

**PORT OF COLUMBIA COUNTY**  
**100 E STREET, COLUMBIA CITY, OR 97018**  
**JANUARY 11, 2023**  
**COMMISSION MEETING**  
**8:30 A.M.**

The Port of Columbia County Commission Meeting will be in person.  
In accordance with state law, the meeting will be accessible via telephone or Zoom.  
Members of the public who want to attend the meeting electronically should do so by:

<https://us02web.zoom.us/j/88090098137>

Meeting ID: 880 9009 8137

Passcode: 977025

Call-In

1 (253) 215-8782

**I. CALL MEETING TO ORDER** (President, Robert Keyser)

**A. Flag Salute**

**B. Roll Call**

**II. ADDITIONS TO AGENDA**

**III. CONSENT AGENDA** (The Board has agreed to implement a Consent Agenda. Implementation of the Consent Agenda means that all items marked with an asterisk (\*) are adopted by a single motion unless a Member of the Board requests that such item be removed from the Consent Agenda and voted upon separately. Generally, Consent Agenda items are routine in nature and enable the Board to focus on other matters on the agenda.)

**A.\* Approval of Minutes; December 14, 2022**

**B.\* Financial Reports; December 2022**

**C.\* Approval of December Check Registers (A) in the total amount of \$359,788.27**

**D.\* Approval of December Check Registers (B) in the total amount of \$29,020.17**

**IV. COMMENTS FROM VISITORS** (Limited to 2 min. per person unless prior authorization is obtained)

**V. NEW BUSINESS**

**A. 2022 Audit Report – Kern and Thompson**

**Eric Zehntbauer**

**B. Committee & Organization Assignments**

**Commission**

**C. Approval of 2023 Meeting Dates**

**Commission**

**D. Resolution 2023-01**

**BG**

A RESOLUTION DESIGNATING THE BANK OF THE WEST AS THE DEPOSITORY FOR THE PORT AND AUTHORIZING BANKING SERVICES

**E. Resolution 2023-02**

**RLS**

A RESOLUTION TO APPROVE THE SIGNING OF AMENDMENT 1 TO THE RAIL INTERGOVERNMENTAL AGREEMENT AND DISTRIBUTION AGREEMENT (COLUMBIA COUNTY DEVELOPMENT AGENCY)

**VI. EXECUTIVE DIRECTOR'S REPORT**

**VII. COMMISSIONER REPORTS**

**VIII. EXECUTIVE SESSION**

The Board will hold an executive session to consider exempt public records, including, but not limited to, written legal advice from the Port's legal counsel which is privileged under ORS 40.225 and exempt from disclosure under ORS 192.509(9) pursuant to ORS 192.660(2)(f). To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed under ORS 192.660(2)(h).

**IX. ADJOURNMENT**

Pursuant to ORS 192.640 (1) the Port of Columbia County Board of Commissioners reserves the right to consider and discuss, in either Open Session or Executive Session, additional subjects which may arise after the agenda is published

**Next Regularly Scheduled Meetings**

January 25<sup>th</sup> Work Session at 6:00 p.m.

February 8<sup>th</sup> Comm. Mtg at 8:30 a.m.

**Upcoming Events**

January 30<sup>th</sup> at 5:00 p.m. SA Adv. Com. Mtg

March 7<sup>th</sup> at 5:30 p.m. SBM Adv. Com. Mtg

*Agenda times and order of items listed are estimated and are subject to change without notice. This facility is ADA-accessible. If you need special accommodation, please contact the Port office at (503) 397-2888 or TTY (800) 735-1232, at least 48 hours before the meeting.*

**PORT OF COLUMBIA COUNTY  
DECEMBER 14, 2022  
COLUMBIA CITY, OR 97018**

The Port of Columbia County held a Commission meeting at 8:30 A.M. on Wednesday, December 14, 2022, at the Port Office, 100 E Street, Columbia City, Oregon, and via Zoom video conferencing, with the following present:

**Commissioners**

<b>Robert Keyser</b>	President
<b>Chip Bubl</b>	Vice President
<b>Chris Iverson</b>	2 <sup>nd</sup> Vice President
<b>Nancy Ward</b>	Secretary
<b>Brian Fawcett</b>	Treasurer

**Guests**

**Chris Efird**, NEXT  
**Natasha Parvey**, NEXT  
**Tommy Brooks**, Cable Huston  
**Jay Harland**, CSA Planning Zoom  
**Tammy Maygra**  
**Brady Preheim**  
**Greg Hinkelman**  
**Charles Garman**  
**Annie Christensen**  
**Jasmine Lillich**  
**Brandon Shilling**  
**Carroll Sweet**  
**Paul Vogel**, Columbia Economic Team  
**Peter Kraschinsky**  
**Paul Langner**  
**Trains Are Great** Zoom  
**Dee Dee Lively-Andrews** Zoom  
**Laurie Parry** Zoom

**Staff**

<b>Sean P Clark</b>	Executive Director
<b>Bob Gadotti</b>	Exec. Finance Mgr.
<b>Robert Salisbury</b>	Port General Counsel
<b>Brittany Scott</b>	Exec. Assist. /Office Coord.
<b>Elizabeth Millager</b>	Administrative Assistant
<b>Elliot Levin</b>	N. County Ops. & Terminal Mgr.
<b>Amy Bynum</b>	Real Est. & Bus. Dev. Mgr.
<b>Gina Sisco</b>	External Affairs Mgr.
<b>Lacey Tolles</b> – Zoom	Data Res. & Projects Spec.
<b>Susie Tolleshaug</b> – Zoom	Administrative Assistant
<b>Sydell Cotton</b> – Zoom	Sr. Acct. & Payroll Spec.

**Guests (continued)**

<b>Dan Serres</b> , Columbia Riverkeepers	Zoom
<b>Warren Seely</b>	Zoom
<b>Becky Shipman</b>	Zoom
<b>Kris Lillich</b>	Zoom
<b>Anthony</b>	Zoom
<b>Cass</b>	Zoom
<b>Larry Kotan</b>	Zoom
<b>Anthony Effinger</b>	Zoom
<b>Michael Hinrichs</b>	Zoom
<b>Mary DuVal</b>	Zoom
<b>iPhone</b>	Zoom

The Port of Columbia County Commission meeting was called to order at 8:30 A.M. by President Robert Keyser.

**Consent Agenda**

Chris Iverson moved, Nancy Ward seconded a motion to adopt consent agenda items A, B, & C: November 9, 2022, minutes. Financial Reports for November 2022 and November Check Register (A) in the amount of \$524,008.32 Motion carried unanimously.

Nancy Ward moved, Brian Fawcett seconded a motion to adopt consent agenda item D: November Check Register (B) for \$50,536.81. Chip Bubl, Nancy Ward, and Brian Fawcett voted aye. Chris Iverson and Robert Keyser abstained from voting, declaring a potential conflict of interest. Motion carried.

Commissioner Keyser moved item B of New Business to the top of the items in New Business.

**Comments from Visitors**

Jasmine Lillich prearranged with Commissioner Keyser to have additional time to speak. Ms. Lillich presented her opposition to the rezone and urged the Port Commission to use creativity and curiosity in their decision. She spoke on the history of Port Westward and the land that was intended to be farmland. She mentioned that between 1992 and 2012 there had been 31 million acres of farmland that was lost to development. Ms. Lillich said that she would like to see the Port of Columbia County consider its role in these types of socio-economic injustices and pay respect to the heritage of the land. She would like to see the Port spend the money on land improvements for agricultural use, not on the rezone. Ms. Lillich was pleased to be invited to the Agriculture Information Group (AIG).

Tammy Maygra first noted that she agreed with Ms. Lillich and also spoke against the rezone. Ms. Maygra stated that the Port has tried the rezone three times and has been shot down every time. She asked that the Port do a rezone once we have someone who wants to lease the land. Ms. Maygra urged the Commissioners not to vote for the rezone.

Brady Preheim also spoke against the rezone stating it is a waste of time and money.

Greg Hinkelman, Clatskanie City Manager, spoke on behalf of the Clatskanie City Council in favor of the rezone and Resolution 2022-34. He stated the Council is in support of economic development in the North County area. He urged the Port to move forward with the rezone.

Annie Christensen claimed that NEXT Renewable Fuels doesn't have the community's best interest in mind due to the many discrepancies in communications by NEXT, such as how NEXT originally stated that they plan on using only barge, but more recently stating that they need the rail.

Carroll Sweet said many people from the community do not support NEXT Renewable Fuels. Ms. Sweet mentioned that when the rezone started, we were all young and beautiful, but now we are getting too old to handle the rezone anymore.

Paul Vogel, Columbia Economic Team, expressed support for the rezone. The Land Use System allows for rezoning and also limits the number of jobs you can have per acre on agricultural land.

Peter Kraschinsky said that wars will be fought over fresh water, not fuel. He stated that we are sitting on a gold mine of fresh water and this biofuel is a short-term project.

Paul Langner said he encourages the Port to move forward with the rezone for the opportunities it will bring to the future.

Charles Garman spoke in support of the rezone. Mr. Garman informed the Commission that he worked for Gunderson and has extensive experience around shipping and economic development. Mr. Garman continued by stating that Oregon only has two deep-water ports and one is at Port Westward. He mentioned that we need to think about the unintended consequences if we do not rezone Port Westward.

Warren Seely would like the Commission to consider the denials from the Land Use Board of Appeals and perhaps consider the Land Exchange outside of the Beaver Drainage District.

Dee Dee Lively-Andrews said that she would like to repeat herself about being opposed to the NEXT Renewable Fuels Refinery Project.

Dan Serres from Columbia Riverkeepers mentioned that he wanted to urge the Commissioners to not approve Resolution 2022-34. The approval will result in more wasted Port funds.

Mary DuVal said she supports what Dan Serres said.

## **New Business**

### **NEXT Renewable Fuels Quarterly Update**

Chris Efird provided a quarterly update for NEXT Renewable Fuels (NEXT). Mr. Efird mentioned the recent corporate restructuring between NEXT and Industrial Tech Acquisitions II Inc. (ITAQ); how a Special Purpose Acquisition Company (SPAC) works in relation to NEXT, the stock market, and investors; how NEXT will remain a majority stockholder after the transaction with ITAQ; and generally, how Mr. Efird will remain in control of NEXT throughout the process. Mr. Efird provided an update on the NEXT project, including the Environmental Impact Statement (EIS) with the U.S. Army Corps of Engineers.

Robert Salisbury and Elliot Levin presented a PowerPoint presentation entitled "Rezone at Port Westward". Nancy Ward requested that prior to a decision on the rezone, the Port should find out from the Department of State Lands (DSL) how much land would need to be mitigated for a Wetlands Bank. Commissioner Ward agreed that we would discuss DSL Wetlands issues after today's Executive Session.

## **Executive Session**

The Board held an executive session to consider exempt public records, including, but not limited to, written legal advice from the Port's legal counsel which is privileged under ORS 40.225 and exempt from disclosure under ORS 192.509(9) pursuant to ORS 192.660(2)(f) and to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed under ORS 192.660(2)(h).

EXECUTIVE SESSION BEGAN AT 10:37 A.M.

THE COMMISSION RETURNED TO REGULAR SESSION AT 12:01 P.M.

**Resolution 2022-35**

A RESOLUTION AUTHORIZING PEAK ELECTRIC GROUP, LLC., TO PERFORM ELECTRICAL UPGRADES TO THE WEST SIDE T-HANGARS AT SCAPPOOSE AIRPORT

Chris Iverson moved, Nancy Ward seconded a motion to approve Resolution 2022-35, authorizing the Executive Director or his designee to purchase and install electrical upgrades for the west side T-hangars from Peak Electric Group, LLC., for a cost not to exceed \$67,100. Motion carried unanimously.

**Resolution 2022-37**

A RESOLUTION AUTHORIZING FELTON'S HEATING AND COOLING, INC. TO REPLACE TWO AIR CONDITIONING UNITS AND INSTALL ONE DUCTLESS HEAT PUMP

Chris Iverson moved, Nancy Ward seconded a motion to approve Resolution 2022-37, authorizing the Executive Director or his designee to purchase and install two Ruud air conditioning units, and a Daikin ductless heat pump from Felton's Heating & Cooling Inc. for \$29,100, with the Port paying \$14,550 and Brian Yablon, an airport tenant, paying \$14,550. Motion carried unanimously.

**Resolution 2022-34**

A RESOLUTION TO RETAIN CABLE HUSTON LLP TO PROVIDE LAND USE LEGAL SERVICES FOR PORT WESTWARD REZONING PROCESS.

Chris Iverson moved, Brian Fawcett seconded a motion to approve Resolution 2022-34, authorizing the Executive Director or his designee to retain Cable Huston LLP at a cost not-to-exceed \$398,493.00, which includes costs to engage experts as necessary, to intervene on behalf of and represent the Port through the LUBA remand and appeal process. Nancy Ward again expressed her concern about the Wetlands Mitigation and getting more information from DSL. She would like to postpone the decision until the Port received more information from DSL. Chris Iverson, Brian Fawcett, and Robert Keyser voted aye. Chip Bubl voted nay. Nancy Ward abstained from voting. Motion carried 3-1-1.

**Executive Director's Report**

Provided and read by Sean Clark, which is attached to these minutes.

**Commissioner Reports**

Chip Bubl mentioned that he has been keeping up with the readings and taking a lot of phone calls.

Brian Fawcett said he had answered some questions on the rezone and NEXT Renewable Fuels. Also, he reviewed the financials.

Chris Iverson passed.

Nancy Ward mentioned that the new Agriculture Information Group (AIG) had its first meeting with Sean Clark, Elliot Levin, and Chip Bubl. Also, she was stunned by the Business and Environment Conference and the amount of information she learned.

Robert Keyser thanked everyone for their Ag Committee work. He hopes it does well and does great things.

**THERE BEING NO FURTHER BUSINESS BEFORE THE COMMISSION, THE MEETING ADJOURNED AT 12:26 P.M.**

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
January 11, 2023  
Date Adopted by Commission



## Finance Update December 2022

### STAFF REPORT

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DATE: January 11, 2023  
TO: Commission Board  
FROM: Bob Gadotti  
Executive Finance Manager  
RE: Finance Update as of December 31, 2022

#### Discussion:

This agenda item is a preliminary report of the Port's current financials as of December 31, 2022.

**Cash and Investments:** \$9,147,830.

**YTD Revenues Collected:** \$3,949,552 which is 51.1% of the annual budget of \$7,722,922.

**YTD Expenses:** \$2,750,108 which is 18.40% of the annual budget of \$14,955,276. The annual expense budget includes \$4,018,450 of contingency that will not be utilized.

