

CITY OF NEWPORT, OREGON

**REQUEST FOR PROPOSALS
VISITOR FULFILLMENT SERVICES**



SUBMIT PROPOSAL TO:

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

Due Date: May 23, 2022

CITY OF NEWPORT, OREGON

Request for Proposal Visitor Fulfillment Services

I. BACKGROUND

A. Proposer Entity

The City of Newport (“City”) is seeking a well-qualified profit or non-profit organization to submit a proposal to provide tourism promotion services for the city for a term of three 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.

C. Source of Funds and Budget

The source of funds for this service is from the city's Transient Room Tax Fund.

III. SPECIFICATIONS

A. Goals and Objectives

The objective of this RFP is to award a three-year contract to an entity that will provide visitor fulfillment services for the City of Newport, including, but not limited to:

1. Visitor Center;
2. Visitor information;
3. Media information;
4. Visitor website and website maintenance;
5. Visitor kiosk;
6. Hospitality training;
7. Support group and research tours;
8. Support goals of the Destination Newport Committee;
9. Value season promotion;
10. Other projects and cooperative involvement with local, regional, and state tourism opportunities;
11. Statistical reporting, including lodging occupancy, and Dean Runyon Report.

B. Scope of Services

All services shall be provided under the direction of the City Manager and City Council in coordination with the Destination Newport Committee to complement the city's advertising program. The visitor fulfillment services provided shall include, but not be limited to, the following tasks:

1. Visitor Information:
 - a. Visitor guide;
 - b. Calendar of events;
 - c. Map/Exploring Newport - A to Z;

- d. "Eat, Stay, Play" digital information updated regularly;
- e. Oregon calendar of events - submit primary local events for inclusion in this publication annually;
- f. Online facility guide;
- g. Responses to requests for information generated by the city's advertising efforts. Services include the operation of a visitor center, responding to phone inquiries during regular business hours, preparing and mailing requested information (including paying for postage that may be in an amount up to \$5,000), and responding to e-mail requests.

2. Media Information:

- a. Media kit;
- b. Digital photo library;
- c. Newspaper and other articles;
- d. Host and/or support domestic and international travel writers;
- e. Produce regular and seasonal press releases;
- f. Develop and maintain relationships with media;
- g. Work with Travel Oregon, Oregon Coast Visitor's Association, and other groups on familiarization tours for journalists and the travel trade industry.

3. Visitor Web Page Maintenance. Have or develop visitor landing pages within a website that complements the Discover Newport website. Services shall include updating and maintaining the visitor website. At a minimum, the website maintenance shall include:

- a. Calendar of events;
- b. Photographs;
- c. Press release page;
- d. Group tour information;
- e. Facility information;
- f. Shuttle maps the business information;
- g. Attraction information;
- h. Business information;
- i. Responses to e-mail and social networking;
- j. Content development as necessary to keep website fresh.

4. Visitor Kiosk

- a. Maintain 24-hour information kiosk in the city in a highly visible location;
 - b. Provide information about Newport to other regional kiosk centers.
- 5. Hospitality Training
 - a. Develop and implement training for hospitality industry employees within the corporate limits of Newport.
- 6. Support Group and Research Tours
 - a. Provide material and information to tour groups referred by Travel Oregon or similar organizations.
- 7. Support the Goals of the City's Destination Newport Committee
 - a. Support all Destination Newport Committee programs;
 - b. Forward marketing opportunities to the city's contracted advertising service provider;
 - c. Participate at Destination Newport Committee meetings;
 - d. Fulfill Destination Newport Committee requests related to tourism or relocation marketing (fulfillment);
 - e. Demonstrate intimate knowledge of Newport;
 - f. Promote Newport and the surrounding economic area as appropriate.
- 8. Value Season Promotion
 - a. Develop programming to enhance and support tourism during the off and shoulder seasons.
- 9. Cooperative Involvement with Local, Regional, and State Visitor's Organizations
 - a. Represent Newport at domestic and international trade and travel shows;
 - b. Work cooperatively with other agencies to attract tourists during shoulder and off seasons.
- 10. Statistical Reporting

- a. Conduct occupancy surveys with the lodging community and provide quarterly data;
- b. Collect data regarding visitor’s residences and how they learned of Newport;
- c. Collect other information as requested by the city.

