



Board of Pacific County Commissioners  
 P O Box 187 \* 1216 W Robert Bush Dr \* South Bend, WA  
 98586 Phone 360/875.9337 \* Fax 360/875.9335

Meetings are held the 2nd  
 and 4th Tuesday of each  
 month, beginning at 9 a.m.

REQUESTED MEETING DATE:  
 5/10/2016

### AGENDA REQUEST FORM

#### TO BE COMPLETED BY CLERK OF THE BOARD / DEPUTY CLERK OF THE BOARD

Agenda Item #: \_\_\_\_\_

BOCC ACTION:  APPROVED  DENIED

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

SUBJECT TO ADEQUATE BUDGET APPROPRIATIONS

Review  Clerk of the Board

NO ACTION TAKEN/WITHDRAWN

DEFERRED TO: \_\_\_\_\_

Risk Mgmt

CONTINUED TO DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

Legal Required

OTHER: \_\_\_\_\_

#### DISTRIBUTION LIST:

- |                              |  |                                   |                                     |   |
|------------------------------|--|-----------------------------------|-------------------------------------|---|
| <input type="checkbox"/> RF  | <input type="checkbox"/> Assessor      | <input type="checkbox"/> DPW      | <input type="checkbox"/> NDC        | <input type="checkbox"/> Superior Court |
| <input type="checkbox"/> CF  | <input type="checkbox"/> Auditor       | <input type="checkbox"/> EMA      | <input type="checkbox"/> PACCOM     | <input type="checkbox"/> Treasurer      |
| <input type="checkbox"/> SEA | <input type="checkbox"/> Clerk         | <input type="checkbox"/> Fair     | <input type="checkbox"/> Prosecutor | <input type="checkbox"/> Veg Mgmt       |
|                              | <input type="checkbox"/> Civil Service | <input type="checkbox"/> Health   | <input type="checkbox"/> SDC        | <input type="checkbox"/> WSU Ext.       |
|                              | <input type="checkbox"/> DCD           | <input type="checkbox"/> Juvenile | <input type="checkbox"/> Sheriff    | <input type="checkbox"/> Other          |

### AGENDA ITEM REQUEST

Please fill out in full or the request may be returned for more information. Also, please attach all pertinent documentation.

|  |                           |
|--|---------------------------|
| DEPARTMENT/OFFICE: Commissioners Office  | DIVISION (if applicable): |
| OFFICIAL NAME & TITLE: Marie Guernsey, Clerk of the Board  | PHONE / EXT:              |
| SIGNATURE:    | DATE: 4/19/2016           |
| NARRATIVE OF REQUEST   |                           |
| RECOMMENDED MOTION (To Be Completed by the Clerk/Deputy Clerk of the Board)  |                           |
| Approve renewal of Agreement for Lease of Premises with Coast Seafoods Company for stock piling oyster shells, effective May 18, 2016 through May 17, 2021 |                           |

Name of Contractor: Coast Seafoods Company

Name of Contract/Agreement/Grant/Amendment #: (if amendment, provide copy of those pages that are being amended):  
 Agreement for Lease of Premises

**W-9 Attached** for all vendors/contractors (County issuing payment to)     **Certificate of Insurance Attached** (if required)

Indicate type     Intergovernmental/Interagency     Employment/Special Services Agreement     Federal Contract  
 Memorandum of Understanding/Agreement     Interoffice/Interdepartmental     State Contract

Contractor Type (check all that apply):     For-Profit     Private Organization/Individual  
 Non-Profit     Public Organization/Jurisdiction  
 State     Sub-Recipient  
 Federal     Other

**Please provide Tax ID #, Uniform Business Identification (UBI) #, or Social Security # on Page 3 of this form.**

**TYPE OF REQUEST (Mark all that apply and provide breakdown of bid proposals along with all pertinent documentation):**

Public Works Project (RCW 39.04):     Limited PW Process (<\$35,000)     Limited PW Process (<\$40,000)  
 Small PW Process (<\$300,000)     PW Project (>\$300,000)

Equipment, Materials, & Supplies (RCW 36.32):     < \$5,000 (attach 3 bids)     \$5,000-\$25,000 (use small works roster)     >\$25,000 (competitive bids)