December 2022 checks issued totaled \$388,808.44

#### December Highlights

Preparing for 2023-2024 Budget process.  
Mid-Year account reconciliations are in process  
Finance Manager and Property Manager positions remain open

	Port of Columbia County						
	Income Statement						
	For the period ending						
	December 31,2022						
			Current	Yr To Date	Annual	%	Prior Yr To Date
			Actual	Actual	Budget	Remaining	Actual
<b>Resources</b>							
Property Taxes			876	2,711	-	0.0%	4,131
Licenses and Permits			44,558	273,626	563,935	51.5%	276,347
Rents and Reimbursements			408,103	2,746,283	5,784,328	52.5%	2,360,305
Terminal Services			41,218	184,442	411,202	55.1%	31,744
Bayport RVPark			8,380	74,506	161,996	54.0%	64,154
Parking Fees			674	19,104	32,185	40.6%	21,945
Launch Fees			1,533	19,549	53,456	63.4%	23,553
Other Marina Fees			340	1,741	4,286	59.4%	2,370
Grants			-	47,035	394,627	88.1%	(43,642)
Loan Proceeds			-	483,186	-	0.0%	-
Interest Earnings			22,520	87,958	38,036	-131.2%	18,759
InterGovernmental Income			-	-	-	0.0%	-
Contributions			-	-	250,018	100.0%	-
Miscellaneous Income			404	9,412	28,853	67.4%	42,418
<b>Total Resources</b>			528,605	3,949,552	7,722,922	48.9%	2,802,083
<b>Requirements</b>							
Personnel Services			245,616	1,063,146	2,177,364	51.2%	965,062
Materials and Services			133,155	1,078,404	2,037,779	47.1%	1,269,362
Capital Outlay			102	189,555	5,615,000	96.6%	107,600
Debt Service			121,781	419,002	1,106,682	62.1%	730,801
Contingency			-	-	4,018,450	100.0%	-
						0.0%	
<b>Total Requirements</b>			500,654	2,750,108	14,955,275	81.6%	3,072,825
<b>Ending Fund Balance</b>			27,952	1,199,445	-	0.0%	

**Port of Columbia County  
Vendor Check Register Report - A**

Chk No	Vendor ID	Vendor Name	Date	Chk Amount	Ck Bk ID	Voided
43295	2DEE001	2 Deep Diving	12/14/2022	\$775.00	BOW CHKG	No
43297	ACEH002	Ace Hardware - Scappoose	12/14/2022	\$117.50	BOW CHKG	No
43296	ACEH001	Ace Hardware - St Helens	12/14/2022	\$579.55	BOW CHKG	No
43298	AIRS001	Airside Solutions	12/14/2022	\$337.29	BOW CHKG	No
43245	AMBI001	Ambient IT Solutions	12/1/2022	\$87.50	BOW CHKG	No
43299	AMBI001	Ambient IT Solutions	12/14/2022	\$2,804.00	BOW CHKG	No
43346	AMBI001	Ambient IT Solutions	12/19/2022	\$2,056.25	BOW CHKG	No
43283	BYNU001	Amy Bynum	12/1/2022	\$133.44	BOW CHKG	No
43300	ASSO001	Association of Pacific Ports	12/14/2022	\$1,295.00	BOW CHKG	No
43325	ATTM001	AT&T Mobility	12/19/2022	\$1,119.15	BOW CHKG	No
43326	BANK001	Bank of the West	12/19/2022	\$12,958.07	BOW CHKG	No
43307	FAWC001	Brian Fawcett	12/14/2022	\$591.74	BOW CHKG	No
43246	BUSI001	Business Oregon	12/1/2022	\$13,601.70	BOW CHKG	No
43282	BUSI001	Business Oregon	12/1/2022	\$94,979.88	BOW CHKG	No
43327	BUSI001	Business Oregon	12/19/2022	\$2,967.36	BOW CHKG	No
43347	BUSI001	Business Oregon	12/19/2022	\$23,833.59	BOW CHKG	No
43247	CABL001	Cable Huston	12/1/2022	\$900.00	BOW CHKG	No
43249	CENT002	Century West Engineering	12/1/2022	\$5,638.50	BOW CHKG	No
43248	CENT001	CenturyLink	12/1/2022	\$99.15	BOW CHKG	No
43250	CENT003	CenturyLink	12/1/2022	\$53.63	BOW CHKG	No
43301	CENT001	CenturyLink	12/14/2022	\$236.47	BOW CHKG	No
43251	CHAR001	Charter Communications	12/1/2022	\$225.64	BOW CHKG	No
43252	CINT002	Cintas Corporation No 3	12/1/2022	\$49.92	BOW CHKG	No
43284	CINT002	Cintas Corporation No 3	12/1/2022	\$49.92	BOW CHKG	No
43302	CINT002	Cintas Corporation No 3	12/14/2022	\$107.42	BOW CHKG	No
43328	CINT002	Cintas Corporation No 3	12/19/2022	\$49.92	BOW CHKG	No
43304	CITY005	City of Clatskanie	12/14/2022	\$77.44	BOW CHKG	No
43285	CITY001	City of Columbia City	12/1/2022	\$244.48	BOW CHKG	No
43253	CITY002	City of Scappoose	12/1/2022	\$963.15	BOW CHKG	No
43303	CITY003	City of St. Helens	12/14/2022	\$13,306.72	BOW CHKG	No
43254	CIVI001	CivicPlus LLC	12/1/2022	\$2,205.00	BOW CHKG	No

**Port of Columbia County  
Vendor Check Register Report - A**

43255	CLAT002	Clatskanie PUD	12/1/2022	\$37.34	BOW CHKG	No
43305	CLAT002	Clatskanie PUD	12/14/2022	\$789.50	BOW CHKG	No
43329	COLU011	Columbia County Dept.of Community Justice Adult Division	12/19/2022	\$2,250.00	BOW CHKG	No
43256	COLU008	Columbia River PUD	12/1/2022	\$3,498.85	BOW CHKG	No
43257	COMC001	Comcast	12/1/2022	\$83.15	BOW CHKG	No
43286	COMC001	Comcast	12/1/2022	\$4,318.61	BOW CHKG	No
43348	COMC002	Comcast Business	12/19/2022	\$1,971.78	BOW CHKG	No
43330	KOLD001	Culligan	12/19/2022	\$86.65	BOW CHKG	No
43306	DDME001	D & D Mechanical Inc	12/14/2022	\$0.00	BOW CHKG	Yes
43259	DELL001	Dell Financial Services LLC	12/1/2022	\$2,525.27	BOW CHKG	No
43332	ELME001	Elmers Flag & Banner	12/19/2022	\$661.00	BOW CHKG	No
43260	FINE001	Encore Business Solutions	12/1/2022	\$4,050.00	BOW CHKG	No
43333	FINE001	Encore Business Solutions	12/19/2022	\$787.50	BOW CHKG	No
43287	EPRI001	EPrint	12/1/2022	\$319.83	BOW CHKG	No
43288	FPRE001	F. Preston	12/1/2022	\$2,800.00	BOW CHKG	No
43292	SISC001	Gina Sisco	12/1/2022	\$236.26	BOW CHKG	No
43308	GLOB001	Global Security	12/14/2022	\$297.50	BOW CHKG	No
43281	BROW001	Harold Brown	12/1/2022	\$162.75	BOW CHKG	No
43309	HUDS001	Hudson Garbage Service	12/14/2022	\$400.36	BOW CHKG	No
43349	HUDS001	Hudson Garbage Service	12/19/2022	\$159.85	BOW CHKG	No
43350	HUDS002	Hudson Portable Toilet Service	12/19/2022	\$364.62	BOW CHKG	No
43311	NUIS001	John A. Norvell dba	12/14/2022	\$175.00	BOW CHKG	No
43261	KERN001	Kern & Thompson LLC	12/1/2022	\$5,000.00	BOW CHKG	No
43351	KERN001	Kern & Thompson LLC	12/19/2022	\$1,250.00	BOW CHKG	No
43331	CULV001	Kimberlee Culver	12/19/2022	\$50.00	BOW CHKG	No
43262	KPFF001	KPFF, Inc	12/1/2022	\$54,486.50	BOW CHKG	No
43289	LESS001	Les Schwab Tire Center	12/1/2022	\$485.92	BOW CHKG	No
43334	LOWE001	Lower Columbia Engineering	12/19/2022	\$20,406.25	BOW CHKG	No
43263	MILL002	Milliman	12/1/2022	\$395.00	BOW CHKG	No
43264	NORW001	Norwest Engineering, Inc	12/1/2022	\$28,319.35	BOW CHKG	No
43310	NORW001	Norwest Engineering, Inc	12/14/2022	\$3,750.63	BOW CHKG	No
43265	NWNA001	NW Natural Gas Company dba	12/1/2022	\$157.51	BOW CHKG	No



**Port of Columbia County  
Vendor Check Register Report - A**

43336	NWNA001	NW Natural Gas Company dba	12/19/2022	\$94.91	BOW CHKG	No
43313	PAMP001	Oregon Publication Corporation	12/14/2022	\$125.00	BOW CHKG	No
43312	OREG011	Oregon Secretary of State	12/14/2022	\$300.00	BOW CHKG	No
43266	ORKI001	Orkin LLC	12/1/2022	\$75.00	BOW CHKG	No
43290	ORGE007	Outdoor Advertising Sign PRG ODOT	12/1/2022	\$25.00	BOW CHKG	No
43337	PACI005	Pacific Office Automation	12/19/2022	\$357.00	BOW CHKG	No
43267	PAUL001	Paulson Printing	12/1/2022	\$1,341.00	BOW CHKG	No
43268	PITN001	Pitney Bowes	12/1/2022	\$453.00	BOW CHKG	No
43269	PORT002	Portland General Electric	12/1/2022	\$8,038.05	BOW CHKG	No
43314	QUAL001	Quality Auto Parts	12/14/2022	\$109.98	BOW CHKG	No
43338	QUAL001	Quality Auto Parts	12/19/2022	\$19.49	BOW CHKG	No
43316	QUIN001	Quincy Water Association	12/14/2022	\$45.00	BOW CHKG	No
43318	STEL001	Richard Stellner	12/14/2022	\$4,574.38	BOW CHKG	No
43339	SALI002	Robert Salisbury	12/19/2022	\$55.88	BOW CHKG	No
43291	SCAP006	Scappoose Outfitters Inc.	12/1/2022	\$2,336.00	BOW CHKG	No
43271	SHER001	Sherwin-Williams	12/1/2022	\$494.27	BOW CHKG	No
43272	SHRE001	Shred Northwest, Inc	12/1/2022	\$100.00	BOW CHKG	No
43340	SIER001	Sierra Springs	12/19/2022	\$91.71	BOW CHKG	No
43273	SOLU001	Solutions Yes, LLC	12/1/2022	\$108.00	BOW CHKG	No
43341	SOLU001	Solutions Yes, LLC	12/19/2022	\$131.00	BOW CHKG	No
43274	SONI001	Sound Security, Inc	12/1/2022	\$497.50	BOW CHKG	No
43293	SONI001	Sound Security, Inc	12/1/2022	\$478.15	BOW CHKG	No
43270	QUIL001	Staples Inc dba	12/1/2022	\$95.57	BOW CHKG	No
43315	QUIL001	Staples Inc dba	12/14/2022	\$142.01	BOW CHKG	No
43319	STEW001	Stewardship Solutions, Inc	12/14/2022	\$102.25	BOW CHKG	No
43320	SUNS001	Sunset Auto Parts	12/14/2022	\$174.37	BOW CHKG	No
43276	SUPP002	SupplyWorks	12/1/2022	\$110.52	BOW CHKG	No
43321	SUPP002	SupplyWorks	12/14/2022	\$98.70	BOW CHKG	No
43277	THES001	The Seminar Group	12/1/2022	\$1,448.00	BOW CHKG	No
43275	STAN002	The Standard	12/1/2022	\$1,641.32	BOW CHKG	No
43343	THOM001	Thomson Reuters-West Payment Center	12/19/2022	\$115.82	BOW CHKG	No
43342	TCMS	Trotter & Morton	12/19/2022	\$621.25	BOW CHKG	No

**Port of Columbia County  
Vendor Check Register Report - A**

43278	TVW0001	TVW	12/1/2022	\$884.75	BOW CHKG	No
43344	TVW0001	TVW	12/19/2022	\$884.75	BOW CHKG	No
43258	DAHL001	VASA Hldgs LLC dba	12/1/2022	\$61.76	BOW CHKG	No
43279	VOYA001	Voya - State of Oregon	12/1/2022	\$2,835.00	BOW CHKG	No
43294	VOYA001	Voya - State of Oregon	12/1/2022	\$2,835.00	BOW CHKG	No
43345	VOYA001	Voya - State of Oregon	12/19/2022	\$2,835.00	BOW CHKG	No
43322	WAST002	Waste Management of OR, Inc.	12/14/2022	\$32.92	BOW CHKG	No
43280	WILC001	Wilson Oil Inc dba	12/1/2022	\$1,197.82	BOW CHKG	No
43323	WILC001	Wilson Oil Inc dba	12/14/2022	\$256.39	BOW CHKG	No
43352	WILC001	Wilson Oil Inc dba	12/19/2022	\$727.59	BOW CHKG	No
43324	ZIPL001	Ziply Fiber	12/14/2022	\$115.80	BOW CHKG	No
<b>106</b>			<b>Total</b>	<b>\$359,788.27</b>		

**Port of Columbia County  
Vendor Check Register Report - B**

Check No	Vendor ID	Vendor Name	Check Date	Check Amount	Chk Bk ID	Voided
43335	MODA001	Moda Health	12/19/2022	\$28,014.49	BOW CHKG	No
43317	SDIS001	SDIS	12/14/2022	\$1,005.68	CHKS121422	No
<b>2</b>		<b>Total</b>		<b>\$29,020.17</b>		

DEC 07 2022

**PORT OF COLUMBIA COUNTY  
COMMITTEE and ORGANIZATION MEETINGS**

Organization or Committee	Description	Schedule	Staff Assigned	Commissioner Assigned
Association of Public Ports (APP)			Sean	
City/County Quarterly meeting		Quarterly	Executive Director	All Commissioners
Chamber - Clatskanie	Chamber Forum	Monthly	PWW Terminal Mgr.	Robert Keyser
Chamber - Rainier	Chamber Forum	Monthly	Gina	Brian Fawcett
South Columbia County Chamber - Scappoose/St. Helens	Chamber Forum and Koffee Klatsch	Bimonthly	Executive Director Managers	All
Chamber Legislative Meetings	Interested parties meet with State Senator or State Representative during legislative session.	Every Wednesday at 7:00 a.m. during session	Executive Director	
City of St. Helens Tourism Meeting	Strategic tourism planning for St. Helens area.	Monthly	Prop. Ops. Mgr.	
Clatskanie Fire District		Second Wed. 7:00 p.m.	PWW Terminal Mgr.	
Clatskanie PUD		Monthly 7:00 p.m.	PWW Terminal Mgr.	
Clatskanie, City of	City Council	1 <sup>st</sup> Wednesday of the month 7:00 pm	PWW Terminal Mgr.*	Robert Keyser
Columbia County Board of County Commissioners		Every Wednesday, 10 a.m.	Sean, Pertinent Staff	
Columbia Economic Team (CET)		2 <sup>nd</sup> Tuesday of every other month	Sean (Amy Alt)	
Columbia Pacific Economic Development District (ColPac)	N.W. Oregon regional organization operation under federal E.D.A. guidelines.	Once a month	Executive Director	Brian Fawcett
Columbia River Channel Coalition (CRCC)	Provides information to elected officials and community leaders to help build regional and national consensus for the Columbia River Channel Deepening Project.	Bi-monthly concurrent with I.C.R.I.P.	Executive Director	
Columbia River PUD		3 <sup>rd</sup> Tuesday, 6 p.m.	Pertinent Staff (as Needed)	
Community Development Forum	Ongoing committee comprised of representatives of the Governor's office (Governor's Economic Revitalization Team G.E.R.T.), the agency factors of O.E.C.D.D., L.C.D.C., D.E.Q., Transportation, Agriculture, and D.S.L., and local government representative of counties, cities, Ports and Special District.	Quarterly or monthly dependent on workload.	Executive Director Deputy Director	

