

PORT OF NEWPORT REGULAR MONTHLY COMMISSION MEETING AGENDA

Tuesday, February 25, 2020, 6:00 p.m.
South Beach Activities Room
2120 SE Marine Science Drive, Newport, OR 97365

If you want to comment on a particular agenda item during the meeting, please complete a comment form and submit before the meeting is called to order.

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	True Wildlife Fishing Pier Cleanup	Mar 28
	Davis Shows Loyalty Days Carnival	Apr 30 – May 4

- X. Public Comment (3 minutes limit per person)
- XI. Adjournment

Regular Monthly Meetings are scheduled for the fourth Tuesday of every month at 6:00 pm.

The Port of 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.

Link for directions to the RV Park Activity Room:
<https://www.portofnewport.com/recreational-marina-rv-parks-maps>

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PORT OF NEWPORT MINUTES

January 28, 2020

Regular Commission Meeting

This is not an exact transcript. The audio of the session is available on the Port’s website.

Agenda Item

**Audio
Time**

I. CALL TO ORDER

0:00

Commission Vice-President Jim Burke called the Regular Commission Meeting of the Port of Newport Board of Commissioners to order at 6:00 pm at the South Beach Activities Room, 2120 SE Marine Science Drive, Newport, Oregon.

Commissioners Present: Walter Chuck (Pos. #1), Secretary/Treasurer; Gil Sylvia (Pos. #3); Jeff Lackey (Pos. #4); and Jim Burke, Vice-President (Pos. #5). Sara Skamser (Pos. #2), President, was absent.

Management and Staff: Paula J. Miranda, General Manager; Aaron Bretz, Director of Operations; Mark A. Brown, Director of Finance & Business Services; and Karen Hewitt, Administrative Supervisor.

Members of the Public and Media: Dietmar Goebel, Newport City Council; Angela Nebel, Summit Public Relations; and Rex Capri, citizen.

II. CHANGES TO THE AGENDA

0:18

There were no changes to the Agenda.

III. PUBLIC COMMENT

0:30

There was no public comment at this time.

IV. CONSENT CALENDAR

0:38

- A. Minutes
 - 1. Meeting Dec 17 2019
 - 2. Special Commission Meeting Jan 7 2020
- B. Financial Reports
- C. Payne West NOAA Facilities Earthquake & Flood Insurance (\$85,686.25)
- D. Silver Dollar Disposal – Port of Toledo
- E. HYAK – Network & Video System (\$7,700.00)

A motion was made by Chuck and seconded by Lackey to approve the Consent Calendar as presented. The motion passed 4 – 0.

V. OLD BUSINESS

A. Items Removed from Consent Calendar

1:00

There were no items removed from the Consent Calendar.

B. <u>Accounts Paid</u>	1:14
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A motion was made by Chuck and 2nd by Lackey to approve the Accounts Paid. The motion passed 4 – 0.

C. <u>GO Bond Purchase Agreement (Information Only)</u>	1:45
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Miranda referred to the document included in the Meeting Packet, provided for information only to the Commissioners. There was no discussion on this item.

VI. NEW BUSINESS	2:19
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A. <u>2020 Annual Report (ORS 777.140) – Miranda</u>	2:28
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Miranda presented the report included in the Meeting Packet. Hewitt advised is would be signed by the President, Vice-President and Secretary. There were no changes to the report.

B. <u>Newport Belle Bed & Breakfast Lease – Miranda</u>	3:43
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Miranda presented the document included in the Meeting Packet. She said that she would prefer to negotiate a lease before a tenant came on board, but the Newport Belle had already been sold to new owners. Miranda advised the Commission about changes that had been made in comparison to the previous lease to better capture costs. She also informed the Commission about changes that would be made to the document presented regarding how the oil spill plan would be included and the correction of the location to Port H Dock. There was some discussion about the septic and sewer responsibilities.

A motion was made by Chuck and 2nd by Lackey to approve the Newport Belle Bed & Breakfast Lease. The motion passed 4 – 0.

C. <u>South Beach Boat Ramp Repair – Bretz</u>	9:33
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Bretz referred to the Staff Reports included in the Meeting Packet. He said the second report was included to confirm that a \$10,000 grant was received from the Oregon State Marine Board (OSMB), which would allow the project to be completed this year since the higher cost was due to the need for a long reach excavator. Miranda added that a grant under \$25K did not require Commission approval, but the total contract of \$16,155.71 did. \$6,155.71 would be paid for by the Port, and the grant would be applied to this contract. Miranda gave kudos to Bretz for the quick turn-around with OSMB. Bretz acknowledged the contract and quotes were not included in the Meeting Packet, but were referred to in the report.

A motion was made by Lackey and seconded by Chuck to authorize the General Manager to contract with Road and Driveway to conduct boat ramp repairs in the amount of \$16,155.71. The motion passed 4 – 0.

D. <u>Port Dock 7/Fishing Pier Discussion – Bretz</u>	13:39
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Bretz presented the Power Point presentation, a copy of which is included in the Meeting Packet, which he said represented high level ideas that would be used in discussion with permitting agencies, which he wanted to first share with the Commission. Bretz talked about the loss over time of dock at Port Dock 7 and the changing needs of the fishing industry. He mentioned that

upland development would also be needed to make this project feasible. Bretz spoke of the need and necessary expense of mitigation, but added the suggested changes to the Public Fishing Pier could provide mitigation opportunities that would also address the Port’s objectives for the pier itself. He said that ODFW had mentioned the most valuable area at the public pier was at its end; much of the structure is over mudflats. The suggested configuration could also potentially increase the projects’ priority with the Army Corps because of its path on the breakwater, as well as provide benefits to users. Bretz said he anticipated that construction could possibly begin in 2024.

Chuck asked what kind of grants would be sought. Miranda spoke about possible planning and construction grant opportunities and the matching funds that would be available through the NOAA Bond refinancing. Sylvia commended Bretz for connecting the projects because of the permitting and funding benefits, and asked for a projected cost. Bretz said he roughly estimated \$19MM. Both Bretz and Miranda spoke about working with permitting agencies. Chuck raised concerns about parking and incoming boats with the suggested Public Fishing Pier configuration, and suggested if the projects wouldn’t work together they should still be focused on separately. Burke commented this was a great look forward and asked about the value of eel grass mitigation. Bretz commented that there would need to be discussion with agencies and mentioned the Port’s experience with the NOAA eel grass mitigation. Bretz also referred to the letter from Rondys Inc. in the Meeting Packet, and conversations with West Coast seafood processors and people working on the energy project, addressing the needs for services at the Port. Bretz speculated that if the right services and facilities were provided, Port Dock 7 would be filled when the project was completed. Miranda added that looking at economic impacts would also be part of the planning.

E. Budget Committee, Officer & Calendar – Miranda/Brown.....

48:17

Miranda suggested scheduling a Commission Work Session next month to review recruiting Budget Committee members, a proposed Budget Calendar, the status of the work done by staff in preparing for the budget, and goal setting as discussed in the October meeting.. She said that a lot of the staff work had already been done to develop capital improvement priorities, a budget calendar, and budget expenditures. Brown added he was currently working on a revenue estimate. A consensus was reached to schedule a Work Session for Monday, February 24, 2020 at 12:00 pm.

F. Audit Fiscal Year 2018-2019, Kern Thompson CPAs – Brown

52:50

Brown referred to the Audit Reports included in the Meeting Packet, and added they had been sent to members of record at the end of the fiscal year. He said the two recommendations were already addressed. By consensus, the Commissioners accepted the Audit for Fiscal Year 2018-2019.

VII. STAFF REPORTS

A. Director of Finance & Business Services

1. December Occupancy Report

55:37

Brown introduced the Staff Report included in the Meeting Packet. He said the negative cash flow in December was to be expected, and should turn positive by the end of February. He added total income was looking good. He pointed out that financial reports would now include a comparison to previous years. Brown said the Port was on track to meet budget and any needed changes would be presented next month. He referred to the aging report, and said the Port was receiving payments and meets monthly to decide actions needed. He commented that a semi-trailer at NIT will be seized if the year overdue bill is not paid. Brown said he was not happy with the current collection

agency and would be discussing that with Miranda. He suggested that the Port needs to attract events that will attract RVers to address low winter occupancy.

B. Director of Operations.....

1:00:30

Bretz introduced the Staff Report included in the Meeting Packet. He commented that the EDA said the grant money was set aside for the Port Dock 5 Pier project, and they were waiting on word from DC to finish processing. Bretz said based on the Hydro survey on the NOAA pier, he thought dredging won't be needed this year. It will also be evaluated next year. Bretz commented on the reissue of the storm sewer RFP. He mentioned the Port was looking to add security cameras in South Beach; they have provided helpful at the commercial marina. Bretz talked about his involvement with the Cascades West Economic Development District and the potential benefit to the Port. He said he is working on NOAA permitting changes. Bretz suggested the Port will want to pay attention to the City's parking discussion because the implementation of their permitting plan will change the way the Port's parking assets work. He commented that the consensus seems to be from the City that they are anxious to help. Bretz highlighted that the axle fees were working out.

C. General Manager

1:07:25

1. 2020 Seafood & Wine Festival Permission Letter

Miranda introduced the Staff Report included in the meeting packet, and commented on the holidays and conferences over the past month. Miranda said staff is moving forward with the budget, strategic plan and strategizing. She said she is also focused on staff training and budget. She added that the first session of training funded in part by the Ford Family Foundation would be held tomorrow. She shared information from the survey about staff satisfaction and dissatisfaction regarding working for the Port. Miranda added that the recent loss of employees was one reason change was needed. After training is complete, there will be follow up on its impact. She added that the Port of Newport has lower compensation rates that even most other ports. Miranda said that she and Burke attended the Association of Pacific Ports conference; she suggested that they add more content, and APP has a new CEO who will be working on that. She reminded the Commission that the SDAO Mission to Washington would be the first of March, which would be intense and provide opportunities for a lot of good contacts, and will be attended by Skamser, Chuck and herself. She asked the Commissioners to let her know if there are topics they want to focus on.

VIII. COMMISSIONER REPORTS/COMMENTS.....

1:14:09

Sylvia spoke about topics discussed when he attended Congressman Schrader's round table, included dredging, BOEM, water, and Toledo ship building training. Miranda commented on the importance of Commissioner attendance at such events, and asked that the Commissioners coordinate with her on attending. She offered to provide information if needed. Sylvia said he was impressed by the support across different organizations, and that he was a good place to communicate.

Burke spoke about training and presentations at the APP conference he attended, including security, sea level rise, National Wildlife Foundation grants, biological assessment, and tools for port development. Miranda added that she will have access to the presentations.

Chuck said he has been added to the Bureau of Ocean Energy Management (BOEM) Oregon Intergovernmental Renewable Energy Task Force.

IX. CALENDAR/FUTURE CONSIDERATIONS	1:22:51
	2020
SDAO Annual Conference.....	Feb 6 – 9
Ardor Adventures Run Love Run Race	Feb 8
President’s Day, Port Office Closed	Feb 17
Newport Seafood & Wine Festival	Feb 20 – 23
Regular Commission Meeting	Feb 25
SDAO Mission to Washington	Mar 1 – 5

A Commission Work Session at noon on February 24, 2020 was added to the Calendar.

X. PUBLIC COMMENT	1:23:17
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Rex Capri requested a summary of the efforts over the past year to attract new users at the terminal. Miranda will prepare a summary for the past eight months since she started at the Port of Newport.

XI. ADJOURNMENT	1:24:08
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Having no further business, the meeting adjourned at 7:24 pm.

ATTESTED:

James Burke, Vice-President

Walter Chuck, Secretary/Treasurer

Port of Newport
Statement of Cash Flows
For Fiscal Year to Date

	Jul '19 - Jan 20
OPERATING ACTIVITIES	
Net Income	-32,901.81
Adjustments to reconcile Net Income to net cash provided by operations:	
11200 · Accounts Receivable:11205 · A/R Leases & Other	-25,356.18
11200 · Accounts Receivable:11210 · A/R Commercial Marina	-103,000.93
11200 · Accounts Receivable:11215 · A/R SB Marina & RV Park	12,926.46
11300 · Prepaid Expenses:11310 · General Liab. & Property	73,221.15
11300 · Prepaid Expenses:11320 · Docks & Marine	4,389.00
11300 · Prepaid Expenses:11340 · Worker's Comp.	-17,956.64
11300 · Prepaid Expenses:11350 · Employee Draws	213.31
11300 · Prepaid Expenses:11360 · DSL Lease	7,268.52
11300 · Prepaid Expenses:11370 · Other Prepaid Expenses	-5,249.38
11400 · Due from Other Funds:11406 · Due from Fac. Maint. Res. Fund	-2,569.28
11400 · Due from Other Funds:11408 · Due From Construction Fund	-1,755.00
11400 · Due from Other Funds:11410 · Due from NOAA Fund	-14,315.00
12000 · Accounts Payable	-70,590.27
12020 · Lodging/Room Tax Payable:12022 · City Room Tax Payable	665.94
12020 · Lodging/Room Tax Payable:12024 · State Lodging Tax Payable	-4,671.27
12100 · Payroll Liabilities:12105 · Accrued Payroll	7,409.55
12100 · Payroll Liabilities:12110 · Accrued PTO	6,390.42
12100 · Payroll Liabilities:12115 · Payroll Tax & Deducts Payable:12118 · Payroll Liabilities	4,633.00
12100 · Payroll Liabilities:12115 · Payroll Tax & Deducts Payable:12140 · PERS	-501.48
12100 · Payroll Liabilities:12115 · Payroll Tax & Deducts Payable:12142 · Garnishment With...	0.02
12100 · Payroll Liabilities:12115 · Payroll Tax & Deducts Payable:12145 · 125 Plan	678.57
12250 · Deferred Revenue:12260 · Prepaid Moorage:12270 · South Beach Marina	12,877.02
12250 · Deferred Revenue:12280 · Prepaid RV Park Revenue	49,903.30
Net cash provided by Operating Activities	-98,290.98
INVESTING ACTIVITIES	
11500 · Capital Assets:11520 · Land Improvements	8,844,362.00
11500 · Capital Assets:11525 · Buildings	11,576,886.00
11500 · Capital Assets:11530 · Docks & Piers	17,589,709.00
11500 · Capital Assets:11535 · Vehicles & Equipment	9,643.00
11500 · Capital Assets:11550 · Accum Dep-Land Improvements	-2,254,644.00
11500 · Capital Assets:11555 · Accum Dep - Buildings	-3,006,974.00
11500 · Capital Assets:11560 · Accum Dep - Docks & Piers	-6,242,877.00
11500 · Capital Assets:11565 · Accum Dep - Vehicles & Equip	18,732.00
Net cash provided by Investing Activities	26,534,837.00
FINANCING ACTIVITIES	
12400 · Long Term Debt:12405 · Full Faith & Credit (2013)	-205,000.00
12400 · Long Term Debt:12424 · SPWF-L00012	-5,305.01
12400 · Long Term Debt:12425 · SPWF-Q10001	-37,197.91
12400 · Long Term Debt:12432 · 11-13-576 (NIT Forgivable Loan)	-2,083.33
12400 · Long Term Debt:12442 · OCB - #10032077	-16,911.81
12400 · Long Term Debt:12453 · 2017 CM Toyota Forklift	-4,020.76
12400 · Long Term Debt:12454 · 2017 NIT Hyster Forklift	-6,039.66
12400 · Long Term Debt:12470 · City of Newport SDC - 2016	-5,576.87
12400 · Long Term Debt:12471 · Oregon Brewing Co-MUA 2016	-17,471.09
13000 · Fund Balance	-2,587,902.79
13075 · FB - Prior Period Adj	27,658.59
13110 · FB - Capital Asset Additions	-25,020.00
13150 · FB - Depreciation	3,237,352.00
13200 · FB - Debt Principal	-489,330.80
13275 · FB - Accrued Interest	-1,194.00
13300 · FB - Equity Transfers	-25,747,479.00
Net cash provided by Financing Activities	-25,885,522.44
Net cash increase for period	551,023.58
Cash at beginning of period	3,057,665.56
Cash at end of period	3,608,689.14

Port of Newport - General Operating Fund

Balance Sheet

As of January 31, 2020

	Jan 31, 20	Jan 31, 19	\$ Change	% Change
ASSETS				
Current Assets				
Checking/Savings				
11000 · Cash & Equivalents	3,602,485	2,987,744	614,740	21%
Total Checking/Savings	3,602,485	2,987,744	614,740	21%
Accounts Receivable				
11200 · Accounts Receivable	460,256	379,908	80,348	21%
Total Accounts Receivable	460,256	379,908	80,348	21%
Other Current Assets				
11250 · AR Property Tax	10,335	10,335	0	0%
11255 · Allow for Bad Debt - CM	(20,000)	(20,000)	0	0%
11260 · Allow for Bad Debt - SB	(10,000)	(10,000)	0	0%
11270 · Undeposited Funds	6,205	23,228	(17,023)	(73)%
11300 · Prepaid Expenses	36,877	191,816	(154,938)	(81)%
11400 · Due from Other Funds	18,957	174,784	(155,827)	(89)%
11480 · PERS - NPA(L)	(1,070,645)	(635,021)	(435,624)	(69)%
11485 · PERS - Deferred OF	705,254	369,154	336,100	91%
Total Other Current Assets	(323,018)	104,295	(427,313)	(410)%
Total Current Assets	3,739,722	3,471,947	267,776	8%
Fixed Assets				
11500 · Capital Assets	47,952,695	77,538,301	(29,585,606)	(38)%
Total Fixed Assets	47,952,695	77,538,301	(29,585,606)	(38)%
TOTAL ASSETS	51,692,417	81,010,248	(29,317,830)	(36)%
LIABILITIES & EQUITY				
Liabilities				
Current Liabilities				
Accounts Payable				
12000 · Accounts Payable	71,741	373,133	(301,392)	(81)%
Total Accounts Payable	71,741	373,133	(301,392)	(81)%
Other Current Liabilities				
12010 · Unclaimed Property Payable	2,885	0	2,885	100%
12020 · Lodging/Room Tax Payable	783	106	677	636%
12100 · Payroll Liabilities	122,915	108,649	14,266	13%
12250 · Deferred Revenue	292,156	286,888	5,268	2%
12300 · Accrued Interest Payable	16,843	18,037	(1,194)	(7)%
12350 · Current Portion-Long Term Debt	539,514	528,337	11,177	2%
Total Other Current Liabilities	975,096	942,018	33,078	4%
Total Current Liabilities	1,046,837	1,315,151	(268,314)	(20)%
Long Term Liabilities				
12380 · 2013 FF&C Bond Premium	107,808	115,146	(7,338)	(6)%
12400 · Long Term Debt	6,330,348	7,130,463	(800,114)	(11)%
12900 · PERS - Deferred IF	119,917	109,947	9,970	9%
Total Long Term Liabilities	6,558,073	7,355,555	(797,482)	(11)%
Total Liabilities	7,604,910	8,670,706	(1,065,796)	(12)%

Port of Newport - General Operating Fund

Balance Sheet

As of January 31, 2020

	Jan 31, 20	Jan 31, 19	\$ Change	% Change
Equity				
13000 · Fund Balance	62,575,537	64,765,924	(2,190,387)	(3)%
13050 · FB - Contributed Capital	7,130,788	7,130,788	0	0%
13300 · FB - Equity Transfers	(25,585,916)	0	(25,585,916)	(100)%
Net Income	(32,902)	442,829	(475,731)	(107)%
Total Equity	44,087,507	72,339,541	(28,252,034)	(39)%
TOTAL LIABILITIES & EQUITY	51,692,417	81,010,248	(29,317,830)	(36)%

Port of Newport - General Operating Fund
Profit & Loss Budget vs. Actual
July 2019 through January 2020

	Jul '19 - Jan ...	Budget	\$ Over Budget	% of Budget
Ordinary Income/Expense				
Income				
14000 · Lease Revenues	458,818	720,000	(261,182)	64%
14100 · Moorage	896,746	1,547,850	(651,104)	58%
14200 · Hoist Dock & Services	578,331	872,150	(293,819)	66%
14300 · Shipping Terminal Revenues	0	3,000	(3,000)	0%
14400 · RV Parks	680,548	1,080,000	(399,452)	63%
14500 · Launch Ramp & Trailer Storage	58,076	92,000	(33,924)	63%
14600 · Miscellaneous Revenue	61,368	116,000	(54,632)	53%
Total Income	<u>2,733,886</u>	<u>4,431,000</u>	<u>(1,697,114)</u>	<u>62%</u>
Gross Profit	2,733,886	4,431,000	(1,697,114)	62%
Expense				
15000 · Personnel Services	929,542	1,735,539	(805,997)	54%
16000 · Materials & Services	976,172	2,136,710	(1,160,538)	46%
16990 · Depreciation Expense	973,561	0	973,561	100%
17000 · Debt Service	79,237	786,890	(707,653)	10%
Total Expense	<u>2,958,512</u>	<u>4,659,139</u>	<u>(1,700,627)</u>	<u>63%</u>
Net Ordinary Income	(224,626)	(228,139)	3,513	98%
Other Income/Expense				
Other Income				
18100 · Property Tax Revenue	107,581	116,000	(8,419)	93%
18200 · Interest Income	39,099	60,000	(20,901)	65%
18300 · Grants	6,600	255,300	(248,700)	3%
18600 · Gain/(Loss) on Sale of Assets	423	0	423	100%
18700 · Property & Dredge Sales	36,755	10,000	26,755	368%
Total Other Income	<u>190,457</u>	<u>441,300</u>	<u>(250,843)</u>	<u>43%</u>
Other Expense				
19000 · Capital Outlay	0	44,300	(44,300)	0%
19600 · Contingency	0	10,000	(10,000)	0%
19700 · Transfers Out to Other Funds	0	1,399,770	(1,399,770)	0%
19800 · Transfer-Admin Exp to Programs	(1,267)	0	(1,267)	100%
19902 · UEFB	0	1,209,091	(1,209,091)	0%
Total Other Expense	<u>(1,267)</u>	<u>2,663,161</u>	<u>(2,664,428)</u>	<u>(0)%</u>
Net Other Income	<u>191,724</u>	<u>(2,221,861)</u>	<u>2,413,585</u>	<u>(9)%</u>
Net Income	<u>(32,902)</u>	<u>(2,450,000)</u>	<u>2,417,098</u>	<u>1%</u>

Port of Newport - General Operating Fund
Profit & Loss Budget vs. Actual - Administration
 July 2019 through January 2020

	<u>Jul '19 - Jan 20</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Ordinary Income/Expense				
Income				
14600 · Miscellaneous Revenue	3,478	38,000	(34,522)	9%
Total Income	<u>3,478</u>	<u>38,000</u>	<u>(34,522)</u>	<u>9%</u>
Gross Profit	3,478	38,000	(34,522)	9%
Expense				
15000 · Personnel Services	394,703	736,205	(341,502)	54%
16000 · Materials & Services	276,401	525,468	(249,067)	53%
16990 · Depreciation Expense	1,645	0	1,645	100%
Total Expense	<u>672,749</u>	<u>1,261,673</u>	<u>(588,924)</u>	<u>53%</u>
Net Ordinary Income	(669,271)	(1,223,673)	554,402	55%
Other Income/Expense				
Other Income				
18100 · Property Tax Revenue	107,581	116,000	(8,419)	93%
18200 · Interest Income	39,099	60,000	(20,901)	65%
18300 · Grants	6,600	3,500	3,100	189%
Total Other Income	<u>153,280</u>	<u>179,500</u>	<u>(26,220)</u>	<u>85%</u>
Other Expense				
19600 · Contingency	0	10,000	(10,000)	0%
19700 · Transfers Out to Other Funds	0	1,399,770	(1,399,770)	0%
19800 · Transfer-Admin Exp to Programs	(520,791)	0	(520,791)	100%
19902 · UEFB	0	1,209,091	(1,209,091)	0%
Total Other Expense	<u>(520,791)</u>	<u>2,618,861</u>	<u>(3,139,652)</u>	<u>(20)%</u>
Net Other Income	674,071	(2,439,361)	3,113,432	(28)%
Net Income	<u><u>4,800</u></u>	<u><u>(3,663,034)</u></u>	<u><u>3,667,834</u></u>	<u><u>(0)%</u></u>

Port of Newport - General Operating Fund
Profit & Loss Budget vs. Actual - International Terminal
 July 2019 through January 2020

	<u>Jul '19 - Jan 20</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Ordinary Income/Expense				
Income				
14000 · Lease Revenues	89,224	131,137	(41,913)	68%
14100 · Moorage	96,614	156,000	(59,387)	62%
14200 · Hoist Dock & Services	313,180	416,000	(102,820)	75%
14300 · Shipping Terminal Revenues	0	3,000	(3,000)	0%
14600 · Miscellaneous Revenue	1,229	0	1,229	100%
Total Income	<u>500,247</u>	<u>706,137</u>	<u>(205,890)</u>	<u>71%</u>
Gross Profit	500,247	706,137	(205,890)	71%
Expense				
15000 · Personnel Services	82,566	84,484	(1,918)	98%
16000 · Materials & Services	101,951	216,570	(114,619)	47%
16990 · Depreciation Expense	742,182	0	742,182	100%
16995 · Transfer- Admin Exp to Programs	0	0	0	0%
17000 · Debt Service	46,559	519,095	(472,536)	9%
Total Expense	<u>973,258</u>	<u>820,149</u>	<u>153,109</u>	<u>119%</u>
Net Ordinary Income	(473,011)	(114,012)	(358,999)	415%
Other Income/Expense				
Other Expense				
19800 · Transfer-Admin Exp to Programs	17,915	0	17,915	100%
Total Other Expense	<u>17,915</u>	<u>0</u>	<u>17,915</u>	<u>100%</u>
Net Other Income	(17,915)	0	(17,915)	100%
Net Income	<u>(490,926)</u>	<u>(114,012)</u>	<u>(376,914)</u>	<u>431%</u>

Port of Newport - General Operating Fund
Profit & Loss Budget vs. Actual - Commercial Marina
July 2019 through January 2020

	<u>Jul '19 - Jan 20</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Ordinary Income/Expense				
Income				
14000 · Lease Revenues	111,357	150,213	(38,856)	74%
14100 · Moorage	350,470	512,000	(161,530)	68%
14200 · Hoist Dock & Services	236,172	418,000	(181,828)	57%
14600 · Miscellaneous Revenue	11,337	0	11,337	100%
Total Income	<u>709,336</u>	<u>1,080,213</u>	<u>(370,877)</u>	<u>66%</u>
Gross Profit	709,336	1,080,213	(370,877)	66%
Expense				
15000 · Personnel Services	198,936	349,974	(151,038)	57%
16000 · Materials & Services	163,746	608,274	(444,528)	27%
16990 · Depreciation Expense	30,023	0	30,023	100%
17000 · Debt Service	596	7,915	(7,319)	8%
Total Expense	<u>393,302</u>	<u>966,163</u>	<u>(572,861)</u>	<u>41%</u>
Net Ordinary Income	316,035	114,050	201,985	277%
Other Income/Expense				
Other Income				
18300 · Grants	0	250,000	(250,000)	0%
Total Other Income	0	250,000	(250,000)	0%
Other Expense				
19000 · Capital Outlay	0	11,800	(11,800)	0%
19800 · Transfer-Admin Exp to Programs	227,184	0	227,184	100%
Total Other Expense	<u>227,184</u>	<u>11,800</u>	<u>215,384</u>	<u>1,925%</u>
Net Other Income	<u>(227,184)</u>	<u>238,200</u>	<u>(465,384)</u>	<u>(95)%</u>
Net Income	<u>88,850</u>	<u>352,250</u>	<u>(263,400)</u>	<u>25%</u>

Port of Newport - General Operating Fund
Profit & Loss Budget vs. Actual - Maintenance Department
 July 2019 through January 2020

	<u>Jul '19 - Jan 20</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Ordinary Income/Expense				
Expense				
15000 · Personnel Services	7,128	113,257	(106,129)	6%
16000 · Materials & Services	369	8,000	(7,631)	5%
Total Expense	<u>7,497</u>	<u>121,257</u>	<u>(113,760)</u>	<u>6%</u>
Net Ordinary Income	(7,497)	(121,257)	113,760	6%
Other Income/Expense				
Other Expense				
19000 · Capital Outlay	0	15,000	(15,000)	0%
Total Other Expense	<u>0</u>	<u>15,000</u>	<u>(15,000)</u>	<u>0%</u>
Net Other Income	0	(15,000)	15,000	0%
Net Income	<u><u>(7,497)</u></u>	<u><u>(136,257)</u></u>	<u><u>128,760</u></u>	<u><u>6%</u></u>

Port of Newport - General Operating Fund
Profit & Loss Budget vs. Actual - South Beach
 July 2019 through January 2020

	Jul '19 - Jan 20	Budget	\$ Over Budget	% of Budget
Ordinary Income/Expense				
Income				
14000 · Lease Revenues	258,236	438,650	(180,414)	59%
14100 · Moorage	449,662	879,850	(430,188)	51%
14200 · Hoist Dock & Services	28,979	38,150	(9,172)	76%
14400 · RV Parks	680,548	1,080,000	(399,452)	63%
14500 · Launch Ramp & Trailer Storage	58,076	92,000	(33,924)	63%
14600 · Miscellaneous Revenue	45,324	78,000	(32,676)	58%
Total Income	<u>1,520,824</u>	<u>2,606,650</u>	<u>(1,085,826)</u>	<u>58%</u>
Gross Profit	1,520,824	2,606,650	(1,085,826)	58%
Expense				
15000 · Personnel Services	246,210	451,619	(205,409)	55%
16000 · Materials & Services	433,704	778,398	(344,694)	56%
16990 · Depreciation Expense	199,711	0	199,711	100%
16995 · Transfer- Admin Exp to Programs	0	0	0	0%
17000 · Debt Service	32,082	259,880	(227,798)	12%
Total Expense	<u>911,706</u>	<u>1,489,897</u>	<u>(578,191)</u>	<u>61%</u>
Net Ordinary Income	609,118	1,116,753	(507,635)	55%
Other Income/Expense				
Other Income				
18300 · Grants	0	1,800	(1,800)	0%
18600 · Gain/(Loss) on Sale of Assets	423			
18700 · Property & Dredge Sales	36,755	10,000	26,755	368%
Total Other Income	<u>37,178</u>	<u>11,800</u>	<u>25,378</u>	<u>315%</u>
Other Expense				
19000 · Capital Outlay	0	17,500	(17,500)	0%
19800 · Transfer-Admin Exp to Programs	274,425	0	274,425	100%
Total Other Expense	<u>274,425</u>	<u>17,500</u>	<u>256,925</u>	<u>1,568%</u>
Net Other Income	<u>(237,248)</u>	<u>(5,700)</u>	<u>(231,548)</u>	<u>4,162%</u>
Net Income	<u><u>371,870</u></u>	<u><u>1,111,053</u></u>	<u><u>(739,183)</u></u>	<u><u>33%</u></u>

Port of Newport - NOAA Fund

Balance Sheet

As of January 31, 2020

	Jan 31, 20	Jan 31, 19	\$ Change	% Change
ASSETS				
Current Assets				
Checking/Savings				
51000 · Cash & Equivalents	5,219,937	5,040,420	179,517	4%
Total Checking/Savings	5,219,937	5,040,420	179,517	4%
Accounts Receivable				
51200 · Accounts Receivable	0	212,055	(212,055)	(100)%
Total Accounts Receivable	0	212,055	(212,055)	(100)%
Other Current Assets				
51300 · Prepaid Expenses	91,614	134,046	(42,432)	(32)%
51480 · PERS - NPA(L)	(37,869)	(45,912)	8,043	18%
51485 · PERS - Derfered OF	18,144	26,690	(8,546)	(32)%
Total Other Current Assets	71,889	114,824	(42,935)	(37)%
Total Current Assets	5,291,825	5,367,299	(75,473)	(1)%
Fixed Assets				
51500 · Capital Assets	24,672,668	0	24,672,668	100%
Total Fixed Assets	24,672,668	0	24,672,668	100%
TOTAL ASSETS	29,964,493	5,367,299	24,597,195	458%
LIABILITIES & EQUITY				
Liabilities				
Current Liabilities				
Accounts Payable				
52000 · Accounts Payable	1,218	258,890	(257,672)	(100)%
Total Accounts Payable	1,218	258,890	(257,672)	(100)%
Other Current Liabilities				
52110 · Accrued PTO	8,016	6,672	1,345	20%
52200 · Due to Other Funds	14,031	51,496	(37,465)	(73)%
52300 · Accrued Interest Payable	429,587	447,306	(17,719)	(4)%
52350 · Current Portion Long-Term ...	995,000	945,000	50,000	5%
Total Other Current Liabilities	1,446,634	1,450,474	(3,840)	(0)%
Total Current Liabilities	1,447,852	1,709,364	(261,512)	(15)%
Long Term Liabilities				
52400 · Long-Term Debt	16,665,157	18,931,284	(2,266,127)	(12)%
52800 · Less Current Portion LT Debt	(995,000)	(945,000)	(50,000)	(5)%
52900 · PERS - Deferred IF	6,474	7,949	(1,475)	(19)%
Total Long Term Liabilities	15,676,631	17,994,233	(2,317,602)	(13)%
Total Liabilities	17,124,483	19,703,597	(2,579,114)	(13)%
Equity				
53000 · Fund Balance	(12,578,293)	(13,397,667)	819,373	6%
53300 · FB - Equity Transfers	25,585,916	0	25,585,916	100%
Net Income	(167,612)	(938,632)	771,020	82%
Total Equity	12,840,010	(14,336,298)	27,176,309	190%
TOTAL LIABILITIES & EQUITY	29,964,493	5,367,299	24,597,195	458%

Port of Newport - NOAA Fund
Profit & Loss Budget vs. Actual
 July 2019 through January 2020

	<u>Jul '19 - Jan 20</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Ordinary Income/Expense				
Income				
54000 · Lease Revenue	1,473,085	2,545,000	(1,071,915)	58%
Total Income	1,473,085	2,545,000	(1,071,915)	58%
Expense				
55000 · Personnel Services	51,328	80,495	(29,167)	64%
56000 · Materials & Services	155,894	365,400	(209,506)	43%
56990 · Depreciation Expense	913,248	0	913,248	100%
57000 · Debt Service	574,093	2,001,500	(1,427,407)	29%
Total Expense	1,694,563	2,447,395	(752,832)	69%
Net Ordinary Income	(221,477)	97,605	(319,082)	(227)%
Other Income/Expense				
Other Income				
58200 · Interest Income	56,685	100,000	(43,315)	57%
58800 · Miscellaneous Revenue	1,283	1,000	283	128%
Total Other Income	57,968	101,000	(43,032)	57%
Other Expense				
59000 · Capital Outlay	3,120	0	3,120	100%
59600 · Contingency	0	100,000	(100,000)	0%
59700 · Transfers Out to Other Funds	0	0	0	0%
59800 · Transfer-Admin Exp to Programs	983			
59900 · Reserved for Future Expenditure	0	150,000	(150,000)	0%
59902 · UEFB	0	5,603,605	(5,603,605)	0%
Total Other Expense	4,103	5,853,605	(5,849,502)	0%
Net Other Income	53,865	(5,752,605)	5,806,470	(1)%
Net Income	<u>(167,612)</u>	<u>(5,655,000)</u>	<u>5,487,388</u>	<u>3%</u>

