

CITY OF NEWPORT, OREGON

REQUEST FOR PROPOSALS

**SECURITY AND FIRE ALARM
INSPECTION, TESTING, MONITORING,
AND MAINTENANCE SERVICES**



SUBMIT PROPOSAL TO:

**Peggy Hawker, City Recorder/Special Projects Director
City of Newport
169 SW Coast Highway
Newport, Oregon 97365**

Due Date: July 7, 2021 by 2:00 P.M., PDT

CITY OF NEWPORT, OREGON
REQUEST FOR PROPOSALS
SECURITY AND FIRE ALARM
INSPECTION, TESTING, MONITORING, AND MAINTENANCE SERVICES

I. BACKGROUND

A. Proposer Entity

The City of Newport (“City”) is seeking a well-qualified organization to submit a proposal to provide security and fire alarm services, including inspection, testing, monitoring, maintenance services, and non-proprietary panel replacement on request, to the City for a period of three years with two additional renewal options of one year each, for a total of five years.

B. Overview

The City of Newport is a prime tourist destination and the population center of the Central Oregon Coast. Newport is the county seat of Lincoln County, and houses the offices of several federal and state agencies, including a major Coast Guard station, Oregon State University’s Hatfield Marine Science Center, NOAA’s Pacific Marine Operations Center, the Oregon State Police, Oregon DMV, and Oregon Employment Division offices. The City is home to the Samaritan Pacific Communities Hospital, and the main campus of the Oregon Coast Community College. OCCC is a premier educational institution and unique in its aquarist program. Its aquarist graduates are working in aquarium and research facilities throughout the country. Newport has a population of more than 10,000.

The Yaquina River flows into the Pacific Ocean through Newport’s Yaquina Bay. Newport is home to the Oregon Coast Aquarium, one of the country’s premier aquariums. A substantial commercial fishing fleet calls Newport home, as do several marine research vessels and a large number of private boats docked in marinas around the Bayfront. Newport is one of three deep-water ports on the Oregon Coast. Tonnage of shipping is second behind Coos Bay.

Newport has often been described as the most authentic City on the entire Oregon Coast. The City boasts numerous fine shops, restaurants, galleries, lodging establishments, and endless outdoor recreational opportunities.

Proximity to Portland and the Willamette Valley provides a strong tourism base, and the mid-latitude of Oregon provides moderate rainfall during the winter and spring months, and mild temperatures.

II. RFP SPECIFICATIONS

A. Goals and Objectives

The objective of this RFP is to award a three (3) year contract, with two (2) one-year renewal options exercisable at the City's sole discretion, to an entity that will provide alarm panel Replacement on request, and routine Inspection, Monitoring, Maintenance and Testing Services - Fire and/or Security for the City, including, but not limited to the following facilities:

1. City Hall;
2. 60+ Activity Center;
3. FBO building at the Newport Municipal Airport;
4. Airport T-Hangars;
5. Water Treatment Plant;
6. Wastewater Treatment Plant;
7. Library;
8. Visual Arts Center;
9. Performing Arts Center;
10. Main Fire Station;
11. Recreation and Aquatic Centers;
12. City Shop
13. Pump Station - 48th Street;
14. Pump Station - 68th Street;
15. Pump Station - Big Creek;
16. Pump Station - Nye Beach;
17. Pump Station - Bayfront.

B. Scope of Services

Schedules for each facility follow:

**SCHEDULE 1
CITY HALL
169 SW Coast Highway**

- A. Non-Proprietary Panel Replacement, at request of city
- B. Inspection Services

- C. Monitoring Services
- D. Maintenance Services
- E. Testing Services

**SCHEDULE 2
60+ ACTIVITY CENTER
20 SE 2nd Street**

- A. Non-Proprietary Panel Replacement, at request of city
- B. Inspection Services
- C. Monitoring Services
- D. Maintenance Services
- E. Testing Services

**SCHEDULE 3
AIRPORT BUILDING (FBO)
135 SE 84th Street**

- A. Non-Proprietary Panel Replacement, at request of city
- B. Inspection Services
- C. Monitoring Services
- D. Maintenance Services
- E. Testing Services

