

**CITY OF NEWPORT, OREGON  
PERSONAL SERVICES CONTRACT  
BUILDING PLAN REVIEW AND INSPECTION SERVICES**

THIS AGREEMENT is between the City of Newport, an Oregon municipal corporation (City), and Clair Company, Inc. (Contractor). This agreement shall be effective when signed by both parties.

**RECITALS**

- A. Contractor has the training, ability, knowledge, and experience to provide services desired by the City.
- B. City selected Contractor to provide services pursuant to a request for quotes, consistent with its public contracting rules.

**TERMS OF AGREEMENT**

**1. SERVICES TO BE PROVIDED**

Contractor shall begin services on April 6, 2015. Payment shall not be made for any other services without the written agreement by the City.

Contractor shall provide the services described in Contractor's response to City's request for quotes (Exhibit A to this agreement). Contractor may have contact with the public in the course of performing this contract and shall maintain good relations with the public. Failure to maintain good relations with the public shall constitute a breach of the contract. The City may treat the failure to maintain good relations as a non-curable breach allowing the City to terminate the contract and to disqualify Contractor from future work for the City.

**2. TERM**

This shall expire, unless otherwise terminated or extended, on April 6, 2020.

**3. COMPENSATION**

Contractor shall be compensated as described in Exhibit A to this agreement up to a maximum of \$50,000 per calendar year.

#### **4. ASSIGNMENT/DELEGATION**

Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other.

#### **5. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR**

Contractor certifies that:

- A. Contractor acknowledges that Contractor is an independent contractor as defined by ORS 670.700 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of the finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of the finding. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.
- B. Contractor represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection this Agreement, except as specifically declared in writing.
- C. Contractor certifies that Contractor currently has a City business license or will obtain one prior to delivering services under this Agreement.
- D. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

#### **6. INDEMNIFICATION**

City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws. Acceptance of contractor's work by City shall not operate as a waiver or release. Contractor agrees to indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except to the extent that the liability arises out of the negligence of the

City and its employees. Contractor's indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the validity of the remainder of this indemnification.

**7. INSURANCE**

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. The insurance shall cover all activities of the contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverages:

**A. Commercial General Liability Insurance**

Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	1,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Errors and Omissions (or equivalent) Aggregate	500,000
Each Occurrence	500,000
Fire Damage (Any one fire)	50,000
Medical Expense (Any one person)	5,000

**B. Commercial Automobile Insurance**

Contractor shall also obtain, at contractor's expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.

**C. Workers' Compensation Insurance**

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon

law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

D. Additional Insured Provision

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City as an additional insured with respect to this contract.

E. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days notice of cancellation to the City

F. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Contractor shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

G. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

H. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution, and errors and omissions policies required by this contract.

The procuring of required insurance shall not be construed to limit contractor's liability under this agreement. Notwithstanding said insurance, Contractor shall

be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

#### **8. METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS**

All notices, bills and payments shall be made in writing and may be given by personal delivery or mail. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices and other information:

**City:**

City of Newport  
Attn: Community Development Director  
169 SW Coast Highway  
Newport, Oregon 97365  
Business Phone: 541-574-0604

**Contractor:**

Clair Company, Inc.  
Attn: Code Consulting Services Manager  
525 NW Second Street  
Corvallis, Oregon 97330

Notices mailed to the address provided for notice in this section shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery.

#### **9. MERGER**

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

#### **10. TERMINATION WITHOUT CAUSE**

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the contract pursuant to this paragraph, it shall pay Contractor for services rendered to the date of termination.

## **11. TERMINATION WITH CAUSE**

A. City may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

1. If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
2. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
3. If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
4. If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:

1. If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
2. If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.
3. If Contractor fails to eliminate a conflict as described in Section 11 of this agreement.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (b), Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

## **12. ACCESS TO RECORDS**

City shall have access to books, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

## **13. FORCE MAJEURE**

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of nature or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disabled shall within 10 days from the beginning of the delay, notify the other party in writing of the cause of delay and its probable extent. The notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate the cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

## **14. NON-WAIVER**

The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

## **15. NON-DISCRIMINATION**

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

**16. ERRORS**

Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delay and without additional cost.