Port of Newport - Bonded Debt Fund

Balance Sheet

As of January 31, 2020

	<u>Jan 31, 20</u>	<u>Jan 31, 19</u>	<u>\$ Change</u>
ASSETS			
Current Assets			
Checking/Savings			
21000 · Cash & Cash Equivalents	147,226	233,029	(85,803)
Total Checking/Savings	147,226	233,029	(85,803)
Other Current Assets			
21270 · Property Tax Receivable	86,925	86,925	0
Total Other Current Assets	86,925	86,925	0
Total Current Assets	234,151	319,954	(85,803)
Other Assets			
21800 · Bond Issue costs, net of amort.	2,916	2,916	0
21825 · Advance Refunding Valuation	416,150	416,150	0
Total Other Assets	419,066	419,066	0
TOTAL ASSETS	<u>653,217</u>	<u>739,020</u>	<u>(85,803)</u>
LIABILITIES & EQUITY			
Liabilities			
Current Liabilities			
Other Current Liabilities			
22350 · Bonds Payable - Current	350,000	340,000	10,000
Total Other Current Liabilities	350,000	340,000	10,000
Total Current Liabilities	350,000	340,000	10,000
Long Term Liabilities			
22515 · 2011 Series Bonds	4,948,669	5,018,669	(70,000)
22520 · 2016 Series Bonds	7,043,195	7,320,000	(276,805)
22590 · Bond Premiums	796,865	838,806	(41,941)
22800 · Less Current Portion LTD	(350,000)	(340,000)	(10,000)
22920 · Deferred IF - Refund Valuation	20,808	0	20,808
Total Long Term Liabilities	12,459,537	12,837,475	(377,938)
Total Liabilities	12,809,537	13,177,475	(367,938)
Equity			
23000 · Fund Balance	(12,290,509)	(12,314,927)	24,419
Net Income	134,189	(123,527)	257,716
Total Equity	(12,156,320)	(12,438,455)	282,135
TOTAL LIABILITIES & EQUITY	<u>653,217</u>	<u>739,020</u>	<u>(85,803)</u>

Port of Newport - Bonded Debt Fund

Profit & Loss Budget vs. Actual

July 2019 through January 2020

	<u>Jul '19 - Jan 20</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Ordinary Income/Expense				
Income				
28100 · Bond Levy Proceeds	729,043	832,500	(103,457)	88%
28190 · Proceeds from Bond Refinance	6,014			
Total Income	<u>735,058</u>	<u>832,500</u>	<u>(97,442)</u>	<u>88%</u>
Gross Profit	735,058	832,500	(97,442)	88%
Expense				
27000 · Debt Service	602,506	881,000	(278,495)	68%
Total Expense	<u>602,506</u>	<u>881,000</u>	<u>(278,495)</u>	<u>68%</u>
Net Ordinary Income	132,552	(48,500)	181,052	(273)%
Other Income/Expense				
Other Income				
28200 · Bank Interest Income	1,636	6,500	(4,864)	25%
Total Other Income	1,636	6,500	(4,864)	25%
Other Expense				
29902 · UEFB	0	53,000	(53,000)	0%
Total Other Expense	0	53,000	(53,000)	0%
Net Other Income	1,636	(46,500)	48,136	(4)%
Net Income	<u><u>134,189</u></u>	<u><u>(95,000)</u></u>	<u><u>229,189</u></u>	<u><u>(141)%</u></u>

Port of Newport - Construction Fund

Balance Sheet

As of January 31, 2020

	Jan 31, 20	Jan 31, 19	\$ Change
ASSETS			
Current Assets			
Checking/Savings			
41000 · Cash & Cash Equivalents	14,392	36,010	(21,618)
Total Checking/Savings	14,392	36,010	(21,618)
Total Current Assets	14,392	36,010	(21,618)
TOTAL ASSETS	14,392	36,010	(21,618)
LIABILITIES & EQUITY			
Liabilities			
Current Liabilities			
Accounts Payable			
42000 · Accounts Payable	0	4,879	(4,879)
Total Accounts Payable	0	4,879	(4,879)
Total Current Liabilities	0	4,879	(4,879)
Total Liabilities	0	4,879	(4,879)
Equity			
43000 · Fund Balance	30,337	41,932	(11,595)
Net Income	(15,945)	(10,801)	(5,144)
Total Equity	14,392	31,131	(16,739)
TOTAL LIABILITIES & EQUITY	14,392	36,010	(21,618)

Port of Newport - Construction Fund

Profit & Loss Budget vs. Actual

July 2019 through January 2020

	<u>Jul '19 - Jan 20</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Other Income/Expense				
Other Income				
48200 · Interest Income	12	30	(18)	40%
48300 · Grants	0	1,200,000	(1,200,000)	0%
48900 · Transfers In from Other Funds				
48902 · Transfers In from General Fund	0	1,194,970	(1,194,970)	0%
Total 48900 · Transfers In from Other Funds	<u>0</u>	<u>1,194,970</u>	<u>(1,194,970)</u>	<u>0%</u>
Total Other Income	12	2,395,000	(2,394,988)	0%
Other Expense				
49000 · Capital Outlay				
49303 · PD5 Pier Construction	14,552	2,410,000	(2,395,448)	1%
49440 · Licenses, Permits & Fees	435	0	435	100%
49480 · Terminal WIP				
49484 · Terminal WIP Const & Management	970	0	970	100%
Total 49480 · Terminal WIP	<u>970</u>	<u>0</u>	<u>970</u>	<u>100%</u>
Total 49000 · Capital Outlay	15,957	2,410,000	(2,394,043)	1%
49600 · Contingency	0	10,000	(10,000)	0%
Total Other Expense	<u>15,957</u>	<u>2,420,000</u>	<u>(2,404,043)</u>	<u>1%</u>
Net Other Income	<u>(15,945)</u>	<u>(25,000)</u>	<u>9,055</u>	<u>64%</u>
Net Income	<u>(15,945)</u>	<u>(25,000)</u>	<u>9,055</u>	<u>64%</u>

Port of Newport - Facility Maintenance Reserve Fund

Balance Sheet

As of January 31, 2020

	<u>Jan 31, 20</u>	<u>Jan 31, 19</u>	<u>\$ Change</u>
ASSETS			
Current Assets			
Checking/Savings			
31000 · Cash & Cash Equivalents	151,407	131,368	20,039
Total Checking/Savings	<u>151,407</u>	<u>131,368</u>	<u>20,039</u>
Total Current Assets	<u>151,407</u>	<u>131,368</u>	<u>20,039</u>
TOTAL ASSETS	<u>151,407</u>	<u>131,368</u>	<u>20,039</u>
LIABILITIES & EQUITY			
Liabilities			
Current Liabilities			
Accounts Payable			
32000 · Accounts Payable	4,642	118,409	(113,767)
Total Accounts Payable	<u>4,642</u>	<u>118,409</u>	<u>(113,767)</u>
Total Current Liabilities	<u>4,642</u>	<u>118,409</u>	<u>(113,767)</u>
Total Liabilities	4,642	118,409	(113,767)
Equity			
33000 · Fund Balance	(2,015)	31,045	(33,060)
33020 · FB - Assigned for Future Expend	150,000	100,000	50,000
Net Income	<u>(1,220)</u>	<u>(118,086)</u>	<u>116,866</u>
Total Equity	<u>146,765</u>	<u>12,959</u>	<u>133,806</u>
TOTAL LIABILITIES & EQUITY	<u>151,407</u>	<u>131,368</u>	<u>20,039</u>

Port of Newport - Facility Maintenance Reserve Fund

Profit & Loss Budget vs. Actual

July 2019 through January 2020

	<u>Jul '19 - Jan 20</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Other Income/Expense				
Other Income				
38200 · Interest Income	1,349	2,700	(1,351)	50%
38900 · Transfers In				
38902 · Transfers In from General Fund	<u>0</u>	<u>204,800</u>	<u>(204,800)</u>	<u>0%</u>
Total 38900 · Transfers In	<u>0</u>	<u>204,800</u>	<u>(204,800)</u>	<u>0%</u>
Total Other Income	1,349	207,500	(206,151)	1%
Other Expense				
39000 · Capital Outlay				
39306 · PD5 & 7 Pile Replacement	805	120,000	(119,195)	1%
39309 · SB Boat Ramp Toe Repair	<u>1,764</u>			
Total 39000 · Capital Outlay	2,569	120,000	(117,431)	2%
39600 · Contingency	0	10,000	(10,000)	0%
39900 · Reserved for Future Expenditure	0	65,000	(65,000)	0%
39902 · UEFB	<u>0</u>	<u>150,000</u>	<u>(150,000)</u>	<u>0%</u>
Total Other Expense	2,569	345,000	(342,431)	1%
Net Other Income	<u>(1,220)</u>	<u>(137,500)</u>	<u>136,280</u>	<u>1%</u>
Net Income	<u>(1,220)</u>	<u>(137,500)</u>	<u>136,280</u>	<u>1%</u>

Arthur J. Gallagher Risk Management Services, Inc.
 1241 SE Bay Blvd Ste 200
 Newport, OR 97365

HOLRA1

Phone: (541)265-5555 Fax:

Invoice #	3305686	1 of 2
ACCOUNT NUMBER	DATE	
PORTOFN-09	1/16/2020	
BALANCE DUE ON	AMOUNT DUE	
1/16/2020	\$11,738.50	

PORT OF NEWPORT
 600 SE Bay Blvd
 Newport, OR 97365



Insurance | Risk Management | Consulting

Item #	Trans Eff Date	Due Date	Trans	Description	Amount
Vessel Pollution 2.14 PolicyNumber: OPY19 1034 Company: Underwriters at Lloyd's, London Effective: 1/1/2020 to 1/1/2021					
19561080	1/1/2020	1/16/2020	RENB	POLLUTION LIABILITY RENEWAL	\$1,206.00
19561081	1/1/2020	1/16/2020	CFEE	Policy Fee	\$125.00
Hull & Machinery 2.14 PolicyNumber: SE20CFT00697701 Company: Navigators Insurance Company Effective: 1/1/2020 to 1/1/2021					
19561077	1/1/2020	1/16/2020	RENB	HULL & MACHINERY RENEWAL	\$5,407.50
Excess Protection & Indemn PolicyNumber: SE20LIA00697702 Company: Navigators Insurance Company Effective: 1/1/2020 to 1/1/2021					
19561078	1/1/2020	1/16/2020	RENB	EXCESS PROTECTION & INDEMNITY RENEWAL	\$5,000.00
MARINE LIABILITY RENEWAL AND VESSEL COVERAGE JANUARY 1, 2020 TO JANUARY 1, 2021.					

Please return this portion with your payment. Include your invoice number on your remittance to expedite processing.

HOLRA1

PORT OF NEWPORT
 600 SE Bay Blvd
 Newport, OR 97365

Invoice #	3305686
ACCOUNT NUMBER	DATE
PORTOFN-09	1/16/2020
BALANCE DUE ON	AMOUNT DUE
1/16/2020	\$11,738.50
AMOUNT PAID	

Please send your remittance to:

Arthur J. Gallagher Risk Management Services, Inc.



Insurance | Risk Management | Consulting

**PORT OF NEWPORT
RESOLUTION NO. 2020-01**

**A RESOLUTION ADOPTING A PREVENTION OF WORKPLACE DISCRIMINATION,
HARASSMENT AND RETALIATION POLICY**

WHEREAS, the Port of Newport Board of Commissioners adopted the Port of Newport Personnel Manual by Resolution 2016-12 on December 20, 2016; and

WHEREAS, the Personnel Manual may be amended from time to time by resolution of the Commission; and

WHEREAS, Chapter 21, Section 21.3 of the Personnel Manual addresses a “*Policy Against Harassment*”; and

WHEREAS, the Oregon Legislature passes Senate Bill 479 requiring the establishment or adoption of a written policy with specific policy provisions to prevent workplace harassment, discrimination and retaliation effective January 1, 2020; and

WHEREAS, now the Port Commission would like to adopt a Policy to comply with the law and best practices to supersede the section of the Personnel Manual addressing harassment;

NOW THEREFORE,

THE PORT OF NEWPORT BOARD OF COMMISSIONERS RESOLVES AS FOLLOWS:

Section I. Chapter 21 Section 21.3 of the Personnel Manual adopted December 20, 2016, is hereby rescinded.

Section II. The Port of Newport Prevention of Workplace Discrimination, Harassment and Retaliation Policy, attached hereto as Exhibit A, is hereby adopted by reference.

Section II. The Policies and Procedures may be modified by Resolution or may be modified administratively to follow best practices, for example, to update items to comply with Port Personnel Policy, or to incorporate new laws and rules.

Section II. This resolution becomes effective upon adoption.

Section IV. Staff is directed to codify this policy according to past administrative practices.

APPROVED AND ADOPTED BY THE BOARD OF COMMISSIONERS this 25th day of February, 2020.

ATTEST:

Sara Skamser, President

Walter Chuck, Secretary/Treasurer



Port of Newport

Prevention of Workplace Discrimination, Harassment and Retaliation Policy

Adopted by Resolution XXXX-XX

Date

Prevention of Workplace Discrimination, Harassment and Retaliation
Policy 2/25/2020

PORT OF NEWPORT

Prevention of Workplace Discrimination, Harassment and Retaliation Policy

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Chapter 1. General Provisions

- 1.1 Title.** This Policy and any amendments hereto shall be called, collectively, the Port of Newport Prevention of Workplace Discrimination, Harassment and Retaliation Policy.
- 1.2 Adoption.** This Policy supersedes and replaces the Ports Harassment policy in the personnel manual (chapter 21, section 21.3), adopted on December 20, 2016, resolution number 2016-12.
- 1.3 Purpose and Scope.** The Port of Newport is committed to a work environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a professional atmosphere that promotes equal employment opportunities and prohibits unlawful discriminatory practices, including harassment. Therefore, the Port of Newport expects that all relationships among persons will be respectful and professional, free of bias, prejudice and harassment in the workplace, at work related events, or any activity coordinated by or through the organization. This policy applies to all employees, elected officials, board or commission members, volunteers, interns and any other person we interact with in the course of accomplishing the work of the organization.

The Port of Newport has developed this policy to ensure that all its employees can work in an environment free from unlawful harassment, discrimination and retaliation. The Port of Newport will make every reasonable effort to ensure that all concerned are familiar with these policies and are aware that any complaint in violation of these policies will be investigated and resolved appropriately.

Discrimination, harassment and retaliation are not acceptable.

Any employee who has questions or concerns about these policies should contact the Director Finance and Business Services or the Director of Operations. As an alternative you may reach the Port General Manager.

- 1.4 Interpretation.** If any section or part of this policy is found to be inconsistent with any laws of the State of Oregon or of the United States, or any rule, regulation or standard established pursuant thereto, such section, or part thereof shall be interpreted in the manner most consistent with its original intent that is not inconsistent with any laws of the State of Oregon or the United States or any rules, regulations or standards established pursuant thereto. Nothing contained in this policy shall be construed as a limitation of any rights, privileges, or remedies previously existing under any applicable laws or as a limitation of the powers of the Port Commission or management.
- 1.5 Severability.** Should any portion or the application thereof to any person or property be found invalid for any reason, the validity of the remainder of these provisions or the application of such remainder to other persons or property shall not be affected.

Chapter 2. Equal Employment Opportunity

It is our policy to ensure equal employment opportunity without discrimination or harassment on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other characteristic protected by law.

Chapter 3. Retaliation

We encourage reporting of all perceived incidents of discrimination or harassment. It is the policy of The Port of Newport to promptly and thoroughly investigate such reports. We prohibit retaliation against any individual who reports discrimination or harassment or participates in an investigation of such reports.

Chapter 4. Sexual Harassment

- 4.1 Definition.** Sexual harassment constitutes discrimination and is illegal under federal and state laws. For the purposes of this policy, “sexual harassment” is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when, for example: a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or c) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.
- 4.2 Federal Law.** Title VII of the Civil Rights Act of 1964 recognizes two types of sexual harassment: a) quid pro quo and b) hostile work environment. Sexual harassment may include a range of subtle and not-so-subtle behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these behaviors may include unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual’s body, sexual prowess or sexual deficiencies; leering, whistling or touching; insulting or obscene comments or gestures; display in the workplace of sexually suggestive objects or pictures; and other physical, verbal or visual conduct of a sexual nature.
- 4.3 Oregon State Law.** Oregon Law provides further protection from sexual assault defined as unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat, or intimidation.

Chapter 5. Harassment

- 5.1 Definition.** Harassment on the basis of any other protected characteristic is also strictly prohibited. Under this policy, harassment is verbal, written or physical conduct that denigrates or shows hostility or aversion toward an individual because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, national origin, age, disability, marital status, citizenship, genetic information, or any other characteristic protected by law, or that of his or her relatives, friends or associates, and that: a) has the purpose or effect of creating an intimidating, hostile or offensive work environment, b) has the purpose or effect of unreasonably interfering

with an individual's work performance, or c) otherwise adversely affects an individual's employment opportunities.

- 5.2 *Harassing Conduct.*** Harassing conduct includes labels, insults or negative stereotyping; threatening, intimidating or hostile acts; demeaning jokes; and written or graphic material that belittles or shows hostility or dislike toward an individual or group that is placed on walls or elsewhere on the employer's premises or circulated in the workplace, on company time or using company equipment by e-mail, phone (including voice messages), text messages, social networking sites or other means.

Chapter 6. Reporting

- 6.1 *Reporting Discrimination, Harassment or Retaliation.*** The Port of Newport encourages reporting of all perceived incidents of discrimination, harassment or retaliation, regardless of the offender's identity or position. Individuals who believe that they have been the victim of such conduct should discuss their concerns with the Director Finance and Business Services or the Director of Operations as an alternative you may reach The Port General Manager. See the complaint procedure described below.

In addition, we encourage individuals who believe they are being subjected to such conduct to promptly advise the offender that their behavior is unwelcome and to request that it stop. Often this action alone will resolve the problem. We recognize, however, that an individual may prefer to pursue the matter through complaint procedures.

Following receipt of a complaint or concern management will follow-up every three months for one year to ensure no further concerns or retaliation are experienced. Employees should not wait for the management follow-up to share related experiences. If an employee would like the follow-up to discontinue the follow-up process a request must be submitted in writing to the Port General Manager.

- 6.2 *Internal Complaint Procedure.*** Individuals who believe they have been the victims of conduct prohibited by this policy or believe they have witnessed such conduct should discuss their concerns with Director Finance and Business Services or the Director of Operations if you are unable to reach the primary contact please reach out to the Port General Manager. We encourage employees to document the event(s), associated date(s), and potential witnesses.

The Port of Newport encourages the prompt reporting of complaints or concerns so that quick and helpful action can be taken before relationships become irreparably broken. Early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of harassment. However, complaints and concerns may be brought forward within four years of the alleged violation. We encourage employees to document the events, associated dates, and potential witnesses.

Any reported allegations of harassment, discrimination or retaliation will be investigated quickly. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the event(s) or may have other relevant knowledge.

The Port of Newport will maintain confidentiality throughout the investigatory process to the extent possible with acceptable investigation and appropriate corrective action.

Misconduct constituting harassment, discrimination or retaliation will be dealt with appropriately. Responsive action may include, for example, training, referral to counseling or corrective action such as [Identify potential options: warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay, or termination] as The Port of Newport believes appropriate under the circumstances.

False and malicious complaints of harassment, discrimination or retaliation (as opposed to complaints that, even if erroneous, are made in good faith) may be the subject of appropriate disciplinary action.

6.3 External Complaint Procedures. We encourage employees to bring their concerns and complaints to the organization, and understand that, at times, this may not be the choice of the employee. Below is a list of the external complaint options. Please reach out to the preferred choice to determine the appropriate timelines for their processes.

- Oregon Bureau of Labor and Industries at the following web address:
https://www.oregon.gov/boli/CRD/Pages/C_Crcompl.aspx
- Civil or Criminal Action. In these circumstances, a Notice of Claim must be provided to us in accordance with ORS 30.275.

Chapter 7. Employment Agreements

No employee will be required or invited to sign an agreement requiring the non-disclosure of information related to discrimination or sexual assault as a condition of employment, continued employment, promotion, compensation or the receipt of benefits. An employee may request this type of agreement and, upon request, will be provided at least seven (7) days to change their mind.

Chapter 8. Additional Employee Support Services

Employees may choose to use other support services throughout and following instances related to concerns and complaints. The organization provides the following for additional assistance:

- Counseling and Support Services and/or Employee Assistance Services

References

Reserved



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/09/2020	41736	Alsco			
12/04/2019	LPOR2432094		Shop towels, shirt, and mats	Administration	34.43
12/05/2019	LPOR2432904		NIT towels	International Terminal	33.44
12/06/2019	LPOR2433735		SB mats	SB Admin & Overhead	67.67
12/11/2019	LPOR2436000		Shop towels, shirt, and mats	Administration	34.54
12/13/2019	LPOR2437621		SB mats	SB Admin & Overhead	72.06
12/18/2019	LPOR2439774		Shop towels, shirt, and mats	Administration	34.54
12/19/2019	LPOR2440490		NIT towels	International Terminal	32.97
12/20/2019	LPOR2441189		SB mats	SB Admin & Overhead	72.06
12/25/2019	LPOR2443317		Shop towels, shirt, and mats	Administration	34.54
12/27/2019	LPOR2444703		SB mats	SB Admin & Overhead	72.06
01/02/2020	LPOR2447545		NIT towels	International Terminal	32.97
					<u>521.28</u>
01/09/2020	41737	Aalsea Bay Power Products			
12/09/2019	303389		Repair and maintenance for riding mower	SB Operations	363.36
					<u>363.36</u>
01/09/2020	41738	Amazon Capital Services			
11/26/2019	19P1-KWVQ-H4XD		Office supplies - 64GB jump drives	Administration	67.99
			Freight	Administration	11.24
11/28/2019	1FVL-RGK9-DVXY		Office supplies - USB audio adapter, earbuds, headphone cord extensions, and wireless keyboard and mouse	Administration	76.77
11/29/2019	11KN-W6XJ-RCVM		Office supplies - earbuds	Administration	29.99
01/04/2020	1DY9-FKLM-PGLT		Office supplies - printer ink cartridges and removable file labels	Administration	52.48
01/08/2020	1N3H-VGLJ-1G4P		ViewSonic 3600 Lumens SVGA projector	Administration	279.99
					<u>518.46</u>



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/09/2020	41739	Barrelhead Supply			
12/18/2019	280633		Extension cord	SB Operations	17.99
12/20/2019	280773		Pik Stik grabbers	Commercial Marina	49.98
			Filter canisters	Commercial Marina	45.98
			Gloves	Commercial Marina	41.94
12/30/2019	281104		South restroom doors	SB Operations	400.00
					<u>555.89</u>
01/09/2020	41740	Cedar Creek Quarries	VOID		0.00
01/09/2020	41741	City of Newport Room Tax			
12/31/2019	Dec 2019 Room Tax		Transient room tax - Dec 2019	Main RV Park	962.25
					<u>962.25</u>
01/09/2020	41742	City of Newport Water/Sewer			
12/31/2019	172421.00-12-19		Water and sewer for RV dump station	Main RV Park	63.38
12/31/2019	94861.00-12-19		Water for G and H Docks	SB Marina	251.32
					<u>314.70</u>
01/09/2020	41743	Coastal Paper & Supply			
12/03/2019	568430		Paper products & cleaning supplies	SB Operations	473.52
			Shipping	SB Operations	4.00
12/10/2019	568690		Paper products & cleaning supplies	SB Operations	451.40
			Shipping	SB Operations	4.00
12/17/2019	569003		Paper products & cleaning supplies	SB Operations	518.67
			Shipping	SB Operations	4.00
					<u>1,455.59</u>
01/09/2020	41744	Copeland Lumber Yards			
12/18/2019	1912-053354		5.5" saw blades	International Terminal	14.81
12/27/2019	1912-056280		Toilet tank repair kit	Administration	13.29
					<u>28.10</u>



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/09/2020	41745	Dahl & Dahl			
10/28/2019	244640		Take load of garbage to dump	Commercial Marina	151.04
11/07/2019	245159		Take load of woody debris to dump	SB Operations	64.98
11/07/2019	245168		Take load of garbage to dump	SB Operations	34.50
11/13/2019	245441		Take load of garbage to dump	Commercial Marina	166.40
11/13/2019	245472		Take load of garbage to dump	Commercial Marina	55.68
11/19/2019	245685		Take load of garbage to dump	Commercial Marina	101.12
12/16/2019	246704		Take load of garbage to dump	Commercial Marina	229.76
					<u>803.48</u>
01/09/2020	41746	Doug's Electric			
11/27/2019	C34888F		Troubleshoot and repair garbage compactor	SB Operations	294.00
					<u>294.00</u>
01/09/2020	41747	Englund Marine Supply Co			
12/02/2019	958667/6		Galvanized washers for skiff trailer	Commercial Marina	6.90
12/06/2019	958984/6		Raingear and boots	Commercial Marina	345.84
12/09/2019	959087/6		Raingear and boots	Commercial Marina	345.84
12/11/2019	983881/6		Caps and plugs for restrooms	Commercial Marina	2.19
12/11/2019	959220/6		SS rods for SDS holder	Commercial Marina	14.76
12/13/2019	984377/6		Hydraulic hose and plastic wrap	Commercial Marina	38.32
12/13/2019	959335/6		Electrical tape	International Terminal	9.80
12/13/2019	959310/6		Cleat bolts and galvanized hardware	SB Operations	2.81
12/18/2019	959582/6		Boots	Commercial Marina	89.36
12/19/2019	959626/6		Gloves	International Terminal	4.38
12/20/2019	984343/6		Cleat bolts for docks	SB Operations	15.52
12/20/2019	959707/6		Chains for skiff trailer	Commercial Marina	36.64
12/26/2019	959949/6		Cable for #2 hoist	Commercial Marina	76.25
12/31/2019	960307/6		Chain and hooks	International Terminal	47.70
12/31/2019	960311/6		Galvanized and SS hardware	Commercial Marina	18.30
					<u>1,054.61</u>



Port of Newport

Operating Fund January 2020

Date	Num	Name	Memo	Class	Amount
01/09/2020	41748	Hippo Facility Management			
01/01/2020	19662		License Fee 1/1/20-12/31/20	Administration	3,806.51
					<u>3,806.51</u>
01/09/2020	41749	IcniPro Security Alarms			
01/01/2020	30821		NIT fire and security monitoring	International Terminal	125.97
			FWT fire and security monitoring	International Terminal LP	125.97
					<u>251.94</u>
01/09/2020	41750	Idea Print Works			
12/18/2019	8153		Dry camp traffic cone stickers	SB Operations	325.00
					<u>325.00</u>
01/09/2020	41751	Industrial Welding Supply			
12/05/2019	081833		Welder repair	Commercial Marina	42.33
12/05/2019	081834		Dust masks	SB Operations	37.42
					<u>79.75</u>
01/09/2020	41752	Jalene Case			
12/30/2019	PORTNEWPORT.12.2019		Professional development consultant	Administration	4,800.00
					<u>4,800.00</u>
01/09/2020	41753	Lance P Stimely			
12/24/2019	917054		Diving - repair electrical line on D dock	SB Operations	350.00
					<u>350.00</u>
01/09/2020	41754	Leisure Interactive			
01/01/2020	25430		Annual software subscription for SB	Administration	6,300.00
					<u>6,300.00</u>
01/09/2020	41755	Lincoln County Public Works			
01/01/2020	6033		Fuel for trucks	Commercial Marina	115.45
			Fuel for trucks	SB Operations	212.52
					<u>327.97</u>
01/09/2020	41756	MacPherson Gintner & Diaz			
12/31/2019	81128		Professional services	Administration	4,815.00
					<u>4,815.00</u>



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/09/2020	41757	Employee			
01/05/2020	01/20 Reimbursement		Employee reimbursement - coffee	Administration	59.98
					<u>59.98</u>
01/09/2020	41758	Maxim Crane Works			
01/07/2020	1002765		Spring and roll pin kits for the crane	International Terminal	146.94
					<u>146.94</u>
01/09/2020	41759	Neofunds			
12/27/2019	December 2019		Postage and fee	Administration	802.80
			Finance charge	Administration	12.25
					<u>815.05</u>
01/09/2020	41760	Newport Rental Service			
12/09/2019	W4902		Bolt for lawn mower	International Terminal	2.98
12/10/2019	108409		Mix oil for weed eaters	International Terminal	20.00
					<u>22.98</u>
01/09/2020	41761	Norton Corrosion Limited			
12/27/2019	255639		Annual inspection and adjustment to cathodic protection system	International Terminal	4,050.00
					<u>4,050.00</u>
01/09/2020	41762	Orkin			
12/27/2019	193174898		Pest control	Administration	45.00
					<u>45.00</u>
01/09/2020	41763	Pacific Habitat Services			
12/20/2019	1-6859-01		SB stormwater outfall repair - coordination with agencies	SB Operations	900.00
					<u>900.00</u>
01/09/2020	41764	Papé Material Handling Exchange			
01/02/2020	8314136		Wiper blades and arm for HD90 forklift	International Terminal	230.62
			Freight	International Terminal	14.25
					<u>244.87</u>



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/09/2020	41765	Pioneer Connect			
01/01/2020	Shop 0120		Telephone	SB Operations	40.99
01/01/2020	Office 0120		Telephone	SB Admin & Overhead	229.50
					<u>270.49</u>
01/09/2020	41766	Pioneer Printing			
12/27/2019	71452		Service tickets	Administration	361.95
					<u>361.95</u>
01/09/2020	41767	Platt Electric Supply			
10/29/2019	X485700		Fluorescent bulbs	International Terminal	112.50
11/01/2019	X520442		Fluorescent bulbs	Administration	155.48
11/08/2019	X568489		60 amp receptacles for docks - return credit	International Terminal	-1,827.55
12/05/2019	X770333		LED bulbs for docks and inventory	SB Operations	27.58
12/06/2019	X719411		60 amp shore power plugs	International Terminal	1,944.79
12/12/2019	X832145		15-in-1 tamper proof screwdriver	SB Operations	36.89
12/13/2019	X844022		20 and 30 amp receptacles	SB Operations	156.54
12/13/2019	X841205		20 and 30 amp breakers	SB Operations	225.34
12/16/2019	X855405		4' LED light fixture	SB Operations	56.95
12/18/2019	X862635		20 and 30 amp receptacles	SB Operations	1,465.83
					<u>2,354.35</u>
01/09/2020	41768	Power Motors			
12/02/2019	FOCS235644		Ford Edge oil change	Commercial Marina	47.95
12/13/2019	FOCS235934		Ford Edge maintenance and repairs	Commercial Marina	1,075.37
					<u>1,123.32</u>
01/09/2020	41769	Rau Plumbing			
12/27/2019	32302		Clean out 3/4' swing check valve filters and lines-SB Admin bldg	SB Operations	120.00
					<u>120.00</u>
01/09/2020	41770	RentPrep Enterprise			
01/01/2020	5452		Background checks	SB Admin & Overhead	14.95
					<u>14.95</u>



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/09/2020	41771	Smart Foodservice - Cash & Carry			
12/06/2019	5410540023587		Cleaning supplies	Commercial Marina	49.96
			Breakroom supplies	Commercial Marina	49.14
12/13/2019	5410540024120		Breakroom supplies	International Terminal	99.37
12/17/2019	5410540010709		Cleaning supplies	SB Operations	3.49
			Breakroom supplies	SB Operations	133.21
12/17/2019	5410540010716		Breakroom supplies	SB Operations	15.90
					<u>351.07</u>
01/09/2020	41772	SDIS			
01/02/2020	Feb Health-Dental-Lf		Monthly health-dental-life insurance	Administration	5,219.13
			Monthly health-dental-life insurance	Commercial Marina	757.43
			Monthly health-dental-life insurance	SB Operations	5,219.13
			Monthly health-dental-life insurance	International Terminal	1,491.18
					<u>12,686.87</u>
01/09/2020	41773	Staples			
12/04/2019	2400194581		Computer mouse	Administration	14.99
			Cleaning supplies	Administration	23.58
12/12/2019	2405979421		Office supplies - copy paper	Administration	54.98
12/12/2019	2406102311		Office supplies - thumb tacks	Administration	5.55
12/29/2019	FC 12/19		Credit plan finance charge	Administration	46.04
					<u>145.14</u>
01/09/2020	41774	Suburban Propane			
12/14/2019	1568-103888SB 12-19		Annual propane tank rental	Main RV Park	81.00
12/31/2019	130497		Propane	Commercial Marina	101.89
					<u>182.89</u>
01/09/2020	41775	Sunbelt Rentals			
12/24/2019	96038485-0002		Forklift rentals for crab push	International Terminal	1,188.81
					<u>1,188.81</u>



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/09/2020	41776	T & L Septic Tank Service			
11/26/2019	147871		Chemical toilet rental - SB Dry Camp	SB Operations	80.00
11/26/2019	147870		Chemical toilet rental - NIT	International Terminal	80.00
11/26/2019	147869		Chemical toilet rental - Marina & RV Park	SB Operations	80.00
11/26/2019	147868		Chemical toilet rental - SB south restroom	SB Operations	80.00
11/26/2019	147867		Chemical toilet rental - Bay Front	Commercial Marina	260.00
11/26/2019	147866		Chemical toilet rental - Bay Front	Commercial Marina	200.00
					<u>780.00</u>
01/09/2020	41777	TCB Security Services			
01/01/2020	228580		Monthly security contract - SB Marina	SB Marina	2,055.87
			Monthly security contract - SB RV	Main RV Park	2,055.87
			Monthly security contract - CM	Commercial Marina	2,055.87
			Monthly security contract - NIT	International Terminal	1,088.39
					<u>7,256.00</u>
01/09/2020	41778	Thompson's Sanitary Service			
12/31/2019	13499 12-2019		Trash disposal	Commercial Marina	1,632.66
12/31/2019	12514 12-2019		Trash disposal	SB Admin & Overhead	2,536.44
12/31/2019	12058 12-2019		Trash disposal	International Terminal	1,644.50
					<u>5,813.60</u>
01/09/2020	41779	Toyota Lift NW			
12/16/2019	14133467		Repair forklift hydraulic hose - 40334	Commercial Marina	615.51
12/16/2019	14789857		Preventative maintenance for forklift - 40193	SB Operations	139.60
12/27/2019	14133682		Replace forklift seat - 40193	SB Operations	597.01
					<u>1,352.12</u>



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/09/2020	41780	TWGW NAPA Auto Parts			
11/27/2019	771686		3/8" ratchets and extenders for impact gun	Commercial Marina	59.53
12/04/2019	772784		Pressure washer fittings	Commercial Marina	20.73
12/04/2019	772783		Pressure washer coupler	Commercial Marina	15.77
12/05/2019	773065		Tubes for grease gun	SB Operations	21.16
12/17/2019	775139		Tubes for grease gun	Commercial Marina	90.00
12/18/2019	775402		Connector pieces for skiff trailer	Commercial Marina	31.94
12/19/2019	775514		Cable ties to tie down skiff to trailer	Commercial Marina	37.99
12/19/2019	775512		Ratchet tie downs for skiff trailer	Commercial Marina	74.97
12/24/2019	SVC 122419		Service fee	Administration	1.00
					353.09
01/09/2020	41781	Verizon Wireless			
12/12/2019	9844100429		Monthly cell phone - Admin	Administration	86.23
			Monthly cell phone - CM	Commercial Marina	53.81
			Monthly cell phone - NIT	International Terminal	37.26
			Monthly cell phone - SB	SB Operations	66.73
			Monthly MiFi - SB Admin	SB Admin & Overhead	10.02
			Monthly cell phone plan - Admin	Administration	136.50
			Monthly cell phone - Maint	Maintenance Dept	16.55
			Case and screen protector for new phone - P Miranda	Administration	41.23
					448.33
01/09/2020	41782	Voya (State of Oregon Plan)			
01/01/2020	Jan - 2020		Monthly employee contributions	Administration	50.00
					50.00
01/09/2020	41783	Westech Rigging Supply			
12/13/2019	298010		Rigging slings for hydraulic crane	International Terminal	102.76
					102.76
01/09/2020	41784	Yaquina Boat Equipment			
01/02/2020	37767		5/8" mild steel round bar for wheelbarrow axels	Commercial Marina	26.90
					26.90