Services / Leases:     Architectural & Engineering     Personal Services  
 Lease (Personal Property i.e. copier, printer)     Lease (Real  
 Telecomm & Data Processing     Other (Describe) :

To be located at: \_\_\_\_\_

**Exceptions to Bidding (Please provide appropriate documentation):**

Insurance/Bonds     Emergency Event (Purchases/Public Works)  
 Single (Sole) Source Purchase\*     Special Facilities/Market Conditions  
 \*Resolution Required

**PURCHASE UNDER ANOTHER AGENCY'S CONTRACT ("Piggybacking")**  
 Please attach the following:  
 - Copy of Intergovernmental Agreement with other agency  
 - Confirmation that vendor agrees to participation  
 - Documentation that contract was awarded in compliance with bidding law  
 - Documentation that Agency posted bid/solicitation notice on its website or provided access link to the notice

RFP     RFQ     Franchise     Annexation     Ordinance     Resolution  
 Appeal     Inventory Acquisition/Disposal     Tort Claim     Call for Bids  
 Open Space     Post, Advertise, & Fill Position  
 Other (please describe): \_\_\_\_\_

**BACKGROUND/SUMMARY (include date of prior workshop and/or action, if applicable):**

TOTAL COST/AMOUNT (include sales & use tax):    TOTAL TAX:

TOTAL SHIPPING/HANDLING:    EXPENDITURE FUND #: \_\_\_\_\_ .XXX.XXX.XX.XX

EXPENDITURE BUDGETED?     Yes     No    SUPPLEMENTAL REQUIRED?     Yes     No

IN-KIND MATCH REQUIRED?     Yes     No    DESCRIBE MATCH:

MATCHING FUNDS REQUIRED?     Yes     No    AMOUNT OF MATCHING FUNDS:

**BOCC / RISK MANAGEMENT / LEGAL REVIEW**

[TO BE COMPLETED BY THE CLERK/DEP. CLERK OF THE BOARD]

Legal Contracting Authority/Entity

OK Comments/Changes

Business License/Professional License/Debarment

OK Comments/Changes

*(Please indicate appropriate ID#)*

TIN#: 93-0158890

UBI#:

SS#:

Background Check(s)

OK Comments/Changes

Risk Transfer - Indemnity and Insurance

OK Comments/Changes

Fund/Budget Authorization

OK Comments/Changes

EEOC/WMBE Requirements and/or Wage Determination

ADA

OK Comments/Changes

POSTED ON WEB

NOTES/COMMENTS

AGREEMENT  
FOR  
LEASE OF PREMISES

THIS LEASE AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the County of Pacific, a municipal corporation ("LESSOR"), and Coast Seafoods Company, a corporation organized under the laws of the State of Washington, authorized to do business in the State of Washington, ("LESSEE"), as and for a lease of certain premises hereinafter described in Exhibit A:

LESSOR, in consideration of the rent later specified to be paid by LESSEE, and the covenants and agreements later contained, by the LESSEE to be performed, hereby leases unto the LESSEE those certain premises in the City of South Bend, County of Pacific, State of Washington, described in Exhibit A, which Exhibit is attached and by this reference incorporated herein for all purposes as if here set forth at length.

Said lease of premises to the LESSEE shall be on the following terms and conditions:

1. TERM

The term of this lease shall commence on the 18<sup>th</sup> day of May 2016, and shall end on the 17<sup>th</sup> day of May 2021.

2. RENTAL

LESSEE agrees to pay to LESSOR as rent the yearly sum as follows:

For the period May 18, 2016 through May 17, 2017: \$1,775  
For the period May 18, 2017 through May 17, 2018: \$1,800  
For the period May 18, 2018 through May 17, 2019: \$1,825  
For the period May 18, 2019 through May 17, 2020: \$1,850  
For the period May 18, 2020 through May 17, 2021: \$1,875

Commencing upon execution of this lease, with the first yearly rental payment due upon execution of the lease, and sum as specified above due on the 18<sup>th</sup> day of May of each and every consecutive calendar year thereafter until the termination of this lease, without delay, deduction, or default. LESSOR will provide LESSEE with an annual invoice for payment.

Rental payments should be made payable to the Pacific County Treasurer's Office, P.O. Box 98, South Bend, WA 98586.

