

GRANT AGREEMENT

BETWEEN: City of Newport,
a municipal corporation of the State of Oregon, (City)

AND: Newport Sea Lion Docks Foundation
a nonprofit corporation incorporated in the State of Oregon (NSLDF)

EFFECTIVE DATE: The latest date signed by the parties.

RECITALS

- A. The City of Newport (City) is a municipal corporation with Home Rule authority pursuant to its Charter and the constitution of the State of Oregon.
- B. The Newport Sea Lion Docks Foundation (NSLDF) is a nonprofit corporation organized under section 501(c)(3) of the Internal Revenue Code and the Laws of the State of Oregon.
- C. Pursuant to state law and the Newport Municipal Code, the City collects transient room tax revenues from the occupants of transient lodging facilities located within the City.
- D. The City has created the Tourism Facilities Grant Program to facilitate grants of local transient room tax revenues (Grant Funds) to fund Tourism-Related Facilities.
- E. Tourism-Related Facilities are defined as a conference center, convention center or visitor information center, or other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities.
- F. NSLDF submitted application materials to the City and was selected for an award of Grant Funds to be used by the NSLDF for replacement of the sea lion Docks, as described in the application materials attached to this Agreement as Exhibit A (Project).
- G. The Project is a Tourism-Related Facility because it is improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities.
- H. The City wishes to grant and NSLDF wishes to accept Grant Funds totaling \$50,000 to be used for the Project.

- C. NSLDF represents that the Project constitutes a Tourism-Related Facility as defined in the City's Tourism Facilities Grant Program Policies, attached to this Agreement as Exhibit B.
- D. NSLDF acknowledges and agrees that Grant Funds received by NSLDF from the City pursuant to this Agreement will be used exclusively to perform work on the Project as described in Exhibit A. NSLDF further acknowledges and agrees that Grant Funds may not be used to refinance existing debt.
- E. NSLDF acknowledges and agrees that NSLDF is responsible for all the expenses of operation and maintenance of the Project, including but not limited to adequate insurance and any taxes or special assessments applicable to the Project.
- F. NSLDF will comply with all federal, state, and local laws and regulations applicable to the Project, including but not limited to the City's Tourism Facilities Grant Program Policies and workers' compensation laws.
- G. NSLDF will provide, upon the City's request, any documents or information identified or referenced in NSLDF's application materials. This information may include, but is not limited to, information pertaining to Project schedule, budget and cash flow, feasibility, readiness to construct, permits, likelihood of completion within a planned time frame, and other items related to completion of proposed Project elements.
- H. Prior to distribution of Grant Funds for any phase of the Project, NSLDF will provide documentation acceptable to the City, which shows that NSLDF has secured, at a minimum, a dollar for dollar Match, for the Grant Funds to be used for that phase of the Project (Matching Funds). For example, since \$15,000 of the Grant Funds are to be allocated to Phase One of the Project, prior to distribution of those funds, NSLDF will need to show the City that NSLDF has raised at least \$15,000 in Matching Funds.
- I. During the term of this Agreement, NSLDF will maintain its status as a tax-exempt nonprofit corporation, duly organized and validly existing under the laws of the state of Oregon.
- J. NSLDF will indemnify, defend, save, and hold harmless the City and its officers, employees, and agents from any and all claims, suits, or actions of any nature arising out of the activities and due to the negligence and/or fault of NSLDF, its officers, employees, agents, contractors, and subcontractors pursuant to this Agreement.
- K. Notwithstanding NSLDF's defense obligations described in paragraph I of this section, neither NSLDF nor any attorney engaged by NSLDF shall defend any claim in the name of the City, nor purport to act as a legal representative of the City, without the prior written consent of the City's attorney. The City may, at any time, elect to assume its own defense and settlement. The City reserves all rights

to pursue any claims it may have against NSLDF if the City elects to assume its own defense.

