

EXHIBIT A

**PENINSULA TERMINAL COMPANY GRANT AGREEMENT
Portland Bureau of Transportation**

Agreement No.: _____

This Grant Agreement ("this Agreement") is by and between the City of Portland ("City"), acting by and through the Portland Bureau of Transportation ("PBOT") and its elected officials, and **Peninsula Terminal Company** ("Grantee"), for the **North Suttle Road Local Improvement District** project. The City's Project Manager is **Andrew Aebi**. This Agreement shall become effective upon execution by all parties. This Agreement shall expire, unless otherwise terminated or extended as provided herein, on June 30, 2022.

City will provide Grantee with grant funds to a maximum total of **\$994,907** in accordance with this Agreement.

GENERAL PROVISIONS

1. Grant Award and Compensation

Grantee agrees to perform the actions and/or spend grant funds as described in the PROJECT SCOPE below and in accordance with this Agreement. City agrees to provide grant funds up to the total amount identified in this Agreement with the first payment of one-half the total amount made upon execution of this Agreement and the remaining one-half of the total amount made on a reimbursement basis upon presentation of receipts. Payments shall be for expenses directly related to the project and can include supplies, equipment, rentals, and other expenses as agreed upon by City and Grantee. Grant funds cannot be used for wages or other activities outside of the Project Scope without written approval from the City's Project Manager. All work must be completed, and funds must be expended prior to the expiration date of this Agreement.

2. Billing and Payments

- (a) Grantee must submit to the City Project Manager two (2) separate invoices which include proof of payment to Rick Franklin for 50% of the Grant Agreement amount upon execution of this Grant Agreement and upon completion of the work. All invoices must be submitted to City prior to the expiration date of this Agreement. City shall not be responsible for payment of invoices received after that date.
- (b) If for any reason Grantee receives a grant payment under this Agreement and does not use grant funds, provide required work or services, or perform as required by the Agreement, then City may at its option terminate this Agreement, reduce or suspend any grant funds that have not been paid, require Grantee to immediately refund to City the amount improperly expended, return to City any unexpended grant funds received by Grantee, require Grantee to fully refund any or all grant funds received, or any combination thereof.
- (c) Payments under this Agreement may be used only to provide the services or take the actions required under this Agreement and may not be used for any other purpose.

3. Termination

- (a) Cause for Termination; Cure. It shall be a material breach and cause for termination of this Agreement if Grantee uses grant funds outside of the scope of this Agreement, or if Grantee fails to comply with any other term or condition or to perform any obligations under this Agreement within 30 days after written notice from City. If the breach is of such nature that it cannot be completely remedied within the 30-day cure period, Grantee, as applicable, shall commence cure within the 30 days, notify City of Grantee's steps for cure and estimated time table for full correction and compliance, proceed with diligence and good faith to correct any failure or

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noncompliance, and obtain written consent from City for a reasonable extension of the cure period.

- (b) No Payment or Further Services Authorized During Cure Period. During the cure period, City is under no obligation to continue providing additional grant funds notwithstanding any payment schedule indicated in this Agreement. Grantee shall not perform services or take actions that would require City to pay additional grant funds to Grantee. Grantee shall not spend unused grant funds and such unused funds shall be deemed held in trust for City. Grantee shall be solely responsible for any expenses associated with cure of its noncompliance or failure to perform.
- (c) Termination for Cause. Termination for cause based on Grantee's misuse of grant funds shall be effective upon notice of termination. Termination for cause based on failure to comply or perform other obligations shall be effective at the end of the 30-day period unless a written extension of cure period is granted by City. Grantee shall return all grant funds that had not been expended as of the date of the termination notice. All finished or unfinished work product, such as documents, data, studies, and reports prepared by Grantee under this Agreement, shall, at the option of City, become the property of City. Grantee may be entitled to receive just and equitable compensation for any satisfactory work completed on such documents up until the time of notice of termination, in a sum not to exceed the grant funds already expended.
- (d) Penalty for Termination for Cause. If this Agreement is terminated for cause, City, at its sole discretion, may seek repayment of any or all grant funds tendered under this Agreement, and decline to approve or award future grant funding requests to Grantee.
- (e) Termination by Agreement or for Convenience of City. City and Grantee may terminate this Agreement at any time by mutual written agreement. Alternatively, City may, upon 30 days' written notice, terminate this Agreement for failure of Grantee to perform the work prior to issuing a Notice to Proceed to its contractor to perform the street construction work. If the Agreement is terminated as provided in this paragraph, Grantee shall return any grant funds that would have been used to provide services after the effective date of termination. Unless the Parties agree otherwise, Grantee shall finish any work and services covered by any grant funds already paid and shall not commence any new work or services which would require payment from any unused grant funds.

