

CITY OF NEWPORT, OREGON

REQUEST FOR PROPOSALS

BUSINESS PLAN FOR RECREATION SERVICES



SUBMIT PROPOSAL TO:

**Mike Cavanaugh
Parks and Recreation Director
City of Newport
169 SW Coast Highway
Newport, Oregon 97365**

Due Date: June 11, 2021 by 4:00 P.M., PST

CITY OF NEWPORT, OREGON

REQUEST FOR PROPOSALS RECREATION BUSINESS PLAN

I. BACKGROUND

A. Proposer Entity

The City of Newport (“City”) is seeking a well-qualified individual or organization to submit a proposal to provide professional services for the development of a five-year Recreation Business Plan. The plan should review and assess existing operational practices and forecast viable business options for the Newport Recreation Center, the Newport Aquatic Center, and the 60+ Activity Center.

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 and nursing & allied health programs. Its aquarist graduates are working in aquarium and research facilities throughout the country while its nursing & allied health program has produced more than 200 graduates in the industry. 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.

The City of Newport Parks and Recreation department is integral to the sense of community, place and high quality of life enjoyed by the residents. The department has a track record of providing excellent, high quality recreation and education programs and

facilities for Newport residents and non-residents of all ages. The department administers the City's diverse array of recreation opportunities, including youth and adult sports, health and wellness activities, specialty classes, and summer camps, among many other offerings. The department manages the Newport Recreation Center, Aquatic Center, 60+ Activity Center and produces special events, such as the Autumn Art Festival, Coast Hills Classic Mountain Bike Race, Agate Beach Surf Classic, and Buccaneer Mud Run Race.

C. Source of Funds and Budget

The source of funds for this service is from the City's General Fund. The budget for this project is \$40,000. Total expenditures under any contract awarded for this project shall not exceed the amount the City has budgeted for this project.

II. RFP SPECIFICATIONS

A. Goals and Objectives

The objective of this RFP is to award a contract to an individual or organization that will develop a five-year business plan for the City's recreation services which include the Newport Recreation Center, Newport Aquatic Center, and 60+ Activity Center.

In October 2017, the City of Newport adopted the Greater Newport Area Vision 2040 Community Vision and Strategic Plan. This Vision is intended to guide the City and its stakeholders in the cultivation of a healthy and livable community for the future. Link to [the Greater Newport Area Vision 2040 Community Vision and Strategic Plan](#). In August 2019, the City of Newport adopted the Newport Park System Master Plan. This plan establishes goals and strategies for enhancing the community's parks and facilities through investment and development over the next 20 years. Link to [the Newport Park System Master Plan](#). Both plans should be used as references for gathering community information, assessing department fees and pricing structure, reviewing finances and funding options, and building recommendations and strategies for recreation services. These plans will be provided upon request to the successful proposer.

Specific objectives include:

1. Identify ways to reduce the required subsidies from the General Fund to provide high quality recreational services in the community.
2. Inform decision-making regarding the operation of all components of the identified recreation facilities.
3. Assist in prioritizing infrastructure investment for the identified recreation facilities.
4. Inform program development and delivery.
5. Identify internal and external partners, responsibilities, and processes to strengthen collaboration to deliver the best services to the community.

B. Scope of Services

1. The Contractor shall perform a preliminary review meeting with key stakeholders, including but not limited to members of City Council, Budget Committee, Parks and Recreation Advisory Committee, 60+ Advisory Committee, and City staff (consultant to suggest quantity, final number to be negotiated).
2. The Contractor shall review the current operational delivery model and associated budgets in the identified recreation facilities.
3. The Contractor shall compare the City's recreation delivery model with other delivery models in similar communities.
4. The Contractor shall conduct an inventory and perform an evaluation of existing recreation programs and services in the identified recreation facilities.
5. The Contractor shall perform an assessment of the marketing efforts associated with recreation service delivery.
6. The Contractor shall perform a SWOT analysis of the Newport Recreation Center, Newport Aquatic Center, and 60+ Activity Center.
7. The Contractor shall provide recommendations, implementation strategies, and action plans. This could include actions that need to be taken, the desired results, how to measure the results, and what resources will be needed. This should include:
 - a. Best practices for delivery of services.
 - b. Using three levels of reduction in subsidies from the General Fund (reduce by 25%, 50%, and 75%), provide an analysis of programs and services that could be offered depending on funding level.
 - c. Develop standards for evaluating the financial performance of current and future programs.
 - d. Best practices for marketing services to local residents and out-of-town visitors.
 - e. Potential funding sources and fees to reduce subsidies from the General Fund and a financial plan for future development.
8. The Contractor shall present the Draft Business Plan to City Staff and to the City Council and Parks and Recreation Advisory Committee in a joint meeting.