- L. NSLDF acknowledges and agrees that the City shall have reasonable access to NSLDF's books, documents, papers and records related to this Agreement during the term of this Agreement and for a period of six years after termination of this Agreement. NSLDF will make copies of applicable records available to the City upon request.
- M. NSLDF acknowledges and agrees that this Agreement does not create an employment relationship between the City and NSLDF, its officials, employees, agents, or contractors. NSLDF further agrees that NSLDF is exclusively responsible for all costs and expenses related to NSLDF's employment of individuals to perform work related to the Project, including but not limited to retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
- N. NSLDF will keep an accounting of Grant Funds received pursuant to this Agreement to ensure that the Grant Funds are used as required by this Agreement. NSLDF will provide the accounting required by this paragraph to the City annually during the term of this Agreement, as well as upon request by the City.
- O. Within 60 days of completion of Phase Two of the Project, NSLDF will submit a final project report to the City detailing each expenditure of Grant Funds, and requesting payment of the remaining Grant Funds.
- P. In the event of default by NSLDF under section 6 of this Agreement, NSLDF agrees, upon the City's demand, to return any unexpended Grant Funds to the City and to repay to the City any Grant Funds expended in violation of the terms and conditions of this Agreement or of the Tourism Facilities Grant Program Policies.

5. CITY OBLIGATIONS.

- A. Upon receipt of documentation satisfactory to the City showing that the Matching Funds required by section 4, paragraph H of this Agreement have been obtained for Phase One of the Project, and that a building permit has been issued for Phase One, the City agrees to pay NSLDF a lump sum payment of \$15,000 in January of 2014. Upon receipt of documentation satisfactory to the City showing that the Matching Funds required by section 4, paragraph H of this Agreement have been obtained, and that a building permit has been issued for the Phase Two of this project a second lump sum payment of \$30,000 will be paid to NSLDF in July of 2014. The remaining \$5,000 of Grant Funds will be paid to NSLDF upon approval of the final project report by the City, as provided in paragraph B of this section.

- B. Within 30 days of the date the final project report is submitted to the City as provided in section 4, paragraph O of this Agreement, the City will either approve the report or notify NSLDF of any concerns that must be addressed or information that must be submitted before the report is considered complete. Once the final project report has been approved by the City, the remaining Grant Funds will be promptly paid to NSLDF.
- C. Notwithstanding paragraphs A and B of this section, the City's payment obligations under this Agreement are contingent upon the availability of funds in the Tourism Grant Facilities Program.

6. DEFAULT.

A. The following constitute default by NSLDF under this Agreement:

- i. Failure to obtain the Matching Funds required by section 4, paragraph H of this Agreement for Phase One of the Project by January 1, 2014;
- ii. Failure to obtain the Matching Funds required by section 4, paragraph H of this Agreement for Phase Two of the Project by July 1, 2014;
- iii. Failure to substantially commence work on Phase One of the Project within one year of the effective date of this Agreement;
- iv. Failure to substantially commence work on Phase Two of the Project within two years of the effective date of this Agreement;
- v. Failure to complete the Project within five years of the effective date of this Agreement;
- vi. A determination by the City that material statements, information, or representations in the application materials attached as Exhibit A to this Agreement are false, misleading, fraudulent, or misrepresentations;
- vii. A change in circumstances such that material information provided in the application materials attached as Exhibit A and relied upon by the City in making the decision to award Grant Funds to NSLDF is no longer true or accurate;
- viii. Failure of the Project to meet the definition of a Tourism-Related Facility;
- ix. Violation of any of the terms or conditions of this Agreement;
- x. Dissolution of NSLDF; and
- xi. Appointment of a receiver, trustee, liquidator, or conservator for NSLDF or to take possession of all or substantially all of NSLDF's property; or the filing of a petition for bankruptcy, insolvency, dissolution, liquidation, or reorganization,

or order for relief in which NSLDF is named as debtor, by, against, or with respect to NSLDF pursuant to any federal or state statute, regulation or law for the protection of debtors; and, with respect to any such appointment or filing, failure of NSLDF to secure a stay or discharge thereof within 45 days after such appointment or filing.

- B. In the event of a default by NSLDF, the City will not exercise the remedies provided in paragraph C of this section unless and until the City notifies NSLDF in writing of the default and NSLDF fails to cure the default within 20 days of receipt of the notice; or if the default cannot reasonably be cured within 20 days, NSLDF commences action to cure the default within 10 days of receipt of the notice and diligently pursues the cure to completion. In no event will the time for opportunity to cure exceed 60 days from the date of receipt of notice of default. If the default is not cured within the time provided in this paragraph, the City may elect to pursue any of the remedies provided in paragraph C of this section.
- C. In the event of default or failure to cure within the time period provided in paragraph B of this section, the City may pursue any one or more of the following remedies:
 - i. City revocation of Grant Funds;
 - ii. City withholding of unexpended funds;
 - iii. Return of unexpended funds by NSLDF;
 - iv. Repayment of expended funds by NSLDF;
 - v. Termination of this Agreement.
- D. The remedies provided by paragraph C of this section are cumulative, not exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.

