



## AGENDA MEMORANDUM

TO: The Warrenton City Commission  
FROM: Linda Engbretson, City Manager  
DATE: August 18, 2017  
SUBJ: Consideration of Agreements Related to State Funding/Grants for Pacific Coast Seafood Rebuild

### IN SUMMARY

Attached are four agreements related to the Pacific Coast Seafood Company Rebuild:

- Between City and Oregon Business Development Department (OBDD) - \$150,000 grant
- Between City and Pacific Coast Seafood for Disbursement of Lottery Revenue Bonds - \$3,000,000
- Between City and Pacific Coast Seafood for Disbursement of OBDD Grant - \$150,000
- Between City and State of Oregon Department of Administrative Services (DAS) for Lottery Bonds Grant Agreement - \$3,000,000

As you know, the City has been working with legal counsel to come to terms on these agreements since last summer. Legal Counsel has worked diligently to

make sure the citizens of Warrenton are protected in the event of any issues related to the project. Of course we welcome this important business back to the community; however, there should be no impact to City finances should there be any problems with the project.

Legal Counsel, Spencer Parsons will be at the meeting to discuss the agreements with you on Tuesday.

#### RECOMMENDATION/SUGGESTED MOTION

*" I move to authorize the Mayor's signature on the Agreement for Disbursement of Proceeds from OBDD Grant."*

*"I move to authorize the Mayor's signature on the Intergovernmental Grant Agreement No. RS1612."*

*"I move to authorize the Mayor's signature on the Agreement for Disbursement of Proceeds from Sale of Lottery Revenue Bonds for Construction of New Dock."*

*"I move to authorize the Mayor's signature on the State of Oregon Revenue Bonds Grant Agreement."*

#### ALTERNATIVE

Other action as deemed appropriate by the City Commission

#### FISCAL IMPACT

The City has included a reimbursement for Administrative Expenses clause in both agreements. The City will be contracting with Mary McArthur of Col-Pac to provide oversight of the grant requirements.

**INTERGOVERNMENTAL GRANT AGREEMENT No. RS1612**

**Title: City of Warrenton - Pacific Coast Seafoods Company**

As authorized by ORS 190.110, this Grant Agreement (“Agreement”) is between the State of Oregon acting by and through its Oregon Business Development Department (“OBDD”) and the City of Warrenton, OR (“City”). OBDD and City (each a “party” and together the “parties”) may be contacted at the address(es) or number(s) below:

<b>OBDD Contact</b>	<b>City Contact</b>
Project Contact: Melanie Olson	Project Contact: Linda Engbretson
Title: Regional Development Officer	Title: City Manager
Address: Business Oregon 775 Summer Street NE Suite 200 Salem OR 97301-1280	Address: City of Warrenton PO Box 250 Warrenton OR 97146-0250
Phone: 503-801-7155	Phone: 503-861-3927
Email: <a href="mailto:melanie.olson@oregon.gov">melanie.olson@oregon.gov</a>	Email: <a href="mailto:lengbretson@ci.warrenton.or.us">lengbretson@ci.warrenton.or.us</a>

1. **Effective Date.** This Agreement becomes effective on the later of the dates shown beneath the parties’ signatures below.
2. **Statement of Obligations.** OBDD and City agree to perform their respective obligations in accordance with the terms and conditions of this Agreement, and as more fully described in Exhibit A, attached hereto and incorporated herein by this reference.
3. **Grant, Payment Terms.** Subject to the terms and conditions of this Agreement, OBDD will provide City with \$150,000 in funding (the “Grant”) to enable the City to assist Pacific Coast Seafoods Company (the “Company”) in the construction of its seafood processing facility in Warrenton, Oregon, as further described in Exhibit A (the “Project”). OBDD will disburse the Grant to the City in accordance with and subject to the terms, conditions and requirements in Exhibit A. The City may use the Grant funds solely to reimburse the Company for costs and expenses incurred by the Company in connection with the Project that are approved for reimbursement by OBDD and not otherwise reimbursed by City or a third party.
4. **Assignment.** City shall not assign or transfer any of its interest in this Agreement, without OBDD’s prior written consent. Unless otherwise agreed in writing, an assignment or transfer of an interest in this Agreement does not relieve City of any of its duties or obligations under this Agreement.
5. **Amendments.** Unless otherwise expressly provided in this Agreement, the terms of this Agreement may only be extended or amended by written instrument signed by both parties.
6. **Representations, Warranties.** City represents and warrants to OBDD that:
  - (a) City is a municipality, duly organized and validly existing under Oregon law. City has the power and authority to enter into and perform this Agreement.
  - (b) The making and performance by City of this Agreement (1) has been duly authorized by all necessary action of City, (2) does not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of City’s charter or other organizational document and (3) does not and will not result in the breach of, or constitute a default of, or require any consent under, any other agreement or instrument to which City is party or by which City may be bound or affected. No

further authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by City of this Agreement.

(c) This Agreement has been duly executed and delivered by City and constitutes a legal, valid and binding obligation of City enforceable in accordance with its terms.

**7. Records Maintenance; Access.** City will maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, City will maintain any other records pertinent to this Agreement in such a manner as to clearly document City's performance. City acknowledges and agrees that OBDD and the Oregon Secretary of State's Office and their duly authorized representatives shall have access to fiscal records and other books, documents, papers, plans and writings of City pertinent to this Agreement in order to perform examinations and audits as well as make excerpts, transcripts or copies. Any examination or audit, creation of excerpt, transcript or copy by OBDD or the Oregon Secretary of State's Office must be commenced within six (6) years following City's final payment to the Company under this agreement. City will retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following the City's final payment to the Company under this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

**8. City Defaults and OBDD Remedies.**

City will be in default under this Agreement if City fails to perform, observe or discharge one or more of its covenants, agreements or obligations under this Agreement and such failure continues for a period of at least 30 calendar days (or such longer period as OBDD may determine in writing if it determines City instituted and has diligently pursued corrective action) after written notice specifying such failure is given to City by OBDD.

City will be in default under this Agreement if any representation, warranty or statement made by City in this Agreement or in any documents or reports relied upon by OBDD to measure progress on the Project, the expenditure of the funds or the performance by City is untrue in any material respect when made.

In the event City is in default, OBDD may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) immediate termination of this Agreement, (b) requiring repayment of all or any portion of the Grant not used by the City as provided in this Agreement, (c) reducing or withholding future disbursements of Grant funds, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of setoff. These remedies are cumulative to the extent the remedies are not inconsistent, and OBDD may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

OBDD shall provide the Company with a copy of any default notice that OBDD gives to City, and such copy shall be provided to the Company at the same time that such default notice is given to City. Such default notice shall be sent to the Company at 16797 S.E. 130th, P.O. Box 97, Clackamas, Oregon 97015-0097, Attention: General Counsel, and a copy of the default notice shall contemporaneously be sent to Schwabe, Williamson & Wyatt, P.C., Attn: James F. Dulcich, 1211 S.W. Fifth Avenue, Suite 1900, Portland, Oregon 97204. The Company shall have the same opportunity as City to cure any City default under this Agreement, and OBDD shall accept such cure by the Company as if the cure were made by City.



9. **OBDD Default and Remedy.** City may terminate this Agreement upon 30 days' notice to OBDD if OBDD fails to pay City pursuant to the terms of this Agreement and OBDD fails to cure such failure within 30 business days after receipt of City's notice, or such longer period of cure as City may specify in such notice. The exclusive remedy for OBDD's default under this Agreement is limited to an action to recover any amount that remains unpaid and due and owing under Section 3.
10. **Funds Available and Authorized.** OBDD has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within OBDD's biennial appropriation or limitation. Notwithstanding the preceding sentence, payment of funds by OBDD is conditioned on OBDD receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow OBDD, in the exercise of its reasonable administrative discretion, to continue to make payments in accordance with the terms of this Agreement, and notwithstanding anything in the Agreement, the failure of such condition will not constitute an event of default. Upon the failure of such condition, OBDD shall have no further obligation to disburse funds to City under this Agreement and City's obligation to reimburse the Company shall immediately terminate other than City's obligation to reimburse Company with any Grant funds remaining in City's possession.
11. **Notices.** Except where otherwise expressly provided in this Agreement, any notices to be given hereunder shall be given in writing by personal delivery, mail (postage prepaid), or email at the address set forth in this Agreement, or to such other addresses as may be designated by notice under this Section 11. Any notice so addressed and mailed will be deemed to be given five (5) days after mailing. Any notice by personal delivery shall be deemed to be given when actually delivered. Any such notice delivered by email will be effective on the day the transmitting machine generates a receipt of successful transmission, if transmission was during the normal business hours of the recipient, or on the next business day, if transmission was outside the normal business hours of the recipient. To be effective against a party, any such notice transmitted by email must be confirmed by telephone notice to that party.
12. **Indemnification of OBDD.** To the fullest extent authorized by law, City shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OBDD and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability, expenses of any nature whatsoever and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by City or its officers, employees, agents, or contractors under this Agreement or related to the Project; however, this section does not waive any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.
13. **Disclaimer of Warranties; Limitation of Liability.** City agrees that:
  - (1) OBDD makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any authorized use of the Project, or any other warranty or representation.
  - (2) In no event shall OBDD or its agents be liable or responsible for any direct, indirect, incidental, special, consequential, punitive or other damages in connection with or arising out of this Agreement or the existence, furnishing, functioning or City's use of these Grant funds. The sole and exclusive remedy for OBDD's breach of this Agreement is set forth in Section 9.
14. **Successors in Interest.** The provisions of this Agreement are binding upon and inure to the benefit of the parties, and their authorized successors and assigns.