C. Eligible Contractor

Contractor must be qualified to conduct business in the State of Oregon and City of Newport. If the contractor is a corporation or limited liability company, it must be in good standing with the Secretary of State.

D. Contract Term

The term of the contract shall be three years.

E. Preliminary Schedule

Release of Request for Proposals	April 29, 2022
Pre-Proposal Conference	May 10, 2022 @11 A.M.
Written Questions about Proposals	May 13, 2022 @ Noon
Proposals Due	May 23, 2022 @ 5 P.M.
Proposal Award Date	June 20, 2022
Contractor Begins Work	July 1, 2022

F. Pre-Proposal Conference

An optional Pre-Proposal Conference has been scheduled to answer questions about this RFP on Tuesday, May 10, 2022, at 11:00 A.M., at:

City of Newport City Hall
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. 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

Proposals must be submitted by e-mail to Peggy Hawker, at p.hawker@newportoregon.gov, and received by 5:00 P.M., on May 23, 2022. The subject line of the e-mail must read, "Visitor Fulfillment Services Proposal."

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 accepted.

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, and those required under City's Public Contracting Rules 2012 (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.

A sample Contract, as an example only, is attached to this RFP as Exhibit A. 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:

a. Cover Letter for the Proposal

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.

b. Providing Services to Meet Goals and Objectives

Each proposer shall furnish a narrative of how the organization will provide services to meet the city's goals and objectives.

c. Proposer Experience

Each proposer shall furnish a narrative supported by relevant data regarding past experience with similar projects, including names of organizations and persons with whom proposer has entered into contracts and employment for substantially similar services as described herein, within the last five (5) years. Proposer shall also identify the individuals who will be assigned to work on this project.

Each proposer shall also furnish a list of references 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.

d. Projected Costs and Proposed Services

Itemize the annual projected costs of each component in the "Scope of Services" described above. If applicable, identify other sources of revenue that can be matched or leveraged to provide a greater promotion of Newport.

I. Proposal Evaluation and Selection Process

The city will conduct a preliminary evaluation of all

proposals to determine compliance with proposal requirements and mandatory document submissions. The city reserves the right to request additional information to clarify the content of a proposal.

All proposals shall be reviewed to determine that the minimum eligibility requirements have been met. Ineligible proposers will be informed via e-mail.

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
Quality and responsiveness of proposal to the Goals and Objectives and Scope of Service detailed in this RFP	40 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	20 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.

K. 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:

1. Laws and Policies

In the performance of the visitor services fulfillment agreement, 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.

2. 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.

3. 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 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.

4. Termination

Any contract awarded pursuant to this RFP may be terminated by the city, with or without cause.

L. PUBLIC RECORDS DISCLOSURE

Information provided to the Agency will become property of the Agency and will be subject to public inspection after completion of the evaluation in accordance with Oregon Public Records Law, ORS 192.311 et seq. If an entity responding to this RFP believes that a specific portion of its response constitutes a "trade secret" under Oregon Public Records Law (ORS 192.345(2)) and is; therefore, exempt from public disclosure, the entity must clearly identify that specific information as a "trade secret." Identification of information as a "trade secret" does not necessarily mean that the information will be exempt from disclosure. The agency will make that determination based upon the nature of the information and the requirements of Oregon Public Record Law.

M. 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

EXHIBIT A

CITY OF NEWPORT, OREGON

DRAFT GOODS AND SERVICES CONTRACT

Visitor Fulfillment Services

The City of Newport, an Oregon municipal corporation (City), and [REDACTED] (Contractor) hereby enter into a contract for services in accordance with the specifications and proposal provided.

All terms of the following exhibits are hereby incorporated by reference into this Contract, and Contractor agrees to comply with each:

- (1) Exhibit A - Request for Proposals
- (2) Exhibit B - Contractor Proposal
- (3) Exhibit C - Oregon Public Contracting Requirements

To the extent there are any inconsistencies or conflicts between this document and Exhibit B, this document shall control and prevail.

1. Term. The term of this Contract shall extend from [REDACTED] to [REDACTED], unless extended for additional periods of time upon written mutual agreement of both parties. Notwithstanding this Term, City reserves the right to terminate this Contract as outlined in this Agreement.

2. Scope of Work. Contractor shall provide all materials, labor, equipment, and all other services and facilities necessary for the services specified in the attached Exhibits A and B (Project). All work shall be completed within each year of the contract.

