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AGENDA
THE BOARD OF COMMISSIONERS
OF THE
PORT OF NEW ORLEANS
SPECIAL MEETING

Tuesday, September 25, 2018
5:00 P.M.

Main Auditorium
1350 Port of New Orleans Place
New Orleans, Louisiana 70130

- I. Determination of Quorum and Call to Order**
- II. Pledge of Allegiance**
- III. General Public Comment**
- IV. Actions Required:**
 - A. Consider Approval of a Resolution Authorizing a Cooperative Endeavor Agreement Between the Board of Commissioners of the Port of New Orleans ("Port"), New Orleans Public Belt Railroad Corporation ("NOPB"), Jefferson Parish ("Parish"), and Avondale Marine, LLC ("Avondale Marine"), to Facilitate the Re-Development of the Former Avondale Shipyard Site.**
- V. Adjournment**

POSTED: Monday, September 24, 2018, 4:00 P.M.

COOPERATIVE ENDEAVOR AGREEMENT

by and between

BOARD OF COMMISSIONERS OF THE PORT OF NEW ORLEANS

and

NEW ORLEANS PUBLIC BELT RAILROAD CORPORATION

and

PARISH OF JEFFERSON, STATE OF LOUISIANA

and

AVONDALE MARINE, LLC

COOPERATIVE ENDEAVOR AGREEMENT

This cooperative endeavor agreement (“**Agreement**”) is made between:

the BOARD OF COMMISSIONERS OF THE PORT OF NEW ORLEANS (the “**Port**”), a political subdivision of the State;

the NEW ORLEANS PUBLIC BELT RAILROAD CORPORATION (the “**NOPB**”), a Louisiana public non-profit corporation;

the PARISH OF JEFFERSON, STATE OF LOUISIANA (the “**Parish**”), a political subdivision of the State of Louisiana; and

AVONDALE MARINE, LLC (“**Avondale Marine**”), a Delaware limited liability company.

PORT, NOPB, PARISH, and Avondale Marine are at times collectively referred to as “**Parties**” and individually as a “**Party**.”

WHEREAS, Avondale Marine is authorized to do business in the State of Louisiana;

WHEREAS, Avondale Marine is currently under contract to acquire the former Avondale Shipyard facility located at 5100 River Road, Avondale, Louisiana (the “**Site**”);

WHEREAS, Avondale Marine has proposed to construct a port and intermodal facility at the Site (the “**Project**”);

WHEREAS, in connection with and in support of the Project, Avondale Marine wishes to comprehensively address (i) the development of the Project; (ii) the resolution of jurisdictional matters relative to the operation of the Site, (iii) rail access to the Project; (iv) the provision of promotion and other support services to the Site; (v) the support of Foreign Trade Zone status for the Site; and (vi) such other matters as are set forth herein;

WHEREAS, the Louisiana Constitution of 1974, Article VII, Section 14(C), provides, that for a public purpose, the State and its political subdivisions may engage in cooperative endeavors with each other and with any public or private association, corporation or individual; and in Article VI, Section 21 (A) authorizes assistance to local industry;

THEREFORE, IT IS AGREED:

ARTICLE I DEFINITIONS

Section 1.01 Definitions

“**Constitution**” means Section 14(C) of Article VII of the Louisiana Constitution of 1974, as amended.

“**Force Majeure**” means: (1) an act of God, an act of war, or a natural disaster due to earthquake, landslide, fire, flood, tornado, tropical storm, hurricane, act of terrorism, strike, or lockouts; (2) which is beyond the reasonable control of a Party to this Agreement; and (3) prevents the Party from performing its obligations hereunder.

“Material” means a representation relating to a matter which is so substantial and important as to influence the Party to whom made.

“Rail Construction Agreement” means the agreement between NOPB and Avondale Marine providing the terms and conditions for the design and construction of a spur track, owned and operated by NOPB, connecting the Project to NOPB’s line.

“Rail Services Agreement” means the agreement between NOPB and Avondale Marine addressing the rail service to be provided to the Project by NOPB.