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/09/2020	41785	Department of Environmental Quality			
11/22/2019	2020-EEO-5145		Expedited Enforcement Offer (EEO) for Stormwater Violations	International Terminal	1,600.00
					<u>1,600.00</u>
01/23/2020	41786	Amazon Capital Services			
01/09/2020	1XMM-XFRP-KHJK		Acer 15 laptop	SB Operations	375.95
01/10/2020	1XMM-XFRP-NWKP		Drone and battery for mitigation and planning	SB Operations	305.98
01/12/2020	1MRT-PFXW-9JD7		BBQ grill cover	SB Operations	22.99
			Freight	SB Operations	5.99
01/16/2020	19FG-LHX3-JDLY		Spanner wrench-spindle flange lock nut kit for angle grinder	SB Operations	30.36
01/18/2020	1RWL-GD91-46Y9		Office supplies - clipboards and organizer	Administration	39.01
01/18/2020	117W-PJHK-VRWG		Coffee maker	Commercial Marina	184.95
			Freight	Commercial Marina	16.75
					<u>981.98</u>
01/23/2020	41787	Ben's Diving			
01/03/2020	738232		Diving - electrical cord inspection PD3	Commercial Marina	100.00
01/09/2020	738242		Diving - assist Doug's Electric in installing trunk line on A dock	SB Operations	350.00
					<u>450.00</u>
01/23/2020	41788	Business Oregon - OBDD			
			Loan Payment		
01/16/2020	655-36-02Q1001 2-20		Principal - Feb 2020	International Terminal	5,331.47
			Interest - Feb 2020	International Terminal	2,468.53
					<u>7,800.00</u>
01/23/2020	41789	Cedar Creek Quarries			
12/23/2019	0117568-IN		6"-0 crushed rock for Mt NOAA access road	SB Operations	630.91
12/31/2019	0117637-IN		1 1/2 x 3/4" drain rock	International Terminal	208.25
					<u>839.16</u>
01/23/2020	41790	Century Link			
01/05/2020	5412657758840B-01/20		Telephone	Administration	215.02
01/05/2020	5412659651245B-01/20		Telephone	International Terminal	201.69
					<u>416.71</u>



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/23/2020	41791	CenturyLink - Business Service			
12/31/2019	1483631216		Telephone	Administration	26.23
					<u>26.23</u>
01/23/2020	41792	CoastCom			
01/15/2020	0299000117 01-20		Internet - Jan 2020	SB Admin & Overhead	1,039.52
			Internet - Jan 2020	Administration	500.00
					<u>1,539.52</u>
01/23/2020	41793	Department of Environmental Quality			
01/14/2020	UST20-01139		OPER SB underground storage tanks annual fee	SB Operations	590.00
					<u>590.00</u>
01/23/2020	41794	Design Space			
01/10/2020	1114775-IN		Temporary office rental	Administration	877.00
01/17/2020	1115802-IN		Customs office lease	Administration	217.00
					<u>1,094.00</u>
01/23/2020	41795	Digital Deployment			
01/14/2020	103221		Website monthly fee	Administration	450.00
					<u>450.00</u>
01/23/2020	41796	Doug's Electric			
01/10/2020	C34955F		Troubleshoot breaker at top of A dock	SB Operations	4,632.00
01/17/2020	C34965F		Repair outer light circuit on Rogue building and replace photo cell	SB Operations	940.95
					<u>5,572.95</u>
01/23/2020	41797	Fastenal Company			
07/01/2019	ORNEW135515		Safety vest	SB Operations	47.02
					<u>47.02</u>
01/23/2020	41798	G & K Floors	Janitorial services - Port office, SB and customs trailer		
01/21/2020	020120		Janitorial services - SB	SB Admin & Overhead	1,880.00
			Janitorial services - Customs trailer	Administration	120.00
			Janitorial services - Port office	Administration	200.00
					<u>2,200.00</u>



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/23/2020	41799	Hyak			
01/19/2020	19975		Web filtering	Administration	200.00
					<u>200.00</u>
01/23/2020	41800	Kern & Thompson			
12/31/2019	21631		Audit - final billing	Administration	2,500.00
					<u>2,500.00</u>
01/23/2020	41801	Employee	Employee reimbursement		
01/22/2020	01/20 Reimburse		January mileage and travel for Economic Development training	Administration	296.38
					<u>296.38</u>
01/23/2020	41802	National Business Solutions			
			IT contract charge plus Symantec	Administration	-21.72
01/06/2020	IN69147		IT contract charge plus Symantec	Administration	1,086.09
					<u>1,064.37</u>
01/23/2020	41803	Northwest Parking Equipment			
01/06/2020	1-6-2020		New bill acceptor and cash box for launch pay station	SB Marina	1,510.10
			Freight	SB Marina	58.10
					<u>1,568.20</u>
01/23/2020	41804	Oregon Department of State Lands			
01/22/2020	Dredge Spoil 55069		Royalties due on sale of dredge spoils	Administration	7,265.72
01/22/2020	Dredge Spoil 11865		Royalties due on sale of dredge spoils	Administration	8,396.13
					<u>15,661.85</u>
01/23/2020	41805	Pacific Coast Lock & Safe			
01/09/2020	8608		Doorknobs for Marina restrooms	SB Operations	2,200.00
01/17/2020	8801		Doorknob latches for installing new doors in south restroom	SB Operations	44.00
					<u>2,244.00</u>
01/23/2020	41806	Employee	VOID		
					0.00



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/23/2020	41807	Petty Cash			
01/09/2020	Petty Cash - SB		WalMart - coffee and creamer for shop	SB Operations	19.03
			Barrelhead Supply - 3 cotter pins	SB Operations	1.70
			Shower refund due to lack of hot water	SB Admin & Overhead	1.50
			Fred Meyer - tape for boat flags	SB Admin & Overhead	39.96
			Barrelhead Supply - batteries and glue	SB Operations	17.86
			Abby's Pizza - tip for delivery - lunch for executive session	Administration	10.00
			Barrelhead Supply - ss screws for hanging Marina laundry sign	SB Operations	3.10
			Barrelhead Supply - 3-10 pack electric connectors	SB Operations	8.97
			Barrelhead Supply - nuts and bolts	SB Operations	1.92
			Newport Rental Service - keeper ring for lawn mower key	SB Operations	3.98
			Shipping Solutions - ship package	SB Admin & Overhead	42.86
			VenTek Boat launch system - TEST	SB Operations	6.00
			Cash short	SB Admin & Overhead	0.36
01/14/2020	Petty Cash CM		USPS - postage for NIT/DEQ reporting documents	International Terminal	4.80
			WalMart - safety glasses	International Terminal	19.88
			JC Market - beverages for safety meeting	Administration	4.29
			Dollar Tree - paper products for meeting	Administration	10.00
			OR DMV - vehicle registration for Ford Edge	Administration	29.50
			Dollar Tree - holiday party supplies	Administration	2.00
			Dollar Tree - tablecloths for holiday party	Administration	10.00
			USPS - postage for final check return receipt	Administration	13.70
			Balance - A/R till short	Administration	1.25
			USPS - postage for NIT/DEQ reporting documents	International Terminal	1.30
			USPS - international postage	Administration	21.25
			Amazon - HDMI cable	Administration	17.99
			Cash short	Administration	0.25
					<u>293.45</u>



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/23/2020	41808	Pioneer Printing			
01/09/2020	70570		1000 2020 Tide Tables	Administration	129.50
			2000 2020 Tide Tables	SB Admin & Overhead	259.00
					<u>388.50</u>
01/23/2020	41809	Road & Driveway Co			
12/17/2019	0027413-IN		Grade rock for Mt NOAA access road	SB Operations	475.00
					<u>475.00</u>
01/23/2020	41810	Rondys			
06/25/2019	Lease 0619		Gear storage lease	International Terminal	2,000.00
07/25/2019	Lease 0719		Gear storage lease	International Terminal	2,000.00
08/25/2019	Lease 0819		Gear storage lease	International Terminal	2,000.00
09/25/2019	Lease 0919		Gear storage lease	International Terminal	2,000.00
10/25/2019	Lease 1019		Gear storage lease	International Terminal	2,000.00
11/25/2019	Lease 1119		Gear storage lease	International Terminal	2,000.00
12/25/2019	Lease 1219		Gear storage lease	International Terminal	2,000.00
					<u>14,000.00</u>
01/23/2020	41811	SDAO			
01/10/2020	20AC-122019-1568		2020 SDAO Annual Conference - P Miranda	Administration	330.00
01/10/2020	20AC-122019-1382		2020 SDAO Annual Conference - M Brown	Administration	330.00
					<u>660.00</u>
01/23/2020	41812	Toyota Industries Commercial Finance			
01/07/2020	4002640868-17		2017 CM forklift - principal	Commercial Marina	581.22
			2017 CM forklift - interest	Commercial Marina	78.33
					<u>659.55</u>
01/23/2020	41813	Troyer's Marine Supply			
01/17/2020	253225		Hydraulic hoses and fittings for forklift	Commercial Marina	107.36
					<u>107.36</u>



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/23/2020	41814	Verizon Wireless			
01/12/2020	9846177118		Monthly cell phone - Admin	Administration	70.78
			Monthly cell phone - CM	Commercial Marina	54.06
			Monthly cell phone - NIT	International Terminal	37.34
			Monthly cell phone - SB	SB Operations	67.34
			Monthly MiFi - SB Admin	SB Admin & Overhead	10.02
			Monthly cell phone plan - Admin	Administration	136.50
			Monthly cell phone - Maint	Maintenance Dept	16.72
					<u>392.76</u>
01/23/2020	41815	VISA - A Bretz			
12/09/2019	All State Notary		OR Notary stamp		0.00
12/11/2019	Newport Florist		Sympathy arrangement - Pete Gintner's brother	Administration	3.50
12/20/2019	OEDA EB Training		OEDA Economic Development training - M Brown	Administration	99.99
12/31/2019	Intuit		2019 1099-Misc forms	Administration	72.99
					<u>176.48</u>
01/23/2020	41816	VISA - P Miranda			
12/16/2019	Star Park Lot		Parking for bond signing	Administration	4.99
12/16/2019	OR Convention Center		Parking for OR Business Plan Leadership summit	Administration	12.00
12/26/2019	Alaska Air		Airfare for PNWA Mission to Washington - S Skamser	Administration	294.00
12/26/2019	Hawaiian Airlines		Airfare to Honolulu for APP Conference - P Miranda	Administration	467.20
12/26/2019	Delta Air		Airfare for PNWA Mission to Washington - S Skamser	Administration	184.00
12/26/2019	Delta Air		Airfare for PNWA Mission to Washington - P Miranda	Administration	184.00
					<u>1,146.19</u>
01/23/2020	41817	Wells Fargo Financial Leasing			
01/03/2020	5008689941		Copier lease - North office	Administration	141.50
			Copier lease - SB office	SB Admin & Overhead	141.50
					<u>283.00</u>



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/30/2020	41818	Alsco			
01/01/2020	LPOR2446888		Shop towels, shirt, and mats	Administration	34.54
01/03/2020	LPOR2448294		SB mats	SB Admin & Overhead	72.06
01/08/2020	LPOR2450424		Shop towels, shirt, and mats	Administration	34.54
01/15/2020	LPOR2454397		Shop towels, shirt, and mats	Administration	34.54
01/16/2020	LPOR2455120		NIT towels	International Terminal	32.97
01/17/2020	LPOR2455938		SB mats	SB Admin & Overhead	72.06
01/22/2020	LPOR2458143		Shop towels, shirt, and mats	Administration	34.54
01/29/2020	LPOR2461843		Shop towels, shirt, and mats	Administration	34.54
01/30/2020	LPOR2462573		NIT towels	International Terminal	32.97
					<u>382.76</u>
01/30/2020	41819	Alsea Bay Power Products			
01/28/2020	305297		Mower parts - deflector and gauge wheels	SB Operations	64.97
			Gloves	SB Operations	11.89
			Freight	SB Operations	5.50
					<u>82.36</u>
01/30/2020	41820	Amazon Capital Services			
01/23/2020	1N3J-D6JC-HWXG		Metal case for drone	SB Operations	65.99
					<u>65.99</u>
01/30/2020	41821	Barrelhead Supply			
01/02/2020	281222		Electrical conduit for picnic bunker lights	SB Operations	25.99
					<u>25.99</u>
01/30/2020	41822	Builders FirstSource			
01/30/2020	45828789		2 - 100' contractor-grade extension cords	International Terminal	159.98
					<u>159.98</u>



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/30/2020	41823	Coastal Paper & Supply			
01/07/2020	569607		Paper products & cleaning supplies	SB Operations	469.02
			Shipping	SB Operations	4.00
01/14/2020	569914		Paper products & cleaning supplies	SB Operations	460.44
			Shipping	SB Operations	4.00
01/21/2020	570193		Paper products & cleaning supplies	SB Operations	418.10
			Shipping	SB Operations	4.00
01/28/2020	570488		Paper products & cleaning supplies	SB Operations	480.24
			Shipping	SB Operations	4.00
					<u>1,843.80</u>
01/30/2020	41824	Copeland Lumber Yards			
01/08/2020	2001-061093		Toilet tank repair parts	Commercial Marina LP	5.22
01/24/2020	2001-068879		Doorknob	Commercial Marina	23.74
01/29/2020	2001-071132		Supplies for designing recycle dumpster signage brackets	International Terminal	10.14
01/30/2020	2001-071579		Sawzall torch blades	International Terminal	46.99
					<u>86.09</u>
01/30/2020	41825	Dahl & Dahl			
01/07/2020	247614		Take load of garbage to dump	Commercial Marina	192.56
01/28/2020	248407		Take load of garbage to dump	Commercial Marina	153.38
					<u>345.94</u>
01/30/2020	41826	DEQ			
01/27/2020	AQGP-122 012720		Air Contaminant Discharge Renewal permit application	SB Operations	144.00
					<u>144.00</u>
01/30/2020	41827	Dustin's Custom Fiberglass			
01/14/2020	Skiff Repair		Skiff repair - labor and materials	Commercial Marina	303.88
					<u>303.88</u>



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/30/2020	41828	Englund Marine Supply Co			
01/03/2020	960400/6		Shore power adapter	International Terminal	38.47
01/03/2020	988276/6		Forklift repair supplies - hydraulic hose, picks, and wax tape	Commercial Marina	50.59
01/08/2020	989000/6		Hydraulic hoses for forklift	Commercial Marina	133.24
01/27/2020	K61378/6		Bilge pump and hose	SB Operations	212.51
					<u>434.81</u>
01/30/2020	41829	Enterprise Marine Service			
01/24/2020	2020-011		Tow Silver Dollar to Port of Toledo for haul out	SB Operations	822.50
					<u>822.50</u>
01/30/2020	41830	Fred Meyer Customer Charges			
01/08/2020	166860		Coffee maker	International Terminal	24.99
01/14/2020	166873		Printer ink and batteries	SB Operations	203.94
01/24/2020	166899		Candy for front office	Administration	51.92
					<u>280.85</u>
01/30/2020	41831	Hyak			
01/16/2020	19954		Annual Wi-Fi and security camera network support	Administration	7,700.00
01/24/2020	101073		Security cameras and equipment	Commercial Marina	4,048.87
			Labor	Commercial Marina	1,245.00
					<u>12,993.87</u>
01/30/2020	41832	Jeremy Walsh	Refund Annex RV		
01/13/2020	8358824		Cancelled reservation	SB Annex	319.27
					<u>319.27</u>
01/30/2020	41833	KSHL Radio			
01/01/2020	121141		Radio ads - Blessing of the Fleet	Administration	99.00
					<u>99.00</u>
01/30/2020	41834	NW Natural			
01/20/2020	1584562-1 01-20		SB gas	Main RV Park	283.88
01/20/2020	1584561-3 01-20		SB gas for shop	SB Operations	190.72
					<u>474.60</u>



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/30/2020	41835	PNWA	2020 Mission to Washington DC		
01/09/2020	5886		Registration - W Chuck, P Miranda, and S Skamser	Administration	2,775.00
					<u>2,775.00</u>
01/30/2020	41836	Pioneer Printing			
01/17/2020	71653		Purchase order forms	Administration	252.10
					<u>252.10</u>
01/30/2020	41837	Platt Electric Supply			
01/14/2020	0A54359		Wall heater	Commercial Marina	118.59
					<u>118.59</u>
01/30/2020	41838	Rondys			
01/25/2020	Lease 0120		Gear storage lease	International Terminal	2,000.00
					<u>2,000.00</u>
01/30/2020	41839	Smart Foodservice - Cash & Carry			
01/08/2020	13618		Cleaning supplies - citrus degreaser and dish soap	International Terminal	58.28
01/23/2020	15631		Breakroom supplies - water, creamer, coffee filters, and coffee	SB Operations	112.34
			Office supplies - batteries	SB Operations	13.77
01/24/2020	15774		Breakroom supplies - coffee, water, and sugar	Commercial Marina	127.58
01/29/2020	28143		Breakroom supplies - coffee, water, and sodas	International Terminal	89.93
					<u>401.90</u>
01/30/2020	41840	SDAO			
12/19/2019	20AC-122019-1570		2020 SDAO Annual Conference - G Sylvia	Administration	330.00
01/24/2020	20AC-012020-0181		2020 SDAO Annual Conference - Pre-Conference - G Sylvia	Administration	100.00
					<u>430.00</u>
01/30/2020	41841	TCB Security Services			
01/28/2020	228833		Monthly security contract - SB Marina	SB Marina	2,055.87
			Monthly security contract - SB RV	Main RV Park	2,055.87
			Monthly security contract - CM	Commercial Marina	2,055.87
			Monthly security contract - NIT	International Terminal	1,088.39
					<u>7,256.00</u>



**Operating Fund
January 2020**

Date	Num	Name	Memo	Class	Amount
01/30/2020	41842	Toyota Lift NW			
01/24/2020	14787799		Preventative maintenance for forklift - 40193	SB Operations	140.00
					<u>140.00</u>
01/30/2020	41843	TWGW NAPA Auto Parts			
12/31/2019	777151		Starting fluid	Commercial Marina	19.14
01/07/2020	778275		Hydraulic fluid	Commercial Marina	85.98
01/08/2020	778561		Air, fuel, and oil filters for dump truck	Commercial Marina	99.06
01/16/2020	780013		Case of Simple Green	Commercial Marina	67.96
01/23/2020	781150		Starting fluid	International Terminal	3.98
01/28/2020	781943		Headlight bulbs for crane	International Terminal	24.98
					<u>301.10</u>
				Total	\$ 167,460.39



**NOAA Fund
January 2019**

Date	Num	Name	Memo	Amount
01/09/2020	13638	AVS Elevator		
12/16/2019	4040		Troubleshoot elevator door issue	693.67
12/23/2019	4046		Install and set up new elevator door operator	<u>1,688.36</u>
				2,382.03
01/09/2020	13639	Lincoln County Public Works		
01/01/2020	6033		Gas for truck	<u>30.25</u>
				30.25
01/09/2020	13640	Newport Rental Service		
12/14/2019	108298		Scissor lift rental for overhead door and HVAC service	<u>380.60</u>
				380.60
01/09/2020	13641	Norton Corrosion Limited		
12/27/2019	255639		Annual inspection of cathodic protection system	<u>4,050.00</u>
				4,050.00
01/09/2020	13642	Pacific Habitat Services	NOAA Dock Anode Repair	
12/20/2019	1-6898-01		Coordination with DSL, NMFS, ACOE and app prep	<u>1,058.00</u>
				1,058.00
01/09/2020	13643	Pioneer Connect		
01/01/2020	January 2020		Telephone	<u>239.90</u>
				239.90
01/09/2020	13644	Smart Foodservice - Cash & Carry		
12/26/2019	5410540025269		Breakroom supplies - water	<u>40.95</u>
				40.95
01/09/2020	13645	SDIS		
01/02/2020	Feb Health-Dental-Lf		Monthly health-dental-life insurance	<u>745.59</u>
				745.59



**NOAA Fund
January 2019**

Date	Num	Name	Memo	Amount
01/09/2020	13646	Thompsons Sanitary Service		
12/31/2019	22644 12-2019		December service	744.10
				<u>744.10</u>
01/09/2020	13647	Verizon Wireless		
12/12/2019	9844100429		Phone charges and MiFi	26.57
				<u>26.57</u>
01/23/2020	13648	Bill's Pest Control		
01/08/2020	10500		Pest control	135.00
				<u>135.00</u>
01/23/2020	13649	Verizon Wireless		
01/12/2020	9846177118		Phone charges and MiFi	26.74
				<u>26.74</u>
01/30/2020	13650	Englund Marine Supply Co		
01/14/2020	987188/6		Camel chains	3,120.00
				<u>3,120.00</u>
01/30/2020	13651	PayneWest Insurance		
01/07/2020	257602		Insurance Renewal Business CDIC	85,686.25
				<u>85,686.25</u>
			Total	<u>\$ 98,665.98</u>

STAFF REPORT

DATE: 25 Feb 2020
RE: Supplemental Budget
TO: Paula Miranda, General Manager
ISSUED BY: Mark A. Brown, Director of Finance and Business Services

BACKGROUND

On January 7, 2020 a special meeting of the Commission was held to discuss Anode replacement at the NOAA facilities. The Commission approved the replacement of the Anodes at the NOAA docks. The Camel system on the NOAA docks are in need of replacement and because of the life expectancy and cost are a Capital Outlay.

DETAIL

The staff report incorrectly stated that \$80,000 was allocated in the 2019-2020 budget for Anode replacement. I have carefully reviewed the resolution (2019-09) authorizing expenditures for the current fiscal year, and find no capital expenditures included in the NOAA budget. The NOAA lease revenue fund did include \$100,000 for contingencies. An additional \$3,120 was spent in January to update and maintain the Camel system repairs and modifications, and the installation of the Camel system will add additional costs.

RECOMMENDATION and MOTION

I RECOMMEND A MOTION TO ADOPT RESOLUTION 2020-XX ADOPTING A SUPPLEMENTAL BUDGET FOR FISCAL YEAR 2019-2020 AND MAKING APPROPRIATIONS.

**PORT OF NEWPORT
RESOLUTION NO. 2020-XX**

**A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET
FOR FISCAL YEAR 2019-2020 AND MAKING APPROPRIATIONS**

WHEREAS, the Port of Newport Board of Commissioners adopted Resolution 2019-09 Adopting the 2019-20 Fiscal Year Budget, Making Appropriations, Levying and Categorizing the Tax on June 24, 2019; and

WHEREAS, the Port of Newport Board of Commissioners finds that a pressing necessity exists requiring transfers of appropriated funds between appropriation categories within the NOAA Lease Revenue Fund requiring a supplemental budget in accordance with local budget law (*ORS 294.741*);

NOW THEREFORE,

THE PORT OF NEWPORT BOARD OF COMMISSIONERS RESOLVES AS FOLLOWS:

Section 1. Intrafund transfer of appropriated funds within the NOAA Lease Revenue Fund.

Authorize a \$100,000 intrafund transfer from Contingency to Capital Outlay to cover the cost for the NOAA Cathodic Protection System Anode Replacement in the amount of \$42,210.00, approved by the Commission on January 7, 2020, and the residual cost of the NOAA Camel System Repairs in the amount of \$3,120.00 that was paid for the current fiscal year. The intent was for internal staff to install the Camel system. The Port will instead by utilizing an external party to install the system, and an RFQ is being prepared for quotes to install the camel system, requiring additional funds be transferred to cover the cost of installation.

	Existing FY 2019-2020 Appropriation	Transfer In (Out)	Revised Appropriation
NOAA Lease Revenue Fund			
Capital Outlay	\$ 0	\$ 100,000	\$ 100,000
Contingency	\$ 100,000	\$ (100,000)	\$ 0

Section 2. Effective Date. Resolution shall take effect immediately.

APPROVED AND ADOPTED BY THE BOARD OF COMMISSIONERS this 25th day of February, 2020.

ATTEST:

Sara Skamser, President

Walter Chuck, Secretary/Treasurer

STAFF REPORT

DATE: 25 Feb 2020
RE: Local Government Investment Pool
TO: Paula Miranda, General Manager
ISSUED BY: Mark A. Brown, Director of Finance and Business Services

BACKGROUND

Prior to 2012 the Port utilized the Local Government Investment Pool (LGIP) and the Oregon Short Term Fund (OSTF) per the staff at the Oregon State Treasury. I was unable to find a resolution supporting dissolution of the account. However, in 2012 the LGIP was earning an interest rate of less than 1%, which I believe is the rationale for closing the account. Current earnings on the LGIP account is 2.75% per day

DISCUSSION

The LGIP and OST offer the port to earn a higher rate of interest on its funds. I have included a copy of the LGIP rules and OST rules for your review. Both the OST and LGIP contain greater risk than maintaining an account at our local financial institution, but has greater rewards. The risk is mitigated by their Investment Objectives: 1. Ensure preservation of capital, 2. Maintain liquidity 3. Attain a market rate of return (taking into account numbers 1 and 2).

Interest on the Account Balances are based on the balance of the account at the rate for that day, divided by the number of days in the year, with the interest distributed monthly, on the last day of the month. Over the 1 year life, on average, LGIP has a higher percentage yield than does Oregon Coast Bank.

Recent earnings:

Month	Average Daily Rate	LGIP Annual Percentage Yield	Oregon Coast Bank Percentage Yield
January 2020	2.2500%	2.38%	2.32%
December 2019	2.2500%	2.38%	2.35%
November 2019	2.3433%	2.37%	2.68%
October 2019	2.4500%	2.48%	2.68%

September 2019	2.5650%	2.6%	2.68%
August 2019	2.6387%	2.67%	2.68%
July 2019	2.7500%	2.79%	2.68%
June 2019	2.7500%	2.79%	2.68%
May 2019	2.7500%	2.79%	2.68%
April 2019	2.7500%	2.79%	2.68%
March 2019	2.7500%	2.79%	2.68%
February 2019	2.7500%	2.79%	2.68%
January 2019	2.7500%	2.79%	2.32%

RECOMMENDATION and MOTION

I RECOMMEND A MOTION TO ADOPT RESOLUTION 2020-XX AUTHORIZING USE OF LOCAL GOVERNMENT INVESTMENT POOL, DESIGNATING SIGNERS, AND AUTHORIZING REFINANCING OF LOANS.

**PORT OF NEWPORT
RESOLUTION NO. 2020-**

**A RESOLUTION AUTHORIZING USE OF LOCAL GOVERNMENT
INVESTMENT POOL, DESIGNATING SIGNERS, AND AUTHORIZING
REFINANCING OF LOANS**

WHEREAS, the Port of Newport is a port organized under ORS 777; and

WHEREAS, ORS 777.405 states money of a port shall be deposited in one or more banks designated by the Board of Commissioners. Funds shall be withdrawn only when previously ordered by the Board upon a check signed and countersigned by such persons as may be authorized by resolution of the Board; and

WHEREAS, By-laws for the Port of Newport Board of Commissioners Sec. 1 7(A) states that all Commissioners are eligible to sign checks upon approval; and

WHEREAS, the Port discontinued use of the Local Government Investment Pool in 2012; and

WHEREAS, the Port seeks to maximize the use of dollars received; and

WHEREAS, the Local Government investment pool seeks to keep taxpayer dollars safe and to help governments of all sizes to stretch public funds; and

WHEREAS, the Local Government Investment Pool (LGIP) offers the highest available rates.

NOW THEREFORE,

**THE PORT OF NEWPORT BOARD OF COMMISSIONERS RESOLVES AS
FOLLOWS:**

Section 1. The Commission authorizes the Director of Finance to open an account:

**A. LOCAL GOVERNMENT INVESTMENT POOL AND OREGON SHORT
TERM FUND**

Section 2. The Commission authorizes the General Manager or the Director of Finance and Business Services to explore and, beneficial to the Port, refinance appropriate loans

Section 3. Authorized Signers. The Commission authorizes the five members of the Port of Newport Board of Commissioners, the General Manager, the Director of Operations, and the Director of Finance and Business Services to be signers on accounts associated with LGIP.

- A. Walter Chuck..... Position #1
- B. Sara Skamser Position #2
- C. Gilbert Sylvia Position #3
- D. Jeff Lackey.....Position#4
- E. James M. BurkePosition#5
- F. Paula J. Miranda..... General Manager
- G. Mark A. Brown.....Director of Finance and Business Services
- H. Aaron Bretz.....Director of Operations

APPROVED AND ADOPTED BY THE BOARD OF COMMISSIONERS this
25th day of February, 2020.

ATTEST:

Sara Skamser, President

Walter Chuck, Secretary/Treasurer

STAFF REPORT

DATE: 25 Feb 2020
RE: Financial Institution RFP
TO: Paula Miranda, General Manager
ISSUED BY: Mark A. Brown, Director of Finance and Business Services

BACKGROUND

On November 08, 2019 The Port released an RFP for Banking Services, this was posted on the Ports Web Site. We additionally sent the RFP to local financial institutions that met the statutory requirements for to be included in the Public Funds Collateralization Program (PFCP). The Port received a total of 6 responses, one of those responses was considered unresponsive, five (5) financial institutions were evaluated.

DETAIL

The financial institutions were evaluated in 2 separate stages. In the first round the financial institutions were evaluated on five weighted criteria:

Cost of Services (the most efficient means to manage the Ports cash assets	(50%)
Services Provided – the ability to meet all of the Minimum specified requirements	(15%)
Communication and Interpersonal skills	(15%)
Cost an effort to implement changes	(10%)
Ability to offer optional Services	(10%)

After signing a non-disclosure form, the committee evaluating the financial institutions met and discussed the evaluation criteria and receive instructions and the packets, and were provided with a tool to assist in the evaluation of the cost of services and were instructed to complete the analysis independently. The committee met one week later to discuss the results of the evaluation. At this time the results were compiled, and compared, the results were discussed, and the committee was given the opportunity to change scores based on the discussion. As a result of the discussion to financial Institutions rose to the top.

The Committee determined that an additional in-person interviews was desirable for the top two institutions. The two institutions were invited to come back to present to the Port and respond to the following questions:

What will our relationship be like if I bank here?

Tell us about your familiarity with municipalities and ports specifically, how are municipalities and ports viewed at your institution, are municipalities or Ports a preferred sector?

Based on your experience in working with our industry, what Banking Services do you think we need right now? What do you think we will need in the Future?

Does the bank have a division focused on lending and doing business with Ports or municipalities, please describe your experience.

How many other municipalities or business clients does the banker we'll be working with currently manage? Will they have enough time to provide personalized attention and care to our business?

Does our local contact have local lending authority?

What is your lending process for municipalities?

Based on the presentation by the financial institutions, and review of the scoring, the committee is recommending the Port change to First Interstate Bank for the following reasons:

1. First Interstate Bank and the competing institution (US Bank) offer similar services, and can offer all mandatory services the Port of Newport requires in order to streamline its processes, and to protect the Port against fraud.
2. First Interstate's relationship team includes an individual who has Port experience.
3. The structure of fees at First Interstate Bank is more straightforward
4. First Interstate Bank is offering a conversion credit of \$7,500
5. First Interstate specifically discussed keeping local deposits local and how the staff at First Interstate bank are encouraged to volunteer in the local community, the Bank also gives a minimum of 2% of pre-tax dollars to local communities.

RECOMMENDATION and MOTION

I RECOMMEND A MOTION TO ADOPT RESOLUTION 2020-XX DESIGNATING BANK ACCOUNTS, BANKING INSTITUTIONS, AND SIGNERS

**PORT OF NEWPORT RESOLUTION
NO. 2020-**

A RESOLUTION DESIGNATING BANK ACCOUNTS, BANKING INSTITUTIONS, AND SIGNERS

WHEREAS, the Port of Newport is a port organized under ORS 777; and

WHEREAS, ORS 777.405 states money of a port shall be deposited in one or more banks designated by the Board of Commissioners. Funds shall be withdrawn only when previously ordered by the Board upon a check signed and countersigned by such persons as may be authorized by resolution of the Board; and

WHEREAS, By-laws for the Port of Newport Board of Commissioners Sec. 17(A) states that all Commissioners are eligible to sign checks upon approval; and

WHEREAS, Resolution 2019-11 approved August 27, 2019 was the last resolution authorizing Financial Institutions and Financial Accounts; and

WHEREAS, the Port has put forth a competitive bidding process to compare banking institutions;

NOW THEREFORE,

THE PORT OF NEWPORT BOARD OF COMMISSIONERS RESOLVES AS FOLLOWS:

Section 1. Authorized Signers. The Commission authorizes the five members of the Port of Newport Board of Commissioners, the General Manager, the Director of Operations, and the Director of Finance and Business Operations to be signers on designated bank accounts.

- A. Walter Chuck..... Position #1
- B. Sara Skamser Position #2
- C. Gilbert Sylvia..... Position #3
- D. Jeff Lackey Position #4
- E. James M. Burke Position #5
- F. Paula J. Miranda General Manager
- G. Mark A. Brown Director of Finance and Business Operations
- H. Aaron Bretz..... Director of Operations

Section 2. Rescission. The Commission hereby rescinds authorization for the following to be signers on designated bank accounts.

- A. All previous check signers not listed in Section I above.

Section 3. Designated Primary Financial Institution. The Commission designates First Interstate Bank as its primary financial institution with the following bank accounts:

- 1. Operating CheckingGeneral Operating Funds
- 2. General Money Market.....General Operating Funds
- 3. NOAA Operating Checking.....NOAA
- 4. NOAA Money MarketNOAA

Section 4. Secondary Financial Institutions.

1. Oregon Coast Bank

Section 5. During or upon completion, the Director of Finance shall close all other bank accounts, transferring funds to either the Local Government Investment Fund or the Primary or Secondary Financial Institutions.

APPROVED AND ADOPTED BY THE BOARD OF COMMISSIONERS this 25th day of February, 2020.

ATTEST:

Sara Skamsner, President

Walter Chuck, Secretary/Treasurer

STAFF REPORT

DATE: 25 Feb 2020
RE: Grant Award
TO: Paula Miranda, General Manager
ISSUED BY: Mark A. Brown, Director of Finance and Business Services

BACKGROUND

The Port has received official notification of award from the Economic Development Agency in the amount of \$1,195,563, as a 50% match for construction of a new fixed pier. Gangway and gangway float at Pier Dock 5.

DISCUSSION

In the current fiscal year, the Port budgeted for the replacement of Pier Dock 5, however the award of the Federal Funds occurred after the in-water work period, this work will need to be completed during our next fiscal year, I have included this projects expense in next year's budget, as well as the revenue from the EDA. The required match is \$1,195,563, the Port has the funds to complete this project. As part of the project, quarterly progress reports are required (end of each quarter), and Semiannual financial reporting is required. Once signed the Port has five (5) years to complete the project. The Port is also required to follow specified cost principles, uniform administrative requirements and Audit requirements as part of the grant.

RECOMMENDATION and MOTION

I RECOMMEND A MOTION TO AUTHORIZE THE GENERAL MANAGER TO ACCEPT THE DEPARTMENT OF COMMERCE'S ECONOMIC DEVELOPMENT ADMINISTRATION GRANT IN THE AMOUNT OF \$1,195,563.00 REQUIRING A PORT MATCH OF THE SAME AMOUNT.



U. S. DEPARTMENT OF COMMERCE
Economic Development Administration
915 Second Avenue, Room 1890
Seattle, WA 98174
Fax: 206.220.7669
Voice: 206.220.7660

February 6, 2020

In reply refer to:
Investment No.: 07 01 07523

Mr. Aaron T. Bretz
Director of Operations
Port of Newport
600 S.E. Bay Boulevard
Newport, Oregon 97365

Dear Mr. Bretz:

I am pleased to inform you that the Department of Commerce's Economic Development Administration (EDA) has approved your application for an EDA investment to the Port of Newport.

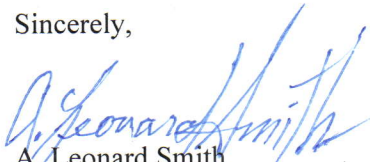
Enclosed are three signed copies of the Financial Assistance Award. Your agreement to the terms and conditions of the award should be indicated by the signature of your principal official on each of the signed copies of the Financial Assistance Award. Two of the executed copies should be returned to A. Leonard Smith, Regional Director, Seattle Regional Office, Economic Development Administration, 915 Second Avenue, Room 1890, Seattle, Washington 98174-1012. If not signed and returned within 30 days from the date the Grants Officer signs the agreement, EDA may declare the Award null and void.

Please, do not make any commitments in reliance on this award until you have carefully reviewed and accepted the terms and conditions. Any commitments entered into prior to obtaining the approval of EDA in accordance with its regulations and requirements will be at your own risk.

EDA's mission is to lead the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA implements this mission by making strategic investments in the nation's most economically distressed regions that encourage private sector collaboration and the creation of jobs. EDA investments are results driven, embracing the principles of technological innovation, entrepreneurship and regional development.

I share your expectations regarding the impact of this investment and look forward to working with you to meet the economic development needs of your community.

Sincerely,



A. Leonard Smith
Regional Director

Enclosures

c: Frances Sakaguchi, Interim Economic Development Representative

SPECIFIC AWARD CONDITIONS
U.S. DEPARTMENT OF COMMERCE
Economic Development Administration (EDA)

Public Works and Economic Development Facilities Program
under 42 U.S.C. § 3141, Section 201 of the
Public Works and Economic Development Act of 1965 (Public Law 89-136),
as amended by the Economic Development Administration Reauthorization Act of 2004
(Public Law 108-373)

Project Title: Port 5 Dock Pier Replacement Project	
Recipient Name: Port of Newport	Project Number: 07 01 07523

1. This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award, as the *Authorized Scope of Work*. All work on this project must be consistent with the *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work in writing through an amendment memorialized by a fully executed Form CD-451.

