

## SETTLEMENT AGREEMENT

THIS AGREEMENT (the "Agreement"), effective as of May 18, 2021 (the "Effective Date"), is made and executed by and between: 1) PACIFIC SEAFOOD – NEWPORT, LLC and 2) the CITY OF NEWPORT, OREGON ("the City") (each, individually, a "Party, and, collectively, the "Parties").

### RECITALS

1. Pacific Seafood – Newport, LLC operates THREE (3) seafood processing facilities in Newport, Oregon. Affiliates of Pacific Seafood – Newport, LLC operate TWO (2) additional locations in Newport, Oregon; specifically, Pacific Surimi – Newport, LLC and Pacific Bio Products – Newport, LLC. For convenience, the FIVE (5) Newport operating locations are collectively referenced in this agreement as "Pacific Seafood."
2. The City of Newport provides water to Pacific Seafood's operations on Bay Boulevard in Newport, Oregon.
3. The City and Pacific Seafood identified a significant billing discrepancy in connection with one or more of the water meters used to track usage by Pacific Seafood. The identified discrepancy resulted in overcharges to Pacific Seafood of at least \$695,000 over a period of years (the "Overcharges").
4. The Parties have fully compromised and settled all issues pertaining to the billing discrepancy and desire to memorialize the terms of that settlement in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and releases described herein, the sufficiency of which is hereby acknowledged, the undersigned parties agree as follows:

1. **Recitals.** The Recitals set forth above are incorporated here by this reference and made a part of this Agreement as though set out again in full.
2. **Overcharges.** The City shall apply billing credits against any and all charges that Pacific Seafood may incur for future water use in the total amount of FOUR HUNDRED AND FIFTY-FOUR THOUSAND SEVEN HUNDRED ONE AND NO/100 DOLLARS (\$454,701) (the "Credits"). Credits shall be applied over a period of TWO (2) YEARS according to the following schedule:
  - a. TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO/100 (\$250,000) in the fiscal year beginning July 1, 2021; and
  - b. TWO HUNDRED FOUR THOUSAND SEVEN HUNDRED ONE DOLLARS AND NO/100 (\$204,701) in the fiscal year beginning July 1, 2022.

Pacific Seafood shall not be responsible for payment of any water-related charges in either year until after the specified credit has been fully exhausted.

3. **Improvements.** The Parties will treat the remaining balance of identified Overcharges (at least \$240,299) as a voluntary contribution by Pacific Seafood to the City's water fund on the condition that such amounts be used to fund short- and long-term systemic improvements. The City will recognize Pacific Seafood's contribution via press release or other appropriate public statement. No statements shall issue except upon advance written consent of both Parties.
4. **No Admission of Liability.** The Parties hereby recognize that this Agreement evidences the full, final, and complete settlement of each of their respective claims; that it is not an admission of liability by any party; and that it is made for the purpose of compromise and to avoid litigation between the parties.
5. **Release of Claims.** Except as set forth in this Agreement, Pacific Seafood and the City each completely release and forever discharge the other from any and all actions, causes of action, liens, claims, charges, judgments, obligations, demands, grievances, damages, costs, attorney fees, expenses, or liabilities of any kind or nature whatsoever, in law or in equity, which exist as of the Effective Date of this Agreement, arising out of or in any way related to the Overcharges. The Parties each intend to fully, finally, absolutely, and forever settle any and all claims, disputes, and differences which exist, may exist, or may have existed in connection with the Overcharges.
6. **Choice of Law.** The Parties hereby agree that any dispute arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of the STATE OF OREGON, without reference to conflict of law principles. The Parties consent to the exclusive jurisdiction of the appropriate state or federal court for LINCOLN COUNTY, OREGON.
7. **Additional Terms and Provisions.**
  - a. Attorney Fees/Costs. In the event that a suit, action, arbitration, or other legal proceeding of any nature whatsoever is brought relating to this Agreement and/or any documents required under this Agreement, or any of the rights or obligations under this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable attorney, paralegal, and other professional fees, as well as any and all other fees, costs, and expenses of any kind actually incurred and reasonably necessary in connection herewith, as determined by the judge or arbitrator at trial or other proceeding, and including such fees, costs, and expenses incurred in any appellate or review proceeding, or in collecting any judgment or award, or enforcing any decree rendered with respect thereto, in addition to all other amounts provided for by law.
  - b. Binding Effect. The terms and conditions of this Agreement shall apply to and bind the successors and permitted assigns of the parties hereto.
  - c. Captions. All captions, titles, headings, and divisions are for purposes of reference and convenience only, and may not be construed to limit or affect the interpretation of this Agreement.

- d. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original, and all of which together will constitute one and the same instrument. If executed in two or more counterparts, this Agreement will be binding upon the exchange of facsimile or other electronic copies of the signature pages from each of the separately signed originals. Facsimile or other electronically copied signatures will be deemed to be originals for all purposes and will have the same force and effect as original signatures.
- e. **Further Assurances.** Each of the Parties shall, upon request of the other party, execute and deliver such additional documents as may be necessary or convenient for the purpose of evidencing or perfecting any rights or interests arising hereunder or in connection with any other documents executed in accordance with this Agreement.
- f. **Merger/Waiver.** This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and supersedes any and all prior or contemporaneous agreements, understandings, negotiations and discussions, whether written or oral, of the parties in connection with the subject matter hereof, except as specifically set forth herein. No supplements, modifications, waivers, or terminations of this Agreement shall be binding unless executed in a writing signed by the parties to be bound thereby.
- g. **Notices.** Any and all notices or communications required or permitted under this Agreement shall be in writing (including, without limitation, via e-mail) and sent to the addresses set forth below, or to such other address as any party entitled to notice shall have communicated in writing to the other party. Notices and other communications shall initially be sent to:

**PACIFIC SEAFOOD:**

Legal Department  
16797 SE 130<sup>th</sup> Avenue  
Clackamas, OR 97015  
[Legal@pacseafood.com](mailto:Legal@pacseafood.com)

**CITY OF NEWPORT:**

David Allen  
City Attorney  
169 SW Coast Highway  
Newport, OR 97365  
[D.Allen@NewportOregon.gov](mailto:D.Allen@NewportOregon.gov)

- h. **Remedies.** In the event of breach of any of the rights or obligations under this Agreement, the non-breaching Party shall be entitled to any and all remedies available at law or in equity, including specific performance.
- i. **Severability.** If any provision of this Agreement becomes or is found to be illegal, unenforceable, void, or voidable, then such clause or provision shall be modified to the extent necessary to make this Agreement legal and enforceable. If modification of such provision is not possible, then it shall be severed from the remainder of this Agreement so that the remainder of this Agreement may remain in full force and effect.
- j. **Time is of the Essence.** Time is of the essence with respect to any and all provisions in this Agreement which specify a time for performance.

- k. Waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall such waiver constitute a continuing waiver unless expressly provided.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement.

**CITY OF NEWPORT**

By: 

Name Spencer R. Nebel

Title: City Manager

05-18-21

Date

**PACIFIC SEAFOOD – NEWPORT, LLC**

By: 

Name Anthony J. Dal Ponte

Title: General Counsel & Asst. Corporate Secretary

May 18, 2021

Date