4. **Changes in Anticipated Services**

If, for any reason, Grantee's anticipated services or actions are terminated, discontinued or interrupted, City's payment of grant funds may be terminated, suspended or reduced. Grantee shall immediately refund to City any unexpended grant funds received by Grantee.

5. **Subcontracts and Assignment**

Grantee shall not subcontract, assign, or transfer any of the work scheduled under this Agreement without the prior written consent of the City. Notwithstanding City approval of a subgrantee or subcontractor, Grantee shall remain obligated for full performance hereunder and the City shall incur no obligation other than its obligations to Grantee hereunder. Grantee agrees that if subgrantees or subcontractors are employed in the performance of this Agreement, Grantee and its subgrantees or subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

6. **Independent Status**

Neither Grantee nor its subgrantees, contractors, or employees are employees of City and are not eligible for any benefits through City, including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

7. **Work Product and Record**

All work Grantee performs under this Agreement shall be considered a public record. Grantee shall provide City a copy of data, brochures, documents, plans, copyrights, specifications, working papers, as-built information and any other materials Grantee produces in connection with this Agreement. On completion or termination of the Agreement, Grantee shall deliver a copy of these materials to the City Project Manager, with final report.

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8. Indemnity

- (a) Claims for Other than Professional Liability. Grantee shall defend, save, and hold the City of Portland and its officers, agents, and employees harmless from and against all claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities of Grantee or its subgrantees, subcontractors, agents, or employees under this Agreement.
- (b) Claims for Professional Liability. Grantee shall defend, save, and hold the City of Portland and its officers, agents, and employees harmless from and against all claims, suits, or actions arising out of the professional negligent acts, errors, or omissions of Grantee or their subgrantees, subcontractors, agents, or employees in the performance of services under this Agreement.

9. Governing Law

This Agreement shall be construed according to the laws of the State of Oregon, without regard to its provisions regarding conflict of laws. Any litigation between City and Grantee arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County court having jurisdiction thereof, and, if in the federal courts, in the United States District Court for the State of Oregon.

10. Compliance with Laws

In connection with its activities under this Grant, Grantee and all persons, subgrantees, and subcontractors performing work under this Agreement shall comply with all applicable federal, state, and local laws and regulations, including reporting to and payment of all applicable federal, state and local taxes.

11. Insurance

During the term of this Agreement, Grantee shall ensure that Franklin maintains in force at its own expense each insurance noted below, and insurance shall apply to the acts and omissions of Franklin. Grantee agrees to require Franklin to maintain continuous, uninterrupted coverage for the duration of this Agreement. Failure to comply with this section shall be cause for immediate termination of this Agreement by City.

- (a) Workers' Compensation insurance. Franklin and all persons working under this Agreement are subject employers under the Oregon workers compensation law. Grantee shall require Franklin to provide workers' compensation insurance for all its subject workers. A certificate of insurance must be attached to this Agreement. If Franklin qualifies as a non-subject employer, this certification shall be maintained with this Agreement as proof of that certification.
- (b) General Liability insurance. Commercial general liability insurance covering bodily injury, personal injury, property damage, including coverage for independent contractor's protection (required if any work will be subcontracted), premises/operations, contractual liability, products and completed operations, in a per-occurrence limit of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000.
- (c) Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable. This coverage may be combined with the commercial general liability insurance policy.
- (d) On all types of insurance. There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without 30-days written notice from Franklin or its insurer(s) to the City.
- (e) Additional Insured. The liability insurance coverages, except workers' compensation, shall be without prejudice to coverage otherwise existing, and shall name Grantee and the City of Portland and its bureaus/divisions, officers, agents and employees as Additional Insureds, with respect to the Franklin's activities to be performed, or products or services to be provided.