The *Authorized Scope of Work* for this project includes:

The Recipient will perform the construction of a pier at a seaport.

Finishes

Construct a new fixed pier, gangway, and gangway float at Port Dock 5 in Yaquina Bay. Construct a temporary walking platform to the Port Dock 5 floating dock complex, demolish the old pier, construct the new pier, and disassemble the temporary platform. Electrical conduit and the marina dock's fuel lines will be relocated to the new structure. The new pier will be installed outside of the existing deck for an out-to-out width of approximately 23 feet. The new fixed dock will consist of approximately 18 piles embedded approximately 30 feet into the siltstone and equipped with a fish screen. Diagonal braces will be installed at each bent followed by steel beams installed as pile caps to support concrete girders. A cast-in-place concrete and asphalt deck will be installed on top of the new girders.

2. The Recipient Contact's name, title, address, and telephone number are:

Aaron Bretz Director of Operations Phone: (541) 265-7758 Email: abretz@portofnewport.com	Port of Newport 600 S.E. Bay Boulevard Newport, Oregon 97365
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3. The Grants Officer is authorized to award, amend, suspend, and terminate financial assistance awards. The Grants Officer is:

A. Leonard Smith Regional Director FAX: (206) 220-7657	Economic Development Administration Seattle Regional Office 915 Second Avenue, Room 1890 Seattle, Washington 98174-1012
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4. The Federal Program Officer (Area Director) oversees the programmatic aspects of this Award. The Federal Program Officer is:

Kerstin Millius Area Director Phone: (206) 220-7700 FAX: (206) 220-7669 Email: KMillius@eda.gov	Economic Development Administration Seattle Regional Office 915 Second Avenue, Room 1890 Seattle, Washington 98174-1012
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5. The EDA Project Officer is responsible for day-to-day administration and liaison with the Recipient and receives all reports and payment requests. The Project Officer is:

Tobey Clarkin Civil Engineer Phone: (206) 220-7694 FAX: (206) 220-7669 Email: TClarkin@eda.gov	Economic Development Administration Seattle Regional Office 915 Second Avenue, Room 1890 Seattle, Washington 98174-1012
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6. **ADDITIONAL INCLUDED DOCUMENTS:** In addition to the regulations, documents, or authorities incorporated by reference on the *Financial Assistance Award* (Form CD-450), the following additional documents are hereby incorporated by reference into this Award:

- The Recipient's application, including any attachments, project descriptions, schedules, and subsequently submitted supplemental documentation.

Should there be a discrepancy among these documents the Specific Award Conditions (this document) and associated attachments hereto shall control.

7. **PROJECT DEVELOPMENT TIME SCHEDULE:** The Recipient agrees to the following Project development time schedule:

<u>Item</u>	<u>Submission Deadline</u>
Return of Executed Financial Assistance Award	30 calendar days after receipt of Form CD-450
Start of Construction	18 Months from Date of Award
Completion of Construction	24 Months from Date of Award
Authorized Award End Date	60 Months from Date of Award
Submission of Final Financial Report on Standard Form 425	No later than 90 calendar days after Award End Date

Project Closeout – All Project closeout documents, including final financial reports (Standard Form 425) and any required program reports, shall be submitted to EDA not more than 90 calendar days after the date the Recipient accepts the completed project from the contractor(s).

The Recipient shall diligently pursue the development of the Project so as to ensure completion within this time schedule. Moreover, the Recipient shall promptly notify EDA in writing of any event that could substantially delay meeting any of the proscribed time limits for the Project as set forth above. The Recipient further acknowledges that failure to meet the development time schedule may result in EDA's taking action to terminate the Award in accordance with the regulations set forth at 2 C.F.R. § 200.338 through § 200.342.

8. PROJECT REPORTING AND FINANCIAL DISBURSEMENTS INSTRUCTIONS:

A. AWARD DISBURSEMENTS: EDA will make disbursements under this Award on a reimbursement basis only, in accord with the procedures outlined during the grant kick-off meeting.

The *Outlay Report and Request for Reimbursement for Construction Programs* (Standard Form 271) is used to request a disbursement, which shall be approved in writing by the Civil Engineer/Project Officer.

Please note that prior to the initial disbursement, Recipients must complete SF-3881, *ACH Vendor/Miscellaneous Payment Enrollment Form* and submit it to NOAA's Accounting Office by FAX to (301) 528-3675 (*FAX is required to secure confidentiality of sensitive information*). The form must be completed by the respective parties (EDA, Recipient Bank, and Recipient) at the start of each new award.

B. REPORTS:

a. *Project Progress Reports:* The Recipient shall submit project progress reports to the Civil Engineer/Project Officer on a quarterly basis for the periods ending **December 31, March 31, June 30 and September 30**, or any portion thereof until the final grant payment is made by EDA. Reports should be submitted in accordance with the format required by the Project Officer and discussed during the project kick-off meeting. Reports are due no later than the 15th day of the month following the end of the quarterly period.

b. *Financial Reports:* The Recipient shall submit a "*Federal Financial Report*" (Standard Form 425) on a semi-annual basis for the periods ending **March 31 and September 30**, or any portion thereof. Reports are due no later than 30 days following the end of the semi-annual period.

A Final Financial Report on Standard Form 425 must be submitted no more than 90 calendar days after the expiration date of the Award (e.g., the Award end date specified on the Form CD-450 or Form CD-451). Final Financial reports should follow the guidance outlined by the form instructions for submitting mid-term financial reports, but should ensure that all fields accurately reflect the total outlays for the entire project period, and that all matching and program income (if applicable) is fully reported.

Final grant rate and determinations of final balances owed to the government will be determined by the information on the final Standard Form 425, so it is imperative that this final financial form is submitted in a timely and accurate manner.

- 9. ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined after the final financial documents are submitted in accordance with the applicable authorities specified on the *Financial Assistance Award* (Form CD-450), including the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* at 2 C.F.R. part 200.

Except as otherwise expressly provided for within these Specific Award Conditions, the Federal share of the allowable costs shall be based on the Investment Rate for the Award, as established on the Form CD-450 or any subsequent amendment (Form CD-451). In the event of an underrun in total allowable costs for this project, the Federal share of allowable costs shall be determined by the Investment Rate. The Federal share of total allowable costs shall not exceed the dollar amount specified on the original Award or any subsequent amendments.

Line Item Budget:

- A. Under the terms of the Award, the total approved authorized budget is:

Federal Share (EDA Funds)	\$1,195,563
Non-Federal Matching Share	<u>\$1,195,563</u>
Total Project Cost	\$2,391,126

- B. Under the terms of this Award, the total approved line item budget is:

COST CLASSIFICATION	Proposed	Approved
Administrative and legal expenses	\$70,000	\$70,000
Land, structures, rights-of-way, etc.	\$0	\$0
Relocation expenses and payments	\$0	\$0
Architectural and engineering fees	\$100,000	\$100,000
Other architectural and engineering fees	\$0	\$0
Project inspection fees	\$50,000	\$50,000
Site work	\$0	\$0
Demolition and removal	\$0	\$0
Construction	\$1,736,900	\$1,736,900
Equipment	\$0	\$0
Contingencies	<u>\$434,226</u>	<u>\$434,226</u>
Total Project Cost	\$2,391,126	\$2,391,126

- 10. FEDERAL SHARE:** The EDA participation in total eligible project costs will be limited to the EDA grant amount or the EDA share of total allowable project costs, based on the area's grant rate eligibility at the time of award, whichever is less.

11. MATCHING SHARE: The Recipient agrees to provide the Recipient's non-Federal Matching Share contribution for eligible project expenses in proportion to the Federal share requested for such project expenses. The Recipient also certifies that, in accepting the Financial Assistance Award, the Recipient's Matching Share of the project costs is committed and unencumbered, from authorized sources, and shall be available as needed for the project.

12. REFUND CHECKS, INTEREST, OR UNUSED FUNDS: Treasury has given EDA two options for having payments deposited to EDA's account:

- i. The first one is Pay.Gov. This option allows the payee to pay EDA through the Internet. The payee will have the option to make a one-time payment or to set up an account to make regular payments.
- ii. The second option is Paper Check conversion. All checks must identify on their face the name of the DOC agency funding the award, award number, and no more than a two-word description to identify the reason for the refund or check. A copy of the check should be provided to the EDA Project Officer. This option allows the payee to send a check to NOAA's Accounting Office, who processes EDA's accounting functions at the following address:

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Finance Office - Accounting Operations Division
Attn: EDA Grants
20020 Century Boulevard
Germantown, MD 20874

The accounting staff will scan the checks in encrypted file to the Federal Reserve Bank, and the funds will be deposited in EDA's account. While this process will not be an issue with most payees, there are occasionally issues for entities remitting funds to EDA via check. If you are remitting funds to EDA via check, please make note of the following:

Notice to Customers Making Payment by Check

If a check is sent to EDA, it will be converted into an electronic funds transfer by copying the check and using the account information to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will appear on your regular account statement.

EDA will not return your original check; the original will be destroyed and a copy will be maintained in our office. If the Electronic Funds Transfer (EFT) cannot be processed for technical reasons, the copy will be processed in place of the original check. If the EFT cannot be completed because of insufficient funds, we will charge you a one-time fee of \$25.00, which will be collected by EFT.

13. CONSTRUCTION COMPLETION: In keeping with prudent grants management policy, EDA construction projects must be completed within five (5) years from the date the Form CD-450 is signed by the Recipient accepting the Award. If construction is not completed by this date and the Grants Officer determines, after consultation with the Grant Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously, the grant may be terminated. Extensions beyond the five-year project period are exceedingly rare and can only be authorized by the Assistant Secretary.

14. USEFUL LIFE: The useful life of this project is hereby determined to be 20 years from the date of Award.

15. GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION: Department of Labor regulations set forth in 41 C.F.R. § 60-4 establish goals and timetables for participation of minorities and women in the construction industry. These regulations apply to all federally assisted construction contracts in excess of \$10,000. The Recipient shall comply with these regulations and shall obtain compliance with 41 C.F.R. § 60-4 from contractors and subcontractors employed in the completion of the Project by including such notices, clauses and provisions in the Solicitations for Offers or Bids as required by 41 C.F.R. § 60-4. The goal for the participation of women in each trade area shall be as follows: From April 1, 1981, until further notice: 6.9 percent.

All changes to this goal, as published in the *Federal Register* in accordance with the Office of Federal Contract Compliance Programs regulations at 41 C.F.R. § 60-4.6, or any successor regulations, shall hereafter be incorporated by reference into these Specific Award Conditions.

Goals for minority participation shall be as prescribed by Appendix B-80, *Federal Register*, Volume 45, No. 194, October 3, 1980, or subsequent publications. The Recipient shall include the “*Standard Federal Equal Employment Opportunity Construction Contract Specifications*” (or cause them to be included, if appropriate) in all Federally-assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 C.F.R. § 60-4.6.

16. ARCHITECT/ENGINEER AGREEMENT. Prior to initial disbursement of funds by EDA, the Recipient must submit to the Government for approval, an Architect/Engineer Agreement that meets the requirements in the EDA’s “Summary of EDA Construction Standards,” as well as the competitive procurement standards of 2 C.F.R. Part 200 and EDA Regulations at 13 C.F.R. Chapter III. The fee for basic Architect/Engineer Services will be a lump sum or an agreed maximum, and no part of the fees for other services will be based on a cost-plus-a-percentage-of-cost or a cost using a multiplier.

17. PROCUREMENT: The Recipients agree that all procurement transactions shall be in accordance with Federal regulations adopted by the Department of Commerce at 2 C.F.R. Part 200 and the EDA regulations contained in 13 C.F.R. Chapter III, especially 13 C.F.R. Part 305 and 13 C.F.R. section 302.17 (“Conflicts of Interest”).

18. EVIDENCE OF GOOD TITLE: Prior to the initial disbursement of funds by EDA, the Recipient shall provide opinion of counsel, satisfactory to the Government, that the Recipient has acquired good and marketable title to land, free of all encumbrances, as well as rights-of-way, and easements necessary for the completion of the project, or of a long-term leasehold interest in accordance with 13 C.F.R. § 314.7.

19. NONRELOCATION: In signing this award of financial assistance, the Recipient(s) attests that the EDA funded project will not be used to induce the relocation or the movement of existing jobs from one Region to another Region by a primary beneficiary of the Award. In the event that EDA determines that its assistance was used for such relocation purposes, EDA reserves the right to pursue all rights and remedies, including suspension of disbursements and termination of the award for convenience or cause, and disallowance of any costs attributable, directly or indirectly, to the relocation and the recovery of the Federal share thereof.

For purposes of ensuring that EDA assistance will not be used for relocation purposes, each applicant must inform EDA of all employers that constitute primary beneficiaries of the project assisted by EDA. EDA considers an employer to be a “primary beneficiary” if, in seeking EDA assistance, the applicant estimates that such employer will create or save 100 or more permanent jobs as a result of the investment assistance and specifically names the employer in its application to EDA to make the Award. In smaller communities, EDA may consider a primary beneficiary to be an employer of 50 or more jobs permanent jobs so identified.

20. REAL PROPERTY REPORTING: Consistent with 2 C.F.R. § 200.329 (“Reporting on real property”), the Recipient must submit reports (using SF-429 “Real Property Status Report” or any successor form). The initial SF-429 form must be returned to the EDA Project Officer no later than December 31 of the year of the initial disbursement of Federal funds. Because EDA’s interest in this real property extends at least 15 years, successive reports will be required by December 31 every **two** years thereafter during the established useful life of the property, rather than on an annual basis. At its sole discretion, EDA reserves the right to require more or less frequent real property reporting for the duration of the useful life of real property in which it retains an interest under this Project.

21. BUY-AMERICAN PREFERENCES: Consistent with Executive Order 13858, *Strengthening Buy-American Preferences for Infrastructure Projects*, the Recipient is encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or sub-award that is chargeable under this Award.

22. PROJECT INSPECTION AGREEMENT. Prior to initial disbursement of funds by EDA, the Recipient must submit to the Government for approval, a Project Inspection Agreement that meets the requirements in the EDA’s “Summary of EDA Construction Standards,” as well as the competitive procurement standards of 2 C.F.R. Part 200 and EDA Regulations at 13 C.F.R. Chapter III. The fee for basic Project Inspection Services will be a lump sum or an agreed maximum, and no part of the fees for other services will be based on a cost-plus-a-percentage-of-cost or a cost using a multiplier.

- 22. SCOPE OF WORK/NON-DUPLICATION OF PAST AND CURRENT FEDERALLY FUNDED ACTIVITIES:** The Scope of Work shall not duplicate activities funded under any other federal programs, including but not limited to any current EDA Award. Recipient shall not use federal or matching share funds for this Award for the completion of any activity required under any other federally funded project and shall not claim the costs of any activity funded under any other federally funded project as part of this EDA Award.
- 23. STAFFING CHANGES:** In the event of a change in the professional staff positions funded with the EDA grant, the Recipient shall provide the name of the individual selected to fill the position to the Project Officer and a copy of his or her resume within thirty (30) business days of the selection.
- 24. FIDELITY BONDING:** Under 2 C.F.R. § 200.304, EDA has determined that fidelity bonding is a requirement for this Award. Prior to initial disbursement, Recipient shall provide evidence satisfactory to EDA that Recipient has fidelity bond coverage for persons authorized to handle funds under the Award in an amount sufficient to protect the interests of EDA. At a minimum, the amount of coverage must be a minimum of \$300,000 and shall maintain such insurance until final close-out of the project. The bonding must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 C.F.R. Part 223, “Surety Companies Doing Business with the United States.”
- 25. ARCHEOLOGICAL AND HISTORICAL RESOURCES:** If during construction of the project, historical and archeological resources, including burial grounds and artifacts are discovered, the Recipient shall immediately stop construction in the area, contact the State Historic Preservation Officer and EDA and follow the SHPO's instruction for the preservation of resources.
- 26. TRIBAL HISTORIC PRESERVATION OFFICER (THPO):** Prior to the start of construction activities, the Recipient shall provide evidence satisfactory to the EDA that the Confederated Tribes of Siletz Indians has received a project schedule.
- 27. STATE HISTORIC PRESERVATION OFFICER (SHPO):** Prior to the start of any construction and/or earth-disturbing activities, the Recipient shall provide evidence satisfactory to the EDA that an Unanticipated Discovery Plan has been prepared for the project.
- 28. FEMA FLOODPLAIN:** Prior to first disbursement of EDA funds, the Recipient shall provide evidence satisfactory to the EDA that the FEMA Floodproofing Certificate has been completed by a registered professional engineer and submitted with the Building Permit application in compliance with the development standards.
- 29. FEDERALLY LISTED SPECIES:** Prior to solicitation of bids, the Recipient shall provide documentation satisfactory to EDA that the bid documents include language requiring the contractor to follow the Marine Mammal Monitoring Plan.

30. WATER RESOURCES: Prior to solicitation of bids, the Recipient shall provide documentation satisfactory to EDA that the bid documents include language requiring the contractor to follow and the general conditions of the SLOPES IV, Section 1.3.1.2 General Construction and all other water-related permit requirements.

31. MIGRATORY BIRD TREATY ACT: To ensure construction activities do not result in “take” of an active nest or migratory bird protected under the Migratory Bird Treaty Act, schedule project activities outside of the peak bird breeding season to the maximum extent practicable. When project activities cannot occur outside the bird nesting season, conduct surveys prior to scheduled activity to determine if active nests are present within the area of impact and buffer any nesting locations found during surveys. Generally, the surveys should be conducted no more than five days prior to scheduled activity.

32. HAZARDOUS OR TOXIC SUBSTANCES: If visual or olfactory evidence of potential soil contamination from current or historical practices is encountered during construction, work will stop immediately upon discovery and the appropriate Ecology regional office will be notified.

33. FREEDOM OF INFORMATION ACT COMPLIANCE: EDA is responsible for meeting Freedom of Information Act (FOIA), Title 5 of the United States Code, Section 522 (5 U.S.C. §522) (Public Law 89-554), requirements regarding its records. The regulations governing the U.S. Department of Commerce under 15 C.F.R. part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications and other information submitted by applicants may be released in response to a written request for federal records that cites FOIA. Applicants should be aware that EDA may make certain application information publicly available. Accordingly, the applicant should notify EDA if it believes any application information to be confidential.

34. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE

A. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIS)) about civil, criminal, or administrative proceedings described in paragraph B of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

B. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
2. Reached its final disposition during the most recent five-year period; and
3. Is one of the following:
 - (a) A criminal proceeding that resulted in a conviction, as defined in paragraph E of this award term and condition;
 - (b) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - (c) An administrative proceeding, as defined in paragraph E. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - (d) Any other criminal, civil, or administrative proceeding if:
 - (i) It could have led to an outcome described in paragraph B.3.(a), (b), or (c) of this award term and condition;
 - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

C. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph B of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

D. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph A of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

E. Definitions

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
2. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.
3. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - (a) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - (b) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

35. PERFORMANCE MEASURES: The Recipient agrees to report on program performance measures and program outcomes in such a form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993, and the Government Performance and Results Modernization Act of 2010.

At this time, all Awards for construction assistance require Recipients to report actual job creation/retention and private investment leverage three (3), six (6), and nine (9) years after an EDA investment. Recipients are to retain sufficient documentation so that they can submit these required reports. Failure to submit this required report can adversely impact the ability of the Recipient to secure future funding from EDA.

Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document. EDA staff will contact Recipients in writing within a reasonable period prior to the time of submission of the reports with information on how this data should be submitted. Recipients should ensure adequate and sufficient records are kept to support the methodology for computing initial job and private investment estimates and all subsequent actual performance data calculations so that this information can be made available to EDA in the event of an audits or performance site visits.

36. REAFFIRMATION OF APPLICATION: Recipient(s) acknowledges that Recipient's application for this Award may have been submitted to the Government and signed by Recipient(s), or by an authorized representative of Recipient, electronically. Regardless of the means by which Recipient(s) submitted its application to the Government or whether Recipient or an authorized representative of Recipient submitted its application to the Government, the Recipient(s) hereby reaffirms and states that:

- i. all data in said application and documents submitted with the application are true and correct as of the date of this Award and were true and correct as of the date of said submission.
- ii. said application was, as of the date of this Award and as of the date of said application, duly authorized as required by local law by the governing body of the Recipient(s) and
- iii. Recipient confirms that it will comply with the Assurances and Certifications submitted with or attached to said application.

The term "application" includes all documentation and any information provided to the Government as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by the Government after submission of the initial application.

**U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION**

**STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS**

Title II of the Public Works and
Economic Development Act of 1965
Public Works and Economic Development Facilities
and
Economic Adjustment Assistance Construction Components



February 12, 2016

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**U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION**

**STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS**

Title II of the Public Works and
Economic Development Act of 1965
Public Works and Economic Development Facilities
and
Economic Adjustment Assistance Construction Components

PREFACE

This document sets out the Standard Terms and Conditions for Construction Projects (hereinafter referred to as the “Construction Standard Terms and Conditions” or “Construction ST&Cs”) applicable to Economic Development Administration (“EDA”) financial assistance awards. A Recipient of an EDA construction financial assistance award must, in addition to the assurances made as part of the Application, comply and require each of its subrecipients, contractors, and subcontractors employed in the completion of the Project to comply with all applicable statutes, regulations, executive orders, Office of Management and Budget (“OMB”) circulars, provisions of the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (codified at 2 CFR part 200) (“Uniform Guidance”), provisions of these Construction ST&Cs, the EDA-approved Project budget and scope of work, any other incorporated terms and conditions, and approved Applications (collectively, “Terms and Conditions of the Award”).

This Award is subject to the laws and regulations of the United States. Any inconsistency or conflict in the Terms and Conditions specified in this Award will be resolved according to the following order of precedence: public laws, regulations (including applicable notices published in the *Federal Register (Fed. Reg.)*), executive orders, OMB circulars, EDA’s Construction ST&Cs, and special award conditions. A special award condition may amend or take precedence on a case-by-case basis over a Construction ST&C when warranted by specific Project circumstances.

Some of these Construction ST&Cs contain, by reference or substance, a summary of the pertinent statutes or regulations published in the *Federal Register* or the Code of Federal Regulations (“CFR”), executive orders, OMB circulars, or the certifications and assurances provided by applicants through Standard Forms (*e.g.*, Forms SF-424B and SF-424D). To the extent that it is a summary, such provision is not in derogation of, or an amendment to, any such statute, regulation, executive order, OMB circular, or assurance.

**ECONOMIC DEVELOPMENT ADMINISTRATION
STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS**

Public Works and Economic Development Facilities and
Economic Adjustment Assistance Construction Components

A. GENERAL REQUIREMENTS AND RESPONSIBILITIES.

1. Purpose.

The Economic Development Administration's ("EDA's") grants for (i) public works (42 U.S.C. § 3141) and (ii) construction economic adjustment assistance (42 U.S.C. § 3149) Projects awarded under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq.*) ("PWEDA") are designed to enhance regional competitiveness and promote long-term economic development in regions experiencing substantial economic distress. EDA provides construction, design, and engineering grants to assist distressed communities and regions revitalize, expand, and upgrade their physical infrastructure to attract new industry, encourage business expansion, diversify local economies, and generate or retain long-term private sector jobs and investment. The requirements set forth in these Construction ST&Cs are applicable to construction, design, and engineering Projects funded in whole or in part by EDA. Any necessary modifications of these requirements will be addressed in special award conditions to accommodate individual Projects. In addition, these Construction ST&Cs apply to construction projects of revolving loan funds ("RLFs") awarded between January 1, 1975 and February 10, 1999 under EDA's Title IX Economic Adjustment Assistance Program, as well as to RLFs funded after February 11, 1999 under section 209 of PWEDA (42 U.S.C. § 3149).

2. Authority and Policies.

EDA is a bureau within the U.S. Department of Commerce ("DOC" or "Department") established under PWEDA. *See* 13 CFR § 300.1 ("Overview of eligibility requirements"). As a Federal agency, EDA is obligated to promulgate regulations and establish policies and procedures to:

- a. Ensure compliance with applicable Federal requirements;
- b. Safeguard the public's interest in the grant assets; and
- c. Promote the effective use of grant funds in accomplishing the purposes for which they were awarded.

The Department or EDA may issue changes from time to time to the regulations and other requirements and policies that apply to this Award. Such changes may upon occasion increase administrative or programmatic flexibility in administering this Award in a manner that is mutually beneficial to EDA and to the non-Federal entity. The implementation of any such regulatory, administrative, or programmatic change in administering this Award requires EDA's prior written approval.

EDA's policy is to administer all awards uniformly; however, there may be special circumstances that warrant a variance. To accommodate these circumstances and to encourage innovative and creative ways to address economic development problems, EDA will consider

requests for variances to the procedures set out in these Construction ST&Cs if they do not conflict with applicable Federal statutory and regulatory requirements, are consistent with the goals of EDA's programs, and make sound economic and financial sense.

3. Definitions.

Whenever used in these Construction ST&Cs, the following words and phrases shall have the following meanings:

- a. "Application" means all forms, documentation, and any information submitted to the Government as part and in furtherance of a request for an Award and includes submissions made in response to information requested by the Government after submission of the initial Application;
- b. "Assistant Secretary" refers to the Assistant Secretary of Commerce for Economic Development;
- c. "Award" refers to the Federal financial assistance that a Recipient receives directly from EDA (*see also* 2 CFR § 200.38);
- d. "Closeout" or "Project Closeout" refers to the process by which the Grants Officer determines that all applicable administrative actions and all required work under the Award have been completed by the Recipient and EDA (*see also* 2 CFR § 200.16);
- e. "Contract" means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the Project or program under this Award. As defined at 2 CFR § 200.22, the term does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward (*see also* 2 CFR § 200.22);
- f. "Contractor" means an entity that receives a contract as defined in this section and at 2 CFR § 200.22 (*see also* 2 CFR § 200.23);
- g. "Department" or "DOC" refers to the U.S. Department of Commerce;
- h. "Government" or "Federal Government" refers to EDA;
- i. "Grants Officer" refers to the official responsible for all business management and administrative aspects of this Award and, under these Construction ST&Cs, is the Regional Director in the appropriate Regional Office;
- j. "Non-Federal entity" is a State, local government, Indian tribe, institution of higher education ("IHE"), or nonprofit organization that carries out a Federal award as a recipient or subrecipient (*see also* 2 CFR § 200.69);
- k. "Pass-through entity" is a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (*see also* 2 CFR § 200.74);
- l. "Project" refers to the activity for which the EDA grant was awarded;
- m. "Project Officer" refers to the EDA official responsible for technical or other programmatic aspects of the Award. During the post-approval stage of the Award, EDA generally assigns this role to an EDA Engineer/Construction Manager;

- n. “Recipient” is a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term “Recipient” does not include subrecipients (*see also* 2 CFR § 200.86);
- o. “Regional Office” refers to an EDA Regional Office;
- p. “Subaward” means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity (*see also* 2 CFR § 200.92);
- q. “Subrecipient” is a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency (*see also* 2 CFR § 200.92); and
- r. “Terms and Conditions of the Award” is defined in the first paragraph of the Preface above.

Capitalized terms used but not otherwise defined in these Construction ST&Cs have the meanings ascribed to them in EDA’s regulations at 13 CFR §§ 300.3 (“Definitions”), 302.20 (“Civil rights”), 307.8 (“Definitions”), and 314.1 (“Definitions”).

4. Grant Recipient as Trustee.

The Recipient holds grant funds and any EDA-assisted Project property in trust for the purposes for which the Award was made. The Recipient’s obligation to the Federal Government continues for the estimated useful life of the Project, as determined by EDA, during which EDA retains an undivided equitable reversionary interest (the “Federal Interest”) in property acquired or improved, in whole or in part, with the EDA investment. *See* 13 CFR § 314.2 (“Federal Interest”).

If EDA determines that the Recipient fails or has failed to meet this obligation, the Government may exercise any rights or remedies with respect to its Federal Interest in the Project. However, EDA’s forbearance in exercising any right or remedy in connection with the Federal Interest does not constitute a waiver thereof.

The Recipient agrees to provide EDA with information and documentation necessary for EDA to conduct due diligence to ensure the financial integrity and responsibility of the Recipient and key individuals associated with the Recipient in the management or administration of this Award.

5. Reaffirmation of Application and Award Acceptance.

The Recipient acknowledges that the Recipient’s Application for this Award may have been submitted to the Government and signed by the Recipient, or by an authorized representative of the Recipient, electronically without providing an original “wet” signature. In addition, the Recipient, or an authorized representative of the Recipient, may have accepted the Award electronically, which includes drawing down any funds at any time under this Award. Regardless of who submitted the Application to the Government or the means by which the Recipient submitted the Application or accepted the Award, the Recipient hereby reaffirms and states that:

- a. All data in the Application were true and correct when the Application was submitted and remain true and correct as of the date of this Award;

- b. The Application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient; and
- c. The Recipient has read, understood, and will comply with all terms of this Award, including the assurances and certifications submitted with, or attached to, the Application.

The Recipient agrees to immediately notify the Grants Officer of any material changes to the Application within 30 calendar days of the date the Recipient becomes aware of such changes.

6. Noncompliance with Award Provisions.

Failure to comply with the provisions of this Award may be grounds for appropriate enforcement action pursuant to 2 CFR § 200.338 (“Remedies for noncompliance”), including but not limited to:

- a. The imposition of additional Award conditions in accordance with 2 CFR § 200.207 (“Specific conditions”);
- b. Temporarily withholding Award payments pending the correction of the deficiency;
- c. The disallowance of Award costs and the establishment of an account receivable;
- d. Wholly or partially suspending or terminating this Award;
- e. Initiating suspension or debarment proceedings in accordance with 2 CFR parts 180 (“OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)”) and 1326 (“Nonprocurement Debarment and Suspension”);
- f. Withholding further Federal awards for the Project or program; and
- g. Such other remedies as may be legally available. *See also* 2 CFR §§ 200.339 (“Termination”) through 200.342 (“Effects of suspension and termination”).

In addition, failure to comply with the provisions of this Award may adversely impact the availability of funding under other active EDA or Federal awards and may also have a negative impact on the Recipient’s eligibility for future EDA or other Federal awards.

B. FINANCIAL REQUIREMENTS.

1. Financial Reports.

- a. During the period of performance, the Recipient shall submit financial reports as follows or as otherwise specified in the special award conditions.
 - i. *Reports on Award Reimbursements.* In accordance with 2 CFR § 200.327 (“Financial reporting”), the Recipient shall submit a “Federal Financial Report” (Form SF-425 or any successor form) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 calendar days following the end of each reporting period, and instructions for completing and submitting Form SF-425 will be discussed during the Project kick-off meeting. Recipients may contact their EDA Project Officer with questions on how to complete or submit the report, if necessary, but they are required to submit reports on time and are encouraged to pose such questions sufficiently

before the deadline to allow for complete, accurate, and timely submission of required reports.

- ii. *Reports on Award Advances.* While EDA generally does not advance funds, when the agency does so, the Recipient must submit Form SF-425 within 15 business days following the end of each quarter for an award under \$1 million, 15 business days following the end of each month for an award totaling \$1 million or more, or as otherwise specified in a special award condition.
- b. The Recipient must submit a final financial report using Form SF-425 within 90 calendar days of the expiration date of the Award.
- c. Noncompliance with the financial reporting requirements will result in appropriate enforcement action under this Award, including but not limited to suspension of Award payments or disallowance of costs.
- d. Financial reports should be submitted to the Project Officer in electronic format, unless otherwise specified in the special award conditions.

2. Disbursements.

- a. *Method of Payment.* The Grants Officer determines the appropriate method of payment. Unless otherwise specified in a special award condition, the method of payment under this Award will be reimbursement. Payments will be made through electronic funds transfers directly to the Recipient's bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3720B *et seq.*). The Award number shall be included on all payment-related correspondence, information, and forms.
 - i. *State Recipients.* Consistent with 2 CFR § 200.305(a) ("Payment"), for States, payments are governed by Treasury-State Cash Management Improvement Act agreements and default procedures codified at 31 CFR part 205 ("Rules and Procedures for Efficient Federal-State Funds Transfers") and *Treasury Financial Manual Volume I, 4A-2000* ("Overall Disbursing Rules for All Federal Agencies").
 - ii. *Recipients Other than States.* Consistent with 2 CFR § 200.305(b), for Recipients other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the U.S. Treasury or the pass-through entity and the disbursement by the non-Federal entity.
- b. *Disbursement Requests.* The Recipient shall use Form SF-271, "Outlay Report and Request for Reimbursement for Construction Programs," to request reimbursement under the Award. Substantiating invoices and/or vouchers also must be provided. Each request for the disbursement of funds shall be made to the Project Officer. Form SF-271 can be downloaded from OMB's website at www.whitehouse.gov/omb/grants/grants_forms.html.
 - i. *Initial Disbursement Request.* For the initial disbursement only, the Recipient must complete and submit Form SF-3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," along with Form SF-271, to the Project Officer.
 - ii. *Interim Disbursement Requests.* All requests for interim disbursement shall be submitted using Form SF-271 and include substantiating invoices and/or vouchers.

- iii. *Final Disbursement Request.* See section C.19 “Project Closeout Procedures” in these Construction ST&Cs.

3. Federal and Non-Federal Cost Sharing.

- a. For purposes of this Award, the Federal share is the amount of EDA funds invested under the Award, while the non-Federal share, or “Matching Share,” means non-EDA funds and any in-kind contributions that are approved by EDA and provided by the Recipient or by third parties as a condition of the Award. Awards that include a Federal and non-Federal share incorporate an estimated budget consisting of shared allowable costs. If actual allowable costs are less than the total approved estimated budget, the Federal share and Matching Share shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. See 13 CFR §§ 305.10 (“Bid underrun and overrun”) and 308.1 (“Use of funds in projects constructed under projected cost”). As noted below in section B.4 “Budget Revisions and Transfers of Funds Among Cost Categories” of these Construction ST&Cs, if actual allowable costs are greater than the total approved estimated budget, the Federal share shall not exceed the total Federal dollar amount authorized by this Award.
- b. The Matching Share, whether cash or in-kind, shall be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the Recipient must meet its non-Federal cost share commitment over the Award period of performance; failure to do so may result in the assignment of special award conditions or other further action as specified in section A.6 “Noncompliance with Award Provisions” of these Construction ST&Cs.
- c. The Recipient must create and maintain sufficient records justifying the required Matching Share to facilitate questions, audits, and other inquiries necessary to meet EDA’s requirements to safeguard Federal funds, and must provide these records if requested by EDA, auditors, or other Federal parties. See also section C.17 “Record-Keeping Requirements” of these Construction ST&Cs. EDA may disallow undocumented costs. See 2 CFR § 200.306 for additional requirements regarding cost sharing.
- d. The Recipient shall show that the Matching Share is committed to the Project, available as needed, and not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA Investment Assistance. See 13 CFR § 301.5 (“Matching share requirements”).

4. Budget Revisions and Transfers of Funds Among Budget Categories.

The EDA-approved budget is the budget plan for the Project. The Recipient must notify EDA of deviations from the budget or program plans in accordance with 2 CFR § 200.308 (“Revision of budget and program plans”), including any change in scope of work or the objective of the Project (even if there is no associated budget revision requiring prior written approval). If prior written approval is not required under 2 CFR § 200.308, the Recipient may request the Grants Officer’s review of and guidance on proposed revisions to the budget.