3. PURPOSE

The leased premises shall be used for lawful purposes consistent with the current use of the property and for no other purpose without the written consent of the LESSOR being first obtained.

The current use of the property is an oyster shell stockpile and will be expanded to include temporary storage of maintenance dredging spoils.

4. ALTERATIONS

No alterations to the leased premises or other appurtenances shall be made by the LESSEE without the written consent of LESSOR.

All alterations, additions, and improvements made by LESSEE shall, unless otherwise provided by written agreement, be the property of the LESSOR and remain and be surrendered with the leased premises. LESSEE waives all claim for damages to or loss of any property belonging to the LESSEE that may be in or upon the leased premises.

In addition, LESSEE shall remove all oyster shells upon termination of the lease, AND dredging spoils must be removed in their entirety each year.

5. TAXES

LESSEE shall pay all taxes levied and assessed upon any personal property, fixtures, and improvements belonging to LESSEE and located in or upon the leased premises, and all leasehold and possessory interest taxes levied or assessed by any proper taxing authority.

6. REPAIRS AND MAINTENANCE

LESSEE represents that LESSEE has inspected and examined the leased premises and accepts them in their present condition, and agrees that LESSOR shall not be required to make any improvements or repairs upon the leased premises or any part of them; LESSEE agrees to make all improvements and repairs at LESSEE'S sole cost and expense, and agrees to keep the premises safe and in good order and condition at all times during the term of this lease, and upon expiration of this lease, or at any sooner termination, the LESSEE will quit and surrender possession of the premises peaceably and in as good an order and condition as the premises were at the commencement of the original lease term, dated June 11, 1991, reasonable wear, tear, and damage by the elements excepted. LESSEE further agrees to lease the premises free from all nuisance and dangerous and defective conditions.

7. ASSIGNMENT AND SUB-LETTING

LESSEE shall not assign, transfer, sub-lease, pledge, surrender, or otherwise encumber or dispose of this lease or any estate created by this lease, or any interest in any portion of the leased premises, or permit any other person or persons, company or corporation to occupy the leased premises, without first obtaining authorization by resolution of the Board of County Commissioners with the consent of two board members of the LESSOR.

## 8. INDEMNIFICATION AND HOLD HARMLESS

- A. Indemnification by Contractor. To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify, defend and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any action or omission, negligent or otherwise, of the CONTRACTOR, its employees, agents or volunteers or CONTRACTOR's subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Contract; or 3) are based upon the CONTRACTOR'S or its subcontractors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the CONTRACTOR shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the COUNTY. This indemnification obligation of the CONTRACTOR shall not be limited in any way by the Washington State Industrial Insurance Action RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the CONTRACTOR hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the CONTRACTOR are a material inducement to COUNTY to enter into the Contract, are reflected in the CONTRACTOR's compensation, and have been mutually negotiated by the parties.
- B. Participation County – No Waiver. The COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of CONTRACTOR's indemnity obligations under the Contract.
- C. Survival of Contractor's Indemnity Obligations. The CONTRACTOR agrees all CONTRACTORS's indemnity obligations shall survive the completion, expiration or termination of this Contract.

## 9. INSURANCE

Without limiting the CONTRACTOR'S indemnification of COUNTY, and prior to commencement of this Contract, CONTRACTOR shall obtain, provide and maintain during the term of this Contract, policies or insurance of the type and amounts described below and in a form satisfactory to the COUNTY.

- A. General Liability Insurance. CONTRACTOR shall maintain commercial general liability insurance with at least as broad as Insurance Services Office form CG 00 0, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.

- B. Workers' Compensation Insurance. CONTRACTOR shall, at its own expense, maintain Workers' Compensation Insurance (statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).
- C. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against COUNTY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONTRACTOR or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONTRACTOR hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

The CONTRACTOR must name the COUNTY as an additional insured. The CONTRACTOR agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that CONTRACTOR's liability insurance policy shall so state.

#### 10. ATTORNEY'S FEES/COST OF SUIT AND VENUE

If either party files suit to enforce this Contract, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit.

- A. Disputes. Differences between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due CONTRACTOR shall be decided by the COUNTY'S Contract representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S contract representative shall be final and conclusive, subject to their right to seek judicial relief pursuant to Choice of Law, Jurisdiction and Venue.
- B. Choice of Law, Jurisdiction and Venue. This Contract has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Pacific County, Washington.