**15. Third-party Beneficiaries.** Except as expressly set forth in this Section 15, OBDD and City are the only parties to this Agreement and entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or may be construed to give any direct or indirect benefit or right to third persons unless such third persons are individually identified by name and expressly described as intended beneficiaries of this Agreement. The Company is an intended beneficiary of the last paragraph of Section 8 hereof (notice of and right to cure a default by City) and is entitled to enforce the provisions thereof, subject to the limitation of liability and remedy set forth in Sections 9 and 13.

**16. Choice of Law; Designation of Forum; Federal Forum.** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the paragraph above, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

**17. Merger Clause.** This Agreement (including Exhibits that are by this reference incorporated herein) constitutes the entire agreement between the parties on the subject matter hereof. No waiver or consent regarding any of the terms of this Agreement will bind either party unless in writing and signed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. All parties, by the signature below of their authorized representatives, hereby acknowledge that they have read this Agreement, understand it and agree to be bound by its terms and conditions.

**18. Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

**19. Survival.** All rights and obligations cease upon termination of this Agreement other than (a) the rights and obligations arising from a party's default hereunder, (b) City's obligation to use Grant funds as provided in this Agreement, or to return those funds to OBDD within 30 days of Agreement termination, (c) City's reporting and indemnification obligations, (d) any rights or obligations accrued to a party under this Agreement prior to termination, and (e) any other provision of this Agreement that, by its express terms, survives termination of this Agreement.

**20. Time of the Essence.** Time is of the essence in the performance of each and every obligation and duty under this Agreement.

**21. Relationship of Parties.** OBDD and the City agree that their relationship is that of independent contracting parties and that City is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.

- 22. **Neutral Construction.** This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and will be construed without regard to which party drafted all or part of this Agreement.
- 23. **Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.



**STATE OF OREGON**  
 acting by and through its  
 Business Development Department



**CITY OF WARRENTON**

By: \_\_\_\_\_  
 Chris Cummings, Assistant Director  
 Economic Development

By: \_\_\_\_\_  
 The Honorable Henry Balensifer  
 Mayor of Warrenton

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

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

**APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:**

\_\_\_\_\_  
 /s/ David Elott as per email dated 3 August 2017  
 David Elott, Assistant Attorney General

## EXHIBIT A

### **1. Background; Project Description**

In June 2013, a fire destroyed the Company's seafood processing plant on Northeast Skipanon Drive in Warrenton. The Company is currently in the process of constructing a new plant at the site (the "New Plant") to resume seafood processing. Construction of the New Plant will create temporary construction jobs and enable the Company to retain the existing seafood processing jobs at the site resulting in significant economic development benefits for the north coast economy. Financial assistance from the City, funded with the proceeds of the Grant, will enable the Company to complete the construction of the New Plant.

Construction of the New Plant, which is referred to herein as the "Project", is occurring at 450 NE Skipanon Drive, Warrenton, OR, and generally includes but is not limited to the following: The Company will (a) replace the former timber pile-supported dock with steel pipe pilings to support a new concrete dock that will meet current industry standards for safety, constructability, and environmental protectiveness and (b) construct a new seafood processing facility on the newly constructed dock. The first phase involves removing and disposing of the charred pilings, and also includes related permitting, engineering and legal activities/costs. The second phase involves constructing the dock and related structures for marine access, mooring and unloading, and includes related final design and engineering and legal and permitting activities/costs. The third phase involves constructing the new seafood processing facility on the newly constructed dock.

### **2. Use of Funds; Disbursements; Funds Availability Deadline**

City will use the Grant funds solely to reimburse the Company for costs and expenses incurred by the Company in connection with the Project that are approved by OBDD as reasonable and are not otherwise reimbursed by City or a third party.

In accordance with the process and subject to the terms and conditions of this Agreement and the limitations of this paragraph and provided City is not in default under this Agreement, OBDD shall disburse Grant funds to City for reimbursement of costs paid or incurred by the Company in connection with the Project that OBDD approves as reasonable. City may submit to OBDD requests for such disbursements not more frequently than once per calendar month. City's disbursement requests must be on an OBDD-provided or OBDD-approved disbursement request form and be accompanied by invoices and/or other documentation evidencing the costs and expenses paid or incurred by the Company in connection with the Project for which the disbursement is sought and not previously reimbursed by the City ("Disbursement Request"). OBDD shall pay to City, within thirty (30) days after OBDD's receipt and approval of a Disbursement Request, an amount equal to the disbursement requested by City in such request; provided, however, that in no event shall the total amount disbursed to City under this Agreement exceed the sum of \$150,000 and in no event shall OBDD be obligated to disburse Grant funds requested in a Disbursement Request received by OBDD after June 30, 2018.

In addition to any other conditions, OBDD's obligation to disburse Grant funds to City under this Agreement is conditioned on the City entering into an agreement with the Company, in form and substance reasonably satisfactory to OBDD, containing the terms and conditions governing the reimbursement of the Company's Project costs with Grant funds received by the City under this Agreement (the "Company Reimbursement Agreement"). The Company Reimbursement Agreement must include Company conditional repayment obligations consistent with Sections 3 and 4 of this Exhibit A, must designate OBDD as an intended third party beneficiary of the Company Reimbursement Agreement with the right to enforce the Company's conditional repayment obligations directly, and must permit the City to assign its rights under the Company Reimbursement Agreement to OBDD.

### **3. Job Retention and Maintenance or Grant Repayment**

In order to retain the entirety of the Grant, City is bound by the condition that the Company (or an affiliate of the Company) retain at least 106 full-time equivalent jobs (“FTEs”) at the New Plant, and maintain those FTEs for a continuous two-year period beginning on the earlier of January 1, 2019 or the first day of the first full calendar quarter following commencement of operations at the New Plant (the “Maintenance Period”).

If at least 106 FTEs are not maintained for the Maintenance Period, City shall repay to OBDD, upon OBDD’s demand after the end of the Maintenance Period, the following amount: the amount of the Grant disbursed to the City, divided by 106, which quotient shall be multiplied by the difference between 106 and the number of FTEs maintained by the Company for the Maintenance Period. For example, if the sum of \$150,000 is disbursed to the City and the number of FTEs maintained by the Company for the Maintenance Period is 102, the City shall repay to OBDD the sum of \$5,660.36 ( $\$150,000 \div 106 = \$1415.09$ ;  $106 - 102 = 4$ ;  $4 \times \$1415.09 = \$5660.36$ )

For purposes of this Agreement, one FTE is equal to 3,640 hours worked during the Maintenance Period. “Hours worked” for an employee means all hours that the employee worked, if the employee is paid for those hours. “Hours worked” does not include vacation time, sick leave or any other paid time where no work is performed. To determine the number of FTEs maintained during the Maintenance Period, the total number of hours worked by all employees at the New Plant during the Maintenance Period shall be divided by 3,640. For example, if the total number of hours worked by all employees at the New Plant during the Maintenance Period is 378,560, the number of FTEs will be deemed to be 104.

Notwithstanding the foregoing provisions of this Section 3, if seafood processing operations at the New Plant are suspended or substantially curtailed during the Maintenance Period as result of a Force Majeure Event, the Maintenance Period will be extended by an amount equal to the duration of the suspension or substantial curtailment (a “Maintenance Period Extension”) and hours worked during the suspension or substantial curtailment will not be considered hours worked for purposes of calculating the number of jobs retained and maintained; provided, however, that the cumulative length of all Maintenance Period Extensions may not exceed five years. A “Force Majeure Event” is (a) a natural disaster, (b) severe weather conditions, (c) fire or other casualty, (d) climate change, (e) lack of fish or harvesting resources, (f) new governmental regulations, (g) civil unrest, (h) strikes or labor disputes, (i) lack of eligible workers, or (j) any other circumstances that are beyond the reasonable control of the Company to prevent. The City shall notify OBDD of a suspension or substantial curtailment of seafood processing operations at the New Plant as a result of a Force Majeure Event promptly after the beginning and end thereof.

OBDD intends to obtain the number of hours worked by employees of the Company at the New Plant during the Maintenance Period through review of information obtained from the Oregon Employment Department. If OBDD is not able to obtain information from the Oregon Employment Department to determine the number of hours worked, City shall obtain and provide comparable information from the Company, as OBDD may reasonably request, in order to determine the actual number of FTEs maintained.

### **4. Continued Operation of the New Plant or Grant Repayment**

In order to retain the entirety of the Grant, City is bound by the condition that the Company and any future owner of the New Plant operate the New Plant as a seafood processing facility for a cumulative total of no fewer than ten (10) years during the fifteen (15)-year period beginning on the earlier of January 1, 2019, or commencement of operations at the New Plant (the “Operations Period”).



In addition to any repayment required under Section 3 of this Exhibit A and unless OBDD otherwise agrees in writing, if the New Plant is not operated as a seafood processing facility for a cumulative total of no fewer than ten (10) years during the Operations Period, the City shall repay to OBDD, upon OBDD's request made after expiration of the Operations Period, an amount equal to (i) ten (10), less the number of years (including the fraction of any partial year) in which the New Plant was operated as a seafood processing facility during the Operations Period, (ii) multiplied by ten percent (10%) of the amount of the Grant disbursed to the City. For example, if during the Operations Period the New Plant is operated as a seafood processing facility for eight and one-half years, and assuming that the full Grant of \$150,000 was disbursed to City, City shall pay to OBDD, upon OBDD's demand made after the expiration of the Operations Period, the sum of \$22,500 (1.5 years x \$15,000). For purposes of this Agreement, the calculation of the number of years for which the New Plant is operated as a seafood processing facility shall be on a cumulative basis, such that any partial years of such use shall be added together and a year shall consist of 365 days.

#### **5. Conditions to City's Repayment Obligation**

The City's repayment obligations under Sections 3 and 4 of this Exhibit A are subject to and exist only to the extent of funds received under the Company Reimbursement Agreement. If the City has not received sufficient funds under the Company Reimbursement Agreement to satisfy OBDD's repayment demand, the City shall, upon OBDD's request, assign its rights under the Company Reimbursement Agreement to OBDD.