**PORT OF COLUMBIA COUNTY  
COMMITTEE and ORGANIZATION MEETINGS**

Columbia River Steamship Operators Association (CRSOA)			Executive Director Deputy Director PWW Terminal Mgr.	
Columbia City, City of	City Council	1st & 3rd Thursday of the month 6:00pm	Executive Dir.* Exc. Asst.*	Chris Iverson
F.A.A. N.W. Mt. Regional	Federal information for airport owners and sponsors.	Annual meeting	Executive Director Pro. Ops. Manager.	All Commissioners
Greater Portland Inc Economic Development Practitioners		3 <sup>rd</sup> Tuesday, 12 pm	Amy	
Homeland Security and Emergency Management Commission (HSEMC)	County Advisory Board	Quarterly	Executive Director Elliot	
Interstate Columbia River Improvement Project (I.C.R.I.P.)	Channel Deepening Sponsors and U.S.A.C.O.E.	Bi-monthly	Executive Director	
Marine & Civil Aviation Committee		Monthly	Sean	
Maritime Fire & Safety Association (MFSA)		Annual Meeting	Prop. Ops. Mgr. PWW Terminal Mgr.	
Northwest Marine Terminal Association (NWMTA)	An association of NW Ports and Marine terminal operators in OR & WA. The Association sets uniform tariff rates, establishes consistent rules & practices, exchange information and pursue cooperative ventures.	3 Mtgs. Per yr. plus subcommittee	PWW Terminal Mgr. Finance Manager	
Northwest Oregon Area Commission on Transportation (NW ACT)	Regional board which provides policy and project prioritization functions which feeds into the Oregon Transportation Commission decision making process.	Monthly	Executive Director Deputy Director	Brian Fawcett
Northwest Oregon Economic Alliance (NOEA)	Rural/regional board provides state funds through this board for economic development projects. The current focus is industrial land development. The Port is not represented on this board. However, a Port representative attends most meetings.	Monthly	Executive Director Deputy Director	
Oregon Airport Manager's Assoc. (OAMA)	Statewide organization providing information, training, and peer support.	Two meetings/yr.	Miriam House	
Oregon Economic Development Association			Amy	
Oregon Municipal Finance Officers Association (OMFOA)	Informative session regarding municipal finance.	Two training seminars per year	Finance Manager	

**PORT OF COLUMBIA COUNTY  
COMMITTEE and ORGANIZATION MEETINGS**

Oregon Public Ports Association (OPPA)	Statewide informational arm of the port industry. Provides updates on critical issues that impact ports.	Quarterly meetings and annual conference	Executive Director	
Oregon State Marine Board (OSMB)	Conference to update on Marine Board funding, marina technology, etc. Funding agency for S.B.M.P.	Semiannual conference	Prop. Ops. Mgr. Prop. Ops. Asst.	
Pacific Coast Congress of Harbormasters and Port Managers	West Coast organization of private sector, public sector, harbormasters, port managers and businesses of the marina industry that focus on exchanging information and recommending policies to establish uniformity in all aspects of marina operations.	Two conferences/year	Prop. Ops. Mgr.	
Pacific Northwest Waterway Association (PNWA)	Assists with appropriations, permitting and environmental issues at the Federal level. This is the Port's main tool for federal issues.	Regional, Semi Annual, Mission to Wash. D.C.	Executive Director Gina	Brian Fawcett
Rainier, City of	City Council	1st & 3rd Mon. of each month 6:00 & 7:00 pm	Finance Mgr.*	Brian Fawcett
Regional Partnerships	Business Oregon is a recognized regional organization. Regional Partnerships is a regional organization recognized by Business Oregon.	Quarterly meetings	Executive Director or Deputy Executive Director	
St. Helens, City of	City Council	1st & 3rd Wed. of the month at 1:00 & 7:00 pm	Deputy Director*	Chip Bubl
Scappoose Bay Marine Park Advisory Committee	Standing committee authorized by the Port Commission to provide guidance and recommendations to the Port Commission regarding development and operation of the marina.	First Tuesday of every other month.	Prop. Ops. Mgr. Prop. Ops. Asst.	Brian Fawcett
Scappoose Economic Development Coordination		4th Monday, 1:30 pm	Gina	
Scappoose Industrial Airpark Advisory Committee	Standing committee authorized by the Port Commission to provide guidance and recommendations to the Port Commission regarding development and operation of the airport.	First Monday of every other month.	Prop. Ops. Mgr. Prop. Ops. Asst.	Nancy Ward
Scappoose, City of	City Council	First and Third Mondays	Amy	Nancy Ward
South County Collaborative		3rd Tuesday, 3:30 pm	Sean	

**PORT OF COLUMBIA COUNTY  
COMMITTEE and ORGANIZATION MEETINGS**

Special District Association of Oregon (SDAO)	Insurance carrier. Assist with developing policy, provides active lobbying during sessions and Commissioner and staff training. Attending meetings and training saves money on insurance premium.	Annual conference, board member training, Best Practices regional meeting, Risk Management/Safety workshop	Executive Director	All Commissioners
Trestle Beach		Once a month TBD	Prop. Ops. Mgr. Prop. Ops. Assn.	

\* Current Assignment  
Last updated 12/01/2021



**PORT OF COLUMBIA COUNTY  
2023 BOARD MEETING DATES**

**Updated 12/28/2022  
Not Yet Approved**

The Port of Columbia County Commission meetings are scheduled as follows: Regular Board Meetings are held the second Wednesday of every month at 8:30 a.m. Work Sessions if held are on the fourth Wednesday of every month at 6:00 p.m. The Advisory Committee Meetings are scheduled as follows: Scappoose Bay Marine Park meets the first Tuesday of **every other month** at 5:30 p.m. and Scappoose Industrial Airpark meets the last Monday of **every other month** at 5:00 p.m. Meetings are held at the Port office, 100 E Street, Columbia City, OR. Please call our office at (503) 397-2888 with questions or concerns.

\*If a **Work Session** is required, the fourth Wednesday will be the predetermined date

**2023**

January 3	5:30 p.m.	Marina Advisory Committee
January 11	8:30 a.m.	Commission Meeting
*January 25	6:00 p.m. TBD	Work Session
January 30	5:00 p.m.	Airport Advisory Committee
February 8	8:30 a.m.	Commission Meeting
*February 22	6:00 p.m. TBD	Work Session
March 7	5:30 p.m.	Marina Advisory Committee
March 8	8:30 a.m.	Commission Meeting
*March 22	6:00 p.m. TBD	Work Session
March 27	5:00 p.m.	Airport Advisory Committee
April 12	8:30 a.m.	Commission Meeting
*April 26	6:00 p.m. TBD	Work Session
May 2	5:30 p.m.	Marina Advisory Committee
May 10	8:30 a.m.	Commission Meeting
*May 24	6:00 p.m. TBD	Work Session
May 29	5:00 p.m.	Airport Advisory Committee
June 14	8:30 a.m.	Commission Meeting
*June 28	6:00 p.m. TBD	Work Session
July 4	5:30 p.m.	Marina Advisory Committee
July 12	8:30 a.m.	Commission Meeting
July 26	6:00 p.m. TBD	Work Session
*July 31	5:00 p.m.	Airport Advisory Committee
August 9	8:30 a.m.	Commission Meeting
*August 23	6:00 p.m. TBD	Work Session
September 5	5:30 p.m.	Marina Advisory Committee
September 13	8:30 a.m.	Commission Meeting
September 27	6:00 p.m. TBD	Work Session
*September 25	5:00 p.m.	Airport Advisory Committee
October 11	8:30 a.m.	Commission Meeting
*October 25	6:00 p.m. TBD	Work Session
November 7	5:30 p.m.	Marina Advisory Committee
November 8	8:30 a.m.	Commission Meeting
*November 22	6:00 p.m. TBD	Work Session
November 27	5:00 p.m.	Airport Advisory Committee
December 13	8:30 a.m.	Commission Meeting
*December 27	6:00 p.m. TBD	Work Session

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**2023 HOLIDAYS  
PORT OFFICE CLOSED**

January 2 (1 <sup>st</sup> falls on a Sunday)	New Year's Day
January 16	Martin Luther King Jr. Day
February 20	President's Day
May 29	Memorial Day
June 19	Juneteenth
July 4	Independence Day
September 4	Labor Day
November 10	Veteran's Day
November 23	Thanksgiving Day
November 24	Day after Thanksgiving Day
December 25	Christmas Day

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**COMMISSIONER'S TERMS**

Nancy Ward	2019 – 2023
Chip Bubl	2019 – 2023
Chris Iverson	2021 – 2023
Robert Keyser	2021 – 2025
Brian Fawcett	2021 – 2025



## Banking Services

# STAFF REPORT

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DATE: January 11, 2023

TO: Commission Board

FROM: Bob Gadotti  
Executive Finance Manager

RE: Port Banking Services  
**Recommendation of selection of Bank of the West  
Resolution 2023-01**

### Discussion

The Port staff contacted three local banks and two credit unions for the Port Banking Services. Bank of the West and InRoads Credit Union responded.

The Executive Finance Manager reviewed the responses for the cost of services, efficiency in meeting the Port's needs, accessibility to branch services, and financial stability. Bank of the West's proposal will continue with the same cost fees as they are currently charging the Port. The current monthly fee charged is \$385.00 based on current account activity. The Bank of the West will be giving an additional .36% reduction on current analysis fees. The total cost savings over three years is approximately \$3,312.00.

The Executive Finance Manager's recommendation is to continue utilizing Bank of the West for banking services.

### Recommendation

Approval of Resolution No. 2023-01 recommends selecting Bank of the West for Port Banking Services.

**RESOLUTION NO. 2023-01**

**A RESOLUTION DESIGNATING THE BANK OF THE WEST AS THE DEPOSITORY FOR THE PORT AND AUTHORIZING BANKING SERVICES**

**WHEREAS**, the Port's current banking services agreement was adopted in 2017 for five years; and

**WHEREAS**, the Port solicited proposals from qualified local banks and credit unions to provide banking services; and

**WHEREAS**, the Port received two proposals, one from Bank of the West and one from InRoads Credit Union;

**WHEREAS**, after thorough review by the staff, the Port wishes to continue banking services with Bank of the West for three years starting Fiscal Year 2023 with two one-year extensions; now, therefore

**BE IT RESOLVED** that the Board of Commissioners authorizes the Executive Director to sign the Bank of the West banking services acceptance letter dated December 9, 2022.

**PASSED AND ADOPTED** this 11th day of January 2023 by the following vote:

AYES: \_\_\_\_\_ NAYS: \_\_\_\_\_

Port of Columbia County

ABSTAINED: \_\_\_\_\_

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

Attested By:

\_\_\_\_\_  
Secretary



## Closing the Port Westward Urban Renewal Plan

### STAFF REPORT

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DATE: January 11, 2023  
TO: Commission Board  
FROM: Robert Salisbury, Port General Counsel  
RE: **Closing the Port Westward Urban Renewal Plan**  
Resolution 2023-02

#### **Discussion**

After over 20 years, the Columbia County Development Agency ("CCDA") and the Port are on the verge of closing the Port Westward Urban Renewal Plan which successfully upgraded road, rail, fire and water systems at Port Westward. CCDA has sufficient funds available to pay off both the Rail System Loan and the Water System Loan, which are the only debt obligations remaining. Paying off the loans will result in significant cost savings to the overlapping taxing districts in Columbia County.

As part of this settlement, CCDA will permanently terminate the collection of property tax revenues for the Port Westward Urban Renewal Area after fiscal year 2022-23. The Water Agreement will terminate and the Rail Agreement will continue in order to provide the most benefit to the taxing districts. The Distribution Agreement allocates the annual Global rail payments directly to the taxing districts beginning in 2023-24.

CCDA has already signed the attached documents. After the Port approves and signs the attached Amendment 1 to Rail Intergovernmental Agreement and Distribution Agreement, the Distribution Agreement will be sent to all of the various taxing districts for signature.

#### **Recommendation**

Approve Resolution 2023-02 to authorize the President of the Port Commission to sign the Amendment 1 to Rail Intergovernmental Agreement and the Distribution Agreement.

**RESOLUTION 2023-02**

**A RESOLUTION TO APPROVE THE SIGNING OF  
AMENDMENT 1 TO THE RAIL INTERGOVERNMENTAL AGREEMENT AND  
DISTRIBUTION AGREEMENT**

**WHEREAS**, the Columbia County Development Agency (“CCDA”) was created in 2001 to administer the Port Westward Urban Renewal Plan, which in partnership with the Port successfully funded critical road, rail, fire system and water system improvements at Port Westward Industrial Park, and

**WHEREAS**, the only debt obligations now remaining from all of the above improvements are the Rail System Loan and Water System Loan, and

**WHEREAS**, CCDA has sufficient funds available to pay off the Rail System Loan and the Water System Loan and the Port supports the concept of early repayment of these debt obligations and closing out the Port Westward Urban Renewal Plan, and

**WHEREAS**, early payment of these debt obligations will result in termination of the Water System Agreement as well as an amendment to the Rail System Agreement in order to pursue a reimbursement policy that will have the most beneficial financial impact to the overlapping taxing districts in Columbia County, and

**WHEREAS**, the Agency has agreed to permanently terminate the collection of property tax revenues for the Port Westward Urban Renewal Area after fiscal year 2022-23, and

**WHEREAS**, to achieve the above-stated goals and settle longstanding legal matters between the Port and CCDA, it is necessary and appropriate for the Port to sign Amendment No. One to Rail Intergovernmental Agreement and Distribution Agreement, and now, therefore,

**BE IT RESOLVED** by the Board of Commissioners of the Port of Columbia County as follows:

The Board approves the signing of Amendment No. One to Rail Intergovernmental Agreement and the Distribution Agreement, and directs the President of the Port Commission to sign both documents as presented.

**PASSED AND ADOPTED** this \_\_\_\_ day of January 2023, by the following vote:

**AYES:** \_\_\_\_\_ **NAYS:** \_\_\_\_\_

**ABSTAIN:** \_\_\_\_\_

**PORT OF COLUMBIA COUNTY**

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

Attested By:

\_\_\_\_\_  
Secretary

**FOR COMMISSION AGENDA REVIEW:**  
**CHANGES TO RAIL IGA**  
**ADDITIONS IN BOLD**  
**DELETIONS IN STRIKE THRU**

1. The Rail System Agreement is amended as follows: (additions in **bold**; deletions in ~~strike-out~~)

- 1.1 Section 1. Term, is amended to read as follows:

“1. Term. This Agreement shall be effective on the Effective Date, and shall continue until the Loan, as defined herein, **and prepayment reimbursement as described in Section 5.C(1)**, is completely repaid, except as otherwise specifically stated herein. “Effective Date” shall mean the date on which the last of the following conditions precedent is met:

- A. The loan agreement for the Loan and related loan documents are fully executed;
- B. Cascade Grain has not exercised its right under certain circumstances to terminate the Rail User Agreements on or before October 4, 2007, as provided in Section 3.2 of the Lead Agreement and Section 3.2 of the Cascade Spur Agreement; and
- C. The Port has determined in its reasonable discretion that it has in hand sufficient documentation that funds, in amounts at least equal to the then current estimate of Project Construction Cost, are available to construct the Rail System and has given its contractor notice to proceed with construction.