3. Compensation.

3.1 Basis of Payment. Contractor shall complete Project as defined above and in the attached exhibits for a total fee of \$ [REDACTED] for each year of the contract.

3.2 Payment. Payment shall be made for services on a quarterly basis by the City, in the amount of \$ [REDACTED] on July 1, October 1, January 1, and April 1.

If City fails to make any payment due Contractor for services within thirty (30) days of receipt of Contractor's invoice for quarterly payment, late fees will be added to amounts due Contractor at the rate of 1.0 percent (1%) per month from the invoice date. Invoices in dispute are not subject to such late fees until such time as they are no longer in dispute.

4. Permits. City will be responsible for obtaining all permits, approvals, and authorizations necessary for Contractor's performance.

5. Termination for Convenience. This Contract may be terminated by mutual consent of the parties upon written notice. In addition, City may terminate all or part of this Contract upon determining that termination is in the best interest of City by giving seven (7) days' prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Upon termination under this paragraph, Contractor shall be entitled to payment in accordance with the terms of this Contract for Contract work completed and accepted before termination less previous amounts paid and any claim(s) City has against Contractor. Pursuant to this paragraph, Contractor shall submit an itemized invoice for all unreimbursed Contract work completed before termination and all Contract closeout costs actually incurred by Contractor. City shall not be liable for any costs invoiced later than thirty (30) days after termination unless Contractor can show good cause beyond its control for the delay.

6. Termination for Cause. City may terminate this Contract 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:

6.1 If City funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.

6.2 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 Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.

6.3 If any license or certificate required by law or regulation to be held by Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed.

7. Termination for Default. Either City or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

If Contractor fails to perform in the manner called for in this Contract or if Contractor fails to comply with any other provisions of the Contract, City may terminate this Contract for default. Termination shall be affected by serving a notice of termination on Contractor setting forth the manner in which Contractor is in default. Contractor shall be paid the Contract price only for equipment installed and services performed in accordance with the manner of performance as set forth in

this Contract.

8. Remedies. In the event of breach of this Contract, the parties shall have the following remedies:

8.1 If terminated under paragraph 7 by City due to a breach by Contractor, City may complete the work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Contractor shall pay to City the amount of the reasonable excess.

8.2 In addition to the above remedies for a breach by Contractor, City also shall be entitled to any other equitable and legal remedies that are available.

8.3 If City breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

8.4 City shall not be liable for any indirect, incidental, consequential, or special damages under the Contract or any damages arising solely from terminating the Contract in accordance with its terms.

8.5 Upon receiving a notice of termination, and except as otherwise directed in writing by City, Contractor shall immediately cease all activities related to the services and work under this Contract.

9. Standard of Care. Contractor warrants that the work to be performed pursuant to this Contract shall be done in a good and workmanlike manner and will conform to the highest standards prevalent in the industry or business most closely involved in providing the equipment and services City is purchasing.

10. Reports. The Contractor shall provide City with reports as detailed in Contractor's proposal, at a minimum of once per month, outlining the Project progress, issues of concern and budget status.

11. Change Orders. Contractor and City reserve the right to order changes to the equipment and services to be provided herein. Contractor and City shall determine a fair and equitable cost and, if required, additional time for such changes. All such changes shall be ordered and agreed to in writing by both parties.

12. Confidentiality. Contractor shall maintain the confidentiality, both external and internal, of any confidential information to which it is exposed by reason of this Contract. Contractor warrants that its employees assigned to this Contract shall maintain necessary confidentiality.

13. Security and Substance Check. Contractor agrees that each of its employees and subcontractor's employees involved in this Project may, at the option of City and in compliance with Contractor policy, be subject to a security background check

and/or substance abuse testing.

14. Access to Records. For a period of not less than three years after City’s final payment to Contractor, Contractor shall permit the City, the State of Oregon and the Federal Government (if State or Federal funding is involved) to have access to all books, documents, papers and records of Contractor which are pertinent to the Services provided hereunder for purposes of audit, examination, excerpts and transcripts. Contractor shall retain those records for at least three years, or until litigation is resolved if litigation is instituted.