#### **6. Prevailing Wage Requirements**

In connection with construction of the Project, City shall comply and require the Company to comply with the prevailing wage requirements set forth in ORS 279C.800 through 279C.870 and the administrative rules promulgated thereunder (the "Prevailing Wage Rate Law"). City shall require the Company and its contractors and subcontractors to pay the applicable prevailing wage rate and to comply with all other Oregon Bureau of Labor and Industries ("BOLI") requirements pursuant to the Prevailing Wage Rate Law, including on all contracts and subcontracts and in filing separate public works bonds with the Construction Contractors Board, unless exempt under ORS 279C.836 and OAR 839-025-0015. The City shall prohibit the Company from contracting with any contractor on the BOLI current *List of Contractors Ineligible to Receive Public Works Contracts*.

#### **7. Reporting, Notifications**

Not later than 120 days after the completion of the Project, City shall provide OBDD with a final project completion report on a form provided by OBDD and in substance acceptable to OBDD.

City shall comply or ensure compliance with ORS 280.518 requiring public display of information on lottery funding of the Project. At a minimum City shall require the Company to:

- (a) Include the following statement, prominently placed on all plans, reports, bid documents and advertisements relating to the Project if paid using the Grant funds: "This project was funded in part with a financial award from the Oregon State Lottery and administered by the Oregon Business Development Department"; and
- (b) For construction funded in whole or in part by the Grant funds, post a sign, provided by OBDD, at the project site or, if more than one site is included in the Project, at a site visible to the general public stating that the Project is being funded by lottery proceeds.

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## **AGREEMENT FOR DISBURSEMENT OF PROCEEDS FROM SALE OF LOTTERY REVENUE BONDS FOR CONSTRUCTION OF NEW DOCK**

This Agreement for Disbursement of Proceeds from Sale of Lottery Revenue Bonds for Construction of New Dock (“Agreement”) is entered into as of this 1<sup>st</sup> day of August, 2017 (the “Effective Date”), between the City of Warrenton, Oregon, a municipal corporation ( “City”), and Pacific Coast Seafoods Company, an Oregon corporation (“Pacific Coast”).

### **Recitals**

A. The Oregon Legislature, under Chapter 66, Section 5, of Oregon Laws 2016 (the “Statute”), directed the Oregon State Treasurer to issue lottery bonds pursuant to ORS 286A.560 to 286A.585 in an amount producing \$3,000,000 in net proceeds and interest earnings for distribution to City for financing construction of a new dock at Pacific Coast’s plant at 450 N.E. Skipanon Drive in Warrenton, Oregon (the “Dock”), to replace the dock that was destroyed by fire in June 2013.

B. The State of Oregon, acting by and through its Department of Administrative Services (“State” or “DAS”), and City intend to enter into a State of Oregon Lottery Revenue Bonds Grant Agreement (“Grant Agreement”) contemporaneously with the execution of this Agreement by City and Pacific, which, among other things, will govern the disbursement of the lottery revenue bonds sale proceeds from the State to the City for financing the Dock’s construction.

C. The purposes of this Agreement are (i) to provide a procedure pursuant to which Pacific Coast may apply for and receive disbursements from the City from proceeds of the sale of lottery bonds received by the City from the State, which disbursements are to reimburse Pacific Coast for certain portions of costs and expenses incurred by Pacific in constructing the Dock, and (ii) to provide City with certain indemnifications and other protections to ensure that Pacific Coast performs its obligations relating to City’s responsibilities under the Grant Agreement.

D. Capitalized terms used in this Agreement that are not otherwise defined in this Agreement shall have the same meanings as set forth in the Grant Agreement.

### **Agreement**

Now, therefore, in consideration of the mutual covenants and promises of City and Pacific Coast contained herein, and for certain other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by City and Pacific Coast, City and Pacific Coast hereby agree as follows:

1. Disbursement Procedures. Pacific Coast may, from time to time, submit to City written requests for reimbursement of the reasonable costs and expenses incurred by Pacific Coast in connection with the Project, in accordance with the Grant Agreement. (Each such reimbursement request shall hereinafter be referred to as a “Reimbursement Request.”) Reimbursement Requests may not be submitted to City more than once per calendar month. Each Reimbursement Request shall be accompanied by copies of all invoices and other relevant

documents, together with a written certification by Pacific Coast evidencing that the work for which reimbursement is being sought was in fact performed in connection with the Project and that Pacific Coast has paid the amounts for which reimbursement is being requested. Within fifteen (15) business days after City's receipt from Pacific Coast of a Reimbursement Request that satisfies the above-described conditions, City shall submit a State-approved disbursement request to the State requesting payment from the Grant Amount of the amounts requested by Pacific in the Reimbursement Request, provided that the sum of (a) the amount requested in the Reimbursement Request and (b) the amounts previously received by Pacific Coast in connection with prior Reimbursement Requests shall not exceed the Grant Amount.

2. Use of Grant Funds. In recognition of City's obligations under Section 4 of the Grant Agreement, (a) Pacific Coast shall not request reimbursement for any Project Costs incurred by Pacific Coast prior to February 15, 2016, (b) Pacific Coast shall not use any portion of the Grant to pay for internal costs charged to the Project by Pacific Coast or a Related Party or to repay interest owed for any interim financing for the Project, and (c) Pacific Coast shall pay to DAS or City any portion of the Grant proceeds disbursed to Pacific Coast that is not used for Project Costs on or before the earliest of (a) the Project Closeout Deadline, (b) the date on which the Grant Agreement is terminated in accordance with its terms, or (c) the third anniversary of the sale date of the Bonds.

3. Pending Litigation. In recognition of City's obligations under Section 5.C of the Grant Agreement, Pacific Coast hereby represents to City that, as of the Effective Date of this Agreement, there are no pending proceedings or, to the knowledge of Pacific Coast, threatened proceedings, environmental or otherwise, which, if adversely determined, would, in the reasonable judgment of Pacific Coast, materially adversely affect the Project. Pacific Coast further agrees to provide written notice to City and DAS of any legal proceedings against Pacific Coast (or, to the knowledge of Pacific Coast, threatened against Pacific Coast) which, if adversely determined, may in the reasonable judgment of Pacific Coast materially and adversely affect the Project. Notice shall be given to City by Pacific Coast promptly after Pacific Coast learns of the existence or threat of such proceedings.

4. Governmental Consent. In recognition of City's obligations under Section 5.F of the Grant Agreement, Pacific Coast hereby represents to City that it has obtained and shall continue to obtain and thereafter maintain any and all permits and approvals (and make all notifications, declarations, filings or registrations required thereby) necessary for completion of the Project, including without limitation, all land use approvals and development permits required under local zoning or development ordinances, state law and federal law for the use of the land on which the Project will be located. "Land use approvals and development permits" includes, but is not limited to, any necessary "land use decision" or "limited land use decision" as those terms are defined by ORS 197.015(10) and (12).

5. Sufficient Funds. In recognition of City's obligations under Section 5.G of the Grant Agreement, City acknowledges and agrees that Pacific Coast has furnished City with satisfactory evidence that Pacific Coast has funds in its possession or control, or committed or available to it, which, together with the Grant Amount, are sufficient to complete the Project.

6. Construction of the Project. In recognition of City's obligations under Section 6.C of the Grant Agreement, Pacific Coast agrees that it shall construct the Dock in accordance with commercially reasonable plans and specifications and shall contract with competent, properly licensed and bonded contractors and professionals in connection with the Project. The plans and specifications for the Dock have been prepared by a licensed architect or licensed engineer. Pacific Coast agrees that the Dock has been designed in conformance with local industry standards.

7. Insurance. In recognition of City's obligations under Section 6.E of the Grant Agreement, Pacific Coast shall, throughout the Insurance/Condemnation Period, maintain a commercially reasonable policy of general commercial general liability insurance against claims for bodily injury and death or property damage and a commercially reasonable policy of property insurance insuring the Dock and the new seafood processing facility that will be constructed on and near the Dock (the "New Facility"). Upon City's request, Pacific Coast shall provide City with a certificate or certificates of insurance evidencing the above-described insurance.

8. Inspections; Information. In recognition of City's obligations under Section 6.H of the Grant Agreement, Pacific Coast shall, upon City's request and reasonable prior notice to Pacific Coast, permit City, State and any other party reasonably designated by either City or the State (collectively, "Inspecting Parties") to physically inspect the Project. Upon City's request, Pacific Coast shall allow the Inspecting Parties to inspect and make copies of any accounts, books, or records relating to the Project and use of Grant funds, provided that (a) Pacific Coast receives reasonable prior oral or written notice of such inspection and (b) subject to the terms of ORS 192.410 to ORS 192.505 (Public Records Act), each of the Inspecting Parties, upon Pacific Coast's request and prior to any such inspection or disclosure, executes and delivers to Pacific Coast a confidentiality or nondisclosure agreement that is in commercially reasonable form and content.

9. Prevailing Wage. In recognition of City's obligations under Section 6.K of the Grant Agreement, Pacific Coast and its contractors and subcontractors shall pay the applicable prevailing wage rate for work performed in connection with the Project and shall comply with all other Oregon Bureau of Labor and Industries requirements pursuant to the Prevailing Wage Law in connection with the Project. If the Project is subject to the Davis-Bacon Act, Pacific Coast shall comply with and require its contractors and subcontractors to comply with the Davis-Bacon Act and any applicable provisions of the Oregon Prevailing Wage Rate law. If the Project is or becomes subject to both the Oregon Prevailing Wage Rate law and the Davis-Bacon Act, Pacific Coast will ensure that all subject workers are paid the higher of the applicable state or prevailing federal rate.

10. Obligations of Pacific Coast.

(a) Pacific Coast shall construct the Project in accordance with commercially reasonable plans and specifications and do so under contract with competent, properly licensed/bonded contractors and other professionals. Pacific Coast shall have plans and specifications for the Project prepared by a licensed architect or licensed engineer and require the Project be designed in conformance with local industry standards.