Section 1.02 Use of Defined Terms

- (A) Terms defined in this Agreement shall have their defined meanings when used herein, and in any document, certificate, report or agreement furnished in connection with this Agreement, unless the context clearly requires otherwise.
- (B) Words indicating the singular number shall include the plural number and vice versa, and words of the masculine gender shall include correlative words of the feminine and neutral genders and vice versa, unless the context clearly requires otherwise.
- (C) The words “hereof and “herein” shall be construed to refer to the entirety of this Agreement and shall not be restricted to the particular portion of this Agreement in which they appear.
- (D) Section numbers shall refer to sections of this Agreement.

ARTICLE II AUTHORITY

Section 2.01 Port, NOPB, and the Parish

The Port, NOPB, and the Parish are granted authority, pursuant to the Constitution, to enter into cooperative endeavor agreements with public and private associations or corporations for a public purpose, including agreements which may require the use of public funds or other resources, provided legal guidelines are met and the economic benefit is demonstrated to be commensurate with or greater than the investment of funds by the Port, NOPB, and Parish. This Agreement is entered into pursuant to the Constitution, and with the expectation and belief that the economic benefit will exceed the applicable obligations of the Port, NOPB, and Parish.

Section 2.02 Avondale Marine

Duly executed certificates, resolutions or other evidence of the authority of Avondale Marine to enter into this Agreement and to carry out the commitments made herein, and the authority of the undersigned representatives to execute this Agreement on their behalf, certified by manager or other authorized representative, are attached hereto as Exhibit A.

Section 2.03 Other Approvals

This Agreement is valid upon execution of all of the Parties. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior oral

or written understandings and agreements between the Parties with respect thereto. No amendment of this Agreement shall be valid unless made in writing, signed by the Parties.

ARTICLE III REPRESENTATIONS

Section 3.01 Port Representations

The Port hereby represents and warrants to each other Party hereto that no resolution or bylaw is in effect, nor has there been, to the best of its knowledge, any other action taken by the Port, that would prevent the completion of and utilization of the Project.

Section 3.02 Parish Representations

The Parish hereby represents and warrants to each other Party hereto that no resolution or bylaw is in effect, nor has there been any other action taken by the Parish, that would prevent the completion of and utilization of the Project.

Section 3.03 NOPB Representations

The NOPB hereby represents and warrants to each other Party hereto that no resolution or bylaw is in effect, nor has there been, to the best of its knowledge, any other action taken by the NOPB, that would prevent the completion of and utilization of the Project.

Section 3.04 Avondale Marine Representations

Avondale Marine hereby represents and warrants to each Party hereto as follows:

- (A) Avondale Marine is a duly and legally organized Delaware limited liability company, in good standing under the laws of that state, and authorized to do business in the State of Louisiana, with all powers and governmental licenses, authorization, qualifications, consents and approvals required to carry on its business in the State as now conducted, and will acquire and possess all such required authority to carry on the business contemplated in this Agreement, including the ownership of the Site and development of the Project.
- (B) Avondale Marine has all the requisite power and authority to enter into this Agreement and to carry out the terms hereof; and the person signing this Agreement has the authority to execute this Agreement as the authorized representative of Avondale Marine, and to bind Avondale Marine to all of the terms of this Agreement.
- (C) This Agreement has been duly authorized, executed and delivered by Avondale Marine and constitutes a legal, valid and binding obligation of Avondale Marine, enforceable in accordance with its terms.
- (D) The execution of this Agreement and any other documents required by this Agreement by Avondale Marine, and the performance by Avondale Marine of its obligations hereunder are within the powers of Avondale Marine and will not violate any provisions of any law, regulation, decree or governmental authorization applicable to Avondale Marine or any agreements of Avondale Marine with any of its creditors.