- a. Requests for budget revisions to the EDA-approved budget in accordance with the provisions below must be submitted through the Project Officer to the Grants Officer, who shall make the final determination on such requests and notify the Recipient in writing.
- b. In accordance with 2 CFR § 200.308(g), EDA’s prior written approval and an amendment executed by the Grants Officer and the Recipient using Form CD-451 or any successor form are required for budget revisions when:
 - i. The revision results from changes in the scope or the objective of the Project;
 - ii. The need arises for additional EDA funds to complete the Project;
 - iii. The Federal share exceeds \$150,000 and the cumulative amount of transfers among direct cost categories exceeds or is expected to exceed 10 percent of the total budget as last approved by EDA; and
 - iv. A revision is desired that involves specific costs for which prior written approval requirements may be imposed consistent with applicable cost principles listed in subpart E of 2 CFR part 200 (“Cost Principles”).
- c. When an Award supports both construction and non-construction work, the Recipient must obtain prior written approval from the Grants Officer before making any fund or budget transfers from non-construction to construction or vice versa. *See* 2 CFR § 200.308(g)(5).
- d. Transfers shall not be permitted if such transfers would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the Recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior written approval. *See* 2 CFR § 200.308.
- e. *Project Underrun Amounts.* Underrun amounts shall be transferred to the contingencies line item. Contingency funds are to be used to address situations resulting from unknown conditions and changes required for the fulfillment of authorized activities under this Award. EDA may approve the use of underrun funds to increase the Federal share of the Project or further improve the Project, as long as EDA determines that the use is consistent with the original purpose of the approved EDA investment. *See* 13 CFR § 308.1 (“Use of funds in projects constructed under projected cost”).
- f. *Additional EDA Funding in Case of Project Overrun Amounts.* In accepting this Award, the Recipient agrees to fund any overrun amounts from non-Federal sources. Additional EDA assistance for the Project may not be approved.

5. Indirect Costs and Facilities and Administrative Costs.

- a. Indirect costs, or facilities and administrative (“F&A”) costs for educational institutions, are generally not applicable under this Award. See the definition of indirect costs at 2 CFR § 200.56 (“Indirect (facilities & administrative (F&A)) costs”).
- b. When indirect costs are applicable, they will not be allowable charges against the Award unless approved under the Award and specifically included as a line item in the Award’s approved budget.
- c. Excess indirect costs may not be used to offset unallowable direct costs.

- d. Under 2 CFR § 200.306(c) (“Cost sharing or matching”), unrecovered indirect costs, including indirect costs on cost sharing or matching, may be included as part of cost sharing or matching only with the prior written approval of EDA.
- e. *Cognizant Agency for Indirect (F&A) Costs.* OMB established the cognizant agency concept, under which a single agency represents all others in dealing with Recipients in common areas, including reviewing and approving indirect cost rates applicable to Federal grants.
 - i. *Determining the Cognizant Agency for Non-Commercial Organizations.* In accordance with 2 CFR § 200.19 (“Cognizant agency for indirect costs”), the cognizant agency for indirect costs is the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals on behalf of all Federal agencies. Approved rates must be accepted by other agencies, unless a Federal statute or regulation requires use of a different rate or a Federal agency awarding head or delegate approves a different rate in accordance with 2 CFR § 200.414(c) (“Indirect (F&A) costs”).

If indirect costs are permitted, but the Recipient has not previously established an indirect cost rate with a Federal agency, the Recipient may consult Appendices III–VII to 2 CFR part 200 for information on determining the relevant cognizant agency and developing and submitting indirect (F&A) cost rate proposals and cost allocation plans:

- (1) Appendix III to 2 CFR part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);
 - (2) Appendix IV to 2 CFR part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;
 - (3) Appendix V to 2 CFR part 200 – State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans;
 - (4) Appendix VI to 2 CFR part 200 – Public Assistance Cost Allocation Plans; and
 - (5) Appendix VII to 2 CFR part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals.
- ii. *General Review Procedures When DOC Is the Cognizant Agency.*
 - (1) Within 90 days of the Award start date the Recipient shall submit to the Grants Officer any documentation (indirect cost proposal, cost allocation plan, etc.) necessary to allow the agency to perform the indirect cost rate proposal review.
 - (2) The Recipient may use the fixed rate proposed in the indirect cost plan as a provisional rate until DOC provides a response to the submitted plan.
 - iii. *When DOC Is Not the Oversight or Cognizant Agency.* When the cognizant Federal agency is not DOC, the non-Federal entity shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.
- f. If the Recipient entity fails to submit required documentation to DOC within 90 days of the Award start date, the Grants Officer may amend the Award to preclude the recovery of any indirect costs under the Award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the Recipient’s delay in

submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

- g. The maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient shall be the lesser of:
 - i. The line item amount for the Federal share of indirect costs contained in the approved Award budget, including all budget revisions approved in writing by the Grants Officer; or
 - ii. The Federal share of the total indirect costs allocable to the Award based on the indirect cost rate approved by the cognizant agency for indirect costs and applicable to the period in which the cost was incurred, provided that the rate is approved on or before the Award end date.
- h. In accordance with 2 CFR § 200.414(g) (“Indirect (F&A) costs”), any Recipient that has a negotiated indirect cost rate may apply to the entity’s cognizant agency for indirect costs for a one-time extension of a currently negotiated indirect cost rate for a period of up to four years, reducing the frequency of rate calculations and negotiations between an institution and its cognizant agency.
- i. Any Recipient that has never received a negotiated indirect cost rate, except for those Recipients described in Paragraph D.1.b of Appendix VII to 2 CFR part 200 (specifically, a governmental department or agency that receives more than \$35 million in direct Federal funding), may elect to charge a *de minimis* rate of 10 percent of modified total direct costs. See 2 CFR § 200.414(f).

6. Incurring Costs Prior to Award.

Project activities carried out prior to EDA’s approval of this Award shall be carried out at the sole risk of the Recipient. Such activity may result in the rejection of the Application, the disallowance of costs, or other adverse consequences as a result of noncompliance with EDA or Federal law, including but not limited to procurement requirements, civil rights requirements, Federal labor standards, or environmental and historic preservation requirements. The Grants Officer must authorize pre-award costs in writing, and such costs must also be allowable under relevant Federal cost principles and the specific Award terms and be included in the EDA approved budget. Pre-award costs not included in the authorized budget are not allowable and may not be reimbursed. See 13 CFR § 302.8 (“Pre-approval Investment Assistance costs”).

7. Incurring Costs or Obligating Federal Funds Beyond the Project Expiration Date.

- a. The Recipient shall not incur costs or obligate funds for any purpose pertaining to the Project, program, or activities beyond the authorized period of performance documented in the Award agreement, unless a written time extension of this Award is granted by the Grants Officer. The only costs that are authorized for a period of up to 90 calendar days following the end date of the period of performance are those strictly associated with Closeout activities. Closeout activities are generally limited to the preparation of final progress, financial, and required Project audit reports unless otherwise approved in writing by the Grants Officer. The Grants Officer may approve extensions of the 90 calendar-day Closeout period upon a request by the Recipient as provided in 2 CFR § 200.343 (“Closeout”), as applicable.

- b. The Recipient shall adhere to the development time schedule and time limits set out in the special award conditions if they differ from those provided in these Construction ST&Cs.
- c. Neither DOC nor EDA has any obligation to provide any additional prospective funding. Any amendment of the Award to increase funding and to extend the period of performance is at the sole discretion of DOC and/or EDA.

8. Time Extensions.

- a. Unless otherwise authorized in 2 CFR § 200.308 (“Revision of budget and program plans”), or a special award condition, any extension of the period of performance can only be authorized by the Grants Officer in writing. A verbal or written assurance of funding from other than the Grants Officer, including Regional Office staff other than the Grants Officer, does not constitute authority to obligate funds for programmatic activities beyond the expiration date of the period of performance.
- b. The Recipient is responsible for implementing the Project in accordance with the development time schedule contained in this Award. As soon as the Recipient becomes aware that it will not be possible to meet the development time schedule, the Recipient must notify the Grants Officer. The Recipient’s notice to EDA must contain the following:
 - i. An explanation of the Recipient’s inability to complete work by the specified date (*e.g.*, a lengthy period of unusual weather delayed the contractor’s ability to excavate the site, major re-engineering required in order to obtain State or Federal approvals, unplanned environmental mitigation required);
 - ii. A statement that no other changes to the Project are contemplated;
 - iii. Documentation that demonstrates there is still a bona fide need for the Project; and
 - iv. A statement that no further delay is anticipated and that the Project can be completed within the revised time schedule.

EDA reserves the right to withhold disbursements while the Recipient is not in compliance with the time schedule and to suspend or terminate this Award if the Recipient fails to proceed with reasonable diligence to accomplish the Project as intended.

9. Tax Refunds.

Refunds of Federal Insurance Contributions Act (“FICA”) or Federal Unemployment Tax Act (“FUTA”) taxes received by the Recipient during or after the period of performance must be refunded or credited to DOC where the benefits were financed with Federal funds under the Award. The Recipient agrees to contact the Grants Officer immediately upon receipt of these refunds. The Recipient further agrees to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the expiration of the Award period of performance.

10. Program Income.

For Projects that generate rental revenue (*e.g.*, buildings or real property constructed or improved for the purpose of renting or leasing space), the Recipient agrees, for the estimated useful life (as

determined by EDA) of the EDA-assisted facility, to use such income generated from the rental or lease of any Project facility in the following order of priority:

- a. Administration, operation, maintenance, and repair of Project facilities in a manner consistent with good property management practice and in accordance with established building codes. This includes, where applicable, repayment of indebtedness resulting from any EDA approved encumbrance (*e.g.*, approved mortgage) on the EDA-assisted facility.
- b. Economic development activities that are authorized for support by EDA, provided such activities meet the economic development purposes of PWEDA.
- c. Any income in excess of paragraphs a. and b. of this section must be deducted from total allowable Project costs in accordance with 2 CFR § 200.307(e).

See 2 CFR § 200.307 (“Program income”).

C. PROGRAMMATIC REQUIREMENTS.

1. Project Progress and Performance Reporting.

- a. Project progress reports must be submitted in accordance with the procedures set out in 2 CFR § 200.328 (“Monitoring and reporting program performance”), as applicable, and as indicated below. Failure to submit required reports in a timely manner may result in the withholding of payments under this Award; deferral of processing of new awards, amendments, or supplemental funding pending the receipt of the overdue reports; or the establishment of an account receivable for the difference between the total Federal share of outlays last reported and the amount disbursed. *See* 13 CFR § 302.18 (“Post-approval requirements”).
- b. Unless otherwise specified in this Award, the Project progress report will contain the following information for each Project program, function, or activity:
 - i. A comparison of planned and actual accomplishments according to the timetable or list of Project objectives in this Award;
 - ii. An explanation of any delays or failures to meet the Project timetable or Project goals; and
 - iii. Any other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

Project progress reports shall be submitted for each calendar quarter to the Project Officer. Each Project progress report must be submitted in accordance with the deadlines outlined in the special award conditions, or, where not otherwise specified, Project progress reports will be due on a quarterly basis not later than January 31, April 30, July 31, and October 31 for the immediate previous quarter. The final Project progress report shall be submitted to EDA no more than 90 calendar days after the Project Closeout date. This reporting requirement begins with the Recipient’s acceptance of this Award and ends when EDA approves Project Closeout.

The Recipient shall submit quarterly Project progress reports to the EDA Project Officer electronically unless otherwise specified in the special award conditions.

2. Reporting on Real Property.

The Recipient must submit reports (using Form SF-429 “Real Property Status Report” or any successor form) at least annually on the status of real property in which EDA retains an interest, unless the Federal interest in the real property extends 15 years or longer. When EDA’s interest extends for a period of 15 years or more, EDA, at its option, may require the Recipient to report at various multi-year frequencies (*e.g.*, every two years or every three years, not to exceed a five-year reporting period; or annual reporting for the first three years of the Award and thereafter every five years). *See* 2 CFR § 200.329 (“Reporting on real property”) and section L.3.h “EDA’s Interest in Award Property” of these Construction ST&Cs.

3. Interim Reporting of Significant Project Developments.

The Recipient must report any event that will or may have a significant impact upon the Project, including delays or adverse conditions that materially may affect the ability of the Recipient to attain Project objectives within established time periods or meet the development time schedule. The Recipient should report such events to the Project Officer in the most time-expedient way possible and then, if the initial report was not in writing, report the event to the Project Officer in writing. Such a report shall include a statement of the event or issue, a statement of the course of action taken or contemplated to resolve the matter, and any Federal assistance needed to resolve the situation. If budget changes are required, the Recipient must submit a written budget revision request. *See* 2 CFR § 200.328(d) (“Monitoring and reporting program performance”).

4. Government Performance and Results Act Reporting.

In addition to quarterly Project progress reports, EDA may require the Recipient to report on Project performance beyond the Project Closeout date for Government Performance and Results Act (“GPRA”) purposes. In no case shall the Recipient be required to submit any report more than ten years after the Project Closeout date. Data used by the Recipient in preparing reports shall be accurate and, whenever possible, from independent sources. *See* 13 CFR § 302.16 (“Accountability”).

5. Unsatisfactory Performance.

Failure to perform the work in accordance with the Terms and Conditions of the Award and maintain at least satisfactory performance may result, at EDA’s discretion, in the assignment of additional award conditions pursuant to 2 CFR § 200.207 (“Specific conditions”) or other appropriate enforcement actions as specified in 2 CFR § 200.338 (“Remedies for noncompliance”). *See also* section A.6 “Noncompliance with Award Provisions” of these Construction ST&Cs.

6. Programmatic Changes.

- a. In accordance with 2 CFR § 200.308 (“Revisions of budget and program plans”), the Recipient shall report programmatic changes, including all changes to the scope of the Award, to the Project Officer. In accordance with section B.4 “Budget Revisions and Transfers of Funds Among Budget Categories” of these Construction ST&Cs, certain budget revisions require the prior written approval of EDA. In these cases, the Project Officer will

forward the request to the Grants Officer, who makes the final decision on approving the request. In addition, the Recipient shall request prior written approvals for certain items of cost in accordance with 2 CFR § 200.407 (“Prior written approval (prior approval”).

- b. Any changes made to the Project without EDA’s approval are made at the Recipient’s risk of nonpayment of costs, suspension, termination, or other EDA action with respect to the Award. *See* 13 CFR § 302.7(b) (“Amendments and changes”).
- c. *Contract Change Orders.* After construction contracts for the Project have been executed, it may become necessary to alter them, which requires a formal contract change order that must be issued by the Recipient and accepted by the contractor. All contract change orders must be reviewed by EDA, even if EDA is not participating in the cost of the change order or the contract price is to be reduced. Work on the Project may continue pending EDA review and approval of the change order, but all such work shall be at the Recipient’s risk as to whether the cost of the work is eligible for EDA participation until the Recipient receives EDA’s written approval for the change order. *See* 13 CFR § 305.13 (“Contract change orders”).

7. Other Federal Awards with Similar Programmatic Activities.

The Recipient shall immediately notify the Project Officer and the Grants Officer in writing if, after receipt of this Award, other financial assistance is received to support or fund any portion of the scope of work incorporated into this Award. EDA will not pay for costs that are funded by other sources.

8. Beneficiary Compliance.

In the event a beneficiary of the Project fails to comply in any manner with certifications, assurances, or agreements that such beneficiary has entered into in accordance with EDA’s requirements, the Recipient will reimburse the Government the Award amount or an amount to be determined by the Government pursuant to 13 CFR §§ 314.4 (“Unauthorized use of property”) and 314.5 (“Federal share”). Where the Government determines that the failure of a beneficiary to comply with EDA requirements affects a portion of the property benefited by the Award, the Recipient will reimburse the Government proportionately.

9. Prohibition Against Assignment by the Recipient.

The Recipient shall not transfer, pledge, mortgage, or otherwise assign the Award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express prior written approval of the Grants Officer, which approval may be provided in a special award condition.

10. Disclaimer Provisions; Hold Harmless Requirement.

- a. The United States expressly disclaims any and all responsibility or liability to the Recipient, subrecipient, or third persons for the actions of the Recipient, subrecipient, or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this Award or any subaward or subcontract under this Award.

- b. The acceptance of this Award or any subaward by the Recipient or subrecipient does not in any way constitute an agency relationship between the United States and the Recipient or subrecipient.
- c. To the extent permitted by law, the Recipient agrees to indemnify and hold the Government harmless from and against all liabilities that the Government may incur as a result of providing an award to assist, directly or indirectly, in the preparation of the Project site or construction, renovation, or repair of any facility on the Project site, to the extent that such liabilities are incurred because of toxic or hazardous contamination or groundwater, surface water, soil, or other conditions caused by operations of the Recipient or any of its predecessors (other than the Government or its agents) on the property. *See* 13 CFR § 302.19 (“Indemnification”).

11. Prohibition on Use of Third Parties to Secure Award.

Unless otherwise specified in the special award conditions to this Award, the Recipient warrants that no person or selling agency has been employed or retained to solicit or secure this Award upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by the Recipient for the purpose of securing business. For breach or violation of this warrant, the Government has the right to annul this Award without liability, or at its discretion, to deduct from the Award sum, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

12. Payment of Attorneys’ or Consultants’ Fees.

No Award funds shall be used, directly or indirectly, to reimburse attorneys’ or consultants’ fees incurred in connection with obtaining Investment Assistance under PWEDA, such as, for example, preparing the Application for EDA Investment Assistance. However, ordinary and reasonable attorneys’ and consultants’ fees incurred for meeting Award requirements (*e.g.*, conducting a title search or preparing plans and specifications) may be eligible Project costs and may be paid out of Award funds, provided such costs are otherwise eligible. *See* 13 CFR § 302.10 (“Attorneys’ and consultants’ fees, employment of expeditors, and post-employment restriction”).

13. Recipient’s Duty to Refrain from Employing Certain Government Employees.

- a. Pursuant to section 606(2) of PWEDA (42 U.S.C. § 3216), for the two-year period beginning on the date EDA executes this Award, any Recipient that is a nonprofit organization, District Organization, or for-profit entity agrees that it will not employ, offer any office or employment to, or retain for professional services any person who:
 - i. On the date the Government executes this Award or within the one-year period ending on that date, served as an officer, attorney, agent, or employee of the Department, and
 - ii. Occupied a position or engaged in activities that the Assistant Secretary determines involved discretion with respect to the awarding of Investment Assistance under PWEDA.

- b. In addition to the types of Recipients noted in paragraph a above, EDA may require another Eligible Applicant to execute an agreement to abide by the above-described post-employment restriction on a case-by-case basis—for example, when an institution of higher education implements activities under or related to the Investment Assistance through a separate nonprofit organization or association.
- c. The two-year period and associated restrictions referenced above also shall apply beginning on the date that EDA executes any cost amendment to this Award that provides additional funds to the Recipient.

See also 13 CFR § 302.10 (“Attorneys’ and consultants’ fees, employment of expeditors, and post-employment restriction”).

14. Commencement of Construction and Project Sign.

- a. *Delayed Construction Starts.* If significant construction (as determined by EDA) is not commenced within two years of the Award date or by the date estimated for start of construction in this Award (or the expiration of any extension granted in writing by EDA), whichever is later, this Award will be automatically suspended and may be terminated if EDA determines, after consultation with the Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously.
- b. *Early Construction Starts.* The Recipient shall make a written request to EDA for early construction start permission (that is, after the date of Award, but before EDA gives formal approval for construction to commence). For Project costs to be eligible for EDA reimbursement, EDA must determine that the award of all contracts necessary for design and construction of the Project facilities is in compliance with the Terms and Conditions of this Award. If construction commences prior to EDA’s determination, the Recipient proceeds at its own risk until EDA’s review and concurrence. *See* 13 CFR § 305.11 (“Contract awards; early construction start”).
- c. *Project Sign.* The Recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the Project site indicating that the Federal Government is participating in the Project. EDA will provide specifications for the sign and may require more than one sign if site conditions so warrant. If the EDA-recommended sign specifications conflict with State or local law, the Recipient may modify such recommended specifications so as to comply with State or local law. *See* 13 CFR § 305.12 (“Project sign”).

15. Efficient Administration of Project.

The Recipient agrees to properly and efficiently administer, operate, and maintain the Project for its estimated useful life, as required by section 504 of PWEDA (42 U.S.C. § 3194). If the Government determines, at any time during the estimated useful life of the facility, that the Project is not being properly and efficiently administered, operated, and maintained, the Government may terminate this Award (if it is still active) and/or may take appropriate enforcement action to protect the Federal Interest in the Project, including requiring the Recipient to repay the Federal Share. *See* 13 CFR §§ 302.12 (“Project administration, operation and maintenance”), 302.18 (“Post-approval requirements”), and 314.2 (“Federal interest”) through 314.5 (“Federal share”).

16. Conflicts-of-Interest Rules.

- a. An “Interested Party” is defined in 13 CFR § 300.3 (“Definitions”) as “any officer, employee, or member of the board of directors or other governing board of the Recipient, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the Recipient, such as agents, advisors, consultants, attorneys, accountants, or shareholders.” An Interested Party includes the Interested Party’s “Immediate Family” (defined in 13 CFR § 300.3 as “a person’s spouse (or domestic partner or significant other), parents, grandparents, siblings, children and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person”) and other persons directly connected to the Interested Party by law or through a business organization.
- b. The Recipient must disclose in writing any potential conflicts of interest to EDA or the pass-through entity. In addition, the Recipient must maintain written standards of conduct to establish safeguards to prohibit an Interested Party from using its position for a purpose that constitutes or presents the appearance of personal or organizational conflicts-of-interest or of personal gain in the administration of an award. *See* 13 CFR § 302.17(a) and (b) (“Conflicts of interest”), 2 CFR § 200.112 (“Conflict of interest”), as applicable, and Forms SF-424B (“Assurances – Non-Construction Projects”) and SF-424D (“Assurances – Construction Projects”).
- c. An Interested Party must not receive any direct or indirect financial or personal interests or benefits in connection with this Award or its use for payment or reimbursement of costs by or to the Recipient. A financial interest or benefit may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance, services, or advice. It also could result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field. *See* 13 CFR § 302.17(a) and (b).
- d. Procurement-related conflicts of interest. In addition, in accordance with 2 CFR § 200.318(c) (“General procurement standards”), the Recipient must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts. *See* 2 CFR §§ 200.317–200.326 (“Procurement Standards”).

17. Record-Keeping Requirements.

- a. *Records.* The Recipient must maintain records that document compliance with the Terms and Conditions of this Award. At a minimum, the Recipient’s records must fully disclose:
 - i. The amount and disposition of EDA investment assistance;
 - ii. All Project expenditures and procurement actions;
 - iii. The total cost of the Project that the Award funds;
 - iv. Copies of all reports and disbursement requests submitted to EDA;

- v. The benefits/impacts of the Project, as reported through GPRA and other reports to EDA;
 - vi. The amount and nature of the portion of Project costs provided by non-EDA sources;
 - vii. Contractor compliance with applicable Federal requirements; and
 - viii. Such other records as EDA determines will facilitate an effective audit.
- b. *Records Retention.* In general and in accordance with 2 CFR § 200.333 (“Retention requirements for records”), all records pertinent to this Award must be retained for a period of three years from the date of submission of the final Project expenditure report (the final Form SF-271 for disbursement). The only exceptions are the following:
- i. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final actions taken.
 - ii. When the Recipient is notified in writing by EDA, the cognizant agency for either audit or indirect costs, the oversight agency for audit, or the relevant pass-through entity to extend the retention period, it must retain the records as directed.
 - iii. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition of the relevant real property or equipment.
 - iv. When records are transferred or maintained by EDA, the three-year retention requirement is not applicable to the Recipient.
 - v. Records for program income transactions after the period of performance. In some cases Recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the Recipient’s fiscal year in which the program income is earned.
 - vi. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
 - (1) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission.
 - (2) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.
- c. *Monitoring and Reporting Obligations.* The Recipient is responsible for monitoring any subrecipients and contractors to ensure their compliance with the records retention requirements. The Recipient must immediately notify the Project Officer if records are lost,

destroyed, or are otherwise no longer available, or if the Recipient anticipates that it will not be able to comply with the record retention requirements under the Award for the general retention periods noted above. *See* 13 CFR § 302.14 (“Records”), as applicable.

18. Termination Actions.

- a. In accordance with 2 CFR § 200.339 (“Termination”), this Award may be terminated in whole or in part as follows:
 - i. *Termination by EDA for the Recipient’s Failure to Comply with the Terms and Conditions of the Award.* EDA may terminate this Award, in whole or in part, if the Recipient fails to comply with the Terms and Conditions of the Award, including if:
 - (1) Any representation made by the Recipient to the Federal awarding agency in connection with the Application for Federal assistance is incorrect or incomplete in any material respect;
 - (2) The Project has changed substantially, without EDA approval, so as to affect significantly the accomplishment of the Project as intended (including an unauthorized use of property as provided in 13 CFR § 314.4 (“Unauthorized use of property”));
 - (3) The Recipient has violated commitments it made in its Application and supporting documents or has violated any of the Terms and Conditions of the Award;
 - (4) The conflicts-of-interest rules at 13 CFR § 302.17 (“Conflicts of interest”) are violated; or
 - (5) The Recipient fails to report immediately to the Federal awarding agency any change of authorized representative acting in lieu of or on behalf of the Recipient.
 - ii. *Termination by EDA for Cause.* EDA may terminate this Award for cause if required by a circumstance beyond EDA’s control, such as a Congressional mandate.
 - iii. *Termination by the Recipient.* The Recipient may terminate this Award in whole or in part upon sending the EDA Grants Officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if EDA determines in the case of partial termination that the reduced or modified portion of the EDA Award will not accomplish the purposes for which the EDA Award was made, EDA may terminate the Award in its entirety.
 - iv. *Termination Upon Mutual Agreement.* EDA and the Recipient may mutually agree to terminate this Award in whole or in part. In such cases, EDA and the Recipient must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.
- b. If the Award is wholly or partially terminated, the Recipient remains responsible for compliance with the requirements in 2 CFR §§ 200.343 (“Closeout”) and 200.344 (“Post-closeout adjustments and continuing responsibilities”).

19. Project Closeout Procedures.

As noted above in section C.15 “Efficient Administration of Project” of these Construction ST&Cs, after construction is completed and the Project is closed out financially, the Recipient has an ongoing responsibility to properly administer, operate, and maintain the Project for its estimated useful life (as determined by EDA) in accordance with its original purpose. See 13 CFR § 302.12 (“Project administration, operation and maintenance”). The Recipient must comply with all Award requirements and maintain records to document such compliance, which shall be made available for inspection by EDA or other Government officials as required.

- a. *Final Disbursement.* When Project construction and final inspection have been completed, or substantially completed as determined by EDA, and the Recipient has accepted the Project from the contractor, the Recipient can begin the Closeout process by submitting the following documentation to EDA:
 - i. A request for final disbursement on an executed Form SF-271;
 - ii. A written certification that all costs charged against this Award (Federal and non-Federal shares) are for eligible activities and represent allowable costs, for which there is documentation in the Recipient’s records;
 - iii. An executed certificate of final acceptance signed by the Recipient and the Recipient’s architect/engineer;
 - iv. The Recipient’s certification that its currently valid single or program-specific audit in accordance with subpart F of 2 CFR part 200 (“Audit Requirements”), if applicable, does not contain any material findings (if the Recipient’s currently valid audit does contain material findings, the Recipient shall submit the applicable audit preferably via e-mail to the Project Officer, who will review with the Grants Officer);
 - v. The Recipient’s certification that its currently valid audit (in accordance with subpart F of 2 CFR part 200), if applicable, has been submitted to the Federal Audit Clearinghouse; and
 - vi. Other documentation as may be required by EDA.

EDA shall advise the Recipient of costs determined to be allowable and unallowable. If a balance of this Award is due to the Recipient, the balance will be paid by wire transfer. If the Recipient has received an amount in excess of the amount due the Recipient, the Recipient must refund the excess to EDA. The Recipient shall contact the Project Officer for refund instructions.

As noted above, if the Recipient’s currently valid audit completed pursuant to subpart F of 2 CFR part 200 contains material findings, the Recipient shall submit the audit, preferably via e-mail, to the Project Officer, who will review with the Grants Officer before final disbursement. If e-mail is unavailable, the Recipient may submit a hardcopy version of the audit to the Project Officer.

- b. The Recipient shall submit, within 90 calendar days after the Project Closeout date, all financial, performance, and other reports as required by the Terms and Conditions of this Award. The Grants Officer may extend the 90 calendar day Closeout period upon a written request from the Recipient.

- c. As required under GPRA and in accordance with a schedule that will be provided by EDA, the Recipient must submit additional Performance Measurement Reports, generally three, six, and nine years after the date of the Award to accurately and completely report the impacts of the Project, especially in terms of job creation and private investment leveraging.
- d. Unless EDA authorizes an extension, the Recipient shall liquidate all obligations incurred under this Award no later than 90 calendar days after acceptance of the Project from the contractor or within 90 calendar days of the expiration date of this Award, whichever occurs earlier.
- e. In accordance with 2 CFR § 200.344 “Post-closeout adjustments and continuing responsibilities,” the Closeout of this Award does not affect any of the following:
 - i. The right of EDA to disallow costs and recover funds on the basis of a later audit or other Project review;
 - ii. The Recipient’s obligation to return any funds due as a result of later corrections or other transactions;
 - iii. Audit requirements per subpart F of 2 CFR part 200; and
 - iv. Requirements for property management and disposition, records retention, and performance measurement reports. *See* subpart D of 2 CFR part 200 (“Post Federal Award Requirements”), as applicable.

20. Freedom of Information Act.

EDA is responsible for meeting its Freedom of Information Act (“FOIA”) (5 U.S.C. § 552) responsibilities for its records. DOC regulations at 15 CFR part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of Applications and other information submitted by applicants and Recipients may be released in response to a FOIA request. The Recipient should be aware that EDA may make certain Application and other submitted information publicly available. Accordingly, as set forth in 15 CFR § 4.9, the Recipient should identify in its Application any “business information” it believes to be protected from disclosure pursuant to 5 U.S.C. § 552(b)(4).

D. ADDITIONAL REQUIREMENTS RELATING TO CONSTRUCTION PROJECTS.

The Recipient and any subrecipients must, in addition to other statutory and regulatory requirements detailed in these Construction ST&Cs and the assurances made to EDA in connection with the Award, comply and require each of its contractors and subcontractors employed in the completion of the Project to comply with all applicable Federal, State, territorial, and local laws, and in particular, the following Federal public laws (and the regulations issued thereunder), executive orders, OMB circulars, Uniform Guidance, and local law requirements.

- 1. The Davis-Bacon Act, as amended (40 U.S.C. §§ 3141–3144, 3146, 3147; 42 U.S.C. § 3212),** which requires minimum wages for mechanics and laborers employed on Federal Government public works projects to be based on the wages that the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the Project is to be performed, or in the District of Columbia if the Project is to be performed there.

2. **The Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§ 3701-3708)**, which provides work hour standards for every laborer and mechanic employed by any contractor or subcontractor in the performance of a Federal public works project.
3. **The National Historic Preservation Act of 1966, as amended (54 U.S.C. § 300101 *et seq.*), and the Advisory Council on Historic Preservation Guidelines (36 CFR part 800)**, which require stewardship of historic properties in projects involving Federal funds.
4. **The Historical and Archeological Data Preservation Act of 1974, as amended (16 U.S.C. § 469a-1 *et seq.*)**, which requires appropriate surveys and preservation efforts if a Federally licensed project may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data.
5. **The Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 *et seq.*)**, and the regulations issued thereunder, which prescribe standards for the design and construction of any building or facility intended to be accessible to the public or that may house handicapped employees.
6. **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*)**, and implementing regulations issued at 49 CFR part 24 (“Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs”), which establish uniform policies for the fair and equitable treatment of persons, businesses, or farm operations affected by the acquisition, rehabilitation, or demolition of real property acquired for a project financed wholly or in part with Federal financial assistance.
7. **The Energy Conservation and Production Act (42 U.S.C. § 6834 *et seq.*)**, which establishes energy efficiency performance standards for the construction of new residential and commercial structures undertaken with Federal financial assistance.
8. **Compliance with Local Construction Requirements.** The Recipient will comply with current local building codes, standards, and other requirements applicable to the Project.

E. NONDISCRIMINATION REQUIREMENTS.

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The Recipient agrees to comply with the nondiscrimination requirements below.

1. Statutory Provisions.

- a. **Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*)** and DOC implementing regulations published at 15 CFR part 8 (“Nondiscrimination in Federally Assisted Programs of the Department of Commerce—Effectuation of Title VI of the Civil Rights Act of 1964”), which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance. *See* the Department’s Title VI compliance provisions at 15 CFR §§ 8.7 (“Cooperation, compliance reports and reviews and access to records”) through 8.15 (“Effect on other laws; supplementary instructions; coordination”).

- b. **Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*)**, which prohibits discrimination on the basis of sex under Federally assisted education programs or activities.
- c. **Pub. L. No. 92-65, 42 U.S.C. § 3123**, which proscribes discrimination on the basis of sex in EDA assistance provided under PWEDA; **Pub. L. No. 94-369, 42 U.S.C. § 6709**, which proscribes discrimination on the basis of sex under the Local Public Works Program; and the Department’s implementing regulations at 15 CFR §§ 8.7 (“Cooperation, compliance reports and reviews and access to records”) -8.15 (“Effect on other laws; supplementary instructions; coordination”).
- d. **The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*) (ADA)**, which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereof, as well as public or private entities that provide public transportation.
- e. **Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794)**, and DOC implementing regulations published at 15 CFR part 8b (“Prohibition of Discrimination Against the Handicapped in Federally Assisted Programs Operated by the Department of Commerce”), which prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance.

For purposes of complying with the accessibility standards set forth in 15 CFR § 8b.18(c) (“New construction”), Recipients must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (“ADA”) (28 CFR part 35 (“Nondiscrimination on the Basis of Disability in State and Local Government Services”); 75 *Fed. Reg.* 56164, as amended by 76 *Fed. Reg.* 13285) and Title III of the ADA (28 CFR part 36 (“Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities”); 75 *Fed. Reg.* 56236, as amended by 76 *Fed. Reg.* 13286). The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design” (2010 Standards), which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

- f. **The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*)** and DOC implementing regulations published at 15 CFR part 20 (“Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance”), which prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance.
- g. Other applicable Federal statutes, regulations, and executive orders, and other applicable nondiscrimination laws.

2. Other Provisions.

- a. Parts II and III of Executive Order 11246 (30 *Fed. Reg.* 12319, 1965), as amended by Executive Orders 11375 (32 *Fed. Reg.* 14303, 1967) and 12086 (43 *Fed. Reg.* 46501, 1978), requiring Federally assisted construction contracts to include the nondiscrimination provisions of sections 202 and 203 of that Executive Order and Department of Labor regulations implementing Executive Order 11246 (41 CFR § 60-1.4(b) (“Equal Opportunity Clause”), 1991).

- b. Executive Order 13166 (August 11, 2000), “Improving Access to Services for Persons With Limited English Proficiency,” requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (“LEP”), and develop and implement a system to provide those services so that LEP persons can have meaningful access to them. The DOC issued policy guidance on March 24, 2003 (“Guidance to Federal Financial Assistance Recipients on the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons”, 68 *Fed. Reg.* 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that Recipients provide meaningful access to their LEP applicants and beneficiaries.

3. Title VII Exemption for Religious Organizations.

Generally, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*) provides that it shall be an unlawful employment practice for an employer to discharge any individual or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual’s race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination on the basis of religion, a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

F. AUDITS.

Under the Inspector General Act of 1978, as amended (5 U.S.C. App. 3, § 1 *et seq.*), an audit of the Award may be conducted at any time. The Department’s Inspector General, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. This right also includes timely and reasonable access to the Recipient’s personnel for the purpose of interview and discussion related to such documents. *See* 2 CFR § 200.336 (“Access to records”). When the Office of the Inspector General (“OIG”) requires a program audit on a DOC Award, the OIG will usually make the arrangements to audit the Award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other Federal, State, or local audit entity.

1. Organization-Wide, Program-Specific, and Project Audits.

- a. Organization-wide or program-specific audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by subpart F of 2 CFR part 200 (“Audit Requirements”). Recipients that expend \$750,000 or more in Federal awards during their fiscal year shall have an audit conducted for that year in accordance with the requirements set forth in subpart F of 2 CFR part 200. Within the earlier of 30 calendar days after receipt of the auditor’s report, or nine months after the end of the audit period, a copy of the audit shall be submitted electronically to the Federal Audit Clearinghouse website at <http://harvester.census.gov/sac/>.

If it is necessary to submit using paper, the address for submission is:

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, IN 47132

Within 90 days of the end of the fiscal year of a Recipient subject to subpart F of 2 CFR part 200, the entity is responsible for notifying the Grants Officer of the amount of Federal awards, including all DOC and non-DOC awards, the Recipient expended during its fiscal year.