Upon the occurrence of the Effective Date, the Parties shall so confirm by written acknowledgement (with a copy of such acknowledgement to OECDD). If the Effective Date has not occurred on or before January 1, 2008, then this Agreement and all of its obligations and duties of the parties will terminate and be of no further force and effect.”

- 1.2 Section 4.C, is amended to read as follows:

**[SECTION ADDED AT END] - -**

**Tax Increment Revenues are available in sufficient amounts to pre-pay the Loan in its entirety. Upon execution of this Amendment, the Agency will pre-pay the remaining principal amount of the Loan, subject to the Port’s obligation to reimburse the Agency in the amount of the pre-payment.**

- 1.3 Section 5.C.1 Tariffs, is amended to read as follows:

“5.C.1. Until the Loan is completely repaid, **and the Port has reimbursed the Agency for the full amount of the Agency Prepayment of the Rail Loan Debt**, the Port shall annually charge users of the Rail System ~~sufficient~~ **at least the total amount shown in each Fiscal Year in the Reimbursement Payment Schedule, below, plus amounts necessary to pay, and** for

administrative, operational and maintenance expenses, including repair, capital repair and replacement expenses related to the Rail System, in accordance with the Rail User Agreements (collectively, "Rail Tariff"); provided, however, that the Port shall not be obligated to charge Portland General Electric or its affiliates (collectively, "PGE") to the extent PGE is entitled to use the Rail System without charge under one or more agreements predating this Agreement (agreements predating this Agreement to which the Port or Cascade Grain is a party and to which PGE is a party or which expressly grant rights to PGE are referred to herein as "PGE Agreements"). The Port shall not amend the PGE Agreements to expand PGE's rights to use the Rail System without charge without the Agency's prior written consent. The Port shall provide the Agency with a list of all PGE Agreements as of the date of this Agreement known to the Port and shall provide a list of any PGE Agreements as they later become known to the Port. Copies of PGE Agreements shall be provided to the Agency upon request. **The Port shall annually reimburse the Agency at least the Total amount shown in the Reimbursement Payment Schedule, below. The Port's obligation to reimburse the Agency shall continue until the last debt service payment would have been due for the Rail Loan (2033), or when the Port has reimbursed the Agency the total amount of the Agency's prepayment of the Rail Loan in the amount of \$1,593,713.62, whichever is sooner."**

1.4 Section 5.C.7, is amended to read as follows,

**"(7) The Parties acknowledge that , after the Loan has been prepaid in whole ~~or in part~~ with Tax Increment Revenues , User Debt Service Payments shall be paid to the Agency up to the amount of the Loan prepayment as described in Section 5.C.1.**



AMENDMENT 1 TO  
INTERGOVERNMENTAL AGREEMENT  
BY AND BETWEEN  
THE COLUMBIA COUNTY DEVELOPMENT AGENCY AND  
THE PORT OF COLUMBIA COUNTY  
FOR THE PORT WESTWARD RAIL SYSTEM

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This Amendment 1 ("Amendment 1") is to the Intergovernmental Agreement made and entered into on the 27<sup>th</sup> day of December, 2007, by and between the Columbia County Development Agency, the Urban Renewal Agency of Columbia County, Oregon, a public body corporate and politic, duly created and functioning under the laws of the state of Oregon, (hereinafter referred to as the "Agency"), and the Port of Columbia County, a municipal corporation of the State of Oregon (formerly, the "Port of St. Helens" hereinafter referred to as "the Port") (the "Rail System Agreement"). The Agency or the Port may be referred to herein as a "Party" and jointly as "Parties". Once executed by the Parties, this Amendment 1 is effective on December 28, 2022.

#### RECITALS

WHEREAS, pursuant to the Rail System Agreement, the Agency agreed to use Net Tax Increment Revenues to act as a secondary source to repay Debt incurred by the Port to construct a Rail System at its Port Westward property, until the entire principal amount, up to three million dollars (\$3,000,000) and accrued interest is paid, except to the extent that Tariffs, as defined in Section 5.C (2) are charged and collected by the Port for payment of the Port's Loan to construct the the Rail System ("Rail System Loan"); and

WHEREAS, pursuant to the Rail System Agreement, the Port has collected Tariffs from users of the Rail System and has made scheduled debt payments on the Rail System Loan, as defined in the Rail System Agreement; and

WHEREAS, the remaining principal amount of the Rail System Loan is \$1,593,713.62; and

WHEREAS, the parties entered into the Amended and Restated Intergovernmental Agreement By and Between The Columbia County Development Agency and The Port of St. Helens on June 24, 2015, in which the Agency agreed to use net Tax Increment Revenues to act as a secondary source to repay debt incurred by the Port to construct a Water System at its Port Westward property (the "Water System Agreement") until the entire principal amount, up to Eight Million Ninety Five Thousand, One Hundred and Twenty One Dollars (\$8,095,121) and accrued interest is paid, except to the extent that Tariffs, as defined in Section 8.3 of the Amended and Restated Agreement are charged and collected by the Port for repayment of the Port's Loan to construct the Water System (the "Water System Loan"); and

WHEREAS, the Port has asserted that no Tariffs have been collected as defined in Section 8.3 of the Water System Agreement and that as of the date of this Amendment, no such Tariffs are expected to be paid by a User of the water system as that term is defined in the Water System Agreement; and

WHEREAS, the Agency has made all Water System Loan debt payments when due; and

WHEREAS, Section 4.C of the Rail System Agreement provides that to the extent that Tax Increment Revenue in any fiscal year is available in sufficient amounts to make at least scheduled debt payments on all Plan Debt, the Agency, in its sole discretion may pre-pay any Plan Debt, including the Rail System Loan, with Tax Increment Revenue; and

WHEREAS, Section 4.C of the Water System Agreement provides that to the extent that Net Tax Increment Revenue in any fiscal year is available in sufficient amounts to make at least scheduled debt payments on all Plan Debt, the Agency may, in its sole discretion pre-pay any Plan Debt, including the Water System Loan, with Tax Increment Revenue; and

WHEREAS, the Agency has sufficient funds available and projected to make discretionary Plan Debt pre-payments sufficient to retire both the Rail System Loan and the Water System Loan; and

WHEREAS, the Port's obligation to collect and remit Tariffs under the terms of the Rail Agreement and the Water System Agreement exists only until the respective debt obligations are fully repaid and then, once repaid, the Port has no further obligation to collect and remit Tariffs; and

WHEREAS, private users of the Water System and Rail System should be effectively paying back the debt for the systems by paying Tariffs so when the debts are fully repaid ahead of schedule, debt payment effectively is shifted to the overlapping taxing districts unless the Tariffs continue to be collected and are reimbursed to the overlapping taxing districts; and

WHEREAS, there are significant cost savings to the overlapping taxing districts in Columbia County to the extent that interest expenses can be avoided by pre-payment of the Water System Loan and Rail System Loan; and

WHEREAS, the Parties agree that payment of the Water System Loan in full will result in the termination of the Water System Agreement by its own terms as outlined in Section 1 of the Water System Agreement; and

WHEREAS, the Parties have agreed to amend the Rail Agreement to pursue a reimbursement policy that will have the most beneficial financial impact to the overlapping taxing districts in Columbia County; and

WHEREAS, the Agency has agreed to permanently terminate the collection of property tax revenues for the Port Westward Urban Renewal Area after fiscal year 2022-23, except as may be necessary to pay administrative costs related to closing down the Urban Renewal Plan and/or the Columbia County Urban Renewal Agency; and

WHEREAS, on July 25, 2018, the Port of St. Helens formally changed its name to the Port of Columbia County;

NOW, THEREFORE, the Parties agree as follows:

1. Incorporation of Recitals. The Parties acknowledge and agree that the above-stated Recitals are true and correct and are incorporated into this Agreement as though fully set forth herein.
2. The Rail System Agreement is amended as follows:
  - 2.1 Section 1. Term, is amended to read as follows:

"1. Term. This Agreement shall be effective on the Effective Date, and shall continue until the Loan, as defined herein, and prepayment reimbursement as described in Section 5.C(1), is completely repaid, except as otherwise specifically stated herein. "Effective Date" shall mean the date on which the last of the following conditions precedent is met:

- A. The loan agreement for the Loan and related loan documents are fully executed;

- B. Cascade Grain has not exercised its right under certain circumstances to terminate the Rail User Agreements on or before October 4, 2007, as provided in Section 3.2 of the Lead Agreement and Section 3.2 of the Cascade Spur Agreement; and
- C. The Port has determined in its reasonable discretion that it has in hand sufficient documentation that funds, in amounts at least equal to the then current estimate of Project Construction Cost, are available to construct the Rail System and has given its contractor notice to proceed with construction.

Upon the occurrence of the Effective Date, the Parties shall so confirm by written acknowledgement (with a copy of such acknowledgement to OECDD). If the Effective Date has not occurred on or before January 1, 2008, then this Agreement and all of its obligations and duties of the parties will terminate and be of no further force and effect."

2.2 Section 4.C, is amended to read as follows:

"4.C Limited to Pledge of Tax Increment Revenues. The Agency's obligation to service the Loan hereunder is to make the Loan payments to the extent of any shortfall in the User Debt Service Payments. As to any Loan payment, this shortfall in the User Debt Service Payments is calculated as follows: the amount of Loan payment then due minus the sum of (i) the User Debt Service Payments received by the Port after the due date of the previous Loan payment and on or prior to the due date of the Loan payment then due, (ii) the amount of any defaulting User's Impound Payment (as defined in the Rail User Agreements) held by the Port as of the due date of the Loan payment then due, and (iii) other amounts, if any, held by the Port as of the due date of the Loan payment then due that have been paid by Rail Users and that the Rail Users have expressly agreed in writing, in the Rail User Agreements or otherwise, may be applied by the Port to Loan payments. (As used in this Agreement, "Rail Users" means Users as that term is defined in the Rail User Agreements.) The Agency's obligation to service the Loan hereunder is further expressly limited to available Tax Increment Revenues in each fiscal year. Under no circumstances shall the Agency be held liable for payment of the Loan out of any other Agency funds. "Tax Increment Revenues" as used in this Agreement shall mean all ad valorem tax revenues from property located within the Port Westward Urban Renewal Area (the "Area") which are attributable to the increase in assessed value of property within the Area pursuant to Section 1c, Article IX of the Oregon Constitution and the Oregon Revised Statutes, Chapter 457, all taxes levied in connection with the Plan pursuant to Article XI, Section 11(15) of the Oregon Constitution, and all earnings thereon while the Tax Increment Revenues are held in the fund established under ORS 457.440(6)(b) to hold Tax Increment Revenues. Tax Increment Revenues shall be available to pay the Loan only if User Debt Service Payments are not received by the Port in sufficient amounts to make minimum Loan payments when due, and those Tax Increment Revenues are not required to be maintained by the Agency in a debt service fund, reserve fund or similar fund, or as part of a minimum balance or similar requirement, for any indebtedness of the Agency payable from Tax Increment Revenues which is either outstanding on the date the Loan is incurred and secured by a lien senior to the lien granted herein, or which is on parity with the Loan, provided that OECDD has granted its prior written consent to such parity. The Parties

acknowledge that any lien granted by the Agency to the County securing the County's right to debt repayment out of Tax Increment Revenues for debt incurred by the County pursuant to the terms of the County IGA and all amendments thereto, including but not limited to all debt incurred by the County to make road improvements under the Plan and reimbursement for administrative expenses, shall be superior to any lien granted herein. The Parties acknowledge that the Agency's obligations to repay said County debt is an outstanding indebtedness of the Agency which is payable from Tax Increment Revenues.

The Port shall not attempt to recover from the Agency for failure to pay the Loan from any source other than Tax Increment Revenues, and the Port shall indemnify, defend and hold the Agency harmless from and against any and all claims made by OECDD or a Rail User for repayment of the Loan out of other funds. If Tax Increment Revenues are not available, as described herein, to pay the Loan in any fiscal year, the Port shall not attempt to recover from the Agency for failure to pay the Loan, and the Port shall be solely responsible for payment of the Loan during the applicable fiscal year. The Agency shall not be considered a borrower or named as a borrower in any debt instrument signed or otherwise agreed to by the Port. Neither the Oregon Department of Transportation nor any Rail User shall be a third party beneficiary to this Agreement. The Agency shall approve the terms of any debt instrument evidencing the Loan before it is executed by the Port, which approval shall not be unreasonably withheld. To the extent that Tax Increment Revenues are not available, as described herein, the Port shall indemnify, defend and hold the Agency harmless from and against any claim of liability for repayment of the Loan out of Tax Increment Revenues. To the extent that Tax Increment Revenues in any fiscal year are available in sufficient amounts to make at least scheduled debt payments on all Plan Debt (defined below), including the Loan, as described herein, the Agency, in its sole discretion may pre-pay any Plan debt, including the Loan, payable through Tax Increment Revenues.

Tax Increment Revenues are available in sufficient amounts to pre-pay the Loan in its entirety. Upon execution of this Amendment, the Agency will pre-pay the remaining principal amount of the Loan, subject to the Port's obligation to reimburse the Agency in the amount of the pre-payment."

2.3 Section 5.C.1 Tariffs, is amended to read as follows:

"5.C.1. Until the Loan is completely repaid, and the Port has reimbursed the Agency for the full amount of the Agency Prepayment of the Rail Loan Debt, the Port shall annually charge users of the Rail System at least the total amount shown in each Fiscal Year in the Reimbursement Payment Schedule, below, plus amounts necessary to pay, for administrative, operational and maintenance expenses, including repair, capital repair and replacement expenses related to the Rail System, in accordance with the Rail User Agreements (collectively, "Rail Tariff"); provided, however, that the Port shall not be obligated to charge Portland General Electric or its affiliates (collectively, "PGE") to the extent PGE is entitled to use the Rail System without charge under one or more agreements predating this Agreement (agreements predating this Agreement to which the Port or Cascade Grain is a party and to

which PGE is a party or which expressly grant rights to PGE are referred to herein as “PGE Agreements”). The Port shall not amend the PGE Agreements to expand PGE’s rights to use the Rail System without charge without the Agency’s prior written consent. The Port shall provide the Agency with a list of all PGE Agreements as of the date of this Agreement known to the Port and shall provide a list of any PGE Agreements as they later become known to the Port. Copies of PGE Agreements shall be provided to the Agency upon request. The Port shall annually reimburse the Agency at least the Total amount shown in the Reimbursement Payment Schedule, below. The Port’s obligation to reimburse the Agency shall continue until the last debt service payment would have been due for the Rail Loan (2033), or when the Port has reimbursed the Agency the total amount of the Agency’s pre-payment of the Rail Loan in the amount of \$1,593,713.62, whichever is sooner.