**17. EXTRA WORK**

The Community Development Director may authorize additional work not described in Exhibit A, in writing, if such work is necessary to comply with Building Codes adopted by the City of Newport. Failure of Contractor to secure written authorization for work not described in Exhibit A shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.

**18. ATTORNEY'S FEES**

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

**19. GOVERNING LAW**

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

**20. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES**

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapter 279B, the provisions of which are hereby made a part of this agreement. (See Exhibit B.)

CITY OF NEWPORT

  
By: Spencer Nebel, City Manager

03-30-15  
Date

CONTRACTOR

  
By: Allan Clair, President, Clair Company, Inc.

4-6-15  
Date



**EXHIBIT A**  
**PERSONAL SERVICES CONTRACT**  
**BUILDING PLAN REVIEW AND**  
**INSPECTION SERVICES**

March 13, 2015

City of Newport  
 169 SW Coat Highway  
 Newport, OR 97365

**Attention: Derrick I. Tokos, AICP, Community Development Director**

**Subject: Proposal: Plan Review and Inspection Support, City of Newport**

Clair Company, Inc (Clair) is pleased to provide the following proposal to provide Plan Review and Inspection Support Services to the City of Newport (City). We have included information based on our understanding of the scope of work requested by the City.

Clair is an experienced, successful third-party plan review and inspection, code consulting, and special inspection and materials testing firm, and are confident that we can provide the needed support to assist the City with plan review and inspection needs. We currently provide plan review and inspection services to several other jurisdictions in Washington, Oregon and New York states. We provide services with in-house staff and pride ourselves in having a reputation for exemplary work, use of good judgment, high integrity, and complete reliability. We have included a copy of our general statement of qualifications for your reference.

Based on our conversations, and your email from March 9, 2015, we would like to offer our support to the City of Newberg for the following services in order to supplement the capabilities of your Building Official, Joseph Lease.

- Fire and Life Safety Plan Reviews
- Electrical and Plumbing Plan Reviews
- Electrical inspections for services that require qualifications that exceed that of a Specialized Electrical Inspector
- Plumbing inspections for services that require qualifications that exceed that of a Specialized Plumbing Inspector

Itemized List of Charges

Clair can provide these support services and understand that the City prefers an hourly rate basis for both plan review and inspection services. We are open to further discussion on the level of service and suggested fee rates quoted in this proposal, depending on the specific needs of the City. We understand that these support services will be on a limited basis, typically up to a dozen projects of this type in any given year. Below are our suggested rates for the requested support services as well as services that the City may find a need for on specific projects.

Description	Hourly Rate
Building Official / Project Manager	\$78.00
Plans Examiner (Bldg/FLS, Mech, Plumb, Elect)	\$68.00
Fire Code / HazMat Tech Support	\$75.00
Licensed Engineer / Structural Plans Examiner	\$90.00
A-Level Inspector (Bldg/FLS, Mech, Plumb, Elect)	\$68.00
Project Administration / Controller / Document Control	\$45.00
Mileage, at Federal Rate	\$0.575
Overtime (before 7am, after 5pm, weekends, holidays)	1.5 x base



Clair charges for time and materials associated with plan reviews beyond first back check, review of construction document revisions, and deferred submittals. Typically, these fees will be billed to the City as a pass through cost to the applicant to be paid to the City at time of document pickup for payment to Clair. Inspection fees will be charged portal to portal from our office in Corvallis.

All other miscellaneous charges, including postage, will be absorbed within the hourly rates or lump sum.