(b) Pacific Coast, or any successor as owner of the Dock, shall use or operate the Dock as part of a seafood processing operation for a cumulative total of no fewer than ten (10) years during the fifteen (15)-year period immediately following Project's Completion Date ("Post-Completion Period"). Should Pacific Coast or a successor as owner of the Dock fail to use or operate the Dock as part of a seafood processing operation for a cumulative total of at least ten (10) years during the Post-Completion Period, and Sections 9(c) and 9(d) below do not apply, Pacific Coast shall pay the State, upon City's written request made after the expiration of the Post-Completion Period, an amount equal to (i) ten (10) less the number of years (including the fraction of any partial year) in which the Dock was used or operated as part of a seafood processing operation during the Post-Completion Period, (ii) multiplied by ten percent (10%) of the Grant Amount disbursed to City and received by Pacific Coast. For example, if during the Post-Completion Period, the Dock is used or operated as part of a seafood processing operation for eight and one-half (8½) years, and assuming the full Grant Amount of \$3 million was received by Pacific Coast, Pacific Coast shall be obligated to and shall pay the State, upon City's written demand made after expiration of the Post-Completion Period, the sum of \$450,000 (1.5 years x \$300,000). For purposes of this Agreement (including, without limitation, this Section 9(b) and Sections 9(c) and 9(d) below), (A) the Dock shall be deemed to be used or operated as part of a seafood processing operation during normal fishing off-seasons and during periods of maintenance of and repairs to the Dock, and (B) the calculation of the number of years for which the Dock is used or operated as part of a seafood processing operation shall be on a cumulative basis, such that any partial years of such use shall be added together and a year shall consist of 365 days.

(c) Throughout the Insurance/Condemnation Period, Pacific Coast shall maintain insurance policies with responsible insurers insuring against liability and risk of direct physical loss, damage or destruction of the Dock to the extent similar insurance is customarily carried by persons or entities constructing, operating and maintaining a Dock-like facility. The "Insurance / Condemnation Period" shall begin on the Project Completion Date and expire on the first to occur of (i) the end of the tenth (10<sup>th</sup>) year in which the Dock has been used or operated as part of a seafood processing operation or (ii) the expiration of the Post-Completion Period. If, (A) during the Insurance/Condemnation Period, the Dock or any portion thereof is destroyed or damaged in a manner preventing continued operation of the Dock as part of a seafood processing operation ("Casualty Loss"), (B) Pacific Coast receives insurance proceeds in amount(s) sufficient to repair or restore the Dock to substantially the same condition existing immediately prior to said Casualty Loss, and (C) Pacific Coast fails, refuses or neglects to timely use the insurance proceeds to effect the repair or restoration, then Pacific Coast shall, within thirty (30) days after written notice is received by Pacific Coast from the State or City, pay the State an amount equal to (i) ten (10) less the number of years (including the fraction of any partial year) following the Project Completion Date in which the Dock was used as part of a seafood processing operation prior to the Casualty Loss, (ii) multiplied by ten percent (10%) of the Grant Amount disbursed to City and received by Pacific Coast. For example, if, seven and one-half years after the Project Completion Date, the Dock is destroyed or damaged such that it may no longer be used as part of a seafood processing facility, and Pacific Coast receives insurance proceeds for the Casualty Loss in an amount sufficient to repair or restore the Dock to substantially the same condition it was in immediately prior to the Casualty Loss, and Pacific Coast does not use the insurance proceeds to repair or restore the Dock, and assuming that (a) the full Grant Amount of \$3 million had previously been disbursed to City and received by Pacific



Coast and (b) the Dock had been continuously used as part of a seafood processing operation for such 7½-year period, Pacific Coast shall, upon the State's or City's demand, pay to the State the sum of \$750,000 (2.5 years x \$300,000). If, during the Insurance/Condemnation Period, there is a Casualty Loss, and Pacific Coast repairs or restores the Dock so that it may again be used as part of a seafood processing operation, Section 9(b) above will apply; provided, however, the Post-Completion Period shall be extended for the length of the period of the repair or restoration of the Dock. If, during the Insurance/Condemnation Period, there is a Casualty Loss and Pacific Coast does not receive insurance proceeds in an amount sufficient to repair or restore the Dock to substantially the same condition it was in immediately prior to the Casualty Loss and chooses not to repair or restore the Dock, Pacific Coast shall have no obligation to pay any portion of the Grant Amount to the State. The repayment obligations of Pacific Coast set forth in this Section 9(c) shall be its sole payment obligations to City or the State in the event of a Casualty Loss.

(d) Condemnation Proceeds. If, during the Insurance/Condemnation Period, the Dock or any portion thereof is condemned in a manner that prevents the continued use or operation of the Dock as part of a seafood processing operation ("Condemnation Loss"), then Pacific Coast shall pay the State, upon the State's or City's demand, an amount equal to the lesser of (i) the amount of condemnation proceeds received by Pacific Coast or the then-owner of the Dock that are attributable to the value of the Dock and (ii) ten (10) less the number of years (including the fraction of any partial year) following the Project Completion Date in which Dock was used or operated as part of a seafood processing operation prior to the date of the Condemnation Loss, multiplied by ten percent (10%) of the Grant Amount disbursed to City and received by Pacific Coast. The repayment obligations of Pacific Coast set forth in this Section 9(d) shall be its sole payment obligations to City and the State in the event of a Condemnation Loss.

11. Indemnification. Pacific Coast shall indemnify City for, hold City harmless from, and defend City (with counsel reasonably satisfactory to City) against claims by the State arising from Pacific Coast's breach of or failure to comply with this Agreement or from Pacific Coast's failure to comply with any applicable laws in connection with the Project.

12. Pacific Coast's Payment Obligations. Without limiting the generality of Section 11 above, Pacific Coast shall pay to City or the State, upon City's demand, all amounts received by City from the State under the Grant Agreement and disbursed by City to Pacific Coast that City is obligated to repay to the State pursuant to Section 4.B, 4.C, 4.E, 6.D, 6.E, or 6.F of the Grant Agreement, provided that such repayment obligation of City does not arise or result from City's intentional misconduct.

13. Compliance with the Internal Revenue Code. In recognition of City's obligations under Section 6.M of the Grant Agreement, Pacific Coast shall not knowingly violate any provisions of the Code that are necessary to protect the exclusion of interest on the Bonds from federal taxation. Pacific Coast shall take such actions that are reasonably necessary to preserve the tax-exempt status of the Bonds as reasonably requested by City or the State.

14. Notice of Defaults. City shall notify Pacific Coast of any notice of a Default or an Event of Default that City receives from the State under the Grant Agreement promptly after

City's receipt of the same. City agrees Pacific Coast may cure any Default or Event of Default by City under the Grant Agreement, as set forth in Section 7.B of the Grant Agreement.

15. The State's Demand for Repayment of Grant Funds. City shall promptly notify Pacific Coast if the State makes a demand or claim against City for the repayment of all or any portion of the Grant Amount received by City and disbursed to Pacific Coast, including without limitation any demand or claim under Section 4.B, 4.C, 4.E, 6.D, 6.E, or 6.F of the Grant Agreement (a "Repayment Claim"). City shall provide Pacific Coast with any documents delivered by the State to City in connection with a Repayment Claim promptly after City's receipt of the same. Pacific Coast shall have the right to act on behalf of City, at no cost or expense to City, in defending, contesting, challenging, or opposing such Repayment Claim, which actions may include, without limitation, exercising such rights, making such claims (which may include, without limitation, the filing of a lawsuit or appearing on behalf of City in a lawsuit), and/or raising such defenses that City would be entitled to exercise, make, or raise. City agrees to reasonably cooperate with Pacific Coast, at no out-of-pocket cost or expense to City, in the event Pacific Coast chooses to defend, contest, challenge, or oppose such demand or claim, or if the State fails to make a disbursement to City in breach or violation of the Grant Agreement and Pacific Coast elects to challenge or contest such failure. Such cooperation may include, without limitation, City's assignment to Pacific Coast of City's rights under the Grant Agreement, provided that DAS consents to such assignment pursuant to Section 9.B(3) of the Grant Agreement; and City agrees to request the consent of DAS to such an assignment upon Pacific Coast's written request.

16. Successors and Assigns. If Pacific Coast sells or otherwise transfers fee ownership of the Dock within the Post-Completion Period, Pacific Coast shall be responsible for ensuring that any future owners of the Dock comply with Pacific Coast's duties and obligations under Sections 3, 5, 7, and 8 of this Agreement through the end of the Post-Completion Period. This Agreement shall bind and inure to the benefit of Pacific Coast's successors in interest.

17. Notices. All notices or other communications required or permitted under this Agreement shall be in writing and shall be (a) personally delivered (including by means of professional messenger service), which notices and communications shall be deemed given on receipt at the office of the addressee; (b) sent by registered or certified mail, postage prepaid, return receipt requested, which notices and communications shall be deemed given three (3) business days after deposit in the United States mail; or (c) sent by overnight delivery using a nationally recognized overnight courier service, which notices and communications shall be deemed given one business day after deposit with such courier. Notices shall be given at the following addresses:

To the City: Linda Engbretson  
City Manager  
225 S. Main Avenue  
P.O. Box 250  
Warrenton, Oregon 97146

With a copy to: Paul C. Elsner  
Beery Elsner & Hammond, LLP

1750 S.W. Harbor Way, Suite 380  
Portland, Oregon 97201

To Pacific Coast: c/o Pacific Seafood Co.  
Attn: General Counsel  
16797 S.E. 130<sup>th</sup> Avenue  
P.O. Box 97  
Clackamas, Oregon 97015-0097

With a copy to: James F. Dulcich  
Schwabe, Williamson & Wyatt, P.C.  
1211 S.W. Fifth Avenue, Suite 1900  
Portland, Oregon 97204

Notice of change of address shall be given by written notice in the manner detailed in this Section 17. Notices may be given by a party or a party's attorney or agent.