**SCHEDULE 4
AIRPORT (T-HANGARS)
135 SE 84th Street**

- A. Non-Proprietary Panel Replacement, at request of city
- B. Inspection Services
- C. Monitoring Services
- D. Maintenance Services
- E. Testing Services

**SCHEDULE 5
WATER TREATMENT PLANT
2810 NE Big Creek Road**

- A. Non-Proprietary Panel Replacement, at request of city
- B. Inspection Services
- C. Monitoring Services
- D. Maintenance Services
- E. Testing Services

**SCHEDULE 6
WASTEWATER TREATMENT PLANT
5525 SE 50th Place**

- A. Non-Proprietary Panel Replacement, at request of city
- B. Inspection Services
- C. Monitoring Services
- D. Maintenance Services
- E. Testing Services

**SCHEDULE 7
LIBRARY
35 NW Nye Street**

- A. Non-Proprietary Panel Replacement, at request of city
- B. Inspection Services
- C. Monitoring Services
- D. Maintenance Services
- E. Testing Services

**SCHEDULE 8
VISUAL ARTS CENTER
777 NW Beach Drive**

- A. Non-Proprietary Panel Replacement, at request of city
- B. Inspection Services
- C. Monitoring Services
- D. Maintenance Services
- E. Testing Services

**SCHEDULE 9
PERFORMING ARTS CENTER
777 West Olive Street**

- A. Non-Proprietary Panel Replacement, at request of city
- B. Inspection Services
- C. Monitoring Services
- D. Maintenance Services
- E. Testing Services

**SCHEDULE 10
MAIN FIRE STATION
245 NW 10th Street**

- A. Non-Proprietary Panel Replacement, at request of city
- B. Inspection Services
- C. Monitoring Services
- D. Maintenance Services
- E. Testing Services

**SCHEDULE 11
RECREATION AND AQUATIC CENTERS
225 SE Avery Street**

- A. Non-Proprietary Panel Replacement, at request of city
- B. Inspection Services
- C. Monitoring Services
- D. Maintenance Services
- E. Testing Services

**SCHEDULE 12
CITY SHOP
845 NE 3rd Street**

- A. Non-Proprietary Panel Replacement, at request of city
- B. Inspection Services
- C. Monitoring Services
- D. Maintenance Services
- E. Testing Services

**SCHEDULE 13
48th STREET PUMP STATION**

- A. Non-Proprietary Panel Replacement, at request of city
- B. Inspection Services
- C. Monitoring Services
- D. Maintenance Services
- E. Testing Services

SCHEDULE 14
68th STREET PUMP STATION

- A. Non-Proprietary Panel Replacement, at request of city
- B. Inspection Services
- C. Monitoring Services
- D. Maintenance Services
- E. Testing Services

SCHEDULE 15
BIG CREEK PUMP STATION

- A. Non-Proprietary Panel Replacement, at request of city
- B. Inspection Services
- C. Monitoring Services
- D. Maintenance Services
- E. Testing Services

SCHEDULE 16
NYE BEACH PUMP STATION

- A. Non-Proprietary Panel Replacement, at request of city
- B. Inspection Services
- C. Monitoring Services
- D. Maintenance Services
- E. Testing Services

SCHEDULE 17
BAYFRONT PUMP STATION

- A. Non-Proprietary Panel Replacement, at request of city
- B. Inspection Services
- C. Monitoring Services
- D. Maintenance Services
- E. Testing Services

C. Eligible Proposers

Proposals will be accepted only from organizations that:

1. Are qualified to conduct business in the State of Oregon and the City of Newport.

2. If a corporation or limited liability company, it is in good standing with the Secretary of State.

D. Contract Term

The term of the contract with the successful proposer shall be three (3) years with an option to extend for up to two additional one-year terms, at City’s sole discretion, taking into account the factors set forth below. The proposer shall state if it is willing to grant the City the option to extend any contract awarded hereunder for two additional periods of one year each, under the same prices, terms, and conditions. Contract extension will be contingent upon the availability of funds; contractor’s continuing compliance with applicable federal, state, and local government legislation; and an evaluation indicating the contractor’s successful performance of the contract. Where tasks are to be performed annually; twice annually, or four times annually, City will cooperate to accommodate proposer staffing resources and minimize scheduling conflicts. These tasks shall be scheduled so as to occur in evenly spaced intervals throughout the year. Cooperation and accommodation are at the sole discretion of the City.