- C. Severability. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

Should the COUNTY determine that the severed portions substantially alter this Contract so that the original intent and purpose of the Contract no longer exists, the COUNTY may, in its sole discretion, terminate this Contract.

#### 11. TERMINATION BY LESSOR

LESSOR may terminate this lease at any time it shall be determined that public necessity and convenience require it to do so, by serving upon the LESSEE in the manner subsequently provided, a written notice of its election so to terminate, which notice shall be served at least ninety (90) days prior to the date in the notice named for such termination.

#### 12. SIGNS

LESSEE shall not erect, install, operate, nor cause nor permit to be erected, installed, or operated in or upon the leased premises, any signs or other similar advertising devices without first having obtained the LESSOR'S written consent thereto.

#### 13. DEFAULT

If any one or more of the following events shall occur and be continuing, it is here defined as and declared to constitute an "event of default" or "default" under this lease:

- A. default in the due and punctual payment of the basic rent or additional rent; or
- B. default in the due observance of performance of any other covenant, agreement, obligation or provision of this lease agreement on the LESSEE'S part to be observed or performed, and such default shall continue for thirty days after the LESSOR has given the LESSEE written notice specifying the default (or such longer period as shall be reasonably required to cure the default; provided that
  - (i) the LESSEE has commenced the cure within thirty (30) day period, and
  - (ii) the LESSEE diligently prosecutes the cure to completion.

If any event of default shall have occurred and be continuing, then the LESSOR may, at the LESSOR'S election, then or anytime afterward, and while the default shall continue, take any one or more of the following actions:

- C. give the LESSEE written notice of intention to terminate this lease on a specified date, which date shall not be earlier than thirty days after the notice is given, and if all defaults have not then been cured, on the date so specified, the LESSEE'S right to possession of the leased premises shall cease and this lease shall be terminated, and the LESSOR may re-enter and take possession of the leased premises; or

- D. without terminating this lease, re-enter the leased premises or take possession of them pursuant to legal proceedings or pursuant to any notice provided for by law or provided for herein, and having elected to re-enter or take possession of the leased premises without terminating this lease, the LESSOR shall use reasonable diligence to re-let the premises, or parts of it, for such term or terms and at such rental and upon such other terms and conditions as the LESSOR may deem advisable, with the right to make alterations and repairs to the leased premises, and no such re-entry or taking of possession of the leased premises by the LESSOR shall be construed as an election of the LESSOR'S part to terminate this lease, and no such re-entry or taking of possession of the leased premises by the LESSOR shall relieve the LESSEE of its obligation to pay rent (at the time or times provided herein), or of any of its other obligations under this lease, all of which shall survive such re-entry or taking of possession. The Lessee shall continue to pay the rent provided for in this lease until the end of the lease term, whether or not the leased premises shall have been re-let, less the net proceeds, if any, of any re-letting of the leased premises after deducting all of the LESSOR'S reasonable expenses in or in connection with such re-letting, including without limitation all repossession costs, brokerage commissions, legal expenses, expenses of employees, alteration costs and expenses of preparation for re-letting. Having elected to re-enter or take possession of the leased premises without terminating this lease, the LESSOR may (subject, however, to any restrictions against termination of this lease contained hereinabove) by notice to the LESSEE given at anytime afterwards while the LESSEE is in default in the payment of rent or in the performance of any other obligation under this lease, elect to terminate this lease on a date to be specified in such notice, which date shall not be earlier than thirty days after re-entry under above. The LESSEE shall return the premises to its original condition and the cost of removing the oyster shells and the dredging tailings will be levied against the LESSEE if the LESSOR elects to re-enter and relet prior to termination;
- E. if all defaults shall not have then been cured, on the date so specified this lease shall be terminated. If, in accordance with any of the foregoing provisions of this article, the LESSOR shall have the right to elect to re-enter and take possession of the leased premises, the LESSOR may enter and expel the LESSEE and those claiming through or under the LESSEE and remove the property and effects of both or either without being guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenant. The LESSOR may take whatever action at law or in equity which may appear necessary or desirable to collect rent then due and later to appear necessary or desirable to collect rent then due and later to become due, or to enforce performance and observance of any obligation, agreement, or covenant of the LESSEE under this lease.