18. Reimbursement of City's Administrative Expenses. Pacific Coast shall from time to time (and in no event more than once each calendar month) reimburse City for City's reasonable costs and expenses incurred in connection with City's administration of the Grant pursuant to the Grant Agreement and this Agreement, including without limitation out-of-pocket costs and employee time at a reasonable hourly rate; provided, however, that in no event shall Pacific Coast be obligated to reimburse City an aggregate amount in excess of \$75,000 for the costs and expenses incurred by City in connection with administration of (a) the Grant and (b) that certain grant provided to City by the State of Oregon, acting by and through its Oregon Business Development Department ("OBDD"), pursuant to that certain Intergovernmental Grant Agreement that has been or will be entered into between the State of Oregon, acting by and through OBDD, and City. Such reimbursement shall be made by Pacific Coast within thirty (30) days after Pacific Coast's receipt of City's written request for payment, which request shall include copies of invoices, receipts, statements, and other reasonable documentation evidencing that such costs or expenses (or employee time) were incurred. In no event shall Pacific Coast have any obligation to reimburse City for the legal costs and expenses, including without limitation attorney fees, incurred by City in connection with the negotiation and/or preparation of this Agreement or the Grant Agreement.

19. No Control over the Design and Construction of the Dock. Nothing contained in this Agreement gives City the right or obligation to direct or control the design or construction of the Dock; any rights of City relating to the design or construction of the Dock shall be derived solely from the Warrenton Municipal Code and other applicable laws.

20. Headings. Headings at the beginning of each section and subsection of this Agreement are solely for the convenience of the parties and are not part of this Agreement.

21. Interpretation. This Agreement has been fully reviewed by City and Pacific Coast and their counsel and shall not be strictly or adversely construed against the drafter; the parties agree that this Agreement shall be construed as if both parties were equally responsible for drafting it.

22. Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original and all of which together shall constitute one and the same agreement.

CITY OF WARRENTON, a municipal  
corporation

PACIFIC COAST SEAFOODS COMPANY,  
an Oregon corporation

By: \_\_\_\_\_  
Henry Balensifer, Mayor

By: \_\_\_\_\_  
Daniel Occhipinti, General Counsel

## **AGREEMENT FOR DISBURSEMENT OF PROCEEDS FROM OBDD GRANT**

This Agreement for Disbursement of Proceeds from OBDD Grant (this "Agreement") is entered into as of this 1<sup>st</sup> day of August, 2017 (the "Effective Date"), between the City of Warrenton, Oregon, a municipal corporation ("City"), and Pacific Coast Seafoods Company, an Oregon corporation ("Pacific Coast").

### **Recitals**

A. The State of Oregon, acting by and through its Oregon Business Development Department ("State" or "OBDD") and City intend to enter into a certain Intergovernmental Grant Agreement No. RS1612 (the "IGA") contemporaneously with the execution of this Agreement, which, among other things, will govern the disbursement of a \$150,000 grant from OBDD to City (the "Grant") that will be used to reimburse Pacific Coast for costs and expenses incurred by Pacific Coast in connection with the construction of a new seafood processing facility in Warrenton, Oregon (the "Project").

B. The purposes of this Agreement are (i) to provide a procedure pursuant to which Pacific Coast may apply for and receive disbursements from City from Grant funds received by City from OBDD to reimburse Pacific Coast for certain portions of costs and expenses incurred by Pacific in connection with the Project, and (ii) to provide City with certain indemnifications and other protections to ensure that Pacific Coast performs its obligations relating to City's responsibilities under the IGA.

C. Capitalized terms used in this Agreement that are not otherwise defined in this Agreement shall have the same meanings as set forth in the IGA.

### **Agreement**

Now, therefore, in consideration of the mutual covenants and promises of City and Pacific Coast contained herein, and for certain other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by City and Pacific Coast, City and Pacific Coast hereby agree as follows:

1. Disbursement Procedures. Pacific Coast may, from time to time, submit to City written requests for reimbursement of the reasonable costs and expenses incurred by Pacific Coast in connection with the Project, in accordance with the IGA. (Each such reimbursement request shall hereinafter be referred to as a "Reimbursement Request.") Reimbursement Requests may not be submitted to City more than once per calendar month. Each Reimbursement Request shall be accompanied by copies of all invoices and other relevant documents, together with a written certification by Pacific Coast evidencing that the work for which reimbursement is being sought was in fact performed in connection with the Project and that Pacific Coast has paid the amounts for which reimbursement is being requested. Within fifteen (15) business days after City's receipt from Pacific Coast of a Reimbursement Request that satisfies the above-described conditions, City shall submit to OBDD an OBDD-provided or OBDD-approved disbursement request form requesting payment from the Grant of the amounts requested by Pacific Coast in the Reimbursement Request, provided that the sum of (a) the amount requested in the Reimbursement Request and (b) the amounts previously received by



Pacific Coast in connection with prior Reimbursement Requests shall not exceed the amount of the Grant.

2. Prevailing Wage. In recognition of City's obligations under Section 6 of Exhibit A to the IGA, Pacific Coast shall, in connection with the Project, comply with the prevailing wage requirements set forth in ORS 279C.800 through 279C.870 and the administrative rules promulgated thereunder (the "Prevailing Wage Rate Law"). Pacific Coast and its contractors and subcontractors shall, in connection with the Project, pay the applicable prevailing wage rate and comply with all other Oregon Bureau of Labor and Industries ("BOLI") requirements pursuant to the Prevailing Wage Rate Law, including on all contracts and subcontracts. Pacific Coast shall not contract with any contractor on the BOLI current *List of Contractors Ineligible to Receive Public Works Contracts*.

3. Reporting; Notifications. In recognition of City's obligations under Section 7 of Exhibit A to the IGA, Pacific Coast shall (a) cooperate with City in preparing and providing to OBDD a final project completion report on a form provided by OBDD and in substance acceptable to OBDD, (b) include in a prominent place on all plans, reports, bid documents, and advertisements prepared after the Effective Date of this Agreement that relate to those portions of the Project paid for with the use of Grant funds, the following statement: "This project was funded in part with a financial award from the Oregon State Lottery and administered by the Oregon Business Development Department," and (c) during the pendency of construction of the Project that is funded in whole or in part by Grant funds, post a sign (if a sign is provided by OBDD) at a site visible to the general public, stating that the Project is being funded by lottery proceeds.

4. Job Retention and Maintenance.

(a) In recognition of City's obligations under Section 3 of Exhibit A to the IGA, Pacific Coast, or an affiliate of Pacific Coast, shall retain at least 106 full-time equivalent jobs ("FTEs") at the New Plant, and maintain those FTEs for a continuous two-year period beginning on the earlier of January 1, 2019, or the first day of the first full calendar quarter following commencement of operations at the New Plant (the "Maintenance Period"). If at least 106 FTEs are not maintained for the Maintenance Period, Pacific Coast shall repay to OBDD, upon OBDD's demand after the end of the Maintenance Period, the following amount: the amount of the Grant disbursed to City and received by Pacific Coast, divided by 106, which quotient shall be multiplied by the difference between 106 and the number of FTEs maintained by Pacific Coast for the Maintenance Period. For example, if the sum of \$150,000 is disbursed to City and received by Pacific Coast and the number of FTEs maintained by Pacific Coast for the Maintenance Period is 102, Pacific Coast shall repay to OBDD the sum of \$5,660.36 ( $\$150,000 \div 106 = \$1,415.09$ ;  $106 - 102 = 4$ ;  $4 \times \$1,415.09 = \$5,660.36$ ). For purposes of this Agreement, one FTE is equal to 3,640 hours worked during the Maintenance Period. "Hours worked" for an employee means all hours that the employee worked, if the employee is paid for those hours. "Hours worked" does not include vacation time, sick leave or any other paid time where no work is performed. To determine the number of FTEs maintained during the Maintenance Period, the total number of hours worked by all employees at the New Plant during the Maintenance Period shall be divided by 3,640. For example, if the total number of hours

worked by all employees at the New Plant during the Maintenance Period is 378,560, the number of FTEs will be deemed to be 104.

(b) Notwithstanding the foregoing provisions of this Section 4, if seafood processing operations at the New Plant are suspended or substantially curtailed during the Maintenance Period as a result of a Force Majeure Event, the Maintenance Period will be extended by an amount equal to the duration of the suspension or substantial curtailment (a “Maintenance Period Extension”) and hours worked during the suspension or substantial curtailment will not be considered hours worked for purposes of calculating the number of jobs retained and maintained; provided, however, that the cumulative length of all Maintenance Period Extensions may not exceed five years. A “Force Majeure Event” is (i) a natural disaster, (ii) severe weather conditions, (iii) fire or other casualty, (iv) climate change, (v) lack of fish or harvesting resources, (vi) new governmental regulations, (vii) civil unrest, (viii) strikes or labor disputes, (ix) lack of eligible workers, or (x) any other circumstances that are beyond the reasonable control of Pacific Coast to prevent. Pacific Coast shall notify City and OBDD of a suspension or substantial curtailment of seafood processing operations at the New Plant as a result of a Force Majeure Event promptly after the beginning and end thereof.

(c) Upon the reasonable request of OBDD or City, Pacific Coast shall provide the requesting party with documents and other information relating to the number of hours worked during the Maintenance Period by employees of Pacific Coast.