- (E) Except as may be otherwise disclosed to the Port, NOPB, and Parish, in writing, there is no action, suit, investigation or proceeding pending, or to the best of its knowledge threatened, against Avondale Marine before any court, arbitrator, or administrative or governmental body which could reasonably be expected to result in a Material adverse change in Avondale Marine's financial condition or operations, or in Avondale Marine's ability to comply with its obligations hereunder or to participate in the transactions contemplated hereby.
- (F) At the time of execution of this Agreement, Avondale Marine is in full compliance with all of the Material terms and conditions of this Agreement, and no default hereunder has occurred or is continuing, and no event, act or omission has occurred or is continuing which with the lapse of time or the giving of notice would constitute such a default.
- (G) There is no Material fact or circumstance known to Avondale Marine which adversely affects or, so far as Avondale Marine can now reasonably foresee, will adversely affect the condition of Avondale Marine or Avondale Marine's ability to perform its obligations hereunder, which Avondale Marine has not disclosed in writing to the Port, NOPB, and Parish. All representations made herein by Avondale Marine are true and accurate in all Material respects and remain in full force and effect.

ARTICLE IV COOPERATIVE ENDEAVOR OBLIGATIONS

Section 4.01 Port and Avondale Marine Obligations

- (A) Jurisdiction of the Port. Avondale Marine agrees that the Site will be subject to the jurisdiction of the Port and within the scope of the rights and powers of its Board of Commissioners under La. R.S. 34:1 *et seq.* The Port specifically consents to the existence of all docks, wharves, buildings, and improvements presently existing on the Site. The Port agrees to timely review any future jurisdictional permit applications submitted by Avondale Marine for the Site, including any relative to its desire to maintain, alter, or construct any improvements on the Site, in a manner consistent with all other applications within the Port's jurisdiction.
- (B) Tariffs and Fees. The Port may assess and collect directly the harbor fees set forth in FMC Tariff No. 2, Item 400, as amended from time to time with such amendment including the change of item number (the **"Port Tariff"**), for all vessels arriving at the Site. The Port agrees that it will not assess dockage or fees that are discriminatory, unfair, unreasonable and non-equitable, for any vessel for which dockage is provided at the Site provided that Avondale Marine complies with the requirements set forth herein. The Port agrees that it will not assess any new fees for any vessel for which dockage is provided at the Site provided that Avondale Marine complies with the requirements set forth herein unless exceptional or unforeseen circumstances occur and the Port so declares by a vote at a public meeting. Such fees in response to exceptional or unforeseen circumstances shall be non-discriminatory toward the Site and apply to every similarly situated vessel or person as applicable. Avondale Marine shall establish its own tariff (the **"Site Tariff"**) pursuant to which all vessels engaged in foreign trade and/or direct discharge or loading of foreign cargo for which dockage is provided at the Site will be assessed dockage charges equal to or greater than those assessed by the Port under the Port Tariff. Such dockage charges assessed by Avondale Marine shall be retained by Avondale Marine for its own account. Avondale Marine's failure to comply with the tariff

requirements herein shall be deemed a Material breach and shall constitute a Default of this Agreement.

- (C) Container on Barge Service. The Port and Avondale Marine will work cooperatively and in good faith to develop a container on barge service between the Site and the Port's container facility which bolsters commerce and serves the public by reducing traffic along roadways; provides additional logistical solutions that enhance the Port's services and incentivizes shippers to utilize the Port's facilities; and increases containerized traffic through the Port's facilities.
- (D) Promotion of the Site/Ancillary Services. The Port is committed to facilitating the success of Avondale Marine's efforts to reopening Avondale as a priority and growing maritime activities throughout its jurisdiction, including manufacturing, packaging, fabrication, and distribution. In the same fashion it provides to other maritime entities, and to insure the Port's and Avondale Marine's joint success and overall job creation, the Port will assist Avondale Marine's efforts to redevelop the Site and jointly pursue new opportunities and services that add value and synergies within the Port's jurisdiction, which may include the development of joint-marketing plans. The Port will also include on its website a listing of Avondale Marine as well as the Port's other terminal operators, tenants and other maritime entities within its jurisdiction. Avondale Marine is responsible for the success of the Project and all commercial decisions regarding the development of the Project will be made independently by Avondale Marine.
- (E) Right to Bid on Future Port Leases. Whenever properties owned or controlled by the Port become available for lease, Avondale Marine may participate in the public bidding process, to the extent such property is subject to the public bidding process, and, if the successful bidder, will be granted the right to become a tenant of the Port, provided that any such bid meets all legal guidelines set forth in the bid documents and such lease would be economically beneficial to the Port. Any such lease will be subject to the Port's standard lease terms and conditions.