15. Notice. Any required or permitted notices hereunder must be given in writing at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, by one of the following methods: hand delivery; registered, express, or certified mail, return receipt requested, postage prepaid; or nationally-recognized private express courier:

CITY:

CONTRACTOR:

City of Newport	_____
169 SW Coast Highway	_____
Newport, OR 97365	_____
Phone: (541) 574-0603	Phone: _____
Fax: (541) 574-0609	Fax: _____

16. Warranty. Contractor’s warranty is as stated within Exhibit B. Acceptance of any service by City shall not alter or affect the obligations of Contractor or the rights of City.

17. 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:

17.1. 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:

Coverage	Limit
General Aggregate	\$2,000,000

Products-Completed Operations Aggregate	\$1,300,000
Personal & Advertising Injury	\$1,300,000
Errors & Omissions	\$1,300,000
Each Occurrence	\$1,300,000
Fire Damage (Any one fire)	\$50,000
Medical Expense (Any one person)	\$5,000

17.2. 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 \$1,300,000.

17.3. Workers’ Compensation Insurance

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are either subject employers that will 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.

17.4. 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.

17.5. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage of Contractor’s insurance without 30 days prior 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 prior notice of cancellation to the City

17.6. Certificates of Insurance

As evidence of the insurance coverage required by the Agreement, the Contractor shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this Agreement. A renewal certificate will be sent to the City 10 days prior to coverage expiration.

17.7. 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.

17.8. 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.

18. Indemnity. To the extent permitted by law, Contractor shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, trademark or trade secret, arising out of the work performed or goods provided under this Agreement or Contractor's violation of any law, ordinance or regulation, contract provision or term, or condition of regulatory authorization or permit, except for damages resulting from the negligence of City. 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.

19. Force Majeure. This section applies in the event that either party is unable to perform the obligations of this Agreement because of a Force Majeure event as defined herein, to the extent that the Agreement obligation must be suspended. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body which prevents performance. Should either party suffer from a Force Majeure event and be unable to perform, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance. Upon receipt of such notice, the parties shall be excused from such performance as it is affected by the Force Majeure event for the period of such event. If such event effects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such event.

20. Independent Contractor. It is the intention and understanding of the parties that Contractor is an independent contractor and that City shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor

to pay any social security or other tax that may arise as an incident of employment. Contractor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of Contractor shall not be deemed to convert this contract to an employment contract. It is recognized that Contractor may or will be performing work during the term for other parties and that City is not the exclusive user of the services that Contractor provides.

21. Assignment. Contractor shall not assign or subcontract any of its obligations under this Agreement without City's prior written consent, which may be granted or withheld in City's sole discretion. Any subcontract made by Contractor shall incorporate by reference all the terms of this Agreement. City's consent to any assignment or subcontract shall not release Contractor from liability under this Agreement or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

22. 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.

23. 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.

24. 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.

25. 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.

26. Consent to Jurisdiction. 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.

27. Public Contracting Requirements. Contractor shall comply with all federal, state and local laws and ordinances applicable to the work under this agreement, including, without limitation, applicable provisions of the Oregon Public Contracting Code including ORS 279B.020, 279B.220, 279B.230, and 279B.235, as more particularly set forth in Exhibit C, attached hereto and incorporated herein by this reference.

28. Arbitration. If any disputes, disagreements, or controversies arise between

the parties pertaining to the interpretation, validity, or enforcement of this Agreement, the parties shall, upon the request of City, submit such dispute to binding arbitration under the Oregon Uniform Arbitration Act, ORS 36.600 et seq. Arbitration shall be requested by delivering to the other party a written request for arbitration. Within five (5) days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually agreeable rules of arbitration. If the parties cannot agree upon an arbitrator within five (5) days, an arbitrator may be appointed by the presiding judge of the Lincoln County Circuit Court, upon the request of either party submitted in accordance with ORS 36.645. If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall adopt rules for the arbitration. The arbitrator's decision shall be binding upon the parties.

29. Attorney Fees. If suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this Agreement, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for City to incur the services of an attorney to enforce any provision of this Agreement without initiating litigation, Contractor agrees to pay City's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.

30. 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.

31. Entire Agreement. This Agreement shall be the exclusive agreement between the parties with respect to the included terms and for the Project. No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of both parties, except as otherwise authorized herein.

32. Signatures. This Agreement is not effective unless and until it is approved, signed and dated by an authorized representative of each party.

CITY:

CONTRACTOR:

CITY OF NEWPORT



By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

EXHIBIT A
TO PERSONAL SERVICES AGREEMENT

Successful proposer's proposal.

EXHIBIT B
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.