5. Continued Operation of the New Plant. In recognition of City’s obligations under Section 4 of Exhibit A to the IGA, Pacific Coast and any future owner of the New Plant shall operate the New Plant as a seafood processing facility for a cumulative period of no fewer than ten (10) years during the fifteen (15)-year period beginning on the earlier of January 1, 2019, or the commencement of operations at the New Plant (the “Operations Period”). In addition to Pacific Coast’s repayment obligation described in Section 4(a) above, unless OBDD otherwise agrees in writing, if the New Plant is not operated as a seafood processing facility for a cumulative total of no fewer than ten (10) years during the Operations Period, Pacific Coast shall repay to OBDD, upon OBDD’s request made after expiration of the Operations Period, an amount equal to (i) ten (10) less the number of years (including the fraction of any partial year) in which the New Plant was operated as a seafood processing facility during the Operations Period, (ii) multiplied by ten percent (10%) of the amount of the Grant disbursed to City and received by Pacific Coast. For example, if during the Operations Period the New Plant is operated as a seafood processing facility for eight and one-half years, and assuming that the full Grant of \$150,000 was disbursed to City and received by Pacific Coast, Pacific Coast shall pay to OBDD, upon OBDD’s demand made after the expiration of the Operations Period, the sum of \$22,500 (1.5 years x \$15,000). For purposes of this Agreement, the calculation of the number of years for which the New Plant is operated as a seafood processing facility shall be on a cumulative basis, such that any partial years of such use shall be added together and a year shall consist of 365 days.

6. Third-Party Beneficiary. In recognition of City’s obligations under the third paragraph of Section 2 of Exhibit A to the IGA, City and Pacific Coast agree that (a) OBDD is an intended third-party beneficiary of Pacific Coast’s obligations under this Agreement and shall

have the right to enforce such obligations directly against Pacific Coast, and (b) City may assign to OBDD its rights under this Agreement.

7. Indemnification. Pacific Coast shall indemnify City for, hold City harmless from, and defend City (with counsel reasonably satisfactory to City) against claims by the State arising from Pacific Coast's breach of or failure to comply with this Agreement or from Pacific Coast's failure to comply with any applicable laws in connection with the Project.

8. Pacific Coast's Payment Obligations. Without limiting the generality of Section 7 above, Pacific Coast shall pay to City or the State, upon City's demand, all amounts received by City from the State under the IGA and disbursed by City to Pacific Coast that City is obligated to repay the State pursuant to Section 8 of the IGA or Section 3 or 4 of Exhibit A to the IGA, provided that such repayment obligation of City does not arise or result from City's intentional misconduct.

9. Notice of Defaults. City shall notify Pacific Coast of any notice of any breach or default that City receives from the State under the IGA promptly after City's receipt of the same. City agrees Pacific Coast may cure any default by City under the IGA, as set forth in Section 8 of the IGA.

10. The State's Demand for Repayment of Grant Funds. City shall promptly notify Pacific Coast if the State makes a demand or claim against City for the repayment of all or any portion of the Grant funds received by City and disbursed to Pacific Coast, including without limitation any demand or claim under Section 8 of the IGA or Section 3 or Section 4 of Exhibit A to the IGA (a "Repayment Claim"). City shall provide Pacific Coast with any documents delivered by the State to City in connection with a Repayment Claim promptly after City's receipt of the same. Pacific Coast shall have the right to act on behalf of City, at no cost or expense to City, in defending, contesting, challenging, or opposing such Repayment Claim, which actions may include, without limitation, exercising such rights, making such claims (which may include, without limitation, the filing of a lawsuit or appearing on behalf of City in a lawsuit), and/or raising such defenses that City would be entitled to exercise, make, or raise. City agrees to reasonably cooperate with Pacific Coast, at no out-of-pocket cost or expense to City, in the event Pacific Coast chooses to defend, contest, challenge, or oppose such demand or claim, or if the State fails to make a disbursement to City in breach or violation of the Grant Agreement and Pacific Coast elects to challenge or contest such failure. Such cooperation may include, without limitation, City's assignment to Pacific Coast of City's rights under the IGA, provided that OBDD consents to such assignment pursuant to Section 4 of the IGA; and City agrees to request the consent of OBDD to such an assignment upon Pacific Coast's written request.

11. Successors and Assigns. If Pacific Coast sells or otherwise transfers fee ownership of the New Plant during the Operations Period, Pacific Coast shall be responsible for ensuring that any future owners of the New Plant comply with Pacific Coast's duties and obligations under Sections 2, 3, and 4(c) of this Agreement through the end of the Operations Period. This Agreement shall bind and inure to the benefit of Pacific Coast's successors in interest.

**STATE OF OREGON LOTTERY REVENUE BONDS  
GRANT AGREEMENT  
(Governmental Entity)**

Grantee: City of Warrenton  
Project Name: Dock rebuild  
Lottery Bonds Series Number: 2017 Series A

This Grant Agreement (“Agreement”), is made by the State of Oregon, acting by and through its Department of Administrative Services (“DAS”), and City of Warrenton (“Grantee”) for financing of the project referred to above and described in Exhibit A (the “Project”). This Agreement becomes effective only when fully signed and approved as required by applicable law, and shall expire on the date of the last disbursement of the funds provided under this Agreement or the third anniversary date of the sale of the bonds funding this Agreement, whichever is later. This Agreement includes the following exhibits, incorporated into and made a part of this Agreement:

- Exhibit A: Project Description
- Exhibit B: Project Budget
- Exhibit C: Disbursement Request Form

**SECTION 1 – DEFINITIONS OF KEY TERMS**

The following capitalized terms have the meanings assigned below.

“Act” means Article XV, Section 4 of the Oregon Constitution; ORS 286A.560 to 286A.585 and 2016 Oregon Laws, chapter 66 Section 5, all as amended from time to time, inclusive.

“Bond Counsel” means a law firm that serves as bond counsel to the State because it has knowledge and expertise in the field of municipal law and issues opinions that are generally accepted by purchasers of municipal bonds.

“Bonds” means the State of Oregon Lottery Revenue Bonds 2017 Series A issued pursuant to the Act, a portion of the sale proceeds of which are funding the Grant.

“Code” means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

“Date of Issuance” means the date the Bonds are issued, which is expected to be April 5, 2017

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Grant Amount” means an amount of proceeds from the sale of the Bonds, not to exceed \$3,000,000.

“Preliminary Expenditures” means costs such as architectural, engineering, surveying, soil testing, and similar costs that, in the aggregate, are not in excess of 20% of the Grant Amount. Costs of land acquisition, site preparation and similar costs incident to commencement of construction are NOT preliminary expenditures.

“Project” means the project described in Exhibit A.

“Project Budget” means the budget for the Project described in Exhibit B.

“Project Owner” means Pacific Seafoods, Inc.

“Project Completion Date” means the date on which Grantee completes the Project.

“Project Closeout Deadline” means 90 days after the Project Completion Date.

“Project Costs” means the actual Project Costs paid by Grantee to Project Owner to the extent those costs are (a) reasonable, necessary and directly used for the Project, (b) costs permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by the State, to be capitalized to an asset that is part of the Project, (c) capital expenditures for federal income tax purposes within the meaning of Section 1.150-1(b) of the Code, and (d) eligible or permitted uses of the Grant under the Act and this Agreement. Project Costs do NOT include internal costs charged to the Project by Project Owner or payments made to Related Parties, do NOT include loans or grants to be made to third parties, and may only include the payment of principal due on interim financing for the Project with the prior written consent of the State.

“Public Benefits” means the operation of a dock as a delivery point for fishing vessels to provide for the continued operation of the fishing and fish processing industry in and around the north Oregon coast.

“Related Parties” means, in reference to governmental units or 501(c)(3) organizations, members of the same controlled group within the meaning of Section 1.150-1(e) of the Code, and in reference to any person that is not a governmental unit or a 501(c)(3) organization, a related person as defined in Section 144(a)(3) of the Code.

“State” means the State of Oregon, acting by and through its agencies including but not limited to DAS, the Office of the State Treasurer and any other agency authorized to administer proceeds and payment of the Bonds.

## SECTION 2 – FINANCIAL ASSISTANCE

DAS shall provide Grantee, and Grantee shall accept from DAS, a grant (the “Grant”) in an aggregate amount not to exceed the Grant Amount. This Grant is made from the sale proceeds of the Bonds.



### SECTION 3 – DISBURSEMENTS

- A. Disbursement Requests. Grantee must request disbursement of some or all of the Grant Amount using the Disbursement Request form attached to this Agreement as Exhibit C, containing the information and certifications shown in Exhibit C.
- B. Conditions to Disbursement. DAS has no obligation to disburse any of the Grant unless all of the following conditions are met on the date of disbursement:
- (1) There is no Default or Event of Default.
  - (2) The representations and warranties made by Grantee in this Agreement are true and correct as if made on such date.
  - (3) The Bonds have been issued and the State, in the reasonable exercise of its administrative discretion, has sufficient funding, appropriations, limitations, allotments, allocation and other expenditure authority to authorize the disbursement.
  - (4) DAS is satisfied that all items listed in the Disbursement Request are for Project Costs that have been or are expected to be incurred by Grantee.
  - (5) DAS has received the following items in form and substance satisfactory to DAS:
    - (i) This Agreement duly signed by an authorized officer of Grantee.
    - (ii) If requested by DAS, an opinion of counsel to Grantee, subject to appropriate assumptions, qualifications, certifications and representations acceptable to Bond Counsel and the State, to the effect that this Agreement has been duly executed and delivered by, and constitutes a valid and binding obligation of, Grantee, enforceable against Grantee in accordance with its terms and that Grantee has taken all actions necessary to and has full authority and power to incur and perform its obligations under this Agreement and to receive financing for and carry out the Project.
    - (iii) A copy of the executed agreement between Grantee and the Project Owner (approved by DAS) that provides for the transfer of the Grant proceeds from Grantee to Project Owner, describes the allowable uses of the Grant proceeds by the Project Owner and provides for a lien against the dock or other assurance of which DAS is the beneficiary that the Project will not be transferred and will continue to provide the Public Benefits for which proceeds of the Bonds are disbursed to Grantee until the Bonds are no longer outstanding (all as more particularly described in Sections 4, 5 and 6 of this Agreement) .