#### REIMBURSEMENT PAYMENT SCHEDULE

FYE	Port Rail Loan		
	Principal	Interest	Total
2024	\$137,741.84	\$92,276.02	\$230,017.86
2025	\$145,717.09	\$84,300.77	\$230,017.86
2026	\$154,154.11	\$75,863.75	\$230,017.86
2027	\$163,079.64	\$66,938.22	\$230,017.86
2028	\$172,521.95	\$57,495.91	\$230,017.86
2029	\$182,510.97	\$47,506.89	\$230,017.86
2030	\$193,078.35	\$36,939.51	\$230,017.86
2031	\$204,257.59	\$25,760.27	\$230,017.86
2032	\$216,084.10	\$13,933.76	\$230,017.86
2033	\$24,567.98	\$1,422.49	\$25,990.47
<b>Total</b>	<b>\$1,593,713.62</b>	<b>\$502,437.59</b>	<b>\$2,096,151.21”</b>

2.4 Section 5.C.7, is amended to read as follows,

“(7) The Parties acknowledge that, after the Loan has been prepaid in whole with Tax Increment Revenues, User Debt Service Payments shall be paid to the Agency up to the amount of the Loan prepayment as described in Section 5.C.1.”

3. Within 30 days of full execution of this Amendment, the Agency will pre-pay the entirety of the remaining Water System Loan as defined in the Water System Agreement. Within 60 days of pre-payment of the Water System Loan by the Agency, the Agency will notify the Port and the State in writing that the Water System Agreement is terminated pursuant to Sections 9.3 and 9.5 of the Water System Agreement.

4. The Agency will distribute amounts received from the Port as reimbursement for the Rail Loan pre-payment, to taxing districts impacted by the Urban Renewal Area proportionately based on property tax permanent rate levies. The Parties agree that payment to the Clatskanie School District may be made to the Clatskanie Foundation if an agreement between the Agency, School District and Foundation is reached.
5. The Rail System Agreement is attached hereto and is incorporated herein by this reference.
6. Except as otherwise expressly amended herein, the Rail System Agreement remains in full force and effect. In the event of any conflict between the terms, conditions and provisions of this Amendment 1 with the Rail System Agreement, the terms, conditions and provisions of this Amendment 1 shall prevail.
7. Counterparts. This Amendment 1 may be executed in any number of counterparts and by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original but such counterparts together shall constitute one and the same instrument.
8. All references to the "Port of St. Helens" shall be to the "Port of Columbia County."
9. This Amendment 1 to the Intergovernmental Agreement for the Port Westward Rail System is effective on the date last signed by the Parties and shall be retroactive to December 28, 2022.

COLUMBIA COUNTY DEVELOPMENT AGENCY

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

Casey Garrett, Chair

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

Henry Heimuller, Secretary/Treasurer

Date: \_\_\_\_\_

12/21/2022

PORT OF COLUMBIA COUNTY

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

Robert Keyser, President

Date: \_\_\_\_\_

## DISTRIBUTION AGREEMENT

This **Distribution Agreement** ("Agreement") is made and entered into on this 21 day of December, 2022 ("Effective Date"), by and between the Columbia County Development Agency, the Urban Renewal Agency of Columbia County, Oregon, a public body corporate and politic, duly created and functioning under the laws of the state of Oregon, ("the Agency"), Columbia County, a political subdivision of the State of Oregon, ("the County"), the Port of Columbia County, a municipal corporation of the State of Oregon ("the Port"), Columbia 4H and Extension Service District, Columbia 9-1-1 Communications District, Columbia Vector Control District, Rainier Cemetery District, Clatskanie Parks and Recreation District, Clatskanie Library District, Columbia Soil and Water Conservation District, the Clatskanie 6J School District and the Clatskanie Rural Fire Protection District (each a "District" and together "the Districts"), acting by and through their respective board or commission. The Agency, County, Port and the Districts may each be referred to herein as a "Party" and collectively as "the Parties."

### RECITALS

**WHEREAS**, the County and the Port entered into the Intergovernmental Agreement By And Between The Columbia County Development Agency And the Port of St. Helens For the Port Westward Rail System on November 27, 2007, (the "Rail System Agreement") in which the Port agreed to charge and collect Tariffs from Users of the Rail System for the purpose of repaying Debt incurred by the Port to construct the Rail System, and the Agency pledged Tax Increment Revenue assessed against property in the Port Westward Urban Renewal Plan Area as a secondary source of repayment in the event of a Port default; and

**WHEREAS**, the Agency and the Port entered into Amendment 1 to the Rail System Agreement effective on December 28, 2022 to address pre-payment of the Rail Loan in full to avoid accruing future interest; and

**WHEREAS**, pursuant to Amendment 1 to the Rail System Agreement, the Agency will pre-pay the Port's Rail System Loan and in turn, the Port will continue to collect Tariffs from users of the Rail System ("Reimbursement Payments") and pay those Tariffs to the Agency for distribution to overlapping taxing districts proportionately based on property tax permanent rate levies; and

**WHEREAS**, with the exception of the Agency, the Parties to this Distribution Agreement are overlapping taxing districts; and

**WHEREAS**, the Parties desire to set forth the terms of the distribution to the overlapping taxing districts; Districts;



**NOW, THEREFORE, the Parties agree as follows:**

1. Incorporation of Recitals. The Parties acknowledge and agree that the above-stated Recitals are true and correct and are incorporated into this Agreement as though fully set forth herein.
2. Term. This Agreement shall become effective as to each District on the date it is signed by the Agency, Port and that District. Failure of one or more Districts to sign this Agreement does not invalidate the Agreement as to any of the other signing Districts. The term of this agreement shall continue until all Reimbursement Payments are distributed to the Districts.
3. All capitalized terms not otherwise defined herein are as defined in the Rail System Agreement and Amendment 1 as the case may be. Both the Rail System Agreement and Amendment 1 are attached and incorporated by reference.
4. Pursuant to the terms of Amendment 1, Reimbursement Payments shall be paid to the Agency on an annual basis and the Agency will distribute such Reimbursement Payments to Districts proportionately based on property tax permanent rate levies ("Taxing District Payments"). The percentage attributable to each District is based on that District's tax rate in relation to the total of all of the Districts' tax rates in the Tax Code Area.
5. The Agency will distribute the Taxing District Payments according to the formula described in this Section 5. The Agency will act to determine and direct the distribution of the Taxing District Payments not later than March 31 of the year following a year in which a Reimbursement Payment is received ("Calculation Date").
  - 5.1 The Parties agree that the Taxing District Payments shall be distributed by the Agency to the Districts, and new taxing districts listed in ORS 198.010 or 198.180 in the Tax Code Area ("New Districts") and the Clatskanie Foundation ("Foundation") in such percentages of the total Reimbursement Payment received as is calculated according to Section 5.2 below.
  - 5.2 Distribution of the Taxing District Payment shall be calculated annually as follows:
    - 5.2.1 The distribution percentage shall be calculated using the lesser of each District's and New Districts' permanent operating rate as established by ORS 310.200 through ORS 310.246 or the actual rate

levied as certified on the current tax roll. Levies to pay bonded debt shall not be included in the calculation.

- 5.3 If a District is dissolved, or merges with another entity that is not a District or a New District under this Agreement, the share of the Taxing District Payment allocated to the District that has dissolved or merged shall be distributed to the remaining Districts and New Districts.
  - 5.4 The Clatskanie School District's allocation of the payment will be distributed to the Foundation. For the Foundation, the distribution percentage shall be calculated using the lesser of the permanent operating rate of Clatskanie 6J School District ("School District") as established by ORS 310.200 through ORS 310.246 or the actual rate levied by the School District as certified on the current tax roll.
  - 5.5 If the School District is dissolved or merges with another school district, the share of the Reimbursement Payment allocated to the Foundation shall be distributed to the remaining Districts and New Districts.
  - 5.6 The Agency, the Foundation and the School District shall separately agree to such terms as are reasonably necessary to guaranty that the Foundation's share of the Community Service Fee is used for educational purposes.
  - 5.7 If State law or rule is changed resulting in the Foundation's share being included in the School District's local funds in calculating the state school funding formula, the Agency shall discontinue the distribution to the Foundation and the share of the Reimbursement Payment allocated to the Foundation shall be distributed to the remaining Districts and New Districts.
6. District Offices. The Agency shall make a District's, New District's or the Foundation's Taxing District Payments to the office of that entity at such address as is supplied to the County Treasurer prior to the January 1<sup>st</sup> before the Initial Payment. A District, New District or the Foundation may change its office address by notifying the County Treasurer not later than the January 1<sup>st</sup> prior to the annual payment.
7. Miscellaneous Provisions.
    - 7.1 Governing Law; Venue. The laws of the State of Oregon shall govern this Agreement and venue is in the Circuit Court of the State of Oregon for the County of Columbia. The parties agree that, in the case of any disputes that arise under this Agreement, they shall first attempt to resolve such disputes through good-faith negotiations between authorized representatives for all parties. Subject to any action the party must take in order to preserve any rights to pursue

remedies, a party may not file court action against the other party to enforce or interpret this Agreement until ninety (90) days after the party has given notice, or has been given notice by the other party, of the existence of a dispute.

- 7.2 **Defined Terms.** Unless defined herein, and in the Rail Agreement and Amendment 1, thereto, the terms herein shall be given their normal and customary meaning, except that, terms relating to the payment of property taxes and fees in lieu of taxes shall be construed consistently with the tax laws and rules of the State of Oregon. No provision shall be construed against a party on the basis that the party drafted the provision.
- 7.3 **Enforcement.** The Agency and Districts shall have all remedies available at law or in equity to enforce this Agreement. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by that party of that, or any other provisions of this Agreement.
- 7.4 **Overpayment.** In the event of an overpayment of any amount due under this Agreement, a District, in accordance with Oregon law, shall either issue an overpayment refund check or return the incorrect payment and request that the Agency reissue payment in the correct amount.
- 7.5 **Amendment.** No waiver, modification, amendment or other change to this Agreement will be binding on a party, except as evidenced by a written addendum, signed by authorized agents for the parties.
- 7.6 **Notices.** All notices pursuant to this Agreement shall be in writing and (a) by facsimile or email, or (b) delivered personally, or (c) mailed, postage-prepaid. If the Notice is by email it shall not be binding upon the recipient unless there is confirmation of receipt of the email communication by reply of the recipient.
- 7.7 **Contract Representatives.** The persons signing on behalf of the Agency and District shall act as their respective party's representative for matters relating to this Agreement. A New District will notify the County Treasurer of its contract representative not later than the January 1<sup>st</sup> after the New District is formed.
- 7.8 **Counterparts.** This Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original but such counterparts together shall constitute one and the same instrument.
- 7.9 **Effective Date.** This agreement shall be effective on the date signed by each party hereto and shall be retroactive to December 28, 2022.

COLUMBIA COUNTY

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

Henry Heimuller, Chair

Date: \_\_\_\_\_

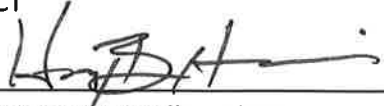
PORT OF COLUMBIA COUNTY

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

Robert Keyser, President

Date: \_\_\_\_\_

COLUMBIA 4H AND EXTENSION SERVICE  
DISTRICT

By:   
Henry Heimuller, Chair  
Date: 12/21/2022

COLUMBIA COUNTY SOIL AND WATER DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_, Chair  
Date: \_\_\_\_\_

COLUMBIA VECTOR CONTROL DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_, Chair  
Date: \_\_\_\_\_

RAINIER CEMETERY DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_, Chair  
Date: \_\_\_\_\_

CLATSKANIE RURAL FIRE PROTECTION DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_, Chair  
Date: \_\_\_\_\_

COLUMBIA 9-1-1 COMMUNICATIONS DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_, Administrator  
Date: \_\_\_\_\_


CLATSKANIE LIBRARY DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_, Chair  
Date: \_\_\_\_\_

CLATSKANIE PARKS AND RECREATION DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_, Chair  
Date: \_\_\_\_\_

COLUMBIA COUNTY DEVELOPMENT AGENCY

By:   
Casey Garrett, Chair  
Date: 12/21/2022

COLUMBIA 4H AND EXTENSION SERVICE DISTRICT

By: \_\_\_\_\_  
Henry Heimuller, Chair

Date: \_\_\_\_\_

COLUMBIA COUNTY SOIL AND WATER DISTRICT

By: \_\_\_\_\_  
Jason Busch, Chair

Date: \_\_\_\_\_

COLUMBIA VECTOR CONTROL DISTRICT

By: \_\_\_\_\_  
Dave Helton, Chair

Date: \_\_\_\_\_

COLUMBIA COUNTY DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Casey Garrett, Chair

Date: \_\_\_\_\_

RAINIER CEMETERY DISTRICT

By: \_\_\_\_\_  
Janice Carstensen, Chair

Date: \_\_\_\_\_

COLUMBIA 9-1-1 COMMUNICATIONS DISTRICT

By: \_\_\_\_\_  
Bruce Holsey, President

Date: \_\_\_\_\_

CLATSKANIE LIBRARY DISTRICT

By: \_\_\_\_\_  
Jim Gibson, Chair

Date: \_\_\_\_\_

CLATSKANIE PARKS AND RECREATION DISTRICT

By: \_\_\_\_\_  
Andrew Mustola, Chair

Date: \_\_\_\_\_

JAN 16 2 23 PM '08

Comm. Book 100 Page 667

COLUMBIA CO. CLERK  
BY G. Allen

**INTERGOVERNMENTAL AGREEMENT  
BY AND BETWEEN  
THE COLUMBIA COUNTY DEVELOPMENT AGENCY AND  
THE PORT OF ST. HELENS  
FOR THE PORT WESTWARD RAIL SYSTEM**

This Agreement is made and entered into, and is dated for reference purposes as of November 27, 2007, by and between the COLUMBIA COUNTY DEVELOPMENT AGENCY, the Urban Renewal Agency of Columbia County, Oregon, a public body corporate and politic, duly created and functioning under the laws of the State of Oregon, (the "Agency"), and the PORT OF ST. HELENS, a municipal corporation of the State of Oregon (the "Port"). The Agency and the Port are sometimes referred to collectively in this Agreement as the "Parties."