7. TERMINATION.

- A. The City may terminate this Agreement effective upon delivery of written notice to NSLDF or at such later date as may be determined by the City upon the following conditions:
 - i. Default by NSLDF under this Agreement; or
 - ii. Lack of funding necessary to award Grant Funds to NSLDF.
- B. NSLDF may terminate this Agreement effective upon delivery of written notice to the City if the City fails to make payments due under this Agreement or fails to abide by the terms and conditions of this Agreement.

- C. Termination of this Agreement will not prejudice any rights or obligations of the parties accrued prior to termination.
- D. The City's entitlement to the remedies provided in section 6 of this Agreement survives termination of this Agreement.

8. NOTICE.

All notices given pursuant to this Agreement must be in writing and delivered to the parties at the following addresses. Notice given pursuant to this section will be deemed to have been received on the date of personal delivery, three calendar days after deposit in the United States mail postage prepaid, or on the date of confirmed delivery by: 1) facsimile; 2) registered mail, return receipt requested; or 3) overnight delivery. Either party may change its notice address under this section at any time by written notice to the other party.

CITY:
City of Newport
Spencer Nebel, City Manager
169 SW Coast Highway
Newport, Oregon 97365

NSLDF:
Newport Sea Lion Docks Foundation
Bob Ward, Director
525 NW 57th Street
Newport, Oregon 97365

9. ASSIGNMENT.

NSLDF may not assign any of its rights, interests, or obligations under this Agreement without the prior written consent of the City, which may be withheld in the City's sole discretion.

10. MODIFICATION.

No modification of this Agreement will be valid unless it is in writing and signed by both parties.

11. RELATIONSHIP OF PARTIES.

The parties acknowledge and agree that nothing in this Agreement is intended to nor shall be construed to create any form of partnership or joint venture relationship between the parties.

12. NO THIRD PARTY BENEFICIARIES.

This Agreement is entered into for the sole benefit of the City and NSLDF, and nothing contained herein is intended for the benefit of any other person or entity.

13. SEVERABILITY.

If any provision of this Agreement is held by any court of competent jurisdiction to be invalid, such invalidity will not affect any other provisions of this Agreement, and this Agreement will be construed as if the invalid provision had never been included in this Agreement.

14. WAIVER OF BREACH.

The waiver by either the City or NSLDF of a breach of any provision of this Agreement will not operate or be construed as a waiver of any other provision of this Agreement or of any subsequent breach of the same provision of this Agreement.

15. GOVERNING LAW.

This Agreement is to be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflicts of law principles.

16. VENUE.

Any legal action or proceeding arising out of or relating to this Agreement shall be commenced in the Circuit Court of the State of Oregon for Lincoln County. The parties hereby consent to the jurisdiction of that court, waive any objections to venue and waive any claim that the forum is an inconvenient forum.

17. ENTIRE AGREEMENT.

This Agreement and all attached exhibits constitute the entire agreement of the parties relating to the subject matter herein. There are no promises, terms, conditions, or obligations oral or written other than those contained herein. This Agreement supersedes all prior communications, representations or agreements, either oral or written, between the parties relating to the subject matter herein.

18. COUNTERPARTS.

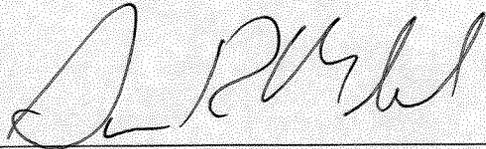
This Agreement may be executed in multiple counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.

19. PARAGRAPH HEADINGS.

Paragraph headings are used solely for convenience and are not to be used in construing or interpreting this Agreement.

20. AUTHORITY TO ENTER INTO AGREEMENT.

Each person executing this agreement on behalf of a party to this agreement hereby covenants that he or she is duly authorized by that party to bind that party to this agreement.



Spencer Nebel, City Manager
City of Newport

01-08-2014

Date



Bob Ward, Director
Newport Sea Lion Docks Foundation

01-08-2014

Date