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 shall be the completion of the business plan, but no longer than one year.

E. Preliminary Schedule

<i>Event</i>	<i>Date</i>
Release of Request for Proposals	April 28, 2021
Optional Pre-Proposal Virtual Conference	May 7, 2021 @ 1:00 P.M.
Proposals Due	June 11, 2021 @ 4:00 P.M.
Proposal Award Date	June 21, 2021
Contractor Begins Work	Immediately After Award

F. Pre-Proposal Conference

A Pre-Proposal Virtual Conference via Zoom has been scheduled to answer questions about this RFP on Friday, May 7, 2021, at 1:00 P.M.

Please RSVP to Mike Cavanaugh at 541.574.5453, or e-mail: m.cavanaugh@newportoregon.gov to confirm your attendance.

At this virtual conference via Zoom, City staff will review the RFP document and respond to questions regarding requirements of 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. Proposal Requirements

1. General Information

- a. Submission of a proposal pursuant to this RFP constitutes acknowledgement and acceptance of the terms and conditions set forth herein, ORS 279B, and those required under City’s Public Contracting Rules (located on City’s webpage, under Administration, City Recorder). 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.

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

2. Proposal Components

The specific content listed below must be organized in the submitted proposal in the order they are listed below. Tabs must be included to identify each section. The proposal shall be limited to no more than twenty-five (25) pages, double sided.

- a. Cover Letter: A cover letter must be submitted with the proposal. The cover letter should be limited to one page and must include the firm name, firm 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.
- b. Experience with Similar Projects: A brief description of the individual's or firm's experience with developing business plans for public and private entities. This section shall be limited to no more than four (4) pages, double sided.
- c. Expertise: A description of the individual's or firm's capability in providing the service(s) as described in the scope of work.
- d. Performance of Services: Description of the proposer's approach to address the objectives and scope of services listed in Section II.
- e. Project Costs: A fee schedule for all items listed in the scope of work.
- f. Insurance: Information regarding insurance coverage.
- g. Point of Contact: The name and contact information for the primary contact person.
- h. References: Each proposer shall also furnish a list of at least five commercial or municipal references, including names, addresses, phone numbers, and principal contacts in which the proposer has provided similar services within the last five years. 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. Other information that may assist the City in making its selection.

III. 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.

Demonstrated ability to meet the requirements of the scope of work. <i>(i.e., Does the proposer have proven ability to provide the services requested? Does the company have prior experience with the same or similar work scope?)</i>	30 points
Proposer experience and competence of personnel assigned to the project.	25 points
Demonstrated understanding of the project approach (i.e., Does the proposal address the range and scope of the services desired? Does the proposal adequately demonstrate an approach that will deliver the requested outcomes?)	25 points
Project schedule and fees	10 points
References	10 points
<i>Total Points Possible</i>	<i>100 points</i>

IV. 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 Manager and 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.

V. 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 Mike Cavanaugh, Parks and Recreation Director, with any questions regarding the scope of work of this RFP at:

Mike Cavanaugh
Parks and Recreation Director
City of Newport
169 SW Coast Highway
Newport, Oregon 97365
541.574.5453
m.cavanaugh@newportoregon.gov

G. Proposal Submission Requirements

The proposals must be **received** by 4:00 P.M., PST, on Friday, June 11, 2021. Proposals must be submitted electronically to m.cavanaugh@newportoregon.gov, with "RFP FOR RECREATION SERVICES BUSINESS PLAN" 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 be returned unopened.

SAMPLE AGREEMENT

CITY OF NEWPORT, OREGON PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the City of Newport, an Oregon municipal corporation (City), and (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 pursuant to a request for proposal process, consistent with its public contracting rules.

TERMS OF AGREEMENT

1. SERVICES TO BE PROVIDED

Contractor shall begin services on _____ 2021. Payment shall not be made for any other services without the written agreement by the City.

Contractor shall provide the services described in the request for proposals and in Contractor's proposal (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

The term of the contract shall be ___ years with an option to extend for up to two additional one-year terms, at City's sole discretion. This contract shall expire, unless otherwise terminated or extended, on _____, 2022.

3. COMPENSATION

Contractor shall be compensated as described in Exhibit B 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 contract, except to the extent that the liability arises out of the sole 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	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 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 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 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 effective 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:

Spencer R. Nebel, City Manager
City of Newport
169 SW Coast Highway
Newport, Oregon 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 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, 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 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 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 suit 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 attached Exhibit C.)

City of Newport

By:

_____ Date

Contractor

By:

_____ 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.

279B.235 Condition concerning hours of labor; compliance with pay equity provisions; employee discussions of rate of pay or benefits.

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.