**RECITALS**

WHEREAS, pursuant to ORS 457.170(5), in planning and undertaking an urban renewal project, an urban renewal agency has the power to install, construct, or reconstruct streets, utilities and site improvements in accordance with an urban renewal plan; and

WHEREAS, pursuant to ORS 457.210(3) an urban renewal agency is authorized to delegate any of its powers or functions to any municipality or other state public body, with respect to the planning or undertaking of an urban renewal project in the area in which the municipality or other state public body is authorized to act; and

WHEREAS, the Port is a "state public body" within the meaning given in ORS 456.305, and has the authority to act at the Port Westward Industrial Park; and

WHEREAS, in accordance with and pursuant to ORS Chapter 457, the Agency has undertaken to carry out its urban renewal activities including, but not limited to, implementing its Port Westward Urban Renewal Plan (the "Plan"); and

WHEREAS, the Plan was originally adopted on May 23, 2001, and became effective on September 11, 2001; and

WHEREAS, the Report (as defined in the Plan) accompanying the Plan set forth the amount of debt allowed to be serviced by the Agency, and allocated such debt among several Plan Projects (as defined in the Plan); and

WHEREAS, the Port is in the process of planning rail improvements (the "Rail System") at the Port Westward Industrial Park; and

WHEREAS, the Rail System is comprised of the Port Lead/West Port Lead and the Cascade Spur as defined in the Rail User Agreements (as defined below); and

WHEREAS, the Rail System is depicted on Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, the cost of the Rail System is estimated as of September 4, 2007, to be Five Million Nine Hundred Ten Thousand Dollars (\$5,910,000) (the "Project Construction Cost"); and

WHEREAS, the Port has obtained a commitment for a grant in the amount of Two Million Dollars (\$2,000,000) through the State of Oregon, Department of Transportation's "Connect Oregon" grant program to fund construction of the Rail System (the "Grant"); and

WHEREAS, the Port has applied for a loan in the amount of Three Million Dollars (\$3,000,000) from the Special Public Works Fund through the State of Oregon acting by and through its Economic and Community Development Department ("OECD") to fund construction of the Rail System (the "Loan"); and

WHEREAS, the Port and Cascade Grain Products, LLC, an Oregon limited liability company ("Cascade Grain"), have entered into (a) that certain Port Lead/West Port Lead Construction, Operation and Maintenance Agreement dated August 29, 2007 (the "Lead Agreement") and (b) that certain Cascade Grain Spur Construction Agreement dated August 29, 2007 (the "Cascade Spur Agreement"); and

WHEREAS, the Lead Agreement and the Cascade Spur Agreement, as they may be amended, are sometimes referred to collectively in this Agreement as the "Rail User Agreements"; and

WHEREAS, the Rail User Agreements provide for Cascade Grain (and other entities that become Users under the Lead Agreement after August 29, 2007) to make periodic payments to the Port throughout the term of the Loan ("User Debt Service Payments") in amounts equal to the periodic amounts the Port is initially scheduled to make to OECD as debt service on the Loan, without regard to whether the Loan is prepaid in whole or in part; and

WHEREAS, the Port requested that the Agency amend the Plan to allow Tax Increment Revenues (as defined below) to be used to service the Loan in the event and to the extent of a shortfall in the User Debt Service Payments; and

WHEREAS, on October 18, 2006, the Agency adopted a minor amendment to the Plan, increasing the amount of Tax Increment Revenues allocated to service Rail System debt to Three Million Dollars (\$3,000,000); and

WHEREAS, the Agency and Columbia County (the "County") entered into an Intergovernmental Agreement on July 28, 2000 and a First Amendment to Intergovernmental Agreement dated September 8, 2004 (collectively, the "County IGA") wherein the County's right to be repaid for debt incurred under the Plan for administrative costs and all Road Improvement debt is superior to any other Agency debt, including the Loan; and

WHEREAS, the Parties intend that the Port will charge and collect User Debt Service Payments at least sufficient to make all scheduled Loan payments and that the Tax Increment Revenues will not be needed to make scheduled Loan payments absent extraordinary circumstances; and

WHEREAS, the Parties desire to evidence their agreement regarding their respective obligations with respect to use of Tax Increment Revenue to service the Loan as a secondary source of repayment to service the Loan in the event and to the extent of a shortfall in the User Debt Service Payments.

NOW, THEREFORE, pursuant to the provisions of ORS Chapter 457, pursuant to the Plan, and in consideration of the benefits that will accrue to the Agency, the Port, the community, and citizens from the Rail System and the covenants herein set forth, the Agency and the Port hereby agree as follows:

1. Term. This Agreement shall be effective on the Effective Date, and shall continue until the Loan, as defined herein, is completely repaid, except as otherwise specifically stated herein. "Effective Date" shall mean the date on which the last of the following conditions precedent is met:
  - A. The loan agreement for the Loan and related loan documents are fully executed;
  - B. Cascade Grain has not exercised its right under certain circumstances to terminate the Rail User Agreements on or before October 4, 2007, as provided in Section 3.2 of the Lead Agreement and Section 3.2 of the Cascade Spur Agreement; and
  - C. The Port has determined in its reasonable discretion that it has in hand sufficient documentation that funds, in amounts at least equal to the then current estimate of Project Construction Cost, are available to construct the Rail System and has given its contractor notice to proceed with construction.

Upon the occurrence of the Effective Date, the Parties shall so confirm by written acknowledgement (with a copy of such acknowledgement to OECDD). If the Effective Date has not occurred on or before January 1, 2008, then this Agreement and all of its obligations and duties of the parties will terminate and be of no further force and effect.

2. Rail System Project. The Port shall design and construct the Rail System, or cause the same to be designed and constructed, generally in accordance with Exhibit A (the "Rail System Construction Project").
3. Project Cost Funding. The Port shall use commercially reasonable efforts consistent with its status as an Oregon port and municipal corporation to cause the Loan and the Grant to be funded and to cause Cascade Grain to perform its construction funding obligations under Section 3.1 of the Lead Agreement and Section 3.1 of the Cascade Spur Agreement.



4. Loan Repayment. In order to assist the Port in undertaking to design and construct the Rail System, except as may be prohibited by any law, rule or regulation, the Agency agrees to pledge and does hereby pledge and grant a lien in the Tax Increment Revenues to service the Loan in the event and to the extent of a shortfall, as calculated below, in the User Debt Service Payments until the entire principal amount of the Loan and accrued interest thereon is repaid, subject to the following:
- A. Amount of Debt. The principal Loan amount to be serviced is limited to Three Million Dollars (\$3,000,000).
- B. Administration, Operations and Maintenance. Tax Increment Revenues shall not be used to pay for Project Expenses (defined below) after the Rail System is constructed.
- C. Limited to Pledge of Tax Increment Revenues. The Agency's obligation to service the Loan hereunder is to make the Loan payments to the extent of any shortfall in the User Debt Service Payments. As to any Loan payment, this shortfall in the User Debt Service Payments is calculated as follows: the amount of Loan payment then due minus the sum of (i) the User Debt Service Payments received by the Port after the due date of the previous Loan payment and on or prior to the due date of the Loan payment then due, (ii) the amount of any defaulting User's Impound Payment (as defined in the Rail User Agreements) held by the Port as of the due date of the Loan payment then due, and (iii) other amounts, if any, held by the Port as of the due date of the Loan payment then due that have been paid by Rail Users and that the Rail Users have expressly agreed in writing, in the Rail User Agreements or otherwise, may be applied by the Port to Loan payments. (As used in this Agreement, "Rail Users" means Users as that term is defined in the Rail User Agreements.) The Agency's obligation to service the Loan hereunder is further expressly limited to available Tax Increment Revenues in each fiscal year. Under no circumstances shall the Agency be held liable for payment of the Loan out of any other Agency funds. "Tax Increment Revenues" as used in this Agreement shall mean all ad valorem tax revenues from property located within the Port Westward Urban Renewal Area (the "Area") which are attributable to the increase in assessed value of property within the Area pursuant to Section 1c, Article IX of the Oregon Constitution and the Oregon Revised Statutes, Chapter 457, all taxes levied in connection with the Plan pursuant to Article XI, Section 11(15) of the Oregon Constitution, and all earnings thereon while the Tax Increment Revenues are held in the fund established under ORS 457.440(6)(b) to hold Tax Increment Revenues. Tax Increment Revenues shall be available to pay the Loan only if User Debt Service Payments are not received by the Port in sufficient amounts to make minimum Loan payments when due, and those Tax Increment Revenues are not required to be maintained by the Agency in a debt service fund, reserve fund or similar fund, or as part of a minimum balance or similar requirement, for any indebtedness of the Agency payable from Tax Increment Revenues which is either outstanding on

the date the Loan is incurred and secured by a lien senior to the lien granted herein, or which is on parity with the Loan, provided that OECDD has granted its prior written consent to such parity. The Parties acknowledge that any lien granted by the Agency to the County securing the County's right to debt repayment out of Tax Increment Revenues for debt incurred by the County pursuant to the terms of the County IGA and all amendments thereto, including but not limited to all debt incurred by the County to make road improvements under the Plan and reimbursement for administrative expenses, shall be superior to any lien granted herein. The Parties acknowledge that the Agency's obligation to repay said County debt is an outstanding indebtedness of the Agency which is payable from Tax Increment Revenues.

The Port shall not attempt to recover from the Agency for failure to pay the Loan from any source other than Tax Increment Revenues, and the Port shall indemnify, defend and hold the Agency harmless from and against any and all claims made by OECDD or a Rail User for repayment of the Loan out of other funds. If Tax Increment Revenues are not available, as described herein, to pay the Loan in any fiscal year, the Port shall not attempt to recover from the Agency for failure to pay the Loan, and the Port shall be solely responsible for payment of the Loan during the applicable fiscal year. The Agency shall not be considered a borrower or named as a borrower in any debt instrument signed or otherwise agreed to by the Port. Neither the Oregon Department of Transportation nor any Rail User shall be a third party beneficiary to this Agreement. The Agency shall approve the terms of any debt instrument evidencing the Loan before it is executed by the Port, which approval shall not be unreasonably withheld. To the extent that Tax Increment Revenues are not available, as described herein, the Port shall indemnify, defend and hold the Agency harmless from and against any claim of liability for repayment of the Loan out of Tax Increment Revenues. To the extent that Tax Increment Revenues in any fiscal year are available in sufficient amounts to make at least scheduled debt payments on all Plan Debt (defined below), including the Loan, as described herein, the Agency, in its sole discretion may pre-pay any Plan Debt, including the Loan, payable through Tax Increment Revenues.

D. Payments to OECDD. If any Loan payments are paid by the Agency under the terms of this Agreement, the Agency shall make Loan payments for the account of the Port directly to OECDD in a manner and method satisfactory to OECDD and the Agency. The Agency promptly shall provide the Port with documentation related to any such payments. The Port shall give the Agency as much advance warning that payments will be due to be paid by the Agency as possible.

E. Agency Covenants Regarding Tax Increment Revenues.

- (1) The Agency hereby agrees that it will not remove any real property from the Area if such removal will cause the anticipated Tax Increment Revenues to be inadequate to pay the scheduled annual debt service on the

Loan and any superior or parity obligations in any fiscal year while the Loan and any superior or parity obligations are anticipated to be outstanding, unless otherwise required by law.

- (2) The Agency agrees that it shall not incur any new debt or obligations payable from or secured by a lien on or pledge of the Tax Increment Revenues that are superior to or on parity with this Agreement without the prior written consent of OECDD, except to the extent that such new debt or obligation is payable according to the terms of the County IGA, as amended.

F. Agency's Obligation Conditioned on Loan Default. The Agency is obligated to service the Loan hereunder only if and to the extent the Port fails to make Loan payments as and when due under the Loan documents. Tax Increment Revenues shall only be used to pay the Loan to the extent that User Debt Service Payments are not available, as provided in Section 4.C. above.

G. Representations and Warranties. The Agency represents and warrants as follows:

- (1) The Agency has full legal right and authority and has obtained all necessary approvals to execute and deliver this Agreement and to carry out and consummate all transactions contemplated by this Agreement.
- (2) The proceedings of the Agency's governing members approving this Agreement and authorizing the execution, issuance and delivery of this Agreement on behalf of the Agency and authorizing the Agency's pledge of Tax Increment Revenues have been duly and lawfully adopted in accordance with the laws of Oregon, and such proceedings were duly approved and published, if necessary, in accordance with applicable Oregon law, at a meeting or meetings which were duly called and held in accordance with applicable Oregon law and at which quorums were present and acting throughout.
- (3) This Agreement has been duly authorized, executed and delivered by an authorized officer of the Agency, and, assuming that the Port has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered, this Agreement, this Agreement constitutes the legal, valid and binding obligation of the Agency in accordance with its terms.

5. Port Obligations.

A. Project Capability. The Port represents that it is fully capable of designing and constructing the Rail System, or capable of contracting for design and construction of the Rail System, and that there is a reasonable expectation that the Rail System can be completed by the Port with the resources identified in this

Agreement. The Rail System will be designed to operate and will be constructed in accordance with prudent utility practice for projects of a similar nature and intended use, and in a good, safe and workmanlike condition. The Port shall provide to the Agency a management plan for the construction of the Rail System (the "Construction Management Plan"). The Construction Management Plan shall include the name and contact information of the Port's Project Manager, the names of all staff working on the Rail System Construction Project, as well as contractors, and consultants, and the schedule for the Rail System Construction Project, which at such time as it has been reasonably approved by the Agency shall be initialed by the Parties and attached hereto as Exhibit C. The Port shall notify the Agency at any time if the Project Manager changes or if the Rail System Construction Project schedule is materially altered.

B. Project Completion. The Port shall proceed with due diligence to complete the Rail System Construction Project, in a safe and workmanlike manner. Construction shall proceed as expeditiously as reasonably possible and shall generally follow the schedule set forth in Exhibit C.

C. Tariffs.

(1) Until the Loan is completely repaid, the Port shall charge users of the Rail System sufficient amounts (collectively, "Rail Tariff") to make all periodic Loan payments when due and to pay for administrative, operational and maintenance expenses, including repair, capital repair and replacement expenses related to the Rail System, in accordance with the Rail User Agreements; provided, however, that the Port shall not be obligated to charge Portland General Electric or its affiliates (collectively, "PGE") to the extent PGE is entitled to use the Rail System without charge under one or more agreements predating this Agreement (agreements predating this Agreement to which the Port or Cascade Grain is a party and to which PGE is a party or which expressly grant rights to PGE are referred to herein as "PGE Agreements"). The Port shall not amend the PGE Agreements to expand PGE's rights to use the Rail System without charge without the Agency's prior written consent. The Port shall provide the Agency with a list of all PGE Agreements as of the date of this Agreement known to the Port, and shall provide a list of any PGE Agreements as they later become known to the Port. Copies of PGE Agreements shall be provided to the Agency upon request.

(2) For purposes of this Agreement, Rail Tariff shall include User Debt Service Payments and all royalties, operation and maintenance fees or charges, including any interest, or penalty thereon and any other fee or charge of whatsoever nature paid or payable to the Port according to the Rail User Agreements (except the Impound Payments made to and held by the Port pursuant to Section 7.2 of the Lead Agreement and Section 7.2 of the Cascade Spur Agreement), as such Rail User Agreements may be

amended to include additional parties or otherwise; or any such fee or charge including any interest or penalty thereon of whatsoever nature paid or payable to the Port, or for the benefit of the Port according to any other agreement arising from the use of the Rail System.