#### 14. HOLDING OVER

In the event the LESSEE shall hold over and remain in possession of leased premises with the consent of LESSOR, that holding over shall be deemed to be from month to month only, and upon all of the same rents, terms, covenants and conditions as contained here.

15. NOTICES

Any notices that are required here, or which either LESSOR or LESSEE may desire to serve upon the other, shall be in writing and shall be deemed served when delivered personally or when deposited in the United States mail, postage prepaid, return receipt requested, addressed as follows:

LESSEE: Coast Seafoods Company  
P.O. Box 166  
South Bend, WA 98586

LESSOR: Board of Pacific County Commissioners  
P.O. Box 187  
South Bend, WA 98586

16. WAIVER

Waiver by LESSOR of any default in performance by LESSEE of any of the terms, covenants, or conditions contained herein, shall not be deemed a continuing waiver of that default or any subsequent default.

17. COMPLAINT WITH LAWS

LESSEE agrees to comply with all laws, ordinances, rules and regulations that may pertain or apply to the leased premises and their use. Any violation and associated fines or sanctions of such are the sole responsibility of the LESSEE.

18. LESSOR MAY ENTER

LESSEE agrees that LESSOR, its agents or employees, may enter upon the leased premises at anytime during the term of this lease agreement or any extension of this lease, for the purpose of inspection, taking of measurements, and doing similar work necessary for the preparation of plans for construction of buildings or improvements on or near the leased premises, with the understanding that such work will be performed in such a manner as to cause a minimum of interference with the use of the leased premises by the LESSEE.

19. SUCCESSORS IN INTEREST

All of the terms, covenants, and conditions contained herein shall continue, and be binding upon all successors in interest of the LESSEE.

20. PUBLIC RECORDS ACT

This Agreement and all public records associated with this Agreement shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the CONTRACTOR are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the CONTRACTOR agrees to make them promptly available to the COUNTY. If the CONTRACTOR considers any portion of any record

provided to the COUNTY under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the CONTRACTOR shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by the CONTRACTOR and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY's sole obligations shall be to notify the CONTRACTOR (a) of the request and (b) of the date that such information will be released to the requester unless the CONTRACTOR obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the CONTRACTOR fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The COUNTY has, and by this section assumes, no obligation on behalf of the CONTRACTOR to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the CONTRACTOR for releasing records not clearly identified by the CONTRACTOR as confidential or proprietary. The COUNTY shall not be liable to the CONTRACTOR for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

CONTRACTOR agrees to indemnify and, to the greatest extent legally possible, to hold harmless the COUNTY in any action by a third party due to the negligence, recklessness or intentional actions by the CONTRACTOR relating to its performance of this contract. This includes any lawsuit filed by a third party for the COUNTY's allegedly improper release of confidential or proprietary information pursuant to a public records request.

IN WITNESS WHEREOF, the parties to this lease agreement do hereby execute this lease agreement by affixing their signatures herein below, on the date first hereinabove mentioned.

COAST SEAFOODS COMPANY  
SOUTH BEND, WASHINGTON

BOARD OF COUNTY COMMISSIONERS  
PACIFIC COUNTY, WASHINGTON

LESSEE

LESSOR

\_\_\_\_\_  
Tim Morris

\_\_\_\_\_  
Frank Wolfe, Chairman

\_\_\_\_\_  
Lisa Ayers, Commissioner

\_\_\_\_\_  
Steve Rogers, Commissioner

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Prosecutor's Office

WSBA#

\_\_\_\_\_  
Marie Guernsey  
Clerk of the Board

## EXHIBIT A

The southwesterly 150 feet of the Plat of Third Addition to South Bend according to the official plat thereof in Volume C of Plats, at page 29 as the same is measured parallel with the southwesterly line of said plat and consisting of the following: Lots 18 to 23 inclusive in Block 3, Lots 31 to 36 both inclusive in Block 2, all of vacated Colorado Avenue lying between said aforesaid lots, and also all of vacated Railroad Avenue lying southerly of said lots in Block 3.

Note: The vacated railroad tracks between the boundary of the property being leased and the State Highway right-of-way are currently owned by Washington State Parks and Recreation. Use of that property is not included in this lease agreement.

DRAFT