(iii) Such other certificates, documents, opinions and information as the State may reasonably require.

C. Disbursement by DAS. Upon receipt of a Disbursement Request, satisfaction of the conditions set forth in Sections 3.B, and DAS's review and approval of the Project Costs set forth in the Disbursement Request, DAS shall disburse or cause to be disbursed the Grant Amount to Grantee.

#### SECTION 4 – USE OF GRANT FUNDS

- A. Use of Proceeds. Grantee shall use disbursements of the Grant only to reimburse itself, or pay, for transfers to the Project Owner to pay for Project Costs in compliance with Grantee's certifications in its Disbursement Request.
- B. Project Costs paid by Grantee before the Bonds are Issued. Except for certain Preliminary Expenditures for costs that can be capitalized to the Project, the Grant cannot be used for Project Costs that were paid more than 60 days before the earlier of the following two dates: (i) the Date of Issuance of the Bonds; or (ii) April 15, 2016 on which date a Declaration of Official Intent to Reimburse Project Costs with Lottery Revenue Bonds was executed.
- C. Costs Paid for by Others. Grantee shall not permit Project Owner to use any of the Grant to pay internal costs charged to the Project by Project Owner or by Related Parties or to repay the interest owed for any interim financing for the Project. Grantee may not permit the Project Owner to use any of the Grant to repay the principal owed on interim financing for the Project.
- D. Earnings on Bond Proceeds. Any earnings on proceeds of the Bonds prior to disbursement will be retained by the State.
- E. Unexpended Proceeds. Grantee shall require the Project to be completed by the Project Completion Date. Grantee shall immediately repay to DAS, unless DAS otherwise directs, any portion of the Grant disbursed to Grantee, and any interest earned by Grantee on the Grant disbursement, that are not used for Project Costs or that remain after the earliest of (a) the Project Completion Deadline, (b) this date that this Agreement has expired or is terminated; or (c) the third anniversary of the sale date of the Bonds, which is expected to be in April 5, 2020.

#### SECTION 5 – REPRESENTATIONS AND WARRANTIES OF GRANTEE

Grantee represents and warrants to the State:

- A. Organization and Authority.
- (1) Grantee is a city validly created and existing under the laws of the State of Oregon.

- (2) Grantee has all necessary right, power and authority under its applicable enabling statutes, code, ordinances or other Oregon law to (a) execute and deliver this Agreement, (b) incur and perform its obligations under this Agreement, and (c) receive financing for and enter into an agreement with the Project Owner to carry out the Project.
  - (3) This Agreement has been duly authorized by a vote, resolution or other act of the governing body or officer of Grantee, is executed by an authorized representative of Grantee, and when executed by DAS, is legal, valid and binding, and enforceable in accordance with its terms.
- B. Full Disclosure. Grantee has disclosed in writing to DAS all facts that may materially adversely affect the Project, or the ability of Grantee to perform all obligations required by this Agreement. Grantee has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading, regarding the Grant, the Project and this Agreement. The information contained in this Agreement is true and accurate in all respects.
- C. Pending Litigation. Grantee shall require Project Owner to disclose in writing to Grantee and to DAS all proceedings, environmental or otherwise, pending (or to the knowledge of Project Owner, threatened) against or affecting Project Owner, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project. Grantee has disclosed to DAS in writing any proceedings, pending or threatened, that, if adversely determined, would materially adversely affect the ability of Grantee to perform its obligations under this Agreement.
- D. No Defaults.
- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Agreement.
  - (2) Grantee has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party, that would materially adversely affect the ability of Grantee to perform all obligations required by this Agreement.
- E. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Agreement will not: (i) cause a breach of a material agreement, indenture, mortgage, deed of trust, or other instrument, to which Grantee is a party or any of Grantee's property or assets may be bound; (ii) violate any provision of the applicable enabling statutes, code, ordinances or other Oregon law pursuant to which Grantee was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Grantee or Grantee's properties or operations.
- F. Governmental Consent. Grantee shall require the Project Owner to obtain all permits and approvals, and make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under its agreement with Grantee the

undertaking and completion of the Project, including without limitation, all land use approvals and development permits required under local zoning or development ordinances, state law and federal law for the use of the land on which the Project will be located. "Land use approvals and development permits" includes, but is not limited to, any necessary "land use decision" or "limited land use decision" as those terms are defined by ORS 197.015(10) and (12).

- G. Sufficient Funds. Grantee has received, or will require in its agreement with the Project Owner, evidence that the Project Owner has sufficient funds in its possession, or committed to it, to complete the Project.

## SECTION 6 – COVENANTS OF GRANTEE

Grantee covenants as follows for so long as the Bonds and any obligations issued to refund the Bonds are outstanding:

- A. Compliance with Laws. Grantee shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Agreement. These laws, rules, regulations and orders are incorporated by reference in this Agreement to the extent required by law.
- B. Project Reporting Obligations.
  - (1) Promptly after completion of the Project and in no event later than the Project Closeout Deadline, Grantee shall furnish the State with a final report on Grantee's expenditure of the Grant; and
  - (2) Grantee shall provide such additional reports as the State may reasonably request from time to time, including information or documentation that the State determines is necessary to comply with arbitrage and private use restrictions that may apply to the Bonds.
- C. Operation and Maintenance of the Project. Grantee agrees to require the Project Owner to construct the Project in accordance with the Project plans, specifications and budget and to contract with competent, properly licensed and bonded contractors and professionals in accordance with the Oregon Public Contracting Code and all other applicable federal, state and local laws regulating construction of the Project. Grantee agrees to require the Project Owner to have plans and specifications for the Project prepared by a licensed architect or licensed engineer and to require that the Project meets applicable standards of survival in good condition. Prior to commencement of any Project construction, Grantee shall require Project Owner to require the general contractor for the Project to procure and maintain in full force and effect throughout the entire time of construction and until one year after the Project Completion Date, a performance and payment bond for the faithful performance and payment of all of the contractor's obligations for the total cost of the Project. The State, shall be named as an obligee on the bond. Grantee shall require the Project Owner to operate and maintain the

Project in good repair and operating condition so as to preserve the Public Benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements until the Bonds are no longer outstanding.

- D. Insurance, Damage. Grantee shall require the Project Owner to maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. If the Project or any portion is destroyed, insurance proceeds will be paid to the State, not to exceed the amount necessary to call or defease the portion of the Bonds relating to the Project (including all allocable costs of issuance), unless Grantee or the Project Owner has informed the State in writing that the insurance proceeds will be used to rebuild the Project.
- E. Sales, Leases and Encumbrances. Grantee shall prohibit the Project Owner from selling, transferring, encumbering, leasing or otherwise disposing of any property paid for with disbursements of the Grant, unless the State has granted prior, written consent. In the case of sale, lease, exchange, transfer or other disposition of any substantial portion of or interest in the Project resulting in the loss of the Public Benefits of the Project, Grantee shall pay to the State the amount necessary to call or defease the portion of the Bonds relating to the Project (including all allocable costs of issuance), for the defeasance or prepayment of debt service on such Bonds, unless the State agrees otherwise in writing.
- F. Condemnation Proceeds. Grantee shall require that if the Project or any portion is condemned, within 30 days of receipt of any condemnation proceeds, the Project Owner shall pay such proceeds to the State, not to exceed the amount necessary to call or defease the portion of the Bonds relating to the Project (including all allocable costs of issuance), unless Grantee or Project Owner has informed the State in writing that the condemnation proceeds will be used to rebuild the Project.
- G. Financial Records. Grantee shall keep accurate books and records regarding the use of the Grant, and maintain them according to generally accepted accounting principles established by the Governmental Accounting Standards Board in effect at the time.
- H. Inspections; Information. Grantee shall require the Project Owner to permit the State and any party designated by the State: (i) to inspect the Project and (ii) to inspect and make copies of any accounts, books and records related to the Project and the Grant, including, without limitation, Grantee's records regarding receipts, disbursements, contracts, investments and any other matters related to the Project and the use of the Grant funds. Grantee shall supply any reports and information related to the Project as the State may reasonably require.
- I. Records Maintenance. Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Project, or the Grant until the date that is three years following the later of the final maturity or earlier retirement of all of the Bonds (including the final maturity or redemption date of any obligations issued to refund the Bonds) or such longer period as may be required by other



provisions of this Agreement or applicable law. The Bonds are expected to mature in April 1, 2037.