- (3) Except as may be otherwise provided in an agreement described in Section 5.C(7) below, User Debt Service Payments shall be used to make periodic Loan service payments according to the Loan documents. Rail Tariff collected in excess of User Debt Service Payments shall be used first for operation, maintenance and capital expenses for the Rail System in accordance with the Rail User Agreements and reasonable administrative expenses ("Project Expenses"). Rail Tariff, if any, in excess of User Debt Service Payments and amounts required for Project Expenses shall be applied to or reserved for payment of the Loan. In no event shall the Port use Rail Tariff to pay for Port operations or expenses other than Loan debt service and Project Expenses, with the exception of reasonable administrative expenses. The Port shall apply any User Debt Service Payments to payment of the Loan within 30 days after year-end accounting is due, or as may otherwise be required by the terms of the Loan. As used in this Agreement, "administrative," "operational," "maintenance," "repair," "capital repair," and "replacement" shall have their common meanings.
- (4) To the extent Rail Tariff is collected in excess of that necessary to make periodic Loan service payments, and to pay current year operation and maintenance expenses, the Port may credit to and retain a reasonable amount of the yearly Rail Tariff in a fund to pay for capital repairs and replacement of worn or damaged Rail System parts (the "Capital Replacement Fund"), as set forth in the Rail User Agreements. To the extent permitted by law, moneys credited to the Capital Replacement Fund may be co-mingled with the Project Fund (as defined below) or other Port moneys for the purpose of investing and reinvesting such moneys; provided, however, that investment earnings derived from moneys in the Capital Replacement Fund shall be accounted for separately from other Port moneys. All investment earnings derived from moneys in the Capital Replacement Fund shall be deposited in the Capital Replacement Fund and invested, reinvested and disbursed as part of the Capital Replacement Fund.
- (5) Prior to October 1 of each year, the Port shall prepare and submit to the Oversight Committee for review and approval the Capital Improvement Plan, Capital Budget, Operating Plan and Operating Plan in accordance with the Lead Agreement, and shall provide to the Agency a copy of each such Plan as approved by the Oversight Committee and as revised. In addition, the Port annually shall provide the Agency with documentation

showing the method for determining Rail Tariff charges, including annual usage of the Rail System.

- (6) The Port shall use all reasonable means consistent with its status as an Oregon port and municipal corporation to collect Rail Tariff from Rail Users as the same becomes due, including without limitation the following: (i) The Port shall give a defaulting Rail User notice of intent to withhold service pursuant to Section 7.8 of the Lead Agreement within ten (10) business days after the first date on which the Port may give such notice; (ii) in the event of dispute between the Port and a Rail User as to the payment of Rail Tariff, the Port shall give notice of dispute resolution pursuant to Exhibit C of the Lead Agreement within thirty (30) days after the Port learns that the payment is disputed by the Rail User; and (iii) the Port shall commence legal action to collect Rail Tariff not disputed by a defaulting Rail User within thirty (30) days after the expiration of any grace period for payment provided by the Rail User Agreement, including any period allowed for cure by a User Mortgagee (as defined in the Rail User Agreements). The Port shall not give Rail Tariff credits or other discounts to Rail Users unless and until the Loan is entirely repaid; provided, however, that the Port is not obligated to charge Rail Tariff to PGE to the extent PGE is entitled to use the Rail System without charge under the PGE Agreements. Effective at the time, if any, the Agency rightfully notifies the Port in writing that the Port is in default of its obligations under the first sentence of this Section 5.C(6), the Port assigns to the Agency the Port's right to collect Rail Tariff from Rail Users as the same becomes due, it being understood and agreed that the Port shall have the right to exercise such collection rights at all times prior to receipt of a rightful notice of default in performance of the Port's obligations under this sentence, and thereafter the Agency shall be entitled to collect Rail Tariff to the exclusion of the Port, until such time as the Rail User payment default that led to the assignment has been cured, at which time the right to collect Rail Tariff shall revert to the Port unless the Agency has elected to terminate this Agreement pursuant to Section 6.D(5), in which case the following sentence shall govern. Effective at such time, if any, the Agency rightfully gives written notice of termination of this Agreement pursuant to Section 6.D. below, the Port assigns to the Agency its right to collect Rail Tariff from Rail Users as the same becomes due, so long as and to the extent that the Port fails to repay the Agency under Section 6.F.
- (7) The Parties acknowledge that the Port and the County after the date of this Agreement may enter into an agreement providing that, after the Loan has been prepaid in whole or in part with Tax Increment Revenues at the election of the Agency, User Debt Service Payments in excess of Loan debt service payments shall be divided between the Port and the County.

- D. Project Fund. The Port shall establish a fund (the "Project Fund"), separate and distinct from its general fund. Prior to completion of construction of the Rail System, the Port shall credit to the Project Fund all funds received by the Port for construction of the Rail System, including Grant proceeds and Loan proceeds, and shall account for and apply solely from the Project Fund all amounts expended by the Port to pay for all Project Construction Costs necessary or appropriate to complete the Rail System. Following completion of the Rail System, the Port shall credit to the Project Fund and shall account for all funds received as Rail Tariff or other income resulting from the Rail System. Notwithstanding any other provision of this Agreement, the Port shall not be obligated to credit Users' Impound Payments to the Project Fund. Amounts credited to the Project Fund following completion of the Rail System shall be expended solely for Loan payments and Project Expenses. The Port shall keep records of amounts credited to and expenditures from the Project Fund in accordance with accounting principles as established by the Government Accounting Standards Board applicable to government entities as in effect from time to time and shall be audited annually by an independent accountant. Audits shall be forwarded to the Agency upon completion. The Port shall manage the Project Fund consistent with all applicable State and Federal laws and in the manner it determines best meets the needs of the Rail System.
- E. Inspections. Upon twenty-four (24) hours prior written notice given by the Agency to the Port, and upon receipt of consent from PGE if required by reason of the PGE Agreements, the Port shall permit the Agency and any party designated by the Agency to examine, visit and inspect, at any and all reasonable times, the Rail System, and to inspect and make copies of any accounts, books and records pertaining to the Rail System, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the Agency may reasonably require in connection therewith; provided, however, that any report or information not maintained or compiled by the Port in the ordinary course of business shall be provided at the Agency's expense. In the event of an emergency, as determined in the Agency's reasonable discretion, the Agency may examine, visit or inspect the Rail System without first providing notice to the Port; provided, however, that the Agency shall first obtain the consent of PGE if such consent is required by reason of the PGE Agreements.
- F. Insurance. The Port shall purchase and maintain or cause to be purchased and maintained such general comprehensive insurance policies with responsible insurers for full replacement coverage amounts in accordance with standard utility practices for projects of similar size, nature and intended uses providing against risk of direct physical loss, damage or destruction of the Rail System, both prior to and after completion, including liability coverage. In the event of damage or destruction of the Rail System or portions thereof, all insurance proceeds shall be first be applied towards repair, including any necessary demolition, and reconstruction of the Rail System. If it is not practicable to repair and/or

reconstruct the Rail System or portions thereof, any such insurance proceeds shall be applied towards the Loan. After the Loan has been paid in full, any additional insurance proceeds (minus funds used to cover necessary demolition costs and expenses) shall be used to repay the Agency for principal and interest payments, if any, made under this Agreement to the extent that the Agency has other Plan Debt outstanding, and unless otherwise agreed to in writing by the Agency. For purposes of this Agreement, the Agency's Plan Debt shall be limited to the maximum debt allowed to be undertaken pursuant to the Plan, as amended on October 18, 2006, by Resolution No. 02-2006 (the "Plan Debt"). The Port's obligation to use insurance proceeds to repay the Loan and the Agency, as described herein, shall survive termination of this Agreement until all Plan Debt has been completely repaid.

- G. Project Fund Investment. Moneys (including investment earnings) credited to the Project Fund shall be disbursed from time to time by the Port for the purpose of paying, when due, the Loan and Project Expenses of the Rail System. Pending disbursements, moneys credited to the Project Fund shall be invested and reinvested consistent with State law and Port practice, subject to the terms and provisions of this Agreement. To the extent permitted by law, moneys credited to the Project Fund may be co-mingled with other Port moneys for the purpose of investing and reinvesting such moneys; provided, however, that investment earnings derived from moneys credited to the Project Fund shall be accounted for separately from other Port moneys. All investment earnings derived from moneys credited to the Project Fund shall be credited to the Project Fund and invested, reinvested and disbursed on a yearly basis to pay for Project Expenses and to repay the Loan.

- H. Representations and Warranties. The Port represents and warrants as follows:

- (1) The Port has full legal right and authority and all necessary licenses and permits required as of the date hereof to own and operate the Rail System, other than licenses and permits relating to the Rail System which the Port expects to obtain in the ordinary course of business or which the Port cannot obtain until construction of the Rail System is complete, and to carry on its activities relating thereto. The Port has all necessary approvals to execute and deliver this Agreement, to undertake and complete the Rail System, and to carry out and consummate all transactions contemplated by this Agreement.
- (2) The Port may undertake to construct the Rail System pursuant to Oregon law.
- (3) The proceedings of the Port's governing members approving this Agreement and authorizing the execution, issuance and delivery of this Agreement on behalf of the Port and authorizing the Port to undertake and complete the Project have been duly and lawfully adopted in accordance



with the laws of Oregon, and such proceedings were duly approved and published, if necessary, in accordance with applicable Oregon law, at a meeting or meetings which were duly called and held in accordance with applicable Oregon law and at which quorums were present and acting throughout.

- (4) This Agreement has been duly authorized, executed and delivered by an authorized officer of the Port, and, assuming that the Agency has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered this Agreement, this Agreement constitutes the legal, valid and binding obligation of the Port in accordance with its terms.
- (5) The Port shall undertake the transactions contemplated by this Agreement in accordance with applicable law governing the bidding and construction of public projects.

I. Plans and Specifications. The Port covenants and agrees to promptly provide, upon the Agency's request, copies of all permits, plans and specifications relating to the Rail System Construction Project. The Port shall obtain as-built drawings for all facilities of the Rail System and obtain certification of completion per as-built drawings from the project engineer. The Port further covenants and agrees to:

- (1) exercise commercially reasonable efforts, consistent with its status as an Oregon port and municipal corporation, in accordance with prudent practice to complete the Rail System Construction Project within budget; and
- (2) proceed expeditiously and complete the Rail System Construction Project.

J. Accounting. The Port shall provide an accounting of the Loan funds used to complete the Rail System within 180 days of completion of the Rail System. The Port shall make all books, documents, bills, receipts, papers and any other Rail System Construction Project documentation available to the Agency for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after completion of the Rail System. The Port shall be responsible for showing to the Agency's reasonable satisfaction that the Loan funds were used to pay for Allowable Project Costs. For purposes of this Agreement, "Allowable Project Costs" shall mean costs for the Rail System Construction Project funded by the Loan as described in Exhibit B, attached hereto and incorporated herein by this reference, except to the extent such costs are not shown to the Agency's satisfaction to be properly related to the Rail System Construction Project and payable out of Tax Increment Revenues as a Plan Project.

- K. Port Solely Responsible. As between the Agency and the Port, the Port shall be solely responsible for all phases of work on the Rail System Construction Project, as well as all costs, expenses, claims, and liabilities related to the Rail System Construction Project, except as otherwise provided in this Agreement with respect to the Loan.
- L. Loan Terms. The Port shall forward to the Agency a copy of all Loan applications and executed Loan documents establishing the Loan which shall not conflict with the terms of this Agreement. The Port shall comply with the terms of any and all Loan documents establishing the Loan and shall forward any and all reports due under the terms of such Loan documents to the Agency at the same time that the reports are filed with OECDD.
- M. Rail User Agreement Terms. The Port shall attempt in good faith to negotiate such amendments to the Rail User Agreements as the Agency reasonably may request by notice to the Port given within thirty (30) days after the Effective Date. The requested amendments may include a provision naming the Agency as an intended third party beneficiary of the Rail Users' obligations. The Port shall attempt in good faith to cause the Rail Users to agree that the Agency may participate in the negotiation of the requested amendments.
- N. O & M Agreement Terms. The Port shall enter into a contract with a contractor reasonably acceptable to the Agency providing for the contractor to operate and maintain the Rail System (the "O&M Agreement"). The terms and conditions of the O&M Agreement shall be reasonably acceptable to the Agency. At the Agency's request, the Port shall attempt in good faith to cause the contractor to agree that the Agency may participate in the negotiation of the O&M Agreement.
- O. Disposition of Rail System. The Port shall not sell, lease, exchange, transfer or otherwise dispose of all or any substantial portion of the Rail System, except upon 30 days prior written notice to the Agency and upon the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed. The Port shall apply any funds received from the sale, lease, exchange, transfer or other disposal of the Rail System to the payment or prepayment of the Loan. If the Loan has then been repaid in full, or if sale funds are received in excess of the amount used to pay the Loan in full, any such excess sale funds shall be used to repay the Agency for principal and interest payments, if any, made by the Agency under this Agreement to the extent that the Agency has other Plan Debt outstanding, unless otherwise agreed to in writing by the Agency. The Port shall not accept less than fair market value for the sale, lease, exchange, transfer or other disposal of the Rail System. Such valuation shall be established by a minimum of two independent appraisals. Regardless of the valuation established, in no case shall the Port sell, lease, exchange, transfer or otherwise dispose of the Rail System for an amount less than the remaining unpaid balance of the Loan, without the prior written approval of the Agency, which approval shall not be unreasonably withheld, conditioned or delayed. The Port's obligation to use sale

proceeds to repay the Loan and the Agency, as described herein, shall survive termination of this Agreement until all Plan debt has been completely repaid.

The Port shall not assign or otherwise transfer its duties and obligations to operate, maintain or administer the Rail System without prior written approval of the Agency, which approval shall not be unreasonably withheld, conditioned or delayed. Upon assignment or other transfer of the Port's duties and obligations to operate, maintain or administer the Rail System, the Port shall cause the assignee or transferee to assume the Port's obligations under this Agreement.

- P. Operation and Maintenance of Systems. The Port covenants and agrees that it shall, in accordance with prudent utility practice, operate the Rail System and any business in connection therewith in an efficient manner; maintain the Rail System in good repair, working order and operating condition; and make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to its System so that at all times the business carried on in connection therewith shall be properly and advantageously conducted, and not provide free service to any Rail User except in an emergency, and except as may be agreed in the PGE Agreements. The Rail System shall be operated and maintained in accordance with prudent utility practices for projects of a similar size, nature and intended purpose, consistent with sound engineering, all operating permits, and any applicable laws. The Agency shall have a voting position on any Oversight Committee, and the Agency's representative shall report back to the Agency as to whether the Rail System is being properly maintained. The Port's obligation under this Section 5.P. shall survive termination of this Agreement for a period of 25 years or until there is no other Plan Debt outstanding, whichever is greater.

6. General Provisions.

- A. Tort Claims. To the extent permitted by Article XI, Section 7, and Section 10 of the Oregon Constitution and by the Oregon Tort Claims Act, each Party shall indemnify, defend and hold harmless the other Party against liability for damage to life or property arising from the indemnifying Party's own activities under this Agreement, provided that a Party will not be required to indemnify and hold harmless the other Party for any such liability arising out of the wrongful acts of employees or agents of that other Party.
- B. Defense of Claims. Notwithstanding the foregoing defense obligations set forth herein, neither Party nor any attorney engaged by either Party shall defend any claim in the name of the other Party or any agency/department/division of such other Party, nor purport to act as legal representative of the other Party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other Party, which consent may be withheld, conditioned or delayed in such legal counsel's sole discretion. Each Party may, at anytime, at its election assume its own defense and settlement in the event that it reasonably

determines that the other Party is prohibited from defending it, or that other Party is not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the Party to do so. Each Party reserves all rights to pursue any claims it may have against the other if it elects to assume its own defense.