Project Coordination (Plan Review)

Plan review support can be provided on an as needed basis, and is easily coordinated. The City can simply call our office with notification that plans are being shipped for review (or emailed, if available electronically). Typical turnaround time for reviews is 7 days for residential reviews, and 14 days for commercial reviews. We can work with the City for faster turnaround times for projects with special needs and schedules.

Project Coordination (Inspections)

Inspection support can be provided on an as needed basis. We suggest at least 24-hour notice in order to coordinate inspection needs with our existing workload and inspector availability. The more advance notice we have, the more capable we are to accommodate the inspection needs. Clair inspection staff can be available most weekdays, depending on request timing and staff availability. Inspections can be requested by calling our office.

As requested, we are enclosing resumes for staff that could provide services on behalf of the City. Should you have questions regarding any of our staff's qualifications, certifications, experience, etc. please do not hesitate to contact me.

If you have any questions, or need clarification regarding the information we have provided, please do not hesitate to contact our office at 800-383-8855 or by email at [dflemings@claircompany.com](mailto:dflemings@claircompany.com). Additional information can be provided upon request. We look forward to discussing the details of the requested scope and to the opportunity to work with you and your team.

Respectfully Submitted,

A handwritten signature in cursive script that reads "David Fleming".

David Fleming  
Code Consulting Services Manager

Enclosure: Clair Statement of Qualifications  
Staff Resumes

EXHIBIT B

**PERSONAL SERVICES CONTRACT  
BUILDING PLAN REVIEW AND INSPECTION SERVICES**

**RELEVANT PROVISIONS OF ORS CHAPTER 279B**

**279B.220 Conditions concerning payment, contributions, liens, withholding.** Every public contract shall contain a condition that the contractor shall:

1. Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
2. Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
3. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
4. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

**279B.230 Condition concerning payment for medical care and providing workers' compensation.**

1. Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
2. Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [2003 c.794 §76c]

**279B.235 Condition concerning hours of labor.**

1. An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

2. In the case of contracts for personal services as described in ORS 279A.055, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
  
3. (a) Except as provided in subsection (4) of this section, contracts for services must contain a provision that requires that persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.  
  
(b) An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

# Oregon Workers' Compensation Certificate of Insurance



**Certificate holder:**

CITY OF NEWPORT  
ATTN: COMMUNITY DEVELOPMENT DIRECTOR  
169 SW COAST HIGHWAY  
NEWPORT, OR 97365

**The policy of insurance listed below has been issued to the insured named below for the policy period indicated. The insurance afforded by this policy is subject to all the terms, exclusions and conditions of such policy; this policy is subject to change or cancellation at any time.**

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<b>Insured</b> Clair Company Inc 525 NW 2nd St Corvallis, Or 97330-6487	<b>Producer/contact</b> SAIF Corporation Portland Service Center 971.242.5001 servic@saif.com
<b>Issued</b> 04/08/2015 <b>Policy</b> 633774 <b>Period</b> 08/01/2014 to 08/01/2015	<b>Limits of liability</b> Bodily Injury by Accident \$1,000,000 each accident Bodily Injury by Disease \$1,000,000 each employee Body Injury by Disease \$1,000,000 policy limit

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**Description of operations/locations/special items**

**Important**

This certificate is issued as a matter of information only and confers no rights to the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies above. This certificate does not constitute a contract between the issuing insurer, authorized representative or producer and the certificate holder.

**CANCELLATION:**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED TO THE POLICYHOLDER AND CERTIFICATE HOLDER IN ACCORDANCE WITH THE POLICY PROVISIONS AND OREGON LAW. SAIF WILL ENDEAVOR TO PROVIDE WRITTEN NOTICE WITHIN 30 DAYS WHENEVER POSSIBLE.

Authorized representative

A handwritten signature in black ink, appearing to read "John D. Gilkey".

John D. Gilkey  
Interim President and CEO

400 High Street SE  
Salem, OR 97312  
P: 800.285.8525  
F: 503.584.9812