A Recipient that expends less than \$750,000 in Federal awards during its fiscal year is exempt from Federal audit requirements for that year, except as noted at 2 CFR § 200.503 (“Relation to other audit requirements”), but records must be available for review and audit by EDA, DOC, or other designated Government officials.

Failure to provide audit reports within the timeframes specified may result in appropriate enforcement action, up to and including termination of the Award, and may jeopardize eligibility for receiving future DOC awards.

- b. Unless otherwise specified in the Terms and Conditions of this Award, for-profit hospitals, commercial entities, and other organizations that are not subject to subpart F of 2 CFR part 200 (“Audit Requirements”) shall have a program specific audit performed by an independent auditor when the Federal share amount awarded is \$750,000 or more over the duration of the period of performance. An audit is required at least once every two years using the following schedule for audit report submission:
 - i. For Awards where the period of performance is less than two years, an audit is required within 90 calendar days of the end of the period of performance to cover the entire Project (the Project Closeout period is included in the 90 days);
 - ii. For Awards with a two- or three-year period of performance, an audit is required within 90 calendar days after the end of the first year to cover Year 1, which is the period of time when Federal funding is available for obligation by the Recipient, and within 90 calendar days of the end of the period of performance to cover Year 2 and Year 3 (if applicable) (the Project Closeout period is included in the 90 days); or
 - iii. For Awards with a four- to five-year period of performance, an audit is required within 90 calendar days after the end of the first year to cover Year 1, within 90 calendar days after the end of the third year to cover Year 2 and Year 3, and within 90 calendar days of the end of the period of performance to cover Year 4 and Year 5 (if applicable) (the Project Closeout period is included in the 90 days).
- c. EDA’s Public Works and Economic Adjustment Assistance programs generally have specific audit guidelines that will be incorporated into the Award and may be found in the annual Compliance Supplement, which is Appendix XI to 2 CFR part 200 and is available on OMB’s website (https://www.whitehouse.gov/omb/circulars_default). When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in 2 CFR § 200.507

(“Program-specific audits”). The Recipient may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit shall be submitted to the Grants Officer.

- d. Recipients are responsible for compliance with the above audit requirements and for informing the Grants Officer of the status of their audit, including when the relevant audit has been completed and submitted in accordance with the requirements of this section. In accordance with 2 CFR § 200.331(d)(3) (“Requirements for pass-through entities”), pass-through entities are responsible for issuing a management decision for any audit findings pertaining to the Federal Award provided to a subrecipient.

2. Requirement to Submit a Copy of the Audit to EDA.

If the Recipient’s currently valid audit required under subpart F of 2 CFR part 200 (“Audit Requirements”) contains material findings, the Recipient must submit a copy of the audit to the Project Officer, who will review it with the Grants Officer. *See also* section C.19.a.iv “Project Closeout Procedures” of these Construction ST&Cs.

3. Audit Resolution Process.

- a. An audit of the Award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (account receivable) due to EDA. For this reason, the Recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.
- b. In accordance with the *Federal Register* notice dated January 27, 1989 (54 *Fed. Reg.* 4053), a Recipient has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt after an audit:
 - i. The Recipient has 30 business days from the date of the transmittal of the “Draft Audit Report” to submit written comments and documentary evidence.
 - ii. The Recipient has 30 business days from the date of the transmittal of the “Final Audit Report” to submit written comments and documentary evidence. There will be no extension of this deadline.
 - iii. EDA shall review the documentary evidence submitted by the Recipient and shall notify the Recipient of the results in an “Audit Resolution Determination Letter.” The Recipient has 30 business days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the Recipient to submit written comments and documentary evidence that dispute the validity of the Audit Resolution Determination Letter.
 - iv. An appeal of the Audit Resolution Determination Letter does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on such debt. If the Audit Resolution Determination Letter is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.
 - v. The EDA or DOC, as applicable, shall review the Recipient’s appeal. EDA shall notify the Recipient of the results in an Appeal Determination Letter. After the opportunity to

appeal has expired or after the appeal determination has been rendered, EDA or DOC will not accept any further documentary evidence from the Recipient. No other EDA or DOC administrative appeals are available.

G. DEBTS.

1. Payment of Debts Owed the Federal Government.

- a. The Recipient must promptly pay any debts determined by the Federal Government to be owed by the Recipient. Any funds paid to the Recipient in excess of the amount to which the Recipient is finally determined to be entitled under the terms of the Award constitute a debt to the Federal Government. In accordance with 2 CFR § 200.345 (“Collection of amounts due”), if not paid within 90 calendar days after demand, DOC may reduce a debt owed to the Federal Government by:
 - i. Making an administrative offset against other request for reimbursement;
 - ii. Withholding advance payments otherwise due to the Recipient; or
 - iii. Taking any other action permitted by Federal statute.
- b. DOC debt collection procedures are set out in 15 CFR part 19. In accordance with 2 CFR § 200.345 (“Collection of amounts due”), failure to pay a debt owed to the Federal Government shall result in the assessment of interest, penalties and administrative costs under 31 U.S.C. § 3717 and 31 CFR § 901.9. DOC entities will transfer any DOC debt that is more than 180 calendar days delinquent to the U.S. Department of the Treasury’s Financial Management Service for debt collection services, a process known as “cross-servicing,” pursuant to 31 U.S.C. § 3711(g), 31 CFR § 285.12, and 15 CFR § 19.9, and may take further action as specified in section A.6 “Noncompliance with Award Provisions” of these Construction ST&Cs. Funds for payment of a debt must not come from other Federally sponsored programs, and DOC may conduct on-site visits, audits and other reviews to verify that other Federal funds have not been used to pay a debt.

2. Late Payment Charges.

- a. Interest shall be charged on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act, as amended (31 U.S.C. § 3701 *et seq.*). The minimum annual interest rate to be assessed is the U.S. Department of the Treasury’s Current Value of Funds Rate (“CVFR”). The CVFR is available online at <http://www.fms.treas.gov/cvfr/index.html> and also published by the Department of the Treasury in the *Federal Register* (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>) and in the *Treasury Financial Manual Bulletin*. The assessed rate shall remain fixed for the duration of the indebtedness.
- b. Penalties shall accrue at a rate of not more than six percent per year or such other higher rate as authorized by law.
- c. Administrative charges (*i.e.*, the costs of processing and handling a delinquent debt) shall be determined by the DOC entity collecting the debt, as directed by the Office of the Chief Financial Officer and Assistant Secretary for Administration.

3. Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees.

Pursuant to 31 U.S.C. § 3720B and 31 CFR § 901.6, unless waived, DOC is not permitted to extend financial assistance in the form of a loan, loan guaranty, or loan insurance to any person delinquent on a non-tax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

4. Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs.

Pursuant to 28 U.S.C. § 3201(e), unless waived by DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

H. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT).

The Recipient shall comply with the provisions of 2 CFR part 1326 ("Nonprocurement Debarment and Suspension") (published in the *Federal Register* on December 21, 2006, 71 *Fed. Reg.* 76573), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions through either primary or lower-tier covered transactions, and which set forth the responsibilities of Recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors. In addition, as provided in section K.4.b "Applicability of Provisions to Subawards, Contracts, and Subcontracts" of these Construction ST&Cs, in accordance with subpart C of 2 CFR part 1326, the Recipient must include a term or condition in lower tier transactions (subawards, contracts, and subcontracts) requiring lower tier participants to comply with subpart C (entitled "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons") of the OMB guidance in 2 CFR part 180 "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)."

I. DRUG-FREE WORKPLACE.

The Recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8102), and DOC's implementing regulations found at 15 CFR part 29 ("Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)") which require that the Recipient take steps to provide a drug-free workplace.

J. LOBBYING RESTRICTIONS.

1. *Statutory and Regulatory Provisions.* The Recipient shall comply with 2 CFR § 200.450 ("Lobbying"), which incorporates the provisions of 31 U.S.C. § 1352; the "New Restrictions on Lobbying" published at 55 *Fed. Reg.* 6736 (February 26, 1990); and OMB guidance and notices on lobbying and restrictions. In addition, the Recipient must comply with the DOC's regulations published at 15 CFR part 28, which implement the "New Restrictions on Lobbying." These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal government in connection with an award, and require disclosure of the use of

non-Federal funds for lobbying. Lobbying includes attempting to improperly influence, meaning any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter, either directly or indirectly. Costs incurred to improperly influence are unallowable. See 2 CFR § 200.450(b) and (c).

2. *Disclosure of Lobbying Activities.* Any Recipient that receives more than \$100,000 in Federal funding shall submit a completed Form SF-LLL, “Disclosure of Lobbying Activities,” regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Recipient must submit any required Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Project Officer.
3. *Special Provisions Relating to Indian Tribes.* As set out in 31 U.S.C. § 1352, special provisions are applicable to Indian tribes, tribal organizations, and other Indian organizations eligible to receive Federal contracts, grants, loans, or cooperative agreements. In accordance with DOC policy, EDA recognizes Tribal Employment Rights Ordinances (“TEROs”), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Federal awards granted to American Indian and Alaska Native tribal governments generally may provide for preference in contracting, hiring, firing, and the payment of a TERO fee. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is “necessary and reasonable for the performance of the Federal award,” as provided under 2 CFR § 200.403 (“Factors affecting allowability of costs”).

K. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS.

1. Code of Conduct for Recipients.

- a. *General conflicts-of-interest requirements.* The Recipient must comply with EDA’s regulation at 13 CFR § 302.17 (“Conflicts of interest”), which articulates EDA’s requirements to prevent conflicts of interest, which generally exist when an Interested Party participates in a matter that has a direct and predictable effect on the Interested Party’s personal or financial interests or there is an appearance that an Interested Party’s objectivity in performing his or her responsibilities under the Project is impaired. In addition, in accordance with 2 CFR § 200.112 (“Conflict of interest”), the Recipient must disclose to EDA in writing any potential conflict of interest. In addition, pursuant to the certification in Form SF-424D, paragraph 7, the Recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflicts of interest or personal gain in the administration of this Award.
- b. *Procurement-related conflicts of interest.* In addition, in accordance with 2 CFR § 200.318 (“General procurement standards”), the Recipient must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts.

2. Applicability of Award Provisions to Subrecipients.

- a. The Recipient or pass-through entity shall require all subrecipients, including lower tier subrecipients, under the Award to comply with the provisions of this Award, including applicable provisions of the Uniform Guidance (2 CFR part 200), and all associated terms and conditions. *See* 2 CFR §§ 200.330 (“Subrecipient and contractor determinations”) through 200.332 (“Fixed amount subawards”) and 2 CFR § 200.101(b)(1) (“Applicability”), which describes the applicability of 2 CFR part 200 to various types of Federal awards.
- b. In accordance with 2 CFR § 200.331 (“Requirements for pass-through entities”), all pass-through entities must:
 - i. *Subaward Identification.* Clearly identify every subaward to the subrecipient at the time of the subaward, including subsequent subaward modification. In accordance with 2 CFR § 200.331(a), required information includes:
 - (1) All Award information data elements set out at 2 CFR § 200.331(a)(1);
 - (2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal Award is used in accordance with Federal statutes, regulations and the Terms and Conditions of the Award;
 - (3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency, including identification of required financial and performance reports;
 - (4) Indirect cost rate information in accordance with 2 CFR § 200.331(a)(4);
 - (5) Access requirements for the subrecipient’s records and financial statements in accordance with 2 CFR § 200.331(a)(5); and
 - (6) Appropriate terms and conditions concerning closeout of the subaward.
 - ii. *Risk-Based Subrecipient Evaluation.* Evaluate each subrecipient’s risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring in accordance with 2 CFR § 200.331(b).
 - iii. *Subaward Conditions.* Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in 2 CFR § 200.207 (“Specific conditions”).
 - iv. *Subrecipient Monitoring.* In accordance with 2 CFR § 200.331(d), monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal requirements, and that the subaward performance goals are achieved. Subrecipient monitoring must include:
 - (1) Reviewing financial and programmatic reports required by the pass-through entity;
 - (2) Following up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means; and

- (3) Issuing a management decision for audit findings pertaining to the Award provided to the subrecipient from the pass-through entity as required by 2 CFR § 200.521 (“Management decision”).
- v. *Utilizing Risk-Based Monitoring Tools.* In accordance with 2 CFR § 200.331(e), depending on the Recipient’s evaluation of each subrecipient’s risk, utilize appropriate monitoring tools, including training and technical assistance, performing on-site reviews, and arranging agreed-upon-procedures engagements as described in 2 CFR § 200.425 (“Audit services”).
- vi. *Subrecipient Audits.* Verify that every subrecipient is audited as required by subpart F of 2 CFR part 200 (“Audit Requirements”) when it is expected that the subrecipient’s Federal awards expended during the fiscal year equaled or exceeded the threshold set forth in 2 CFR § 200.501 (“Audit requirements”).
- vii. *Necessary Adjustments to the Pass-Through Entity’s Records.* Consider whether the results of the subrecipient’s audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity’s own records.
- viii. *Enforcement Action.* Consider taking enforcement action against noncompliant subrecipients as described in 2 CFR § 200.338 (“Remedies for noncompliance”) and in applicable program regulations.

See also 2 CFR § 200.331 for the full text of requirements for pass-through entities.

3. Competition and Codes of Conduct for Subawards.

- a. The Recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition.
- b. The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he or she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the Recipient shall neither solicit nor accept anything of monetary value from subrecipients. However, the Recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Recipient.
- c. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

4. Applicability of Provisions to Subawards, Contracts, and Subcontracts.

- a. The Recipient shall include the following notice in each request for applications or bids for a subaward, contract, or subcontract, as applicable:

Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a DOC official) are subject to subpart C of 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)." In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to 15 CFR part 28, "New Restrictions on Lobbying."

Applicants/bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, Applications for a lower tier covered transaction must include a Form CD-512, "Certification Regarding Lobbying—Lower Tier Covered Transactions," completed without modification.

- b. The Recipient shall include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts) requiring lower tier participants to comply with subpart C of 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)."
- c. Required subaward and contractual provisions:
 - i. The Recipient shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts) exceeding \$100,000 in Federal funds that the subaward, contract, or subcontract is subject to 31 U.S.C. § 1352, as implemented at 15 CFR part 28 ("New Restrictions on Lobbying"). The Recipient shall further require the subrecipient, contractor, or subcontractor to submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the Recipient. The Recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Project Officer within 30 days following the end of the calendar quarter.
 - ii. In addition to other provisions required by the Federal agency or Recipient, in accordance with 2 CFR § 200.326 ("Contract provisions"), all contracts made by the Recipient under this Award must contain the applicable provisions set out in Appendix II to 2 CFR part 200 ("Contract Provisions for Non-Federal Entity Contracts Under Federal Awards"), which address various contractual requirements including remedies, termination for cause and convenience, Equal Employment Opportunity, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, rights to inventions, environmental quality, energy efficiency, debarment and suspension, the Byrd Anti-Lobbying Amendment, and procurement of recovered materials. See Appendix II to 2 CFR part 200 for a full explanation of these requirements.

5. Pilot Program for Enhancement of Employee Whistleblower Protections.

The National Defense Authorization Act (“NDAA”) for Fiscal Year 2013 (Pub. L. No. 112-239, enacted January 2, 2013 and codified at 41 U.S.C. § 4712) includes a pilot program for whistleblower protection. It applies to all DOC awards, subawards, and contracts under awards issued beginning July 1, 2013 through January 1, 2017. This term implements that law.

In accordance with 41 U.S.C. § 4712, an employee of a Recipient or contractor under a Federal award or subaward may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award or subaward or contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority related to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award or subaward or contract under a Federal award or subaward. These persons or bodies include:

- a. A Member of Congress or a representative of a committee of Congress.
- b. An Inspector General.
- c. The Government Accountability Office.
- d. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
- e. An authorized official of the Department of Justice or other law enforcement agency.
- f. A court or grand jury.
- g. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Recipients and contractors under Federal awards and subawards shall inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

6. Small Businesses, Minority Business Enterprises, and Women’s Business Enterprises.

In accordance with 2 CFR § 200.321 (“Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms”), the Recipient must take all necessary affirmative steps to ensure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. DOC encourages Recipients to utilize small businesses, minority business enterprises, and women’s business enterprises in contracts under financial assistance awards. The Minority Business Development Agency (“MBDA”) within DOC will assist Recipients in matching qualified minority business enterprises with contract opportunities. For further information, the Recipient may visit MBDA’s website at <http://www.mbda.gov> or contact MBDA via telephone or mail:

U.S. Department of Commerce
Minority Business Development Agency
Herbert C. Hoover Building
14th Street and Constitution Avenue, N.W.

7. Subaward to or Contract with a Federal Agency.

- a. The Recipient, contractor and/or subcontractor shall not subgrant or subcontract any part of the approved Project to any agency or employee of DOC or any other Federal department, agency, or instrumentality without the prior written approval of the Grants Officer.
- b. The Recipient must submit requests for approval of such action to the Project Officer, who shall review and make a recommendation to the Grants Officer. The Grants Officer must forward all requests to the Federal Assistance Law Division in the Office of the Department of Commerce Assistant General Counsel for Administration and Transactions for review prior to making the final determination. The Grants Officer will notify the Recipient in writing of the final determination.

8. EDA Contracting Provisions for Construction Projects.

The Recipient shall use the “*EDA Contracting Provisions for Construction Projects*” as guidance in developing all construction contracts. The “*EDA Contracting Provisions for Construction Projects*” lists applicable EDA and other Federal requirements for construction contracts.

L. PROPERTY.

1. Standards.

With respect to any property acquired or improved in whole or in part with EDA investment assistance under this Award, the Recipient shall comply with the Property Standards set forth at 2 CFR §§ 200.310 (“Insurance coverage”) through 200.316 (“Property trust relationship”), and EDA’s regulations at 13 CFR part 314. Property acquired or improved in whole or in part by the Recipient under this Award may consist of real property; personal property, including equipment and supplies; and intangible property, such as money, notes, and security interests. Any property reports required under 2 CFR §§ 200.310 through 200.316, such as periodic inventories and requests for disposition instructions, must be submitted to the Grants Officer through the Project Officer on Form SF-428 and/or SF-429, as applicable. *See also* section C.2 “Reporting on Real Property” of these Construction ST&Cs.

2. Title.

- a. Title to equipment, supplies, and intangible property acquired in whole or in part under this Award generally vests upon acquisition in the Recipient. The use, management and disposition of equipment, supplies, and intangible property acquired in whole or in part under this Award shall be in accordance with 2 CFR §§ 200.313 (“Equipment”), 200.314 (“Supplies”), and 200.315 (“Intangible property”), as applicable, and EDA regulations at 13 CFR part 314. *See also* section O.4 “Intellectual Property Rights” of these Construction ST&Cs.
- b. Title to real property acquired in whole or in part under this Award generally vests upon acquisition in the Recipient, subject to the condition that the Recipient uses the real property

for the authorized purpose of the Project. *See* 2 CFR § 200.311 (“Real property”) and EDA regulations at 13 CFR part 314.

3. EDA’s Interest in Award Property.

- a. *General - Evidence of Title.* As stated in section A.4 “Grant Recipient as Trustee” of these Construction ST&Cs, real property, equipment, and intangible property acquired or improved under this Award must be held in trust by the Recipient as trustee for the beneficiaries of the Project for which the property was acquired or improved. This trust relationship exists throughout the duration of the property’s estimated useful life, as determined by the Grants Officer in consultation with the Project Officer, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest).

Before advertising for construction bids or at such other time as EDA requires, the Recipient must furnish evidence, satisfactory in form and substance to the Government, that title to real property required for the Project (other than property of the United States and as provided in 13 CFR § 314.7(c) (“Title”)) is vested in the Recipient and that such easements, rights-of-way, State or local government permits, long-term leases, or other items required for the Project have been or will be obtained by the Recipient within an acceptable time, as determined by the Government. All liens, mortgages, other encumbrances, reservations, reversionary interests, or other restrictions on title or the Recipient’s interest in the property must be disclosed to EDA. With limited exceptions set forth at 13 CFR § 314.6(b) (“Encumbrances”) or as otherwise authorized by EDA, Recipient-owned property acquired or improved in whole or in part with EDA investment assistance must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered. *See* 13 CFR § 314.6.

- b. *Recording EDA’s Interest in Real Property.*
 - i. For all Projects involving the acquisition, construction, or improvement of a building, as determined by EDA, the Recipient shall execute and furnish to the Government, prior to initial Award disbursement, a lien, covenant, or other statement, satisfactory to EDA in form and substance, of EDA’s interest in the property acquired or improved in whole or in part with the funds made available under this Award. EDA may require such statement after initial Award disbursement in the event that grant funds are being used to acquire such property. The statement must specify the estimated useful life of the Project and shall include but not be limited to the disposition, encumbrance, and the Federal Share compensation requirements. *See* 13 CFR §§ 314.1 (“Definitions”) and 314.8(a) (“Recorded statement for real property”). *See also* 2 CFR § 200.316 (“Property trust relationship”).
 - ii. This lien, covenant, or other statement of the Government’s interest must be perfected and placed of record in the real property records of the jurisdiction in which the property is located, all in accordance with applicable law. EDA may require an opinion of counsel for the Recipient to substantiate that the document was validly executed and properly recorded. *See* 13 CFR § 314.8(b).
 - iii. Facilities in which the EDA investment is only a small part of a larger project, as determined by EDA, may be exempted from the requirements listed in paragraphs L.3.b.i and ii above. *See* 13 CFR § 314.8(c).

- iv. In extraordinary circumstances and at EDA's sole discretion, EDA may choose to accept another instrument to protect EDA's interest in the Project property, such as an escrow agreement or letter of credit, provided that EDA determines such instrument is adequate and a recorded statement in accord with section L.3.b.i above is not reasonably available. The terms and provisions of the relevant instrument shall be satisfactory to EDA in EDA's sole judgment. The costs and fees for escrow services or letters of credit shall be paid by the Recipient. *See* 13 CFR § 314.8(d).
- c. *Recording EDA's Interest in Personal Property.* For all Projects involving the acquisition or improvement of significant items of personal property, including but not limited to ships, machinery, equipment, removable fixtures, or structural components of buildings, the Recipient shall execute a security interest, covenant, or other statement of EDA's reversionary interest in the personal property acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with applicable law (usually accomplished by filing a Uniform Commercial Code Financing Statement (Form UCC-1), as provided by State law), with continuances re-filed as appropriate. EDA may require an opinion of counsel for the Recipient to substantiate that the Form UCC-1 or other filing was validly executed and properly recorded. *See* 13 CFR § 314.9 ("Recorded statement for personal property").
- d. The Recipient acknowledges that the Government retains an undivided equitable reversionary interest in property acquired or improved in whole or in part with grant funds made available through this Award throughout the estimated useful life (as determined by EDA) of the Project, except in applicable instances set forth at 13 CFR § 314.7(c) ("Title"). *See* 13 CFR § 314.2(a) ("Federal interest").
- e. The Recipient agrees that if any interest in property acquired or improved in whole or in part with EDA investment assistance is disposed of, encumbered or alienated in any manner, or no longer used for the authorized purposes of the Award during the Project's estimated useful life without EDA's written approval, the Government will be entitled to recover the Federal Share, as defined at 13 CFR § 314.5 ("Federal share"). If, during the Project's estimated useful life, the property is no longer needed for the purposes of the Award, as determined by EDA, EDA may permit its use for other acceptable purposes consistent with those authorized by PWEDA and 13 CFR Chapter III. *See* 13 CFR § 314.3(b) ("Authorized use of property").
- f. For purposes of any lien or security interest, the amount of the Federal Share shall be the portion of the current fair market value of any property (after deducting any actual and reasonable selling and repair expenses incurred to put the property into marketable condition) attributable to EDA's participation in the Project. *See* 13 CFR § 314.5 ("Federal share").
- g. The alienation of Award property includes sale or other conveyance of the Recipient's interest, leasing or mortgaging the property, or granting an option for any of the foregoing.
- h. In accordance with 2 CFR § 200.329 ("Reporting on real property"), the Federal awarding agency or pass through entity must require a non-Federal entity to submit reports (using Form SF-429 "Real Property Status Report" or any successor form) at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal Interest in the real property extends 15 years or longer. In those instances where the Federal Interest attached is for a period of 15 years or more, the Federal awarding agency or

pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (*e.g.*, every two years or every three years, not to exceed a five-year reporting period; or annual reporting for the first three years and thereafter every five years). The Federal awarding agency or pass-through entity may also require a non-Federal entity to periodically submit reports (using Form SF-428 “Tangible Personal Property Report” or any successor form) concerning tangible personal property in which the Federal Government retains an interest. In addition, the Federal awarding agency or pass-through entity may require a non-Federal entity to submit Form SF-429 and/or Form SF-428 in connection with a non-Federal entity’s request to acquire, encumber, dispose of, or take any other action pertaining to real property or tangible personal property acquired or improved, in whole or in part, under this Award or pertaining to Federally owned property under this Award. *See also* section C.2 “Reporting on Real Property” of these Construction ST&Cs.

4. Insurance and Bonding.

- a. *Insurance.* The Recipient shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided for property owned by the Recipient. Federally owned property need not be otherwise insured unless required by the Terms and Conditions of the Award. *See* 2 CFR § 200.310 (“Insurance coverage”).
- b. *Bonding.* If the Award exceeds the simplified acquisition threshold as defined at 2 CFR § 200.88, EDA may accept the Recipient’s or subrecipient’s bonding policy and requirements if EDA or the pass-through entity determines that the Federal Interest is adequately protected. If not, the following minimum requirements shall apply:
 - i. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
 - ii. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
 - iii. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to ensure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. *See* 2 CFR § 200.325 (“Bonding requirements”).

5. Leasing Restrictions.

Leasing or renting of facilities or property is prohibited unless specifically authorized by EDA. The Recipient agrees that any leasing or renting of any facilities or property involved in this Project will be subject to the following:

- a. That said lease arrangement is consistent with the authorized general and special purpose of the Award;
- b. That said lease arrangement is for adequate consideration; and

- c. That said lease arrangement is consistent with applicable EDA requirements concerning but not limited to nondiscrimination and environmental compliance.

6. Eminent Domain.

The Recipient will use funds solely for the authorized purpose of the Project. Pursuant to Executive Order 13406, "Protecting the Property Rights of the American People," the Recipient agrees:

- a. Not to exercise any power of eminent domain available to the Recipient (including the commencement of eminent domain proceedings) for use in connection with the Project for the purpose of advancing the economic interests of private parties; and
- b. Not to accept title to land, easements, or other interests in land acquired by the exercise of any power of eminent domain for use in connection with the Project for such purposes.

The Recipient agrees that any use of the power of eminent domain to acquire land, easements, or interests in land, whether by the Recipient or any other entity that has the power of eminent domain, in connection with the Project without the prior written consent of EDA is an unauthorized use of the Project. If the Recipient puts the Project to an unauthorized use, the Recipient shall compensate EDA for its fair share in accordance with 13 CFR §§ 314.4 ("Unauthorized use of property") and 314.5 ("Federal share"), as the same may be amended from time to time.

7. Disposal of Real Property.

- a. During the estimated useful life of the Project, if EDA and the Recipient determine that property acquired or improved in whole or in part with EDA investment assistance is no longer needed for the original purposes of this Award, EDA may, in its sole discretion, approve use of the property in other Federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and 13 CFR Chapter III. *See* 13 CFR § 314.3(b) ("Authorized use of property").
- b. When property is not disposed of as provided in section L.7.a above, the Government shall determine final disposition and must be compensated by the Recipient for the Federal Share of the value of the property, plus costs and interest, as provided in 13 CFR § 314.4 ("Unauthorized use of property").

M. FEDERAL ENVIRONMENTAL REQUIREMENTS.

Environmental impacts must be considered by Federal decision-makers in their decisions whether or not to approve: (i) a proposal for Federal assistance; (ii) the proposal with mitigation; or (iii) a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts of the projects funded with Federal assistance on the environment. Each Recipient must comply with all environmental standards, to include those prescribed under the following statutes and executive orders, and shall identify to the awarding agency any impact a proposed project may have on the environment. In some cases, Award funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit additional environmental compliance information

sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

1. The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*).

The National Environmental Policy Act (“NEPA”) and the Council on Environmental Quality (“CEQ”) implementing regulations (40 CFR parts 1500–1508) require that an environmental analysis be completed for all major Federal actions significantly affecting the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency’s decision to fund non-Federal projects under grants and cooperative agreements when the Award activities remain subject to Federal authority and control. Recipients are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency in complying with NEPA. Recipients may also be requested to assist EDA in drafting an environmental assessment if EDA determines an assessment is required. Until the appropriate NEPA documentation is complete, and if any additional information is required during the period of performance to assess Project environmental impacts, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit the appropriate NEPA documentation sufficient to enable EDA to make an assessment on any environmental impacts of a Project.

2. National Historic Preservation Act (54 U.S.C. § 300101 *et seq.*).

Section 106 of the National Historic Preservation Act (“NHPA”) (54 U.S.C. § 300101 *et seq.* (formerly codified at 16 U.S.C. § 470f)) and the Advisory Council on Historic Preservation implementing regulations (36 CFR part 800) require that Federal agencies take into account the effects of their undertakings on historic properties. Recipients are required to identify to the awarding agency any effects the Award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Recipients may also be requested to assist EDA in consulting with State or Tribal Historic Preservation Officers or other applicable interested parties necessary to identify, assess and resolve adverse effects on historic properties. Until the appropriate NHPA consultations and documentation are complete and if any additional information is required during the period of performance in order to assess Project impacts on historic properties, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit any information sufficient to enable EDA to make the requisite assessment under the NHPA.

3. Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. §§ 4371–4375).

Federally supported public works facilities and activities that affect the environment shall be implemented in compliance with policies established under existing law.

4. Clean Air Act (42 U.S.C. § 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) (Clean Water Act), and Executive Order 11738 (“Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans”).

The Recipient must comply with the provisions of the Clean Air Act (42 U.S.C. § 7401 *et seq.*), Clean Water Act (33 U.S.C. § 1251 *et seq.*), and Executive Order 11738 (38 *Fed. Reg.* 25161, 1973), and shall not use a facility on the Environmental Protection Agency’s (“EPA’s”) *List of*

Violating Facilities (this list is incorporated into the Excluded Parties List System located at <https://www.sam.gov/portal/public/SAM/>) in undertaking work that is nonexempt under 2 CFR § 1532, and shall notify the Project Officer in writing if it intends to use a facility that is on the EPA's *List of Violating Facilities* or knows that the facility has been recommended to be placed on the list.

5. The Safe Drinking Water Act of 1974, as amended (42 U.S.C. § 300f *et seq.*).

This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer so as to threaten public health.

6. Executive Order 11988 (“Floodplain Management”) and Executive Order 11990 (“Protection of Wetlands”).

Recipients must identify proposed actions in Federally defined floodplains and wetlands to enable the agency to make a determination whether there is an alternative to minimize any potential harm.

7. The Flood Disaster Protection Act (42 U.S.C. § 4002 *et seq.*), and regulations and guidelines issued thereunder by the U.S. Federal Emergency Management Administration (“FEMA”) or by EDA.

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas.

8. The Coastal Zone Management Act (16 U.S.C. § 1451 *et seq.*).

Funded projects must be consistent with a coastal State's approved management plan for the coastal zone.

9. The Coastal Barrier Resources Act (16 U.S.C. § 3501 *et seq.*).

Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

10. The Wild and Scenic Rivers Act (16 U.S.C. § 1271 *et seq.*).

This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

11. The Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*).

This Act requires the evaluation of impacts to fish and wildlife from Federally assisted proposed water resource development projects.

12. The Endangered Species Act (16 U.S.C. § 1531 *et seq.*).

The Recipient must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions with Federal financial assistance and to conduct the required reviews under the Endangered Species Act, as applicable.

13. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, more commonly known as Superfund) (42 U.S.C. § 9601 *et seq.*), and the Community Environmental Response Facilitation Act (Pub. L. No. 102-426, 42 U.S.C. §§ 9601 *note et seq.* and 9620(h)(4)).

These requirements address responsibilities related to hazardous substance releases, threatened releases, and environmental cleanup. They also impose reporting and community involvement requirements to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to State and local emergency responders.

14. The Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*).

This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that Recipients give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

15. Executive Order 12898 (“Environmental Justice in Minority Populations and Low-Income Populations”).

Federal agencies are required to identify and address any disproportionately high adverse human health or environmental effects of Federal programs, policies, and activities on low-income and minority populations.

16. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4821 *et seq.*).

Use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government or with Federal assistance is prohibited.

17. The Farmland Protection Policy Act (7 U.S.C. §§ 4201–4209).

Projects are subject to review under this Act if they may irreversibly directly or indirectly convert farmland, including forest land, pastureland, cropland, or other land, to nonagricultural use.

18. The Noise Control Act of 1972 (42 U.S.C. § 4901 *et seq.*).

Federally supported facilities and activities shall comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements.

19. The Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 *et seq.*).

This Act provides a process for returning certain Native American cultural items to lineal descendants, culturally affiliated Indian tribes, and Native Hawaiian organizations.

N. NOTICE AND EVIDENCE OF COMPLIANCE WITH ALL APPLICABLE ENVIRONMENTAL REQUIREMENTS.

The Recipient agrees to promptly notify the Grants Officer in writing of any environmental requirement or restriction, regulatory or otherwise, with which it must comply. Before Project Closeout and final disbursement of Award funds, the Recipient further agrees to provide evidence satisfactory to the Grants Officer that any required environmental remediation has been completed: (1) in compliance with all applicable Federal, State and local regulations; and (2) as set forth in the

applicable lease, finding of suitability to lease (“FOSL”), lease in furtherance of conveyance, quitclaim deed, or other conveyance instrument and any amendments, supplements, or succeeding documents. Compliance with said laws or restrictions shall be included in any contract documents for Project construction. The Recipient must certify compliance before final disbursement of grant funds.

O. MISCELLANEOUS REQUIREMENTS.

1. Criminal and Prohibited Activities.

- a. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*) provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans, or other benefits).
- b. The False Claims Amendment Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively) provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.
- c. The Civil False Claims Act (31 U.S.C. §§ 3729–3733) provides that suits can be brought by the Government, or a person on behalf of the Government, for false claims under Federal assistance programs.
- d. The Copeland “Anti-Kickback” Act (18 U.S.C. § 874) prohibits a person or organization engaged in a Federally supported Project from enticing an employee working on the Project from giving up a part of his or her compensation under an employment contract. The Copeland “Anti-Kickback” Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

2. Foreign Travel.

- a. The Recipient shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 CFR §§ 301-10.131 through 301-10.143.
- b. The Fly America Act requires Federal travelers and others performing U.S. Government financed air travel to use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable or when use of U.S. flag air carrier service will not accomplish the agency’s mission.
- c. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral and multilateral “Open Skies Agreements” (U.S. Government Procured Transportation) that allow Federally funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple Open Skies Agreements currently

in effect. For more information about the current bilateral and multilateral agreements, visit the General Services Administration (“GSA”) website at <http://www.gsa.gov/portal/content/103191>. Information on the Open Skies Agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State’s website at <http://www.state.gov/e/eeb/tra/>.

- d. If a foreign air carrier is anticipated to be used for any portion of travel under this Award, the Recipient must receive prior approval from the Grants Officer. When requesting such approval, the Recipient must provide a justification in accordance with the guidance provided by 41 CFR § 301-10.142, which requires the Recipient to provide the Grants Officer with the following: (i) his or her name; (ii) dates of travel; (iii) the origin and destination of travel; (iv) a detailed itinerary of travel; (v) the name of the air carrier and flight number for each leg of the trip; and (vi) a statement explaining why the Recipient meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the Recipient must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer shall make the final determination and notify the Recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in disallowance of any transportation costs for which any Recipient improperly used a foreign air carrier.

3. American-Made Equipment and Products.

Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this Award.