- C. Termination; Mutual Consent. This Agreement may be terminated by mutual written consent of both Parties. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- D. Termination; Unilateral. The Agency may terminate this Agreement effective upon delivery of written notice to the Port or at such later date as may be established by the Agency, under any of the following conditions:
  - (1) If the Port fails to comply with any term of this Agreement and does not cure such breach within one hundred twenty (120) days or such longer period as the Agency may authorize after receipt of notice from the Agency; provided, however, that if such breach is of a nature that cannot reasonably be cured within said one hundred twenty (120) days, or any longer period authorized by the Agency, then the cure period shall be extended for such longer time as may be reasonably necessary so long as the Port commences to cure the failure within said one hundred twenty (120) day period, in good faith and with due diligence, and thereafter diligently and continuously prosecutes the same to completion.
  - (2) If the Port fails to commence construction of the Rail System within one year from the Effective Date, unless such delay results from an Allowable Delay, as defined below.
  - (3) If federal or state laws, regulations or guidelines are amended or interpreted by a court of competent jurisdiction over the matter in such a way that either the construction of the Rail System as contemplated by this Agreement or an alternative form of rail system fulfilling substantially the same functions will be prohibited or that the Agency is prohibited from paying for such work from Tax Increment Revenues.
  - (4) If following the completion of construction of the Rail System the Port abandons the Rail System and no person or entity thereafter commences to operate and maintain the Rail System pursuant to an agreement satisfactory to the Agency. For purposes of this Agreement, "abandon" shall mean failure to operate the Rail System after completion for a period greater than one hundred and eighty (180) calendar days unless such failure to operate is (a) necessary for the proper maintenance of the Rail System, including capital repair or replacement to the Rail System, (b) scheduled in conjunction with the maintenance of Rail User projects, or (c) caused by reason of a strike, lockout, labor dispute, Act of God,

absolute inability to obtain labor, materials, or reasonable substitutes therefor, enemy or hostile government action, acts of terrorism, civil commotion and other actions constituting force majeure (each an "Allowable Delay"). However, the Port shall not be deemed to have abandoned the Rail System for any period prior to at least one Rail User requesting the provision of services from the Rail System. Regardless of whether or not such occurrence constitutes an Allowable Delay pursuant to clause (c), above, in the event of earthquake, fire, or other casualty, or other event in which the Rail System is damaged or destroyed, the Port shall not be deemed to have abandoned the Rail System unless the Port fails to take reasonable steps to commence repair or replacement of the Rail System within one hundred twenty (120) days of said damage or destruction.

- (5) The Port fails, for a period of ten (10) business days after written notice from the Agency, to take action to collect Rail Tariff as required by Section 5.C(6) above.
- E. Termination; OECDD Consent. Termination by mutual consent pursuant to Section 6.C. above, or unilaterally pursuant to Section 6.D. above, shall be effective only upon the written consent of OECDD.
- F. Repayment. If the Agency gives written notice of termination of this Agreement, pursuant to Section 6.D., above, without regard to whether OECDD gives its written consent to the termination, the Agency shall assume the obligation to make any future Loan Payments (defined below) to OECDD as they become due in accordance with the terms of this Agreement, and the Port shall reimburse the Agency for any and all Loan Payments, whether scheduled or prepaid, that the Agency has made or is required by this Agreement to make in the future on the Loan, less Rail Tariff amounts collected by the Agency, as follows:
- (1) For purposes of this Section 6.F., "Loan Payment(s)" means any principal, interest or penalty paid by the Agency to OECDD to service the Loan.
  - (2) For Loan Payments made prior to the date of the notice of termination, other than Loan Payments made as prepayments, said reimbursement shall be due and owing on the date designated by the Agency as the termination date. For Loan Payments made as prepayments prior to the date of the notice of termination, reimbursement shall be made in equal annual installments over the remaining Loan term as initially scheduled or, if the termination occurs ten or fewer years before the end of the initially scheduled Loan term, in ten equal annual installments. For scheduled Loan Payments made after the date designated by the Agency as the termination date, said reimbursement shall be due and owing within five (5) business days after the date that each scheduled Loan Payment is mailed to OECDD by the Agency.

- (3) The Port's obligation to reimburse the Agency under this Section 6.F. shall continue until such time as all of the Agency's Plan Debt is either paid in its entirety, or is forgiven.

- G. Disclaimer of Warranties; Limitation of Liability. The Port acknowledges and agrees that the Agency makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for a particular purpose or fitness for any use of the Rail System or any portions thereof or any other warranty or representation with respect thereto. In no event shall the Agency or its officers, agents, or employees be liable or responsible for any direct, indirect, incidental, special or consequential damages in connection with or arising out of this Agreement, or the Rail System or any item, product or service provided for in this Agreement. The Port shall indemnify, defend and hold the Agency harmless from and against any such claims. Notwithstanding the foregoing, the Port shall have no obligation to indemnify, defend or hold harmless the Agency for any claim arising from any negligent act or omission of the Agency.
- H. No Third Party Beneficiaries; Non-Assignment. Except for OECDD, the Agency and the Port are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives or provides, is intended to give or provide, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons, except that OECDD is expressly named as a third party beneficiary of the Agency's obligations under this Agreement and shall be entitled to enforce the pledge of and lien granted hereunder in the Tax Increment Revenues to secure repayment of the Loan. The Port shall not assign any rights or liabilities accruing under this Agreement to any other party without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed, except that the Agency acknowledges and agrees to the assignment to OECDD of, and the Port does hereby assign to OECDD, the pledge of the Tax Increment Revenues and all of the Port's right, title and interest to receive Tax Increment Revenues hereunder. Further, the Parties acknowledge and agree that notwithstanding any other provision of this Agreement (including but not limited to Section 5.C(6)), no action, inaction, omission or default on the part of either Party shall adversely affect the rights of, or provide a defense to any action by, OECDD, whether as a third party beneficiary or as assignee of the rights of the Port, to receive Tax Increment Revenues to service the Loan as provided herein.
- I. No Remedy Exclusive; Waiver; Time of the Essence. No remedy herein conferred upon or reserved to a Party is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any default shall impair any such right, remedy or power or shall be construed to be a waiver

thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. Time is of the essence with respect to all duties and obligations of the Parties hereunder.

- J. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Port or the Agency, as the case may be, at the following address, or such other address as may be designated in a notice given by the Port or the Agency, as the case may be, in accordance with this Section 6.J.:

FOR AGENCY

Janet Wright  
230 Strand Street  
St. Helens, Oregon 97051  
503-397-1035

FOR PORT

Executive Director  
Port of St. Helens  
100 E. Street  
Columbia City, OR 97018

- K. Severability. In the event any provision of this Agreement shall be held to be illegal, invalid, or otherwise unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any provision thereof.
- L. Amendments, Supplements and Modifications. This Agreement may not be amended, supplemented or modified without the prior written consent of the Agency, the Port and OECDD. This Agreement may not be amended, supplemented or modified in a manner that is not in compliance with ORS Chapter 457. The Port will not amend, supplement or modify the Rail User Agreements without the prior written consent of OECDD if the amendment, supplement or modification would materially and adversely affect OECDD's rights under this Agreement. The Port will not amend, supplement or modify the Rail User Agreements if the amendment, supplement or modification would materially and adversely affect the Agency's rights under this Agreement.
- M. Dispute Resolution. The Parties shall endeavor in good faith to resolve disputes consistent with the terms and conditions of this Agreement by entering into mediation prior to commencement of litigation when appropriate.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

**PORT OF ST. HELENS**

By: [Signature]  
Title: PRESIDENT  
Signature Date: 10/10/07

**COLUMBIA COUNTY  
DEVELOPMENT AGENCY**

By: [Signature]  
Anthony Hyde, Chair  
Signature Date: 11/27/07

Approved as to form:

By: [Signature]  
Office of County Counsel  
Signature Date: 11/21/07

By: [Signature]  
Rita Bernhard, Secretary/Treasurer  
Signature Date: 11/27/07

**EXHIBIT A: Depiction of Rail System**

**EXHIBIT B: Allowable Project Costs**

**EXHIBIT C: Rail System Construction Project Schedule**



**EXHIBIT A****DEPICTION OF RAIL SYSTEM**

Please refer to the attached three-page color depiction of the "Port of St. Helens – Port Westward, Port Westward Industrial Lead Rail + Related Spurs dated July 27, 2007 prepared by Thomas W. Wiser, P.E. of Wiser Rail Engineering. The industrial lead colored "green" is the Port Lead/West Port Lead, and the spur colored "orange" is the Cascade Grain Spur.

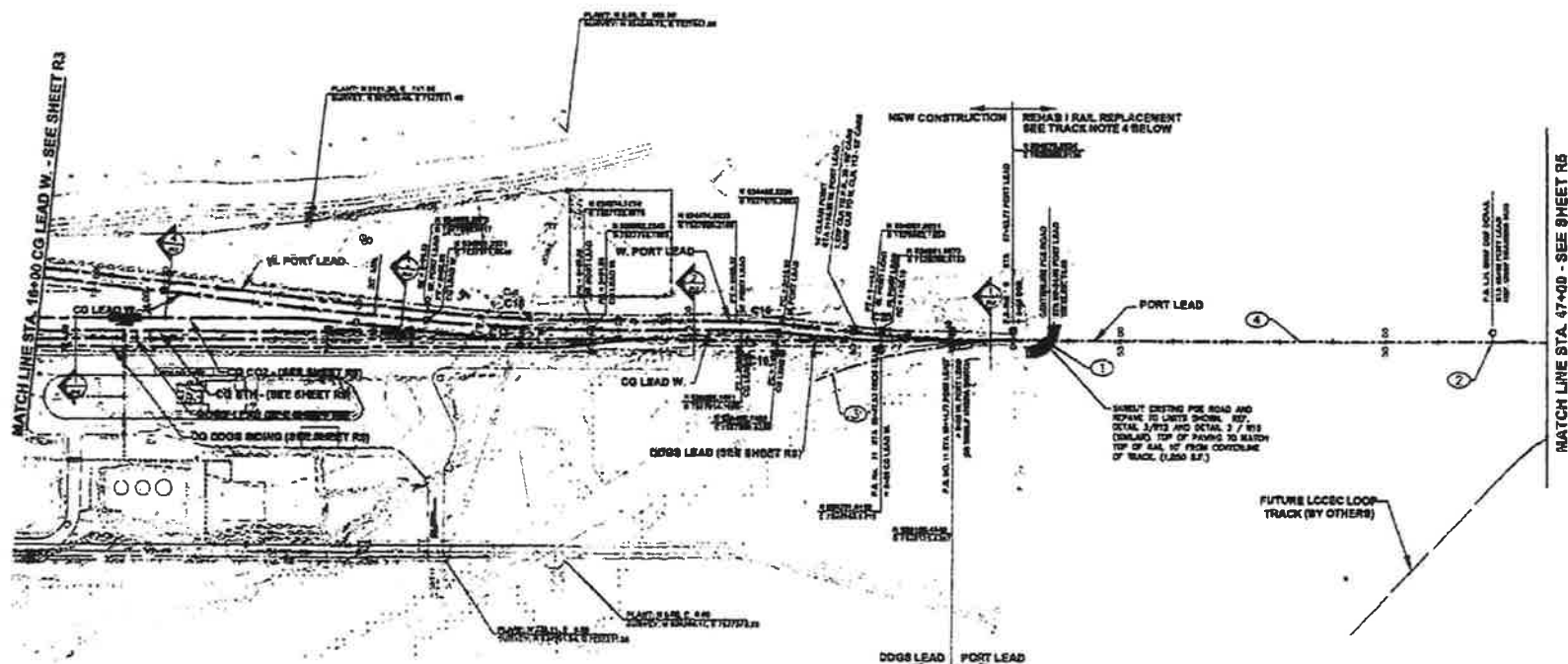


TRACK NO. 112

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$$1^{\circ} \rightarrow (112^{\circ})_2 \rightarrow$$





### 1 TRACK ALIGNMENT PLAN

1° = 100-2

THE TRACK DESIGNATION FOR THE PORT  
LEAD CHANGES AT THE NO. 11 TURNOUT  
FROM PORT LEAD TO THE SOUTH TO  
ODDS LEAD TO THE NORTH.

END:  
OF PREPARED STATE CONTRIBUTION

'ADE LOWE  
AC P

**BACK NOTES:**

REF. DETAIL 3/112. MOON ENLIGHTENMENT AS

[illegible]

GENERAL NOTES:

1. FIELD VERIFY LOCATION AND QUANTITY OF ALL UTILITIES PRIOR TO EXCAVATION.  
FIELD VERIFY ALL DIMENSIONS PRIOR TO CONSTRUCTION.
2. POSITION CURBOUT SETBACK STAKES AS SHOWN ON PLAN.
3. THE STATIONING FOR CURVES IS BASED UPON THE ARC LENGTH OF THE

ELEVATION 107-0 CORRESPONDS TO SITE EL. 15-4'

Thomas W. Wilson, P.E.  
President, Wilson Engine

PORT OF ST. HELENS - PORT WESTWARD  
PORT WESTWARD INDUSTRIAL LEAD PAIL + RELATED GEARING

TRACK ALIGNMENT PLAN  
GRAIN LEADER E AND W - BEECH

PORT OF ST. HELENS

ST. HELENS, OREGON

**EXHIBIT B****ALLOWABLE PROJECT COSTS**

The final Allowable Project Costs will be determined by the Project Budget to be prepared by H&H Engineering Construction as a part of its contractual obligation to build the Port Westward Rail System. This Project Budget will be established as a part of the final contract negotiations. For purposes of this Exhibit B, the attached Spreadsheet entitled, "Rail Budget", dated September 7, 2007, is the best approximation of the Allowable Project Costs currently in the possession of the Port of St. Helens. The final, contractual Project Budget will be attached to an amended Exhibit B when the Project Budget is available from the Contractor.

It should be noted that it is the intent of the Port of St. Helens to utilize the \$3 million SPWF Loan for "hard construction costs" pursuant to the H&H Engineering Construction portion of the estimated total Allowable Project Costs of \$5,910,000.

**EXHIBIT A ALLOWABLE PROJECT COSTS**

**PORT OF ST. HELENS - PORT WESTWARD RAIL SYSTEM  
Preliminary Rail System Project Budget**

#1	Description	OECD Funds	Non-OECD Funds	Total
#2	H&H Engineering & Construction:	\$3,000,000.00	\$326,578.00	\$3,326,578.00
#3	Pre-purchase of Rail:		\$1,942,338.00	\$1,942,338.00
#4	Contingency:		\$337,587.00	\$337,587.00
#5	Engineering, Final Design & Project Management:		\$303,497.00	\$303,497.00
#6				
#7				
#8				
#9		\$3,000,000.00	\$2,910,000.00	\$5,910,000.00

**EXHIBIT C****RAIL SYSTEM CONSTRUCTION PROJECT SCHEDULE**

The final Rail System Construction Project Schedule will be completed by H&H Engineering Construction as a part of its contractual obligation to build the Port Westward Rail System. This Project Schedule will be established as a part of the final contract negotiations. For purposes of this Exhibit C, the key completion dates spelled out in the bid documents are the best approximation of the Project Schedule currently in the possession of the Port of St. Helens. The final, contractual Project Schedule will be attached to an amended Exhibit C when the Project Schedule is available from the Contractor.

Completion of the Port Lead/West Port Lead: February 1, 2008

Completion of the Cascade Grain Spur: February 29, 2008

Completion of the rest of the related Port Westward Rail System: March 31, 2008