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Coverage shall be primary and non-contributory with any other insurance and self-insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

- (f) Certificates of insurance. As evidence of the insurance coverages required by this Agreement, Grantee shall require Franklin to furnish acceptable insurance certificates, including Additional Insured endorsement form(s) and all other relevant endorsements, to the City at the time of signed Agreement submission. The certificate will specify all of the parties who are endorsed on the policy as Additional Insureds, shall include a 30-day cancellation clause that provides that the insurance shall not terminate or be canceled without 30 days written notice first being given to the City, and shall provide that coverage applies to claims between insureds on the policy.
- (g) Subgrantees or subcontractors. Upon request, Grantee shall provide evidence that any subgrantee or subcontractor, if any, performing work or providing goods or service under the Agreement has the same types and amounts of coverages as required herein or that the subgrantee or subcontractor is included under the Grantee's policies.

PROJECT SCOPE

A. Project Representatives

Each party has designated an individual to be the formal representative for this Agreement. All reports, notices, and other communications required under or relating to this Agreement shall be directed to the appropriate individual. Grantee will fulfill its obligations under this section.

<u>CITY</u>	<u>GRANTEE</u>
Name: Andrew Aebi Portland Bureau of Transportation	Name: John Manos Peninsula Terminal Company
Address: 1120 SW Fifth Avenue, Suite 1331 Portland, OR 97204	Address: 739 E. 140th St. Cleveland, OH 44110
Phone: 503-823-5648	Phone: 216-681-1818
Email: andrew.aebi@portlandoregon.gov	Email: john@manosco.com

B. Project Description

1. Project Goals

Reconstruct N. Suttle Rd. and four (4) rail crossings at new elevations that will accommodate stormwater drainage and rail safety while minimizing the need to replace track on private property to accommodate the new grades.

2. Scope and Sequence of Work and Duties Performed

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- a. The 4 railroad crossings will be installed first to minimize the disruption in rail service to Grantee's industry customers. All rail work in the street will be completed before roadwork begins.
- b. Grantee has obtained bids from Railworks and Rick Franklin, Inc. ("Franklin") to install the crossings at the new street elevations and to raise the main line where needed to match the new elevations. The estimates have been sent to PBOT for review.
- c. PBOT has determined that the Franklin bid is the lowest and best. PBOT has requested that Grantee obtain a bid from Franklin to install the asphalt apron at the entrance to the JB Hunt property and to install temporary asphalt ramps as needed at the rail crossings to allow traffic to continue until the new street is installed.
- d. Grantee will contract directly with Franklin for the rail works and asphalt work. PBOT will enter into a not-to-exceed Grant Agreement with Grantee. The grant will equal the Franklin bid price for the rail work and asphalt work. Grantee will be responsible for any cost overruns unless caused by a design change imposed by PBOT or rework resulting from the actions of PBOT's road contractors. Grantee will indemnify PBOT against any claims for labor or materials incorporated into the work performed by Franklin.
- e. PBOT will pay Grantee 50% of the grant amount when the Grant Agreement is signed and the remaining 50% when the work is completed. All rail work shall be installed in accordance with FRA and Oregon Rail DOT requirements.
- f. Once started the rail work in the street shall proceed as expeditiously as possible while maintaining traffic flow. The street will need to be closed to all traffic from Friday afternoon until Monday morning on 4 weekends to allow for the installation of each crossing. Work will proceed from east to west.
- g. The top of rail shall be level with the top of the finished street. PBOT will have survey hubs installed at each crossing. PBOT will have the surveyor available to confirm the rail bed elevation prior to the track panels being set.
- h. PBOT shall have no responsibility to ensure that the rail work is completed. The failure of Franklin to fulfill its contract with Grantee shall have no effect on PBOT's right to rebuild the street as currently designed, even if it interferes with Grantee's rail service. PBOT shall have no responsibility for maintaining the crossings after installation.
- i. The anticipated timeline is for PBOT to provide proposed legislation and the proposed Grant Agreement to City Council in September. PBOT will provide the proposed Grant Agreement to Grantee for comment prior to submitting it to City Council.
- j. Grantee will use best efforts to have Franklin mobilize as soon as the initial grant funds are received. PBOT will keep Grantee informed of the progress of funding to facilitate Franklin's scheduling of the work.
- k. Grantee will subordinate to City, in a form acceptable to City, all easements, licenses, and other interests that are contained within the public right-of-way that comprises North Suttle Road.

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This Agreement may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same Agreement. The parties agree that City and Grantee may conduct this transaction, including any amendments to the Agreement, by electronic means, including the use of electronic signatures.

CITY OF PORTLAND

GRANTEE

By: _____
Chris Warner, Director

By: _____

Date: _____

Name: _____

Title: _____

Date: _____

Approved as to form:

City Attorney

DRAFT