



STAFF REPORT

DATE: September 24, 2018
RE: Lease Addendum, Rondys, Inc.
TO: Port of Newport Board of Commissioners
ISSUED BY: Aaron Bretz – Director of Operations

BACKGROUND

On June 25, 2012, the Port entered into a lease with Rondys, Inc. for the use of Tax Lots 100 and 600, property owned by Rondys, Inc. adjacent to the Newport International Terminal, and shown on exhibit A. The current lease expires on June 24, 2022. At this time the Port and Rondys, Inc. are interested in modifying and amending certain terms of the lease.

DETAIL

Significant changes to the lease are:

- Termination of the lease on the 2 acre site being used as gear storage effective June 25, 2019.
- Termination of the lease on the industrial zoned portion of the property effective September 30, 2018.
- Rondys will move and utilize dredge spoils currently stored on the leased property for use on the industrial portion of the property. Rondys agrees to pay all royalties assessed by the State for the dredge material including dredge material they do not use. In exchange for payment of all royalties, the Port agrees to complete mutually beneficial projects that have been agreed upon by both parties within 5 years of Rondys's payment of royalties to the State.
- The Port agrees to indemnify and hold Rondys harmless from claims, demands or liability up to \$1,000,000.00.

RECOMMENDATIONS

There is great potential benefit to the Port and the Newport community with the development of the Rondys property. The economic opportunities this development presents will have a very positive impact on the community.

I recommend a motion to approve and execute the Addendum to Lease with Rondys, Inc.

ADDENDUM TO LEASE

This Addendum to Lease made this ____ day of _____, 2018, by and between Rondys, Inc., a Washington corporation, hereinafter called "Lessor" or "Rondys", and the Port of Newport, a municipal corporation of the State of Oregon, hereinafter called "Lessee" or "Port".

RECITALS:

A. Previously, the parties hereto entered into a Lease Agreement dated June 25, 2012. The current lease expires June 24, 2022.

B. The parties hereto desire to modify and amend certain provisions of the existing Lease and enter into this agreement. The modifications to the lease dated June 25, 2012 are as set forth herein.

AGREEMENT:

1. The Lease provides that the Lessor may terminate the lease on the 2 acre site being used as gear storage upon written notice of one year that the lease for the 2 acre site is terminated. (as depicted on exhibit A) The parties acknowledge and agree that Lessor provided such notice to Lessee on June 25, 2018 and that the lease of the 2 acre site used as gear storage is terminated effective June 25, 2019 and as of such date the gear storage area is no longer under lease to the Port.

2. The parties acknowledge that Rondys, Inc. has development plans for the industrial zoned portion of the property (as such is designated on Newport zoning maps) and the parties agree that the lease on the industrial zoned property terminates effective 11:59 P.M. on September 30, 2018. Possession of that property is returned to sole possession of the Lessor as of that date. The Port may allow cars to park in an area near the gate of the Natural Gas plant (exhibit A) to have access to the bay for recreational purposes but the Port shall assume all risk of use and indemnify and hold Rondys harmless from any damage, including any attorney fees and costs incurred by Rondys in defending any claim, demand or lawsuit. This requirement is contractual. Rondys may terminate said use upon 30 days written notice to Port. It is agreed that Port is not paying any portion of the Lease payment to allow parking in this area and that use of the area is without charge.

3. The Lessor shall have the right to install, maintain and utilize utility lines and facilities on the property which remains under lease to Lessee. The right to place improvements on the property remaining under lease includes, but is not limited to, all nature of utilities and storm drain channels, water, sewer, cable, electricity and gas. These utilities are listed by way of example and not as a limitation. The Lessor shall also have the right to use all roads and accesses on the property remaining under lease.

4. The area necessary for wetland mitigation shall be removed from the Lease upon the execution of this agreement. Lessor shall provide access to this mitigation site. The mitigation site is depicted on exhibit A.

5. Any portion of the property still remaining under the Lease may be released from the provisions of the Lease by Lessor giving Lessee not less than 180 days' written notice of the termination of an additional portion of property from the Lease.

6. Rondys will move and utilize the dredge spoils currently stored on the Leased property for the development of the industrial portion of the property. Rondys agrees to pay all royalties assessed by The State of Oregon for the material used. The Port of Newport agrees to complete a project that mutually benefits Rondys and the Port within 5 years of Rondys's payment of sand and gravel royalties to the State. The cost of such a project shall be equal to or greater than the cost of sand and gravel royalties paid to the State of Oregon for the material stored on the leased property during the development of the industrial portion of the property. The nature and scope of the project shall be mutually agreed upon in writing by Rondys and the Port, but may include such projects as completion of infrastructure to benefit the Rondys property or improvement of roadways to serve the Rondys property. If the Port fails to agree to and/or complete a project within the 5 years, the Port shall reimburse Rondys for the sand and gravel royalties at cost plus interest at the rate of 1.5% per annum from the date of this agreement. Payment shall be made within 90 days after written notice is given by Rondys that payment is due.

a.) In entering into this portion of the agreement, the parties mutually agree that the use of the materials on the property is beneficial to the Port because the development of the Rondys property will assist in facilitating economic use of the Port facilities. The property is also located within an urban renewal district and development will facilitate economic opportunity in the community.

b.) Sediment testing on the dredge material at McLean Point was conducted prior to dredging in 2009 and 2010. There was preliminary testing performed on the material on-site at McLean Point in 2014. The results of these tests indicate that the dredge spoils are clean and are free from hazardous materials; the Port represents that according to the best data available, the dredge material is clean. In the event hazardous materials are found or placed, the Port shall be solely responsible for any remediation of the hazardous material so placed at Port's expense.

c.) The Port shall indemnify and hold Rondys harmless from any claims, demands or liability under this Section 6. The Port's indemnification obligation under this paragraph with respect to any liability or expenses or expenses of whatsoever kind or nature, arising out of or in connection with the performance or non-performance of either party's respective obligation under this agreement, shall be no greater than \$1,000,000.00. This limitation on the Port's indemnification obligation shall be the same whether the actions or damages being indemnified are characterized as tortious or contractual in nature. The parties agree that they have mutually negotiated this limit of the Port's indemnification obligation. The agreement to indemnify and hold harmless is contractual.

7. There are piles of debris that have accumulated on the Leased property. The debris includes such things as concrete rubble and boulders. Any such debris that is deemed unusable by Rondys shall not be used or taken by Rondys but shall be removed by the Port prior to the termination of the lease. Rondys may negotiate with the Port to use any debris or material

Addendum to Lease Exhibit A



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