Section 4.02 Rail Access

- (A) Expansion of Public Belt. NOPB agrees to connect and provide service to the Project upon construction of a spur track, owned and operated by NOPB, connecting the Project to NOPB's line (the **"Public Belt Extension"**). The Public Belt Extension must be designed and constructed in a manner to ensure safety. Avondale Marine will fund at its expense, the costs of constructing the Public Belt Extension. NOPB shall take all commercially reasonable actions, consistent with applicable laws, rules and regulations, to support the Public Belt Extension. Construction of the Public Belt Extension shall be subject to securing the requisite property/rights, permits and governmental authorizations, which NOPB and Avondale Marine shall acquire in collaboration at Avondale Marine's expense.
- (B) NOPB Operations and Rates. NOPB agrees to provide rail service to the Project upon such terms and conditions with respect to rates, tariffs, and fees that are fair, reasonable, equitable, and non-discriminatory. The Rail Services Agreement between NOPB and Avondale Marine shall be executed upon such terms and conditions to provide neutral rail access via NOPB to the Class I Railroads serving the gateway. Avondale Marine, or an affiliate, may have operating rights on the Public Belt Extension, the extent to which will be determined based on the final

engineering and operational plans submitted and approved by all regulatory agencies and NOPB. For the avoidance of doubt, any such operating rights would be limited to the Public Belt Extension and in no manner include such rights on any other NOPB track specifically including the Huey P. Long Bridge.

- (C) Acquisition of Property and Easements for Public Belt Extension and Use of Parish Property. The Parish agrees to acquire fee interests, rights-of-way, and/or servitudes for the benefit of NOPB in order to accommodate the Public Belt Extension, including without limitation through the exercise of expropriation, or the utilization of Parish property to accomplish same.
- (D) Construction of and Payment for Public Belt Extension. Design and construction of the Public Belt Extension shall be subject to the terms and conditions of the Rail Construction Agreement. Avondale Marine will take all necessary actions and pay all costs associated with designing, constructing, permitting and facilitating the Public Belt Extension, including reimbursing the NOPB, Port, and Parish for any costs incurred in connection with the Public Belt Extension. Port, NOPB and the Parish shall provide a budget to Avondale Marine for approval of Avondale Marine prior to incurring any costs. Such approval shall not be unreasonably withheld. Reimbursements to the NOPB, Port, and Parish for approved costs shall be made within 30 days of submission of a written request.
- (E) NOPB Actions in Support of Public Belt Extension. NOPB will take all commercially reasonable actions to effectuate, facilitate and support the Public Belt Extension and corresponding service in the most economical manner.

Section 4.03 Additional Support for Site

- (A) Incentives. In order to assist Avondale Marine's efforts to rebrand the Site from the former Avondale Shipyard into a premier port terminal servicing commercial navigation on the Mississippi River System and the Gulf of Mexico, the Port will assist Avondale Marine to develop new opportunities to promote the Site's positive impact of bolstering commerce and creating jobs in Louisiana. The Port agrees to provide contacts, data and statistical information relevant to attracting new commercial enterprises as tenants that add new value to the Port's jurisdiction and to the Site.
- (B) Foreign Trade Zone. The Port agrees that it will provide support, information and other resources as may be reasonably requested by Avondale Marine in order for Avondale Marine to qualify the Site and its operations to obtain Foreign Trade Zone status and for certification with London Metal Exchange and other similar organizations.
- (C) Agreement to Collaborate on Joint Development. Port, NOPB, and Avondale Marine agree to work cooperatively and collaboratively to jointly develop maritime opportunities, facilities, and services within the Port's jurisdiction that add value such as manufacturing, packaging, fabrication, and distribution to the Site and to Jefferson Parish.
- (D) Revocation of Public Road. The Parish agrees to revoke the dedication of the public road referred to as Starlight-Fairfield Road; and that any such revocation shall result in said revoked road becoming the property of Avondale Marine as adjacent property owner or otherwise subsequently transferred to Avondale Marine. The Parish further agrees to take all necessary