E. Preliminary Schedule

<i>Event</i>	<i>Date</i>
Release of Request for Proposals	June 4, 2021
Pre-Proposal Conference and Tour	June 23, 2021 @ 1:00 P.M.
Proposals Due	July 7, 2021 @ 2:00 P.M.
Proposal Award Date	July 19, 2021
Contractor Begins Work	Immediately After Award and Execution of Contract

F. Mandatory Pre-Proposal Conference

A mandatory Pre-Proposal Conference and Tour has been scheduled to answer questions about this RFP on Wednesday, June 23, 2021, at 1:00 P.M., at:

City of Newport City Hall
 City Council Chambers
 169 SW Coast Highway
 Newport, Oregon 97365

Please RSVP to Peggy Hawker at 541.574.0613, or e-mail: p.hawker@newportoregon.gov to confirm your attendance.

At this conference, City staff will review the RFP document and respond to questions regarding requirements of the RFP. Following the review of the RFP and response to

questions, the City will take potential proposers on a tour of the facilities included in the RFP. The City of Newport does not discriminate based on disability and, upon request, will provide reasonable accommodations to ensure equal access to its programs, services, and activities. Please contact the City at least 72 hours in advance to request an accommodation.

G. Deadline for Submission of Proposals

The proposal must be sent electronically to p.hawker@newportoregon.gov. The deadline is for submission of proposals is 2:00 P.M., PDT, on Wednesday, July 7, 2021.

Timely submission of proposals is the sole responsibility of the proposer. The City reserves the right to determine the timeliness of all submissions. Late proposals will not be accepted. All proposals received after the deadline will be returned unopened.

H. Proposal Requirements

The following outlines the proposal requirements. Submission of a proposal pursuant to this RFP constitutes acknowledgement and acceptance of the terms and conditions set forth herein, ORS 279, and those required under City's Public Contracting Rules 2012 (located on City's webpage, under Administration, City Recorder). Proposals are limited to a total of fifteen pages. The RFP will be incorporated into any resulting Contract with the successful proposer, along with any terms of the accepted proposal which are not in conflict therewith, as well as provisions which are permissible matters for negotiation, as set forth herein. The contents of the proposal submitted by the successful proposer may become contractual obligations if a Contract is awarded.

A sample Contract, is attached hereto as Exhibit A, and by this reference, incorporated herein. In the event of a conflict between the provisions of applicable law, applicable City Public Contracting Rules 2012, this Request for Proposals, and the successful proposal, the order of precedence shall be as set forth in this sentence.

Failure of the successful proposer to accept these obligations may result in cancellation of the award. The City reserves the right to withdraw this RFP at any time without prior notice. All proposals submitted in response to the RFP become the property of the City and will be a public record after the selection process is completed. Each proposal must contain the following:

Each proposal should include the following basic components and information:

- A cover letter must be submitted with the proposal. The cover letter should be limited to one page and must include the company name, company address, and the name, telephone number, fax number, and e-mail address of the person(s)

authorized to represent the firm on all matters relating to the RFP and any contract awarded pursuant to this RFP. A person authorized to bind the proposer to all commitments made in the proposal must sign the letter.

- A brief description of the individual and/or firm’s experience with providing security and fire alarm inspection, testing, monitoring, and maintenance service to institutional or commercial customers.
- A description of the firm’s capability in providing the service(s) as described in the scope of work.
- A fee schedule for all items, except the panel replacements, listed in the scope of work.
- Information regarding insurance coverage.
- The name and contact information for the primary contact person.
- Other information that may assist the City in making its selection.
- Each proposer shall also furnish a list of at least three commercial or municipal references, within the last five years, including names, addresses, phone numbers, and principal contacts in which the proposer has provided similar services. By submitting a proposal, a proposer consents to City contacting listed references, as well as parties with whom proposer has previously contracted. The results of those contacts will be considered by City in its evaluation of proposer’s proposal, and provided herein.