4. Intellectual Property Rights.

- a. **General.** The rights to any work produced or purchased under this Award are determined by 2 CFR § 200.315 (“Intangible property”). The Recipient owns any work produced or purchased under a Federal award subject to the DOC’s royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or use the work or authorize others to receive, reproduce, publish, or otherwise use the work for Government purposes. In accordance with 2 CFR § 200.315(d), the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award and authorize others to receive, reproduce, publish or otherwise use such data for Federal purposes.
- b. **Inventions.** Unless otherwise provided by law, the rights to any invention made by a Recipient under this Award are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified at 35 U.S.C. § 200 *et seq.*, except as otherwise required by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from Federal awards are described in more detail at 37 CFR part 401 and, in particular, in the standard patent rights clause at 37 CFR § 401.14, which is hereby incorporated by reference into this Award.
 - i. **Ownership.**
 - (1) *Recipient.* The Recipient has the right to elect to retain title to any invention it makes (conceived or first actually reduced to practice) or that is made by its employees. A Recipient that is a nonprofit organization, which includes a university or other institution of higher learning, may not assign to a third party its rights to such an

invention without the permission of DOC unless that assignment is to a patent management organization (*e.g.*, a university's Research Foundation). The Recipient's ownership rights are subject to the Government's nonexclusive, nontransferrable, irrevocable, paid-up license and other rights.

- (2) *Department.* If the Recipient elects not to retain title, fails to disclose the invention to the agency within the required time limits, or does not file a patent application within the time limits set forth in the standard patent rights clause, DOC may request an assignment of all rights, which is normally subject to a limited royalty-free, nonexclusive, revocable license for the Recipient. DOC owns any invention made solely by its employees, but may license to the Recipient in accordance with the procedures in 37 CFR part 404.
 - (3) *Inventor/Employee.* If neither the Recipient nor DOC is interested in owning an invention by a Recipient employee, the Recipient, with the written concurrence of the DOC, may allow the inventor/employee to retain ownership of the invention subject to certain restrictions as described at 37 CFR § 401.9.
 - (4) *Joint Inventions.* Inventions made jointly by a Recipient and a DOC employee will be owned jointly by the Recipient and DOC. However, DOC may transfer or license its rights to the Recipient as authorized by 35 U.S.C. § 202(e) and 37 CFR § 401.10 if the Recipient is willing to patent and license the invention, usually in exchange for a share of "net" royalties based on the number of inventors (*e.g.*, 50-50 if there is one Recipient inventor and one DOC employee inventor). The agreement will be prepared by DOC and may include other provisions, such as a royalty-free license to the Government and certain other entities. The provision at 35 U.S.C. § 202(e) also authorizes the Recipient to transfer its rights to the Government, which can agree to share royalties similarly as described above.
- ii. *Responsibilities – iEdison.* The Recipient has responsibilities and duties set forth in the standard patent rights clause, which are described below. The Recipient is expected to comply with all requirements of the standard patent rights clause and 37 CFR part 401 and is required to submit its disclosures, elections, and requests for waivers from any requirement for substantial U.S. manufacture electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. The Recipient may obtain a waiver of this electronic submission requirement by providing DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.
- c. **Patent Notification Procedures.** Pursuant to Executive Order 12889 (58 *Fed. Reg.* 69681, 1993), DOC is required to notify the owner of any valid patent covering technology whenever DOC or a Recipient, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the Recipient uses or has used patented technology under this Award without a license or permission from the owner, the Recipient must notify the Grants Officer. This notice does not constitute authorization or consent by the Government to any copyright or patent infringement occurring under the Award.
 - d. **Copyright.** A Recipient may copyright any work produced under this Award subject to DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish or

otherwise use the work or authorize others to do so for Government purposes. Works jointly authored by DOC and Recipient employees may be copyrighted, but only the part of such works authored by the Recipient is protectable in the United States because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. On occasion and as permitted under 17 U.S.C. § 105, DOC may require the Recipient to transfer to DOC a copyright in a particular work for Government purposes or when DOC is undertaking the primary dissemination of the work.

5. Increasing Seat Belt Use in the United States.

Pursuant to Executive Order 13043, Recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally-owned vehicles.

6. Research Involving Human Subjects.

- a. All proposed research involving human subjects must be conducted in accordance with 15 CFR part 27 (“Protection of Human Subjects”). No research involving human subjects is permitted under this Award unless expressly authorized by special award condition or otherwise authorized in writing by the Grants Officer.
- b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
- c. DOC regulations at 15 CFR part 27 require that the Recipient maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this Project, the Recipient shall submit appropriate documentation to the Project Officer for approval. This documentation may include:
 - i. Documentation establishing approval of the Project by an institutional review board (“IRB”) approved for Federal-wide use under Department of Health and Human Services guidelines (*see* 15 CFR § 27.103);
 - ii. Documentation to support an exemption for the Project under 15 CFR § 27.101(b); or
 - iii. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- d. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research until the appropriate documentation is approved in writing by the Grants Officer. In accordance with 15 CFR § 27.118, if research involving human subjects is proposed after an award is made, the Recipient must contact the Grants Officer and provide required documentation. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the Project for protocol or instrument development related to human subjects research.

7. Federal Employee Expenses.

Federal agencies are generally barred from accepting funds from a Recipient to pay transportation, travel, or other expenses for any Federal employee. Use of Award funds (Federal or non-Federal) or the Recipient's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts, including travel payments for Federal employees, from Recipients or applicants regardless of the source.

8. Minority Serving Institutions Initiative.

Pursuant to Executive Orders 13555 ("White House Initiative on Educational Excellence for Hispanics") (75 *Fed. Reg.* 65417, 2010), 13592 ("Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities") (76 *Fed. Reg.* 76603, 2011), and 13532 ("Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities") (75 *Fed. Reg.* 9749, 2010), DOC is strongly committed to broadening the participation of minority serving institutions ("MSIs") in its financial assistance programs.

DOC's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website at <https://www2.ed.gov/about/offices/list/ocr/edlite-minorityinst.html>.

9. Research Misconduct.

The DOC adopts, and applies to financial assistance for research, the Federal Policy on Research Misconduct ("Federal Policy") issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 *Fed. Reg.* 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipient organizations that conduct extramural research funded by the DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipient organizations also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Recipients must notify the Grants Officer of any allegation that meets the definition of research misconduct and detail the entity's inquiry to determine whether there is sufficient evidence to proceed with an investigation, as well as the result of any investigation. DOC may take appropriate administrative or enforcement action at any time under the Award, up to and including Award termination and possible suspension or debarment, and referral to the DOC Office of the Inspector General ("OIG"), the U.S. Department of Justice, or other appropriate investigative body.

10. Publications, Videos, and Acknowledgment of Sponsorship.

- a. Publication of results or findings in appropriate professional journals and production of video or other media are encouraged as important methods of recording and reporting results of Federally funded projects, such as scientific research, and expanding access to Federally funded projects.
- b. Recipients must submit a copy of any publication materials, including but not limited to print, recorded or Internet materials, to their EDA Project Officer.
- c. When releasing information related to a funded Project, Recipients must include a statement that the Project or effort undertaken was or is sponsored by DOC.
- d. Recipients are responsible for ensuring that every publication of material based on, developed under, or produced under this Award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer:

This [report/video] was prepared by [Recipient name] using Federal funds under award [number] from the Economic Development Administration, U.S. Department of Commerce.

The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the Economic Development Administration or the U.S. Department of Commerce.

11. Care and Use of Live Vertebrate Animals.

Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. No. 89-544), as amended (7 U.S.C. § 2131 *et seq.*) (“Animal acquisition, transport, care, handling, and use in projects”), and the implementing regulations at 9 CFR parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. § 1531 *et seq.*); the Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq.*) (“Taking possession, transport, purchase, sale, export or import of wildlife and plants”); the Non-indigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. § 4701 *et seq.*) (“Ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release”); and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC award unless authorized by the Grants Officer.

12. Homeland Security Presidential Directive 12.

If performance under the Award requires Recipient personnel to have routine access to Federally controlled facilities and/or Federally controlled information systems (for purposes of this condition, “routine access” is defined as more than 180 business days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with the U.S. Citizenship and Immigration Services (“USCIS”) Verification Division, a component of the Department of Homeland Security (“DHS”), to ensure that the individual is in a lawful immigration status and that he or she is eligible for employment within the U.S. Any items or services delivered under this Award shall comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12, “Policy for a Common Identification Standard for Federal Employees and

Contractors,” Federal Information Processing Standards Publication (“FIPS PUB”) Number 201, and OMB Memorandum M-05-24. The Recipient shall ensure that its subrecipients and contractors (at all tiers) performing work under this Award comply with the requirements contained in this term. The Grants Officer may delay final payment under this Award if a subrecipient or contractor fails to comply with the requirements listed below. The Recipient shall insert the following term in all subawards and contracts when the subrecipient or contractor is required to have routine physical access to a Federally controlled facility or routine access to a Federally controlled information system:

The subrecipient or contractor shall comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally controlled facility or routine access to a Federally controlled information system.

The subrecipient or contractor shall account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee’s employment; (3) Upon subaward or contract completion or termination.

13. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.

- a. This term applies to the extent that this Award involves access to export-controlled items.
- b. In performing under this Award, the Recipient may gain access to export-controlled information or technology. The Recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including the deemed exports and reexports provisions of the Export Administration Regulations (“EAR”). The Recipient shall establish and maintain throughout performance of this Award effective export compliance procedures at non-DOC facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology.
- c. Definitions.
 - i. *Export-controlled items.* Items (commodities, software, or technology) that are subject to the EAR (15 CFR §§ 730–774), implemented by the DOC’s Bureau of Industry and Security. These are generally known as “dual-use” items—that is, items with a military and commercial application.
 - ii. *Deemed export/reexport.* The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is “deemed” to be an export to the home country of the foreign national. 15 CFR § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange

of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national's home country. Licenses from DOC may be required for deemed exports or reexports.

- d. The Recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of this Award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, executive orders, or regulations, including the EAR.
- e. As applicable, Recipient personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items.
- f. Nothing in the Terms and Conditions of this Award is intended to change, supersede or waive the requirements of applicable Federal laws, executive orders, or regulations.
- g. The Recipient shall include this subsection entitled "Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations," including this subparagraph g, in all lower-tier transactions (subawards, contracts, and subcontracts) under this Award that may involve access to export-controlled information technology.

14. The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as Amended, and the Implementing Regulations at 2 CFR part 175.

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the Recipient engages in certain activities related to trafficking in persons. The Department hereby incorporates the following Award term required by 2 CFR § 175.15(b). See <http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf>

- a. *Provisions applicable to a Recipient that is a private entity.*
 - i. The Recipient, its employees, subrecipients under this Award, and subrecipients' employees may not:
 - (1) Engage in severe forms of trafficking in persons during the period of time that the Award is in effect;
 - (2) Procure a commercial sex act during the period of time that the Award is in effect; or
 - (3) Use forced labor in the performance of the Award or subawards under the Award.
 - ii. EDA, as the Federal awarding agency, may unilaterally terminate this Award, without penalty, if the Recipient or a subrecipient that is a private entity:
 - (1) Is determined to have violated a prohibition in paragraph a.i of this Award term; or
 - (2) Has an employee who is determined by the Grants Officer to have violated a prohibition in paragraph a.i of this Award term through conduct that is either:
 - (A) associated with performance under this Award; or (B) imputed to the Recipient or a subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided at 2 CFR part 180 ("OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)") as

implemented by DOC at 2 CFR part 1326 (“Nonprocurement Debarment and Suspension”).

- b. *Provision applicable to a Recipient other than a private entity.* EDA, as the Federal awarding agency, may unilaterally terminate this Award, without penalty, if a subrecipient that is a private entity:
 - i. Is determined to have violated an applicable prohibition in paragraph a.i of this Award term; or
 - ii. Has an employee who is determined by the Grants Officer to have violated an applicable prohibition in paragraph a.i of this Award term through conduct that is either:
 - (1) Associated with performance under this Award; or
 - (2) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided at 2 CFR part 180 (“OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)”), as implemented by DOC at 2 CFR part 1326 (“Nonprocurement Debarment and Suspension”).
- c. *Provisions applicable to any Recipient.*
 - i. The Recipient must inform EDA immediately of any information it receives from any source alleging a violation of a prohibition in paragraph a.i of this Award term.
 - ii. EDA’s right to terminate this Award unilaterally, as described in paragraph a.ii or b of this section:
 - (1) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (“TVPA”), as amended (22 U.S.C. § 7104(g)), and
 - (2) Is in addition to all other remedies for noncompliance that are available to EDA under this Award.
 - iii. The Recipient must include the requirements of paragraph a.i of this Award term in any subaward made to a private entity.
- d. *Definitions.* For purposes of this Award term:
 - i. “Employee” means either:
 - (1) An individual employed by the Recipient or a subrecipient who is engaged in the performance of the Project under this Award; or
 - (2) Another person engaged in the performance of the Project under this Award and not compensated by the Recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward Matching Share requirements.
 - ii. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - iii. “Private entity”:

- (1) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined at 2 CFR § 175.25;
- (2) Includes: (A) a nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of “Indian tribe” at 2 CFR § 175.25(b); and (B) a for-profit organization.
- iv. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given in section 103 of the TVPA, as amended (22 U.S.C. § 7102).

15. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, 31 U.S.C. § 6101 Note), as Amended by the Government Funding Transparency Act of 2008 (Pub. L. No. 110-252).

- a. **Searchable Website Requirements.** The Federal Funding Accountability and Transparency Act of 2006 (“FFATA” or “Transparency Act”) requires that information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at www.USASpending.gov. To meet these requirements, Recipients and subrecipients must include the following data elements in their Application:
 - i. Name of entity receiving Award;
 - ii. Award amount;
 - iii. Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive Award title;
 - iv. Location of entity and primary location of performance (city, State, Congressional District, and country); and
 - v. Unique identifier of entity.

See also 2 CFR § 200.211 (“Public access to Federal award information”).

- b. **Subaward and Executive Compensation Data Reporting Requirements.** A Recipient awarded a new Federal grant greater than or equal to \$25,000 on or after October 1, 2010, other than those funded by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (“Recovery Act”), are subject to FFATA subaward reporting requirements as outlined in the OMB guidance issued August 27, 2010. The Recipient is required to file a FFATA subaward report by the end of the month following the month in which the Recipient awards any subgrant greater than or equal to \$25,000. *See* Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (*see* 31 U.S.C. § 6101 note). The reporting requirements are located in Appendix A of 2 CFR part 170 and are available at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title2-vol1/pdf/CFR-2015-title2-vol1-part170.pdf>.

- i. Reporting of first-tier subawards.
 - (1) **Applicability.** Unless exempt as provided in paragraph b.iv of this Award term, the Recipient must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery Act funds (as defined in section 1512(a)(2) of the

Recovery Act, Pub. L. No. 111-5) for a subaward to an entity (*see* definitions in paragraph b.v of this Award term).

(2) Where and when to report.

(a) The Recipient must report each obligating action described in paragraph b.i(1) of this Award term to <http://www.fsr.gov>.

(b) For subaward information, the Recipient must report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2015, the obligation must be reported by no later than December 31, 2015.)

(3) What to report. The Recipient must report information about each obligating action that the submission instructions posted at <http://www.fsr.gov> specify.

ii. Reporting total compensation of Recipient executives.

(1) Applicability and what to report. The Recipient must report total compensation for each of its five most highly compensated executives for the preceding completed fiscal year, if:

(a) The total Federal funding authorized to date under this Award is \$25,000 or more;

(b) In the preceding fiscal year, the Recipient received:

(i) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and

(ii) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and

(c) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, *see* the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

(2) Where and when to report. The Recipient must report executive total compensation described in paragraph b.ii of this Award term:

(a) As part of its registration profile at <http://www.ccr.gov>.

(b) By the end of the month following the month in which this Award is made, and annually thereafter.

iii. Reporting total compensation of subrecipient executives.

(1) Applicability and what to report. Unless the subrecipient is exempt as provided in paragraph b.iv of this Award term, each first-tier subrecipient under this Award shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

- (a) In the subrecipient's preceding fiscal year, the subrecipient received:
 - (i) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and
 - (ii) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - (b) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, *see* the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
See also 2 CFR § 200.300(b) ("Statutory and national policy requirements").
- (2) Where and when to report. The subrecipient must report its executive total compensation described in paragraph b.iii of this Award term:
- (a) To the Recipient.
 - (b) By the end of the month following the month during which the subaward is made. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), the required compensation information of the subrecipient must be reported by November 30 of that year.
- iv. Exemptions. If, in the previous tax year, the Recipient had gross income, from all sources, under \$300,000, it is exempt from the requirements to report:
- (1) Subawards, and
 - (2) The total compensation of the five most highly compensated executives of any subrecipient.
- v. Definitions. For purposes of this Award term:
- (1) "Entity" means all of the following, as defined at 2 CFR part 25:
 - (a) A Governmental organization, which is a State, local government, or Indian tribe;
 - (b) A foreign public entity;
 - (c) A domestic or foreign nonprofit organization;
 - (d) A domestic or foreign for-profit organization; and
 - (e) A Federal agency, but only as a subrecipient under an award or subaward to a Recipient.
 - (2) "Executive" means officers, managing partners, or any other employees in management positions.
 - (3) "Subaward":

- (a) This term means a legal instrument to provide support for the performance of any portion of the substantive Project or program for which the Recipient received this Award and that the Recipient awards to an eligible subrecipient.
 - (b) The term does not include the Recipient's procurement of property and services needed to carry out the Project or program (for further explanation, *see* 2 CFR § 200.330).
 - (c) A subaward may be provided through any legal agreement, including an agreement that the Recipient or a subrecipient considers a contract.
- (4) "Subrecipient" means an entity that:
- (a) Receives a subaward from the Recipient under this Award; and
 - (b) Is accountable to the Recipient for the use of the Federal funds provided by the subaward.
- (5) "Total compensation" means the cash and noncash dollar value earned by the executive during the Recipient's or subrecipient's preceding fiscal year and includes the following (for more information, *see* 17 CFR § 229.402(c)(2)):
- (a) Salary and bonus.
 - (b) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Share Based Payments.
 - (c) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.
 - (d) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - (e) Above-market earnings on deferred compensation which is not tax-qualified.
 - (f) Other compensation, if the aggregate value of all such other compensation (*e.g.*, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- c. **Central Contractor Registration ("CCR") and Universal Identifier Requirements.** In accordance with 2 CFR part 25, the Recipient must obtain a Data Universal Numbering System ("DUNS") number and maintain an active registration in the CCR database. In addition, the Recipient must notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the Recipient. The requirements are located in Appendix A of 2 CFR part 25 and are available at <http://www.gpo.gov/fdsys/pkg/CFR-2015-title2-vol1/pdf/CFR-2015-title2-vol1-part25.pdf>.
- i. Requirement for CCR. Unless exempted from this requirement under 2 CFR § 25.110, the Recipient must maintain the currency of its information in the

CCR until it submits the final financial report required under this Award or receives the final payment, whichever is later. This requires that the Recipient review and update the information at least annually after the initial registration, and more frequently if required by changes in its information or another Award term.

ii. Requirement for DUNS Numbers. If authorized to make subawards under this Award, the Recipient:

(1) Must notify potential subrecipients that no entity (*see* definition in paragraph b.v of this Award term) may receive a subaward from the Recipient unless the entity has provided its DUNS number to the Recipient.

(2) May not make a subaward to an entity unless the entity has provided its DUNS number to the Recipient.

iii. Definitions for purposes of this Award term:

(1) “Central Contractor Registration (“CCR”)” means the Federal repository into which an entity must provide information required for the conduct of business as a Recipient. Additional information about registration procedures may be found at the System for Award Management website (currently at <https://www.sam.gov/portal/public/SAM/>).

(2) “Data Universal Numbering System (“DUNS”)” number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

(3) “Entity,” as it is used in this Award term, means all of the following, as defined at 2 CFR part 25, subpart C:

(a) A Governmental organization, which is a State, local government, or Indian Tribe;

(b) A foreign public entity;

(c) A domestic or foreign nonprofit organization;

(d) A domestic or foreign for-profit organization; and

(e) A Federal agency, but only as a subrecipient under an award or subaward to a Recipient.

(4) “Subaward”:

(a) This term means a legal instrument to provide support for the performance of any portion of the substantive Project or program for which the Recipient received this Award and that the Recipient awards to an eligible subrecipient.

(b) The term does not include the Recipient’s procurement of property and services needed to carry out the Project or program (for further explanation, *see* 2 CFR § 200.330).

(c) A subaward may be provided through any legal agreement, including an agreement that the Recipient considers a contract.

(5) “Subrecipient” means an entity that:

- (a) Receives a subaward from the Recipient under this Award; and
- (b) Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

See also 2 CFR § 200.300(b) (“Statutory and national policy requirements”).

16. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown.

This term sets forth initial guidance that will be implemented for Federal financial assistance awards in the event of a lapse in appropriations, or a Government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

- a. Unless there is an actual rescission of funds for specific grant obligations, Recipients under Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the Award during a funding hiatus. Recipients are advised that ongoing activities by Federal employees involved in grant administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.
- b. All Award actions will be delayed during a Government shutdown; if it appears that a Recipient’s performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible Government shutdown, the Project Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise the Recipient that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, Recipients whose ability to withdraw funds is subject to prior agency approval, which in general are Recipients that have been designated high risk, Recipients under construction awards, and other Recipients limited to reimbursements or subject to agency review, will be able draw funds down from the relevant Automatic Standard Application for Payment (“ASAP”) account only if agency approval is given and coded into ASAP prior to any Government shutdown or closure. This limitation may not be lifted during a Government shutdown. Recipients should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Recipients whose authority to draw down award funds is restricted may decide to suspend work until the Government reopens.
- c. The ASAP system should remain operational during a Government shutdown. Recipients that do not require any Grants Officer or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a Government shutdown and advanced funds held for more than 30 days will have to be returned with interest.

APPENDIX

The following reference materials and forms are available online:

1. 2 CFR part 200, “*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*”
2. 2 CFR part 1326, “*Nonprocurement Debarment and Suspension*”
3. 13 CFR Chapter III (EDA’s regulations)
4. 15 CFR part 4, “*Disclosure of Government Information*”
5. 15 CFR part 27, “*Protection of Human Subjects*”
6. 15 CFR part 28, “*New Restrictions on Lobbying*”
7. 15 CFR part 29, “*Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)*”
8. 48 CFR part 31, “*Contract Cost Principles and Procedures*”
9. Code of Federal Regulations (CFR): Government Printing Office’s Federal Digital System (FDSYS) at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>
10. EDA’s regulations: <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>; search for Title 13, Chapter III after selecting the relevant year
11. OMB Circulars: www.whitehouse.gov/omb/circulars/index.html
12. Davis-Bacon wage rate determinations: <http://www.wdol.gov/dba.aspx>

Governmentwide and DOC-Specific Forms:

1. Form CD-281, “Report of Government Property in Possession of Contractor”
2. Form CD-450, “Financial Assistance Award”
3. Form CD-451, “Amendment to Financial Assistance Award”
4. Form SF-425, “Federal Financial Report”
5. Form SF-428, “Tangible Personal Property”
6. Form SF-429, “Real Property Status Report”
7. Form SF-271, “Outlay Report and Request for Reimbursement for Construction Programs”
8. Form SF-272, “Federal Cash Transaction Report”
9. Form SF-LLL, “Disclosure of Lobbying Activities”

Commerce Department (“CD”) forms:

http://ocio.os.doc.gov/ITPolicyandPrograms/Electronic_Forms/index.htm

Governmentwide Standard Forms (“SF”): https://www.whitehouse.gov/omb/grants_forms

GRANT COOPERATIVE AGREEMENT

FINANCIAL ASSISTANCE AWARD

FEDERAL AWARD ID NUMBER
07 01 07523; URI: 113380

RECIPIENT NAME
Port of Newport

PERIOD OF PERFORMANCE
From Date of Grants Officer's Signature through 60 Months

STREET ADDRESS
600 S.E. Bay Boulevard

FEDERAL SHARE OF COST
\$ **1,195,563.00**

CITY, STATE, ZIP CODE
Newport, Oregon 97365

RECIPIENT SHARE OF COST
\$ **1,195,563.00**

AUTHORITY
42 U.S.C. 3141, Section 201 of the Public Works and Economic Development Act of 1965 (Public Law 89-136), as amended by the Economic Development Administration Reauthorization Act of 2004 (Public Law 108-373)

TOTAL ESTIMATED COST
\$ **2,391,126.00**

CFDA NO. AND NAME
11.300 / Public Works and Economic Development Facilities Program

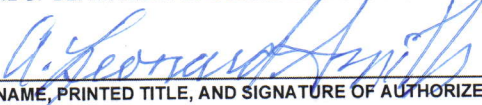
PROJECT TITLE
Port 5 Dock Pier Replacement Project

This Award Document (Form CD-450) signed by the Grants Officer constitutes an obligation of Federal funding. By signing this Form CD-450, the Recipient agrees to comply with the Award provisions checked below and attached. Upon acceptance by the Recipient, the Form CD-450 must be signed by an authorized representative of the Recipient and returned to the Grants Officer. If not signed and returned without modification by the Recipient within 30 days of receipt, the Grants Officer may unilaterally withdraw this Award offer and de-obligate the funds.

- DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS (30 APRIL 2019)
- R & D AWARD
- FEDERAL-WIDE RESEARCH TERMS AND CONDITIONS, AS ADOPTED BY THE DEPT. OF COMMERCE
- SPECIFIC AWARD CONDITIONS
- LINE ITEM BUDGET
- 2 CFR PART 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS, AS ADOPTED PURSUANT TO 2 CFR § 1327.101
- 48 CFR PART 31, CONTRACT COST PRINCIPLES AND PROCEDURES
- MULTI-YEAR AWARD. PLEASE SEE THE MULTI-YEAR SPECIFIC AWARD CONDITION.
- OTHER(S): U.S. Department of Commerce Economic Development Administration Standard Terms and Conditions for Construction Projects (February 12, 2016)

13 C.F.R. Chapter III, Economic Development Administration, Department of Commerce

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER



A. Leonard Smith, Regional Director

DATE

2-6-2020

PRINTED NAME, PRINTED TITLE, AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL

DATE

**ACH VENDOR/MISCELLANEOUS PAYMENT
ENROLLMENT FORM**

OMB No. 1510-0056

This form is used for Automated Clearing House (ACH) payments with an addendum record that contains payment-related information processed through the Vendor Express Program. Recipients of these payments should bring this information to the attention of their financial institution when presenting this form for completion. See reverse for additional instructions.

PRIVACY ACT STATEMENT

The following information is provided to comply with the Privacy Act of 1974 (P.L. 93-579). All information collected on this form is required under the provisions of 31 U.S.C. 3322 and 31 CFR 210. This information will be used by the Treasury Department to transmit payment data, by electronic means to vendor's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Automated Clearing House Payment System.

AGENCY INFORMATION

FEDERAL PROGRAM AGENCY		
AGENCY IDENTIFIER:	AGENCY LOCATION CODE (ALC):	ACH FORMAT: <input type="checkbox"/> CCD+ <input type="checkbox"/> CTX
ADDRESS:		
CONTACT PERSON NAME:	TELEPHONE NUMBER: ()	
ADDITIONAL INFORMATION:		

PAYEE/COMPANY INFORMATION

NAME	SSN NO. OR TAXPAYER ID NO.
ADDRESS	
CONTACT PERSON NAME:	TELEPHONE NUMBER: ()

FINANCIAL INSTITUTION INFORMATION

NAME:	
ADDRESS:	
ACH COORDINATOR NAME:	TELEPHONE NUMBER: ()
NINE-DIGIT ROUTING TRANSIT NUMBER: _ _ _ _ _	
DEPOSITOR ACCOUNT TITLE:	
DEPOSITOR ACCOUNT NUMBER:	LOCKBOX NUMBER:
TYPE OF ACCOUNT: <input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS <input type="checkbox"/> LOCKBOX	
SIGNATURE AND TITLE OF AUTHORIZED OFFICIAL: (Could be the same as ACH Coordinator)	TELEPHONE NUMBER: ()

AUTHORIZED FOR LOCAL REPRODUCTION

Instructions for Completing SF 3881 Form

Make three copies of form after completing. Copy 1 is the Agency Copy; copy 2 is the Payee/Company Copy; and copy 3 is the Financial Institution Copy.

1. Agency Information Section - Federal agency prints or types the name and address of the Federal program agency originating the vendor/miscellaneous payment, agency identifier, agency location code, contact person name and telephone number of the agency. Also, the appropriate box for ACH format is checked.
2. Payee/Company Information Section - Payee prints or types the name of the payee/company and address that will receive ACH vendor/miscellaneous payments, social security or taxpayer ID number, and contact person name and telephone number of the payee/company. Payee also verifies depositor account number, account title, and type of account entered by your financial institution in the Financial Institution Information Section.
3. Financial Institution Information Section - Financial institution prints or types the name and address of the payee/company's financial institution who will receive the ACH payment, ACH coordinator name and telephone number, nine-digit routing transit number, depositor (payee/company) account title and account number. Also, the box for type of account is checked, and the signature, title, and telephone number of the appropriate financial institution official are included.

Burden Estimate Statement

The estimated average burden associated with this collection of information is 15 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Financial Management Service, Facilities Management Division, Property and Supply Branch, Room B-101, 3700 East West Highway, Hyattsville, MD 20782 and the Office of Management and Budget, Paperwork Reduction Project (1510-0056), Washington, DC 20503.

STAFF REPORT

DATE: January 21, 2020
RE: Easement for Utilities, Port Dock 1 Property
TO: Paula Miranda, General Manager
ISSUED BY: Aaron Bretz, Director of Operations

BACKGROUND

The owners of Clearwater Restaurant have approached the Port and requested that we grant them an easement to run the power lines that supply their property under the Port Dock 1 Pier to their building. Currently the lines are aerial, but they would prefer that the power would enter their building from under the pier.

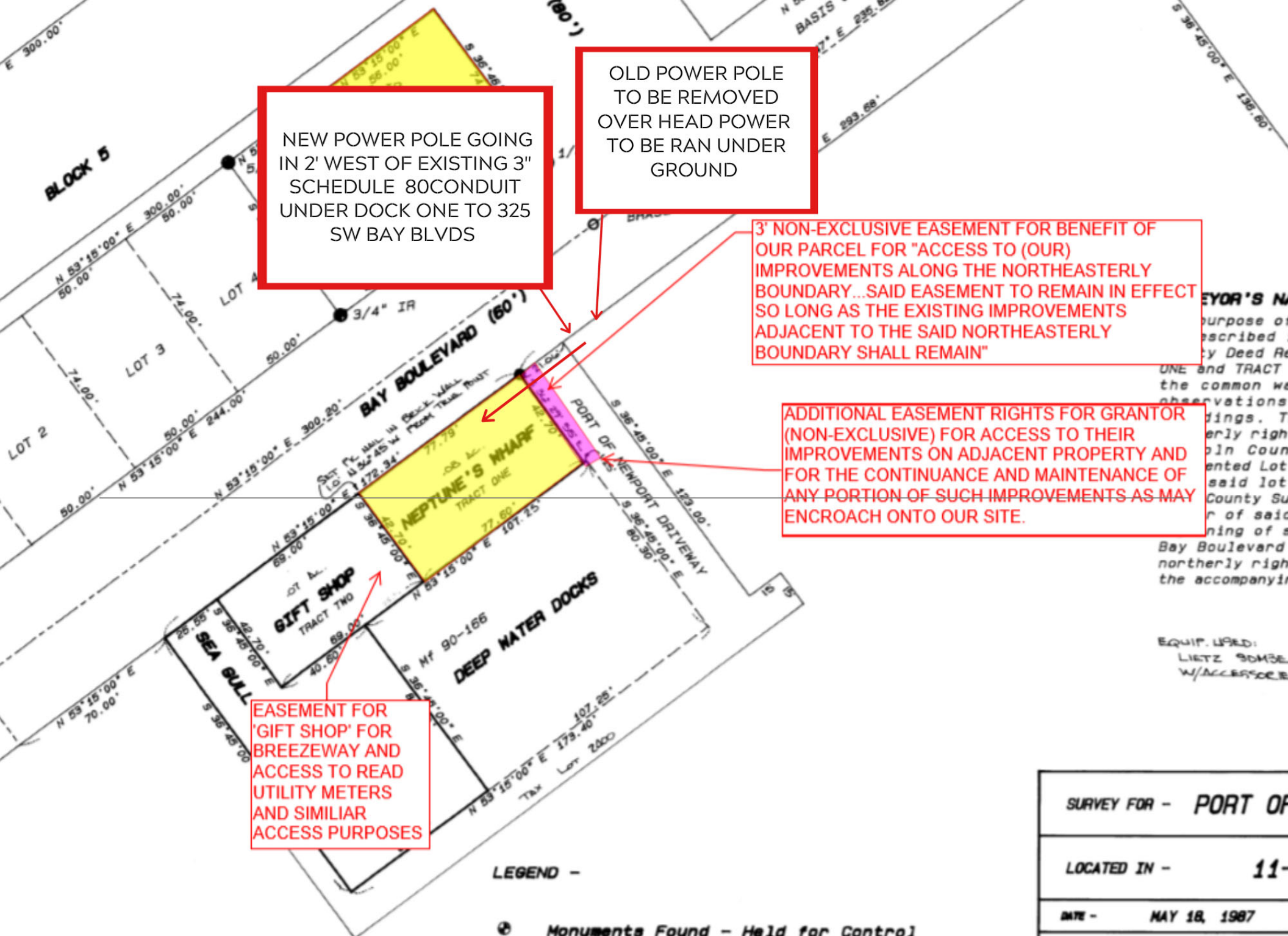
DETAIL

The Port currently has lines that run through the same location, so there are power lines already in the place where Clearwater would like to add theirs. I have let them know that the Port would seek conditions that place the responsibility and cost on Clearwater for everything associated with relocating those lines if that later becomes necessary (as deemed by the Port's future plans or because of external regulations). They have agreed to that condition.

I have sent this to our lawyer for legal review and am requesting authorization to record an easement through our property at Port Dock 1 for Clearwater's power lines to be placed under the dock.

RECOMMENDATIONS

I RECOMMEND A MOTION TO AUTHORIZE THE GM TO RECORD AN EASEMENT WITH CLEARWATER RESTAURANT UNDER THE ABOVE CONDITIONS, PENDING APPROVAL BY THE PORT'S ATTORNEY.



NEW POWER POLE GOING IN 2' WEST OF EXISTING 3" SCHEDULE 80 CONDUIT UNDER DOCK ONE TO 325 SW BAY BLVDS

OLD POWER POLE TO BE REMOVED OVER HEAD POWER TO BE RAN UNDER GROUND

3' NON-EXCLUSIVE EASEMENT FOR BENEFIT OF OUR PARCEL FOR "ACCESS TO (OUR) IMPROVEMENTS ALONG THE NORTHEASTERLY BOUNDARY... SAID EASEMENT TO REMAIN IN EFFECT SO LONG AS THE EXISTING IMPROVEMENTS ADJACENT TO THE SAID NORTHEASTERLY BOUNDARY SHALL REMAIN"

ADDITIONAL EASEMENT RIGHTS FOR GRANTOR (NON-EXCLUSIVE) FOR ACCESS TO THEIR IMPROVEMENTS ON ADJACENT PROPERTY AND FOR THE CONTINUANCE AND MAINTENANCE OF ANY PORTION OF SUCH IMPROVEMENTS AS MAY ENCROACH ONTO OUR SITE.

EASEMENT FOR 'GIFT SHOP' FOR BREEZEWAY AND ACCESS TO READ UTILITY METERS AND SIMILIAR ACCESS PURPOSES

LEGEND -

- ⊕ Monuments Found - Held for Control
- Monuments Found as shown

SURVEY FOR -	PORT OF
LOCATED IN -	11-
DATE -	MAY 18, 1987
SCALE -	1" = 40'
JOB NUMBER -	DSI - 648

STAFF REPORT

DATE: *February 25, 2020*
RE: *CITY OF NEWPORT MOU*
TO: *Port of Newport Board of Commissioners*
ISSUED BY: *General Manager*

BACKGROUND

Back in 2016 the Port entered into a Memorandum of Understanding (MOU) with the City of Newport where the Port and the City agreed the Port would dispose of clean fill material at the airport in exchange for providing the city clean buildable material (sand). The duration for the Port to relocate and dispose of clean unbuildable material, which is currently the material located at the International Terminal has expired. The Port still has plenty material to be disposed of and would like that period to be extended.

Since the original execution of the MOU, the Port has also implemented a Truck Toll. The amended MOU clarifies such charges.

We have also included indemnification languages, which shall BE beneficial to both parties.