- J. Notice of Default. Grantee shall give the State prompt written notice of any Default as soon as any senior administrative or financial officer of Grantee becomes aware of its existence or reasonably believes a Default is likely.
- K. Prevailing Wage. The prevailing wage rate requirements are set forth in ORS 279C.800 through 279C.870 and the administrative rules promulgated thereunder ("Prevailing Wage Rate Law" or "PWR"), or, if applicable, 40 U.S.C. 3141 et seq. ("Davis-Bacon Act"). If Grantee believes the Project is not subject to prevailing wage requirements, Grantee must obtain and provide DAS with a copy of a coverage determination letter from BOLI that confirms the Project is not subject to prevailing wage rate requirements before proceeding. Grantee shall require the Project Owner and its contractors and subcontractors to pay the applicable prevailing wage rate and to comply with all other Oregon Bureau of Labor and Industries ("BOLI") requirements pursuant to the Prevailing Wage Rate Law, including on all contracts and subcontracts and in filing separate public works bonds with the Construction Contractors Board, unless exempt under ORS 279C.836 and OAR 839-025-0015. If the Project is subject to the Davis-Bacon Act, Grantee shall require the Project Owner to comply with and require its contractors and subcontractors to comply with the Davis-Bacon Act and any applicable provisions of Oregon PWR. If the Project is or becomes subject to both PWR and the Davis-Bacon Act, all subject workers must be paid the higher of applicable state or federal prevailing wage rate. The applicable rates are those in effect on the Effective Date of this Agreement. PWR and Davis-Bacon Act prevailing wage rates may be accessed via: [http://www.oregon.gov/boli/WHD/PWR/Pages/pwr\\_state.aspx](http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx) and <http://www.wdol.gov>. Grantee shall prohibit Project Owner from contracting with any contractor on the BOLI current [\*List of Contractors Ineligible to Receive Public Works Contracts\*](#).
- L. Indemnity; Release. To the extent allowed by law, Grantee shall defend, indemnify, save and hold harmless and release the State, its officers and employees from and against any and all claims, demands, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and reasonable attorneys' fees and expenses at trial, on appeal and in connection with any petition for review, arising out of or relating to Grantee, its officers, employees, or agents in connection with this Agreement, the Project or the tax-exempt status of the Bonds, including without limitation, any expenses incurred or amounts paid in connection with an inquiry, investigation, audit or similar proceeding by BOLI, the Internal Revenue Service, the Securities and Exchange Commission, Municipal Securities Rulemaking Board and any other federal, state, governmental or quasi-governmental body with regulatory jurisdiction over the Bonds, arising from the Project or the actions or omissions of Grantee.
- N. Representations and Covenants Regarding the Tax-Exempt Status of the Bonds.
- (1) Grantee acknowledges that the Bonds have been or are expected to be issued with the interest paid on the Bonds excludable from gross income for federal income tax purposes and that the uses of the Grant proceeds by Grantee and the Project Owner during the term

of the Bonds may impact the tax-exempt status of the Bonds. Grantee agrees to comply with all applicable provisions of the Code necessary to protect the exclusion of interest on the Bonds from federal income taxation.

(2) Grantee shall take any actions, or omit to take any actions, including entering into an amendment of this Agreement, in order to preserve the tax-exempt status of the Bonds as reasonably requested by DAS.

## SECTION 7 – DEFAULTS

Any of the following constitutes an “Event of Default” of Grantee:

- A. Any false or misleading representation is made by or on behalf of Grantee, in this Agreement or in any document provided by Grantee to DAS related to this Grant or the Project.
- B. Grantee fails to perform any obligation required under this Agreement, other than those referred to in subsection A of this Section 8, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Grantee by DAS, or such longer period as DAS may agree to in writing, if DAS determines Grantee has instituted and is diligently pursuing corrective action.
- C. If and to the extent allowed by law, Grantee: (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any corporate action for the purpose of effecting any of the foregoing.
- D. If and to the extent allowed by law, a proceeding or case is commenced, without the application or consent of Grantee, in any court of competent jurisdiction, seeking: (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Grantee, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (iii) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

## SECTION 8 – REMEDIES

- A. Remedies. Upon any Event of Default, DAS may pursue any or all remedies in this Agreement, and any other remedies available at law or in equity (including specific performance) to collect amounts due or to become due or to enforce the performance of any obligation of Grantee. Remedies may include, but are not limited to:
- (1) Terminating DAS' commitment and obligation to make any further disbursements of the Grant under this Agreement.
  - (2) While any of the Grant remains undisbursed, withholding amounts otherwise due to Grantee and applying such amounts to the payment of amounts due under this Agreement.
  - (3) Requiring repayment of the Grant (including any costs of defeasing the portion of the Bonds relating to the Project (including all allocable costs of issuance), if necessary) and the State of Oregon's costs of exercising its remedies under this Agreement.

If, as a result of an Event of Default, DAS demands return of the portion of the Grant moneys related to the Event of Default, such amount shall be due and payable upon demand, and DAS may charge and demand payment of interest on all or any portion of the Grant moneys required to be returned.

- B. Application of Moneys. Any moneys collected by DAS pursuant to Section 8.A will be applied first, to pay any reasonable attorneys' fees and other fees and expenses incurred by the State of Oregon; then, to repay any Grant proceeds owed; and last, to pay any other amounts due and payable under this Agreement.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to DAS is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Agreement will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. DAS is not required to provide any notice in order to exercise any right or remedy, except as set forth in Section 7.B.

## SECTION 9 – MISCELLANEOUS

- A. Time is of the Essence. Grantee agrees that time is of the essence under this Agreement.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.



- (1) Nothing in this Agreement gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
- (2) This Agreement will be binding upon and inure to the benefit of DAS, Grantee, and their respective successors and permitted assigns.
- (3) Grantee may not assign or transfer any of its rights or obligations or any interest in this Agreement without the prior written consent of DAS. DAS may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Grantee shall pay, or cause to be paid to DAS, any fees or costs incurred because of such assignment, including but not limited to reasonable attorneys' fees of DAS's counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of the State beyond those in this Agreement, nor DASs assignment relieve Grantee of any of its duties or obligations under this Agreement.
- (4) Grantee hereby approves and consents to any assignment or transfer of this Agreement that DAS deems to be necessary.

C. Disclaimer of Warranties; Limitation of Liability. Grantee agrees that in no event is DAS, any agency of the State or Oregon or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Agreement or the existence, furnishing, functioning or use of the Project.

D. Notices. All notices to be given under this Agreement must be in writing and addressed as shown below, or to other addresses that either party may hereafter indicate pursuant to this section. Notices may only be delivered by personal delivery or mailed, postage prepaid. Any such notice is effective five calendar days after mailing, or upon actual delivery if personally delivered.

If to DAS: Jean Gabriel, Capital Finance & Planning Manager  
Department of Administrative Services  
155 Cottage Street NE U90  
Salem, OR 97301-3966  
Phone (503) 378-3107  
Fax (503) 373-7643

If to Grantee: Linda Engbretson, City Manager  
City of Warrenton  
225 S Main  
Warrenton, Oregon 97146  
Phone (503) 378-3107

- E. No Construction Against Drafter. This Agreement is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Agreement is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- G. Survival. The covenants of Grantee related to the tax-exempt status of the Bonds and the obligations of the parties under this Agreement survive disbursement of the Grant Amount and payment of the Bonds and do not terminate.
- H. Amendments, Waivers. This Agreement may not be amended without the prior written consent of DAS and Grantee. This Agreement may not be amended in a manner that is not in compliance with the Act or the provisions of the Code applicable to obligations bearing interest that is excludable from gross income. No waiver or consent is effective unless in writing and executed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- J. Integration. This Agreement (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Agreement.
- K. False Claims. Grantee will refer to the Agency Agreement Administrator any credible evidence that a principal, employee, agent, sub-grantee contractor, contractor or other person has submitted a false claim under the False Claims Act, ORS180.750 to 180.785, or has committed a criminal or civil violation of laws pertaining to fraud, conflict of

interest, bribery, gratuity or similar misconduct involving funds provided under this Grant Agreement.

- M. Execution in Counterparts. This Agreement may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument. Grantee, by its signature below, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

**STATE OF OREGON**  
acting by and through the  
Department of Administrative Services

**CITY OF WARRENTON**

By: \_\_\_\_\_  
Katy Coba, Director

By: \_\_\_\_\_  
Linda Engbretson, City Manager:

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

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

**APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:**

\_\_\_\_\_  
Cynthia Byrnes, Assistant Attorney General

## EXHIBIT A – PROJECT DESCRIPTION

Grantee shall transfer any Grant proceeds disbursed under this Agreement to the Project Owner for reconstruction of a dock destroyed by fire located at 450 NE Skipanon Drive, Warrenton, Oregon. The former timber pile supported dock will be replaced with steel pipe pilings to support a new concrete dock that will meet current industry standards for safety, constructability, and environmental protection. The first phase of the project will consist of removing and disposing of the damaged pilings, final design and engineering, legal and natural resource analysis to obtain permit approvals. The second phase will consist of reconstructing the dock structure for vessel mooring, constructing dolphins and over-water structures, including, without limitation, docs, walkways and bollards related to marine access and unloading and replacing charred pilings to support the remainder of the concrete dock for structures related to fish processing.

The project shall be completed on or before September 1, 2017.

**EXHIBIT B – PROJECT BUDGET**

Grant Amount: \$3,000,000

Other Amounts: \$

Eligible Costs:<sup>1</sup> \$

Total Project Budget: \$3,000,000

**EXHIBIT C – DISBURSEMENT REQUEST**

DATED: [insert date of request]

Project Name: City of Warrenton dock rebuild

Bonds: Lottery Revenue Bonds: 2017 Series A

Date of Grant Agreement: [            ]

Name of Grantee: City of Warrenton

On behalf of City of Warrenton (the “Grantee”) I hereby request a total disbursement of \$ \_\_\_\_\_ under the Grant Agreement listed above (the “Grant Agreement”).

I hereby make the following certifications in connection with this Disbursement Request:

1. As of the date of this Disbursement Request, Grantee has spent a portion of the Grant Amount in the amount of \$[\_\_\_\_\_] as detailed on the attached list and documentation.
2. All of the disbursement requested by this Disbursement Request (the “Disbursement”) will be used to reimburse Grantee for payments to the Project Owner for Project Costs or to transfer to the Project Owner for Project Costs.
3. Grantee is eligible to receive the Disbursement under the terms of the Grant Agreement, and has satisfied all conditions that the Grant Agreement requires be satisfied for DAS to make the Disbursement.
4. The invoices or other documents provided to DAS in connection with this Disbursement Request evidence that the Project Costs to be paid from the Disbursement have been paid or are currently payable by the Project Owner.
5. All the Disbursement will be used to pay for Project Costs that have not been previously paid from disbursements under the Grant.
6. All representations of Grantee in the Grant Agreement are true and correct on the date of this Disbursement Request and all warranties by Grantee in the Grant Agreement continue to be in effect.

The certifications in this Disbursement Request are true and accurate to the best of my knowledge and belief, after reasonable investigation.

Capitalized terms that are used but are not defined in this Disbursement Request have the meanings defined for those terms in the Grant Agreement.

**CITY OF WARRENTON**

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

Name:

Title:

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