I. Proposal Evaluation and Selection Process

Proposals will be evaluated based upon the following categories, including references and information from entities or persons with whom Proposer has entered into contract(s) within the last five years. Proposals will be scored, and ranked. No single category is determinative, or entitled to greater weight in the evaluation process than any other. The proposal selected as the successful proposal will be determined by the highest point total, based on the categories below. The successful proposal may be eligible for negotiation as to the matters, if any, which are identified as suitable for negotiation in this RFP.

Proposer qualifications, experience, and demonstrated ability, including references and contacts with previous contracting parties	40 points
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Quality and responsiveness of proposal to the Goals and Objectives and Scope of Service detailed in this RFP	30 points
Cost reasonableness, appropriateness, and necessity as compared to all other proposals to provide the services proposed within the City's annual budget and other leveraged monies	30 points

J. CONTRACT AWARD PROCESS

The City Council may accept or reject the recommendation of the staff as to the successful proposer, cancelation of the procurement, or related matters.

The successful proposer that is selected to perform the services outlined in this RFP shall enter into a contract, approved by the City Attorney, directly with the City of Newport, within thirty (30) days of the Notice of Intent to Award Contract, or such later date as determined by the City Council.

The City reserves the right to verify the information received in the proposal. If the proposer knowingly and willfully submits false information or data, the City reserves the right to reject that proposal. If it is determined that a contract was awarded or entered into because of false statements, or other incorrect data submitted in response to this RFP, the City reserves the right to terminate the contract, without penalty therefor, and with all rights reserved.

III. GENERAL RFP AND CITY CONTRACT INFORMATION

The following terms and conditions apply to the agreement entered into between the successful proposer and the City of Newport:

A. Budget

Total expenditures under this contract shall not exceed the amount budgeted by City. In any event, the City provides no assurance that the total amount budgeted by City will be agreed to by City in its award of contract. However, in the event City requires additional services beyond those agreed to by the parties in the contract, such services will be reduced to writing as an amendment to the contract.

B. Laws and Policies

In the performance of the work, the selected successful proposer shall abide by and conform to all applicable laws and rules of the United States, State of Oregon, and the City of Newport.

C. Costs Incurred by Proposers

All costs of proposal preparation shall be the responsibility of the proposer. The City shall not, in any event, be liable for any pre-contractual expenses incurred by proposers in the preparation and/or submission of the proposals. Proposals shall not include any such expenses as part of the proposed budget.

D. General City Reservations

City reserves the right to extend the submission deadline should this be in the best interest of the City. Proposers have the right to revise their proposals in the event that the deadline is extended.

The City reserves the right to withdraw this RFP at any time, and will notify proposers that the solicitation has been canceled. The City makes no representation that any contract will be awarded to any proposer responding to the RFP. The City reserves the right to reject any or all submissions.

If in City's judgment, an inadequate number of proposals are received or the proposals received are deemed non-responsive, not qualified, or not cost effective, the City may, at its sole discretion, reissue the RFP, or execute a contract with the next highest ranked proposer, or to cancel this solicitation, all subject to compliance with applicable laws and the City's public contracting rules.

City reserves the right, subject to the City's public contracting rules and applicable statutes, to reject any and all proposals and to waive any minor informality when to do so would be advantageous to the City.

E. Termination

Any contract awarded pursuant to this RFP may be terminated by the City, with or without cause, upon 30 days prior written notification by the City to the successful proposer.

F. Proposer's Contact for Information

Proposers may contact Peggy Hawker, City Recorder/Special Projects Director, with any questions regarding the scope of work of this RFP at:

Peggy Hawker, City Recorder/Special Projects Director
City of Newport
169 SW Coast Highway
Newport, Oregon 97365
541.574.0613
p.hawker@newportoregon.gov

G. Deadline for Submission of Proposals

The proposals must be **received** by 2:00 P.M., PDT, on Wednesday, July 7, 2021. Proposals must be submitted electronically to p.hawker@newportoregon.gov, with “RFP FOR ALARM SERVICES” in the subject line.