RECOMMENDATION

I recommend **A MOTION AUTHORIZING THE GENERAL MANAGER TO EXECUTE THE AMENDED MEMORANDUM OF UNDERSTANDING AS PRESENTED.**

AMENDED MEMORANDUM OF UNDERSTANDING

This AMENDED MEMORANDUM OF UNDERSTANDING (this "**Amendment**"), dated effective this ____ day of _____, 2020 (the "**Effective Date**"), is by and between the **Port of Newport** (the "**Port**") and the **City of Newport** (the "**City**").

RECITALS

WHEREAS, on the 15th of June 2016, the Port and the City entered into a Memorandum of Understanding (the "**Original Agreement**") where the Port and the City agreed the Port would dispose of clean fill material in exchange to provide the city clean buildable material during the term of the Original Agreement, and

WHEREAS, the Port and the City now desire to extend and amend certain provisions of the Original Agreement as follows.

AGREEMENT

1. ACKNOWLEDGMENT

Section 3 of the Original Agreement shall be deleted in its entirety and replaced with the following:

"The parties acknowledge that the "clean buildable material" is obtained and is owned by the State of Oregon. The said material to be supplied to the City will be acquired by the Port from the State of Oregon at no cost to the City. The Port will pay the charge for such materials at the current rate as established by the State of Oregon. The City shall allow the Port to access the Airport site to dispose "clean unbuildable material" at reasonable times and places. "Clean buildable material" will be provided to the City as described herein and will be transported at the sole cost of the City to locations/projects and at times as determined by the City. The Port may be entitled to charge the City a Truck Toll as set by the Port Rates. The current rate set for vehicles with a Commercial Motor Vehicle Classification of Class 6 or higher (GVWR of 19,501 lbs or above) is at \$7.00 per axle. The City rate will follow the Port's most current rate, which may be revised on an annual basis. The Port agrees to discount the rate by \$2.00 per axle should the City move more than 6,000 cubic yard in a single month.

2. DURATION AND TERMINATION OF AGREEMENT

Section 5 of the Original Agreement shall be deleted in its entirety and replaced with the following:

“This Agreement shall continue for a period of 10 years from the date of execution, and shall continue in effect until terminated by either party with written notice of such intent to terminate to the other party.”

3. MUTUAL INDEMNIFICATIONS

If there are any third party claims against either parties caused by either parties removal or deposit of materials, either party will indemnify, defend (by counsel reasonably acceptable to the other party) protect and hold the other party harmless for, from, and against any and all claims, liabilities, penalties, forfeitures, losses, or expenses (including attorneys’ fees) arising therefrom. “Third party claims” are defined as any claims or rights of recovery by any person or entity (including governmental agencies): (1) which result from injury, damage, or loss to or of any person or property; or (2) for cost recovery, removal, or remedial action. Third party claims will also include any costs paid or payable by either party for damage, loss, injury, investigation, removal, remediation, or other liability in response to any third party claim or in anticipation of any enforcement or remedial action undertaken or threatened by any governmental agency or private party.

The indemnification obligation under this paragraph with respect to any liability or expenses of whatever kind or nature, arising out of or in connection with the performance or non-performance of either party's respective obligation under this agreement, shall be no greater than that prescribed by the provisions of ORS 30.260 to 30.302. This limitation on either party's indemnification obligation shall be the same whether the actions or damages being indemnified are characterized as tortious or contractual in nature.

4. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, among the parties hereto with respect to the subject matter hereof. Any Schedules and Exhibits identified in this Agreement are incorporated herein by reference and made part hereof.

IN WITNESS WHEREOF, the parties hereto have subscribed their names effective as of the date first set forth above.

Port of Newport

By: _____
Paula J. Miranda, General Manager

Dated: _____

City of Newport

By: _____

Dated: _____

As Its: _____



FINANCE DEPARTMENT MONTHLY REPORT

DATE: February 25 , 2020
PERIOD: January 2019
TO: Paula Miranda, General Manager
ISSUED BY: Mark Brown, Director of Finance and Business Services

January 2020 Financial Reports

Financial reports as of January, 2020 are included in your packet, You will also find an aging report listing included in this report for those with balances over 90 days past due and the current year to date reports as compared to last year.

Preliminaries and General Comments:

- We have completed the eighth (8th) month of the fiscal year, the year is 67% complete.
- As previously mentioned the budget has been entered into QuickBooks on straight-line basis and summer is a revenue producer for South Beach which brings about the appearance of a strong revenue. Revenues for South Beach have declined, but will begin rising in February to March.
- Upcoming Tasks:
 - RFP for Managed Service Provider (provides IT services to Port)
 - Replacement of Win 7 Computers
 - RFQ/P for Insurance Agent of record
 - RFP for Voice over IP telephony system
 - Implementing reserves structure
 - Pay Equity Policy
 - Budget
- The contract for a Business Systems Analyst has been executed, the chosen contractor has provided the first view of the “AS-IS” analysis for how service tickets are created and make their way to the front office for data entry.

- In January Service tickets that allow the Office to invoice for services in the Commercial marina have gone missing.
 - As result we have implemented a new process for service tickets to better secure and track the service tickets.
 - Emphasizes the importance of automating and reviewing all processes for weaknesses.

Statement of Cash flows

The Statement of cash flows shows we have a positive cash flow for General Operating Funds of \$551,023.58 for the year. The Port achieved a positive cash flow of \$24,657 in January.

GOF Balance Sheet

Nothing Notable

Profit and Loss - Budget to Actual Reports

General Operating Funds (GOF):

- **Income.**
Any number above 67% is ahead of budget. Moorage and Misc. revenues are below projections, all other Operating (Ordinary) income categories are ahead of projections. We should achieve around 4.7-4.8 Million in revenue for the year.
- **Expenses.**
Any number below 67% is ahead of budget. We are spending less than projected in all categories.

Depreciation expense is not included in the budget but is included in these Profit and Loss statements. If depreciation expense was included in the budget it would be difficult to balance the budget, and depreciation is not a cash expense, required under GAAP, but not GASB.

- **Overall.**
 - **YTD comparison**
 - Last year at this point, the General Operating fund had a Net Income of \$443,000, this year GOF Net Income is \$938,000 (112% increase), excluding depreciation.
 - **Budget vs Actuals**
 - The Port budgeted a loss for the year of \$2,450,000, however, UEFB are reserves which cannot be utilized in the current fiscal year and therefore should not be indicated on the Income Statement. (It is a balance sheet item). The budgeted loss is therefore \$1,012,770. Based on current income, the port should end the year with a profit before depreciation. Other Income is exceeding budget, and other expenses are below budget.

- **General Operating income** (income before expenses/depreciation) by Profit/Cost center is shown below:

	Admin	Commercial Marina	N International Terminal	South Beach	Total
Total Income	3,478.32	709,336.44	500,246.72	1,520,824.39	2,733,885.87

- **Administration Expenses.**

- **YTD**

- As expected more staff means more salary and wages expense. However, materials and services expenses are lower than last year. As a result of a fully staffed program the total cost of admin is 11% higher than the previous year's results.

- **Budget vs Actuals**

- **Expenses** are below budget in all areas, Admin receives a small amount of revenue from copier use and the like, the port is only at 9% of budget for these items, but the amount of revenue expected in minimal. Overall, the Admin budget is 55% percent of budgeted, so performing better than expectations.

- **International Terminal. Income.**

- **YTD comparison**

- Income is up 79% over last year (an increase of \$221,126).
 - Expenses declined 27%.

- **Budget vs Actuals**

- **Income** remains ahead of expectations
 - **Expenses.** Salaries and wages are above budget, due to an additional staff member at the International Terminal, this should cause an increase in revenues. All other expenses are below budget.
 - **Net Income.** The International terminal is contributing to positive cash flow, and would be showing a profit of \$269,170 without depreciation.

- **Commercial Marina.**

- **YTD comparison**

- Income is up 24% over last year (an increase of \$138,449).
 - Expenses declined 5.6%, due to lower Materials and Services expenses.

- **Budget vs Actuals**

- **Income** is in line with Budgeted amounts.
 - **Expenses** are lower than budgeted using only 41% of budget, both Salaries and Wages and Materials and Services are below budget.
 - **Net Income,** excluding depreciation and administration for the Commercial Marina, is exceeding budget substantially

- **South Beach.**

- **YTD comparison**

- Income is up almost 25% over last year, much of this is due to the leases being removed from admin and moved to profit centers.
 - Expenses declined due to debt spending.

- **Budget vs Actuals**

- **Income** is below target, however, revenue was projected on a straight-line basis, revenues will increase dramatically over the next few months, to the budgeted level.
 - **Expenses** are lower than budgeted using only 61% of budget, both Salaries and Wages and Materials and Services are below budget.
 - **Net Income**, excluding depreciation and administration, is right on target at 67% of budget (746,618). Based on historical records, total net income should be in the \$1.6 to \$1.7 million for South Beach this fiscal year. Net income typically is the lowest in November and remains low through March, and begins rises dramatically in April, and reaches its peak in May.

NOAA.

- Only after reserves are set aside for bond payments and capital reserves can excess funds be used for any other purposes.

- **Balance Sheet.**

- The result is an increase in Total Liabilities and Equity on the Balance sheet.

Income Statement

- **YTD comparison**

- Materials and services expenditures are significantly less than last year, as there is no need to dredge in the current and next year.

- **Budget vs Actuals**

- **Income** is at target.
 - **Expenses** are lower than budgeted. A debt payment will occur in June, but expenses will come in below budget.
 - **Capital Outlay.** It was urgent that the Port replace the Cathodic Protection System Anodes on the NOAA docks. A separate report is written to transfer funds from the Contingencies to Capital Outlay.

- **Bonded Debt.** We have begun receiving cash from property taxes, thus the line titled 21400 due from other Funds shows a balance.
- **Construction Fund.** This will be used for Port Dock 5 construction, a \$1.2 million transfer will not occur this fiscal year.
- **Facility Reserve Fund.** No activity. As we build our facility capital maintenance plan this account will be funded to accommodate the plan.

Accounts Receivable:

The Port has two separate Accounts Receivable collection points, South Beach (Hercules) and QuickBooks. Hercules does not integrate with QuickBooks, so a separate report must be run for South Beach customers.

Commercial Marina

Significant progress is being made on receivables, Here is the current summary past due balances.

TOTAL	194,625.27	36,362.35	17,928.29	10,442.92	74,618.44	333,977.27
	58.28%	10.89%	5.37%	3.13%	22.34%	

Below is a listing of all receivable accounts with balances outstanding 90 days or more. Please note: Western Hunter and Oregon Mariculture, LLC have the same owner, Scott Rahash. Certified letters went to those highlighted, urging the owner to come into the office and to make payment arrangements. In addition, ORCA has a promissory note due and payable by March 1st, with the ORCA as collateral. Luna has a new owner, but has not paid. Those not highlighted (certified letters were not sent) are making payments, are in contact with the front office, working to pay down what is owed.

Customer	Days Past Due					TOTAL
	Current	1 - 30	31 - 60	61 - 90	> 90	
Sylvia - 226282	1,484.47	677.66	913.78	950.24	10,100.05	14,126.20
Albatross - 980072	961.84	480.92	575.65	648.49	5,576.84	8,243.74
Orca - 295549	2,987.29	183.25	264.71	1,160.87	5,259.82	9,855.94
Ocean Force - 538936	4,355.64	0.00	122.26	190.09	4,810.01	9,478.00
City of Newport 2	95.80	2,023.00	364.00	0.00	4,354.00	6,836.80
First Hope I - 953627	1,201.30	611.41	827.93	758.49	4,209.45	7,608.58
Valor III - 245645	543.60	284.00	330.33	324.35	4,050.66	5,532.94
Captain's Reel Deep Sea Fishing LLC	0.00	1,585.78	1,265.57	1,366.87	3,771.80	7,990.02
Pacific Rose - 554504	1,355.32	677.66	732.28	62.65	3,264.63	6,092.54
Custom Cold - Semi Trailers	117.80	235.60	170.49	220.52	3,152.01	3,896.42
Angela June - 581478	1,158.58	0.00	661.69	1,301.41	2,922.14	6,043.82
Oregon Mariculture LLC	2,577.57	2,347.42	2,156.03	893.38	2,917.62	10,892.02
Coastal Catch Seafoods	0.00	0.00	45.23	89.00	2,706.28	2,840.51
Emery & Sons Construction Group	0.00	0.00	0.00	0.00	2,546.20	2,546.20
Aquarius - 581510 Novelli	50.40	25.20	64.98	103.29	2,379.72	2,623.59
Western Hunter - OR936AFK	1,798.71	764.43	726.76	18.67	2,140.43	5,449.00
Oregon Brewing Company	0.00	0.00	0.00	0.00	906.58	906.58
Luna - New Owner	786.96	393.48	406.84	12.94	800.11	2,400.33
Caremi - 262161	0.00	0.00	38.09	0.00	768.28	806.37
Instigator - 978135	0.00	0.00	0.00	0.00	648.56	648.56

Nancy - 253247	0.00	0.00	28.30	0.00	570.47	598.77
Billie Marie - 261145	116.10	327.40	422.53	359.80	502.27	1,728.10
Buxtub Too - 974256	0.00	0.00	8.07	14.02	483.68	505.77
Bill's Seafood II	50.40	25.20	7.88	14.56	464.49	562.53
Luna - SOLD BOAT 532150	0.00	0.00	7.23	6.99	432.53	446.75
Sea Breeze -262076	0.00	0.00	14.14	338.40	423.00	775.54
Desire - 516518	0.00	0.00	7.02	13.79	419.43	440.24
Kathleen - 943407	1,114.86	557.43	564.32	6.15	405.60	2,648.36
Gracie Arlene - 563679	446.59	200.00	206.59	165.95	390.07	1,409.20
Captain's Charters - 23826 - Long Fin	0.00	0.00	12.52	148.05	374.77	535.34
Toby J - 274577	0.00	0.00	4.77	4.62	285.64	295.03
Marne - Doug Caesar	0.00	0.00	28.90	0.00	271.10	300.00
Glass Slipper - 541256	759.95	255.00	259.04	244.00	238.00	1,755.99
Chapter II - OR033LR	0.00	0.00	3.03	22.27	179.70	205.00
Lili-Anne - OR956AFD	152.00	86.25	88.99	88.88	161.46	577.58
Granville - 241539	116.55	2,274.40	46.71	45.11	159.60	2,642.37
Island Star - AK6471P	0.00	0.00	5.05	0.00	151.20	156.25
Seawater Seafoods Co	7,544.49	3,817.93	277.39	156.45	148.47	11,944.73
Silver Sea - 252737	0.00	0.00	0.00	0.00	130.25	130.25
Brea -OR620ADW	50.40	25.20	27.39	29.28	129.93	262.20
Long Shot - OR818HC	0.00	0.00	2.14	2.07	128.04	132.25
Robin Ann - 550432	86.50	43.25	263.08	0.00	126.36	519.19
Sea Wolf - 270816	1,005.56	502.78	506.64	0.00	115.60	2,130.58
Norska - 629262	266.60	1,417.74	1,394.11	126.38	113.69	3,318.52
Oceanic Logistics - 1344	0.00	0.00	0.00	0.00	100.55	100.55
Cormorant Isle - WN5436RL	0.00	0.00	3.25	0.00	97.20	100.45
Pursuit -Vanderpool	0.00	0.00	1.48	1.43	88.49	91.40
Midnite -250210	0.00	0.00	1.43	1.38	86.12	88.93
Apache - 533118	25.20	0.00	22.52	0.00	58.36	106.08
Tempo - 555742	1,028.81	545.86	0.00	45.91	36.98	1,657.56
Aloha - 520984	0.00	0.00	1.00	265.82	30.40	297.22
Malahat II - 393610	0.00	0.00	1.00	0.00	28.80	29.80

RV Park and Marina

Collection issues in the RV Park and Marina are all Marina related. The port has seized three vessels in South Beach, a fourth vessel we are working on evicting an individual who refuses to carry issuance on their vessel.

Grant Received

You have a staff report on the Economic Development Administration (EDA) grant the Port has received.

###

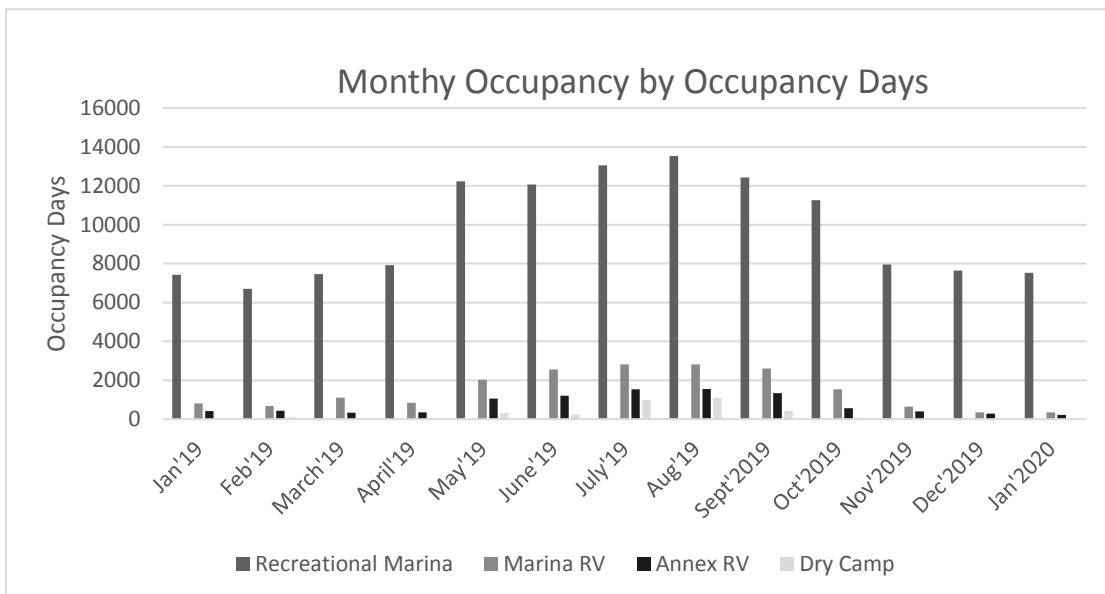
RV PARK & RECREATIONAL MARINA OCCUPANCY REPORT

DATE: 06 February 2020
RE: Month Ending 31 January 2020
TO: Mark Brown, Director of Finance
ISSUED BY: Bill Hewitt, RV and Marina Supervisor

The RV Park has gotten off to a slow start in 2020. RV Park numbers versus 2019 are all down by roughly half. The Marina continues to surpass previous years and starts 2020 ahead of January 2019 numbers. Uncertain why January is so far behind last year, maybe all the rain kept people away. Another reason we might be behind last year and the previous year is because we don't have as many laborers staying in the park working on new construction. In the past we had the pool, hospital and Omni construction going on at the same time. The only construction going on now is the Hatfield Marine Science Center and that job is almost finished. We also may have maxed out pricing on the Wine and Seafood event. We currently have twenty two hook-up sites available. The dry camping reservations for Wine and Seafood have been slow. Weather will determine if we have a full park and if dry camp sites will be sold. We continue to be busy booking reservations in the RV Parks and the Marina. Practically all hook-up sites are booked for July, August and September in the main park. The Marina RV Park is the RV Park where the majority of customers want to stay.

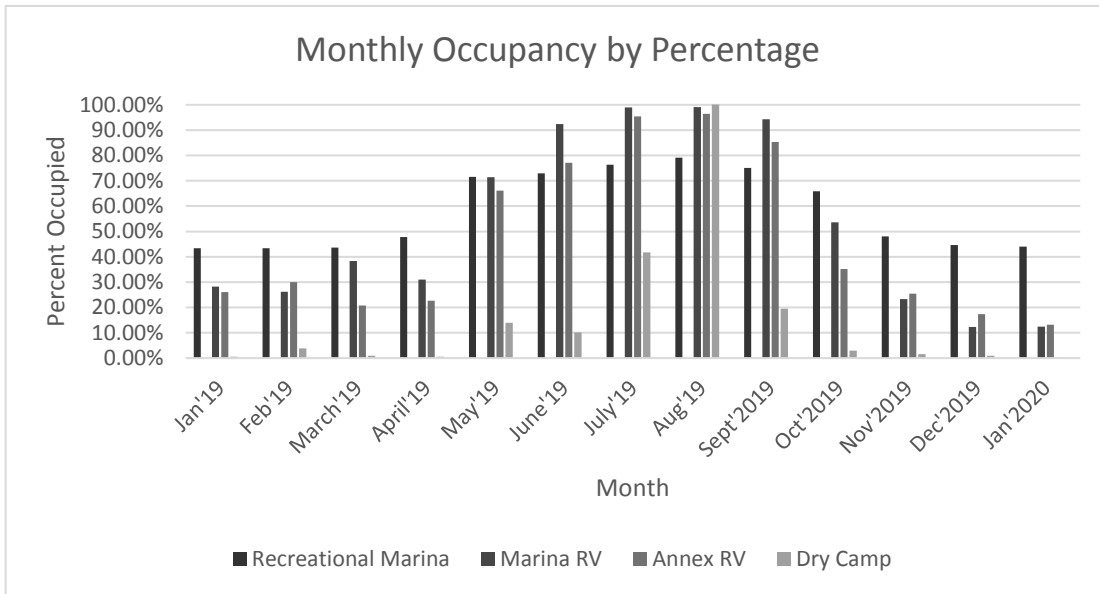
OCCUPANCY DAYS MONTH & YTD

Jan'2020	2019	2020	Change	YTD 2019	YTD 2020	Change
Recreational Marina	7431	7529	1.32%	7431	7529	1.32%
Marina RV	806	353	-56.20%	806	353	-56.20%
Annex RV	420	212	-49.52%	420	212	-49.52%
Dry Camp	12	6	-50.00%	12	6	-50.00%



OCCUPANCY PERCENT MONTH & YTD

Jan'2020	2019	2020	Change	YTD 2019	YTD 2020	Change
Recreational Marina	43.43%	44.00%	0.57%	43.43%	44.00%	0.57%
Marina RV	28.62%	12.38%	-16.24%	28.62%	12.38%	-16.24%
Annex RV	26.05%	13.15%	-12.90%	26.05%	13.15%	-12.90%
Dry Camp	0.52%	0.26%	-0.26%	14.98%	12.09%	-0.26%





DIRECTOR OF OPERATIONS REPORT

DATE: 02/20/2020
PERIOD: January 2019 – February 2020
TO: Paula J. Miranda, General Manager
ISSUED BY: Aaron Bretz

OVERVIEW DIROPS

Summary:

The Seafood and Wine Festival has come and gone for another year. Herring has been in the area, and offshore weather in recent days has been favorable so we've seen an increase in recreational traffic. The Corona Virus has had an effect on exports of seafood from the hoist dock, so the year started very well and has quickly tapered. Permitting and contracts have been keeping me busy on current and future projects

Detail:

- **South Beach Storm Sewer**

Proposals are in, and we will need to select a contractor for the work. More to follow.

- **Port Dock 5 Project**

I have reviewed the grant documents and have an understanding of the performance requirements. I completed the RFP for Construction Management, and I expect to be able to make a recommendation on a contractor (only for construction management) at the next meeting. The next step after that will be to review the bid documents to ensure all EDA requirements are covered and put the construction project out to bid.

- **South Beach Boat Ramp Repair**

Work was completed and we just got back underwater video from the length of the Boat Ramp. The repair was done as planned, and should provide a more gradual transition for longer trailers at the lowest spring tides. Even so, the boat ramp was designed for vessels of 26' or less. Especially for vessels near that length, we don't recommend launching during extremely low tides.

- **New Cameras**

We're collecting quotes right now to add significant security camera coverage in South Beach. This was in the budget, but it's also part of the grant we received from SDAO.

- **Cascades West Economic Development District**

I attended another workshop for the update to the Cascades West Economic Development District's Comprehensive Economic Development Strategy. This document steers (among other things) federal investment in planning and infrastructure. The update is going well, and I've been able to make a few contacts who can help us secure funding to improve the resiliency of the economy.

- **Kaizen Permitting Meeting Army Corps, NMFS, DSL, DEQ, EPA,**

I attended the monthly meeting between the main in-water permitting agencies and their representatives. I presented a similar conceptual outline of the Port Dock 7 / Fishing Pier project, and the associated CAP Section 107 project as well as the upcoming Section 408 request for the South Beach Breakwater. The concepts were received well, and the consensus was to continue working on the project. They were thankful for the level of detail and the legwork that's been done so far, and also very thankful that we are raising these ideas as early on as we are. It was apparent that there are significant mitigation advantages to doing the projects together, which will save the Port money in the big picture. The next best step to keep inching the work along will be to complete the inventory of eelgrass in the area. I have a call scheduled with NMFS to discuss how they might establish a baseline for eelgrass stocks; defining the baseline for both square footage of structures and area of eelgrass will be critical.

Newport International Terminal- Don Moon, Supervisor

Billable Services Performed this Period (February)

Forklift – 145hrs

Moorage – 119days

30 Ton Hydraulic Crane – 43.5

Hoist Dock Tie Up – 74hrs

Labor – 167.5

120V power – 0

Other Overtime Billed 69.5 hrs

208V power – 114days

Special Projects: *(Not regular maintenance & repair tasks. Enter project name and notes)*

Other: *No special projects to report.*

Commercial Marina- Kent Gibson, Harbormaster

Billable Services Performed this Period:

Forklift – 589Hrs

Hoist Dock Crane(s) – 5Hrs

30 Ton Hydraulic Crane - Enter #.Hrs

Dock Tie Up – 672.25Hrs

Launch Tickets - Enter #. passes sold

Other (Labor) – Hrs

Special Projects: *(Not regular maintenance & repair tasks. Enter project name and notes)*

Completed In Progress

Completed In Progress [Click here to enter text.](#)

Completed In Progress [Click here to enter text.](#)

Completed In Progress [Click here to enter text.](#)

Completed In Progress [Click here to enter text.](#)

Completed In Progress

Other: *(Enter issues, events, large purchases and other notable items)*

The hoist dock tie-up time was up 89% from last month but down 12% over January 2019. January forklift usage was up 113% from last month and also up 13.7% over January of last year. Crane usage was down 86% from last month and down 84% over last year in January due to the crab season opening in December instead of January.

As predicted, Axle fees were up a whopping 1,976% over last month with a total of 623 axles counted compared to the 30 axles in December. I would however expect a tapering down in axle fees in the next few months to around 100 by July as we move further into the crab season. This puts us at 1,241 axles counted since implementing the fee in July of last year.

NOAA MOC-P Jim Durkee, Maintenance Supervisor

Special Projects:

Other:

Vessels Using the Facility Since My Last Report – NOAA vessels Hi'ialikai, & Oscar Dyson. OSU R/V Oceanus

Office Occupancy Admin Building – 65 Work Stations Total, 49 Occupied
Warehouse Bldg. – 23 Work Stations Total, 7 Occupied
Occupancy Rate – 64%

The painters should be starting 1/22/2020. I have their contractor's key in my office.

AUS Diving has ordered the anodes for replacement on the west zone of the cathodic protection system.

The outside unit of for the Liebert AC replacement is scheduled to ship 1/24/2020.

Other jobs to be completed in this fiscal year (July-June)

Replacement of remaining backer pipes in the pier fender system

Replacement of pier lights with LED's

Annuals Completed-

Boiler

Liebert air conditioner (Data room)

Eelgrass survey

Backflow devices

Fire extinguishers

HVAC

Elevator

FM200 Fire Suppression Systems

Fire alarms and sprinklers

Automatic Transfer Switch (emergency power system)

Storm-water systems

Battery back-up systems

Overhead doors

Cathodic protection systems (pier)

Annuals yet to be completed-

Generator

Other jobs to be completed in this fiscal year (July-June)

Office painting (winter after hours)

Replacement of remaining backer pipes in the pier fender system

Replacement of pier lights with LED's

Replacement of the outside unit of the Liebert air conditioner

Replacement of anodes on the west zone of the pier cathodic protection system

South Beach Marina- Chris Urbach, Harbormaster

We had 87 launches for a total of 522.00

We got the rock placed at the toe of the launch ramp.

We are waiting on the last two quotes for cameras in south beach and then we can move forward.

The Seafood and Wine tent went up without too many problems the only thing was the attitude of the concrete contractor that doesn't agree with putting fabric under the curbs.

We have been getting rid of a lot of sand to the city for several of their projects, they are currently working on a project that is going to take around 10,000 yards.

We are working on changing out the door knobs on all the restroom doors.

I'm sending Andrew Meats to a training for building automation systems so that he can start helping Jim Durkee out at the NOAA facility.

We will hopefully be finishing the electrical problem up on d dock this month.

We got the Silver Dollar raised and hauled to Toledo and it has been disposed of.

Still waiting on quotes for the north out fall line repair.

We had both the launch ramp and Roque parking lots sweep.

The guys have been working hard to get ready for the upcoming season.

Port Mates Volunteers

New and smaller group is just getting started

GENERAL MANAGER MONTHLY REPORT

DATE: 02/25/20
PERIOD: 01/18/20 – 02/21/2020
TO: Board of Commissioners
ISSUED BY: Paula J. Miranda, General Manager

OVERVIEW

Summary:

This last month has been a very busy one. We had our staff training with Jalene Case and I think that went quite well. We were awarded our EDA Grant to rebuild Port Dock 5 Pier. Again we want to give our praise to Aaron Bretz for a work well done and our thanks to our federal legislators and local legislators, as well as our stakeholders for all their support. We have made a selection for a new Financial Institution, which I believe is a big step in getting our finances in order. The directors and I have attended the Special Districts' conference. As always it was a very good conference with a lot of good information and I would highly recommend commissioners to attend in the future, as it is crafted especially for elected officials. The directors and I have been meeting on a regular basis trying to focus on goal settings and our new budget. We will have some recommendations for you soon, as I look forward to working on this new budget year.

Meetings/Trainings/Summits:

- Meeting with the City of Newport regarding sand usage 01/28/20
- Staff Training with Jalene Case 01/29/20
- YBEF Monthly Meeting 01/29/20
- Banking Services Finalist Interview 01/30/20
- Banking Services Finalist Interview 01/31/20
- Chamber Meeting 01/31/20
- DSL Meeting to meet new staff 02/04/20
- Communications meeting with Summit Communications 02/04/20
- Quarterly Meeting with Commercial Crew 02/05/20
- Meeting with Wave/Coastcom 02/05/20
- SDAO Conference 02/06-09
- Monthly Dept. Heads Meeting 02/10/20
- Tour of Hatfield's new building 02/13/20
- Chamber Meeting 02/14/20

- Newport City Council Meeting – the Port was requested to speak about the new EDA Grant 02/18/20
- Meeting with Englund Marine about possible expansion 02/20/20
- Meeting with DulsEnergy 02/21/20
- Communication Meeting with Summit Communications 02/21/20

Upcoming Schedule:

- PNWA Mission to Washington – 03/01-05
- Vacation (Brazil) – 03/06-16
- Work Session (Goal Setting/Budget) 03/18/20
- OPPA Meeting 03/19/20
- Bud Shoemake requested to change the Port of Toledo joint Commission meeting from 04/14/2020 to 05/12/2020 instead due to a conflict.

Special Use Permits Issued this Month:

- HST Oregon OMSI Bus Training..... Mar 23 - 27
- OSU & SBSA Motorboat Operators Training Course..... Mar 24 – 26
- True Wildlife Fishing Pier Cleanup..... Mar 28
- Davis Shows Loyalty Days Carnival..... Apr 30 – May 4
- Newport Marathon..... May 28 – 31
- CAST for Kids Foundation Fishing & Crabbing Event..... Jul 16

NIT MARKETING EFFORTS:

During the last commission meeting we were asked to provide our efforts to bring new customers to the International Terminal. I will be happy to provide some information, but I just want to make it clear that a lot of our efforts have been very focused on some niche areas that could actually work at that location, especially taking into consideration some of the suggestions provided within the Port Strategic Plan. With challenges such as low draft water (-30'), low air draft (133'), and the lack of rail, our opportunities are not as extensive as some may believe. However, we will keep trying our best to make the International Terminal a successful project.

These are some of the contact attempt we've made based on some contacts provided by the lobbyist for the longshoremen:

- *Met and tour Port properties with Roger Beyer, Oregon Grass Seed Council; Oregon Small Woodlands Association. I am waiting for additional contacts he is supposed to provide. I just reminded him that I am still waiting for the information. He said he is about to give a report to his board and then he will contact me with additional information.*

- *Spoke to Kevin Campbell, Associated Oregon Loggers, Inc. At the moment his customers, which are mostly in the lumber industries do not ship their products through water*
- *Sent a couple emails to Amanda Dalton, Oregon Wheat Growers League; Columbia Gorge Fruit Growers without any responses.*
- *Met with Ralph Saperstein, Boise Cascade; Associated Oregon Loggers, Inc.; Roseburg Forest Products Co. in Salem. He said the logging business was a bit on the slow side and lumber doesn't really get shipped overseas. He provided the contact for Georgia Pacific.*
- *Exchanged emails with Calli Daly, Georgia Pacific as an additional contact provided by Ralph Saperstein. Calli recently contacted me and said I should be talking to CJ Drake, which I emailed and asked me to contact me.*
- *Contacted Cindy Robert, Hancock Forest Management, as provided contact. Apparently she worked with Union Pacific Railroad. Since there is no tracks to this area, she will not be able to help much.*
- *Sent a couple emails to Jonathon Sandau, Oregon farm Bureau Federation without any response.*
- *I emailed Mary Anne Cooper, Oregon Farm Bureau who passed me on to Gail Greenman, Director of National Affairs, Oregon Farm Bureau. We exchanged a couple emails. I'm still trying to meet to see to see if there is any opportunities here at the Port for her customers.*
- *Exchanged emails with Tammy L. Dennee, Legislative Director for Oregon Dairy Farmers Association. We are trying to schedule a meeting for March.*
- *Sent a couple emails to Joseph Rohleder, Oregon Outdoor Council without any responses.*

In addition the Port had the following attempts:

- *I exchanged a couple emails and phone calls with Alan Brunstad, Cascade Hardwood Group. Alan recently email saying the following: "The last Chinese tariffs destroyed the remaining markets in China for American hardwood lumber, temporarily—hopefully—reducing the need for additional logs from distant areas such as northern California and Alaska."*
- *I met Gary Frommelt, Vice President of Marine Operations for the American Queen Steamboat Company during a PNWA Conference. We exchanged cards and I later contacted him to see if there is any opportunities for them here in Newport. I am waiting for a response.*
- *Contacted Frank Vargas, American Seafoods to see if there is any chance we could be the Port of call for a whole bunch of seafood fished right out of this area instead of sending them to Washington State. He said the issue here is that we don't have the draft needed for their ships. They need at least 32'. They tried in the past, but it was quite tight.*
- *We have been talking to Chuck Ebner of L3 Technologies for a wave energy project that is looking into using our terminal. That is still a possibility.*
- *We have also contacted the Oregon Wine Board, Hayworth Wines and Turf to see if there is any opportunity there. We are still researching that opportunity.*

- *We have been talking to Evan Hall for any opportunities Rondy's might bring on to the Terminal.*
- *I have responded to a Business Oregon proposal for a pellet exporting, but have not heard of any feedback.*
- *I have also been discussing cruise opportunities with Bruce Conner with the Port of Astoria. He is also a member of Cruise the West. He thought it would be a great idea to add our route to an existing route they have from Astoria to Eureka, California. Unfortunately, so far we are challenged with the height of the ships that call Astoria, which are most around 184'. Yaquina Bridge can only support an air draft of 133'.*
- *I am also currently reviewing a cruise feasibility study done by Don Mann back in 2008.*
- *We had lengthy conversations with Doug Cooper of Hampton Lumber about the possibilities of lumber and wood products. Made no sense from their standpoint because they have rail access closer to their mills*
- *We had discussions with John May of EuroCanadian who has considered shipping containers and wood chips on self-loading trampers and barges. Nothing has materialized, and we need more laydown space for containers. We will continue to research this opportunity.*
- *The Port also worked with Aaron Edwards of Evergreen Engineering who expressed some interest as part of a project he was working on to develop an area for wood pellet shipping. They would have used just a portion of the 9 acres for storage and needed to build a conveyor over to the Terminal to deliver their product to ships at the Pier. The Port provided them with a bunch of infrastructure info and gave them a tour; they decided to go with another Port.*