actions in furtherance of this paragraph including use of its expropriation authority. Should the Parish use its expropriation authority to effectuate this paragraph, Avondale Marine shall bear the Parish's acquisition costs.

ARTICLE V ASSIGNMENT

The Parties shall not assign this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, provided that a transfer of a non-controlling interest in and/or less than fifty percent (50%) of Avondale Marine's assets shall not require the other Parties' consent. It is the intent of the Parties that an assignment will be permitted as long as the purpose of this Agreement remains intact and the Site continues to be used as a port and intermodal facility as referenced herein. A Party's consent to an assignment does not modify the requirement for consent to any subsequent assignment.

ARTICLE VI DEFAULT

Section 6.01 Default

Subject to the right to cure as provided in Section 6.02(A)(2), the occurrence of any of the following actions during the term of this Agreement shall constitute a Default:

- (1) Failure to satisfy any Material obligation, or breach of any Material term, under this Agreement;
- (2) Any assignment made without the consent of the other Parties;
- (3) Commencement of a bankruptcy, liquidation, reorganization or dissolution proceeding by or against Avondale Marine, under The U.S. Bankruptcy Code, 11 U.S.C. §§ 101 et seq., provided that in the event of an involuntary bankruptcy, only if it shall not have been dismissed within 60 days following the date it has commenced and remains pending thereafter.

Section 6.02 Default Remedies

(A) Upon the occurrence of a Default:

- (1) The Party claiming default shall provide the defaulting Party with written notice specifying the Default, and
- (2) If the Default is susceptible to correction, the defaulting Party shall have a 30-day period within which to cure the Default. If the Default concerns an error under Section 4.01(B), then in order to cure the Default, Avondale Marine shall (1) be liable for any damages sustained by the Port including the difference of what Avondale Marine was obligated to charge versus what was actually charged; and (2) amend its Site Tariff within the time allowed under the applicable time delays under this Section.

(B) After such notice, and, if applicable, expiration of the 30-day (or extended, if applicable) cure period without correction of the Default, any Party may:

- (1) Terminate this Agreement for cause, and/or
- (2) Protect and enforce its rights by suit or other appropriate legal or equitable remedy available by law.

Section 6.03 Delay or Omission

No delay or omission in the exercise of any right or remedy accruing to any Party under this Agreement upon any breach of this Agreement shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. The waiver of any condition or the breach of any term, covenant, or condition herein or therein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein or therein contained.

Section 6.04 Force Majeure

- (A) Upon occurrence of an event of Force Majeure, the Party affected shall have the right, but not the obligation, to declare a Force Majeure period, by giving written notice of such event and declaration to the other Parties hereto within 30 days of such occurrence. Time being of the essence, the affected Party shall make every reasonable effort to give such notice as soon as possible, but in any event notice must be given within 30 days of the occurrence.
- (B) The Force Majeure period shall continue from the date of such notice until the effects of such Force Majeure are removed, remedied or repaired, or otherwise no longer prevent performance of the affected Party's obligations hereunder. During the Force Majeure period, the affected Party's obligations hereunder (except the obligation to pay reimbursements arising prior to the event of Force Majeure) shall be suspended. No Force Majeure period arising from a single event of Force Majeure shall be deemed to exist for longer than one year from the date of such notice, and the aggregate Force Majeure period during the term of this Agreement shall not exceed two years.
- (C) The affected Party must reasonably proceed with due diligence to effect repairs or undertake efforts to remedy or mitigate the effects of a Force Majeure, and within 60 days of the occurrence of the event of Force Majeure shall provide the other Parties with a report showing the efforts made and to be made to remedy or mitigate the effects, and a timetable to return to full performance.