Timely submission of proposals is the sole responsibility of the proposer. The City reserves the right to determine the timeliness of all submissions. Late proposals will not be accepted. All proposals received after the deadline will not be considered.

H. General City Reservations

All work shall be performed during regular business hours unless an exception has been authorized.

Any building keys provided to the contractor remain City property and may not be duplicated without written approval by the City. Keys shall be returned to City on demand. If the contractor loses a key, the contractor shall be responsible for replacing all locks that the lost key opened.

EXHIBIT A

CITY OF NEWPORT, OREGON **DRAFT PERSONAL SERVICES AGREEMENT**

THIS AGREEMENT is between the City of Newport, an Oregon municipal corporation (City), and [REDACTED] (Contractor). This Agreement shall be effective when signed and dated by an authorized representative of each party.

RECITALS

- A. Contractor has the training, ability, knowledge, and experience to provide services desired by the City.
- B. City has selected Contractor to provide services under its public contracting rules.

TERMS OF AGREEMENT

1. SERVICES TO BE PROVIDED

Contractor shall provide the services described in attached Exhibit A to this Agreement. To the extent there are any inconsistencies or conflicts between this Agreement and the attached Exhibit A, this Agreement shall control and prevail.

2. TERM

The term of this Agreement shall be [REDACTED] year(s) with an option to extend for up to [REDACTED] additional [REDACTED]-year terms, at City's sole discretion. This Agreement shall expire, unless otherwise terminated or extended, on [REDACTED].

3. COMPENSATION

Contractor shall be compensated as described in attached Exhibit A to this Agreement.

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 670.600 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 third party) as a result of the finding.
- 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 with 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 fees and witness costs (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 Agreement, 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 Agreement. 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 Agreement, 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 Agreement. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	2,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
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 this Agreement, 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 Agreement that are either subject employers that will comply with ORS 656.017 or employers 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 Agreement.

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 City.

F. Certificates of Insurance

As evidence of the insurance coverage required by this Agreement, the Contractor shall furnish a Certificate of Insurance to the City. No contract shall be effective until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within the Agreement. A renewal certificate will be sent to the City's 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 Agreement.

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 Agreement.

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 Manager
City of Newport
169 SW Coast Hwy.
Newport, OR 97365
Phone: 541-574-0601

Contractor:

Notices mailed to the address provided for notice in this section shall be deemed given upon deposit in 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 this 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 Agreement 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, or terminated, 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.
5. If City determines that termination of this Agreement is in the best interest of the City.

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.
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 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; 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 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 disenabled, 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 disenabled 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 this 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 659A.142, 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

Only the City Manager may authorize additional work not described in Exhibit A. 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 FEES

In any action arising under this Agreement, the prevailing party shall be entitled to such sum as the court may award as reasonable attorney fees and court costs, including attorney fees and court costs on appeal.

19. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict of law principles. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon, and the parties hereby consent to venue in Lincoln County Circuit Court, Oregon, unless exclusive jurisdiction is in federal court, in which case venue shall be in federal district court for the District 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 attached Exhibit B.)

21. SEVERABILITY / COUNTERPARTS

In the event any provision of this Agreement is unenforceable as a matter of law, the remaining provisions will stay in full force and effect. This Agreement may be executed in counterparts and a signed copy transmitted by facsimile or other electronic means, each of which will be deemed an original, but all of which taken together will constitute one and the same agreement.

CITY OF NEWPORT

City Manager

Date

CONTRACTOR

Date

EXHIBIT A
TO PERSONAL SERVICES AGREEMENT
SERVICES TO BE PROVIDED

EXHIBIT B
TO PERSONAL SERVICES AGREEMENT
RATES/COSTS

EXHIBIT C
TO PERSONAL SERVICES AGREEMENT
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.