ARTICLE VII LIABILITY

Section 7.01 No Personal Liability

No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, officer, agent or employee of any Party hereto in his/her individual capacity, and neither the officers of any Party hereto nor any official executing this Agreement shall be liable

personally with respect to this Agreement or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement except to the extent provided by law.

ARTICLE VIII NOTICES

Any notice required or permitted to be given under or in connection with this Agreement shall be in writing and shall be delivered by one of the following means: (1) hand-delivered by courier, with signed receipt; (2) mailed through the United States Postal Service, postage prepaid, first-class, with return receipt requested; (3) delivered by private, commercial carrier, such as Federal Express, with signature for delivery; or (4) sent by telegram, electronic facsimile transmission or other similar form of rapid transmission confirmed by written notice sent (by one of the first three methods described above) at substantially the same time as such transmission. All such communications shall be delivered to the designated representative (or his or her successor) at the address set forth below, or to such other person and address as may be subsequently designated by such Party in written notice to the other Parties.

To the Port:

Brandy Christian, President & CEO
Port of New Orleans
1350 Port of New Orleans Place
New Orleans, LA 70130
Telephone: (504) 528-3232

To the NOPB

Brandy Christian, CEO
New Orleans Public Belt Railroad Corporation
1350 Port of New Orleans Place
New Orleans, Louisiana 70130
Telephone: (504) 528-3232

To the Parish:

The Honorable Cynthia Lee-Sheng
Council Chair, Jefferson Parish
1221 Elmwood Park Blvd., 10th Floor
Jefferson, LA 70123
P: (504) 736-6400

To Avondale Marine:

Adam Anderson
150 W Main St #1600
Norfolk, VA 23510
Phone: (757) 627-6286

ARTICLE IX MISCELLANEOUS

Section 9.01 Captions

The captions or headings in this Agreement are for convenience only and do not define or limit the scope or extent of this Agreement.

Section 9.02 Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which when taken together shall be deemed one and the same Agreement.

Section 9.03 Governing Law

This Agreement shall be construed in accordance with and governed by the laws of the State of Louisiana, without giving effect to any conflicts of laws provisions.

Section 9.04 Jurisdiction, Venue, and Waiver of Jury Trial

The applicable district courts located within the State of Louisiana and the United States District Court for the Eastern District of Louisiana located in New Orleans, shall be deemed to be the only courts of jurisdiction and venue for any litigation, special proceeding or other proceeding that may be brought, or arise out of, in connection with, or by reason of this Agreement; and all parties submit themselves to the jurisdiction of said courts in the event of any legal proceedings in connection with this Agreement. Furthermore, each of the Parties hereby irrevocably waives its right to a jury trial of any claim or cause of action based upon or arising out of this Agreement. The scope of this waiver is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of the overall transaction, including without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims.

Section 9.05 Further Assurances

From time to time hereafter the Port, the NOPB, the Parish and Avondale Marine may execute and deliver such additional instruments, certificates or documents, and take all such actions as each of them may reasonably request for the purpose of fulfilling the Parties' obligations hereunder.

Section 9.06 Amendment

This Agreement may be amended only upon the written consent and approval of all Parties.

IN WITNESS WHEREOF, this Cooperative Endeavor Agreement has been signed in quadruplicate originals by the undersigned duly authorized representatives, in the presence of the undersigned competent witnesses, on the dates indicated below.

AVONDALE MARINE, LLC

By: _____
Name: _____
Title: _____
Date: _____

BOARD OF COMMISSIONERS OF THE PORT OF NEW ORLEANS

By: _____
Name: _____
Title: _____
Date: _____

NEW ORLEANS PUBLIC BELT RAILROAD CORPORATION

By: _____
Name: _____
Title: _____
Date: _____

PARISH OF JEFFERSON, STATE OF LOUISIANA

By: _____
Name: _____
Title: _____
Date: _____