



Service Agreement - Property & Casualty

THIS COMPENSATION AGREEMENT is made and entered into on June 12, 2019 and effective the 1st day of July, 2019 ("Effective Date") by and between The City of Newport, an Oregon Municipality ("Client") and PayneWest Insurance, Inc., a Montana corporation with a location at 811 N Coast Hwy, Newport, OR 97365 ("PayneWest").

I. TERM AND TERMINATION

This Agreement shall commence on the Effective Date for a term of one (1) year. The term may be extended by mutual written agreement of the parties. In the event of termination, PayneWest will assist Client in arranging a smooth transition process. However, PayneWest's obligation and the obligation of its affiliates to provide services to Client will cease upon the effective date of termination, unless otherwise agreed in writing.

Notwithstanding the term of this Agreement, and except as otherwise provided in section V.b., either party shall have the right to terminate this Agreement upon 90 days' prior notice to the other. In the event of termination by the Client prior to expiration, PayneWest's annual compensation will be deemed fully earned.

II. OBLIGATIONS OF PAYNEWEST

For the following lines of insurance: General Liability, Auto Liability, Auto Physical Damage, Property and Optional Excess Crime. PayneWest will provide the services set out on Exhibit A attached hereto (collectively, the "Services") to Client. If the Services include the placement of insurance, PayneWest will use its commercial best efforts to secure such insurance coverages on the Client's behalf. In the event an insurance company cancels or refuses to place such insurance coverages, PayneWest will use its commercial best efforts to obtain the coverage from another insurance company.

III. OBLIGATIONS OF CLIENT

- a. Client shall pay PayneWest an annual fee of \$30,000 for consulting and other Services stated herein, which such fee may be revised at the time of renewal of this Agreement by the execution of an amendment to the Agreement signed by the parties hereto. If work is required to be performed in addition to the Services, Client agrees to compensate PayneWest for such additional work at its reasonable and customary rates. So long as the terms and conditions of the Services are substantially similar and PayneWest performance is acceptable, in subsequent years the annual fee shall be negotiated annually, and shall be payable and earned as provided herein.**
- b. Client will make available such reasonable information as required for PayneWest to conduct its services. Such data will be made available as promptly as possible. PayneWest understands that the time of Client's personnel is limited, and judicious use of that time is a requirement of this Agreement.**
- c. Client agrees to notify PayneWest as soon as possible of any proposed amendments to the plans' legal documents to the extent that the amendments would affect PayneWest in the performance of its obligations under this Agreement. Client agrees to submit (or cause its agent, consultants, or vendors to submit) all information in its (or their) control reasonably necessary for PayneWest to perform the services covered by this Agreement.**



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IV. DISCLOSURE AND RECORD KEEPING

- a. **Full Disclosure.** Client has the right to approve any arrangements and/or the utilization of any intermediaries in connection with, or arising out of, or in any way related to Client's insurance and risk management program. PayneWest must seek approval from Client prior to the use of any of the above in connection with the Client's insurance and risk management program.
- b. **Record Keeping.** PayneWest will maintain accurate and current files including, but not limited to, insurance policies and correspondence with insurers or brokers in accordance with industry standard record retention practice or as otherwise directed by Client.

V. DISCLOSURES

- a. In addition to such consulting fees provided for herein, PayneWest may also receive investment income on fiduciary funds temporarily held by it such as premiums. Other parties, such as excess and surplus lines brokers, wholesalers, reinsurance intermediaries, underwriting managers, captive managers, and similar parties may earn and retain usual and customary commissions and fees in the course of providing insurance products to clients. Any such fees or commission will not constitute compensation to PayneWest under section III above.
- b. PayneWest's fees under this Agreement shall be earned on the Effective Dates (and any renewal thereof), and Client shall pay PayneWest upon receipt of an invoice from PayneWest. Client is responsible for payment of premiums for all insurance placed by PayneWest on its behalf. If any amount is not paid in full when due, including premium payments to insurance companies, that nonpayment will constitute a material breach of the Agreement that will allow PayneWest to immediately terminate this Agreement, at its option, without notice to Client.
- c. Where applicable, insurance coverage placements which PayneWest makes on Client's behalf may require the payment of federal excise taxes, surplus lines taxes, stamping or other fees, to the Internal Revenue Service (federal), various state (s) departments of revenue, state regulators, boards or associations. In such cases, Client is responsible for the payment of such taxes and/or fees, which will be identified separately by PayneWest on invoices covering these placements. Under no circumstances will these taxes or other related fees or charges be offset against the amount of PayneWest consulting fees or commissions referred to herein.
- d. PayneWest will not be operating in a fiduciary capacity, but only as Client's consultant, obtaining a variety of coverage terms and conditions to protect the risks of Client's enterprise (s). PayneWest will seek to bind those coverages based upon Client's authorization; however, PayneWest can make no warranties in respect to policy limits or coverage considerations of the carrier. Actual coverage is determined by policy language, so Client agrees to read all policies carefully.
- e. Client acknowledges that (i) PayneWest shall have no discretionary authority or discretionary control respecting the management of any of the employee benefit plans; (ii) PayneWest shall exercise no authority or control with respect to management or disposition of the assets of Client's employee benefit plans; and (iii) PayneWest shall perform services pursuant to this Agreement in a non-fiduciary capacity.



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- f. Contingent, supplemental, or bonus commissions. Some of the insurance companies PayneWest represents may pay it additional incentive commission, sometimes referred to as contingent, supplemental or bonus commissions, which may be based on the total volume of business we sell for them, and/or the growth rate of that business, retention rate, claims loss ratio, or other factors considering our entire book of business with an insurance company for a designated period of time. Such additional commissions would be in addition to any other compensation PayneWest may receive. At your request, PayneWest will provide you with a detailed statement regarding our compensation on your account and how the compensation is calculated.

VI. INDEMNIFICATION

- a. PayneWest agrees to indemnify and hold Client harmless from any loss, cost, damage, or expense (including reasonable attorney's fees) arising from the negligent acts or omissions of PayneWest.
- b. Client agrees to indemnify and hold PayneWest harmless from any loss, costs, damage, or expense (including reasonable attorney's fees) arising from the negligent acts or omissions of Client, including any financial obligation to pay premiums to any insurance company.

VII. ENTIRE AGREEMENT

This constitutes the entire Agreement between the parties, and any other warranties or agreements are hereby superseded. Subsequent amendments to this Agreement shall only be in writing signed by both parties.

VIII. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first written above.

PayneWest Insurance, Inc
By: [Signature]
Name: Kyle L. Lyschek
Title: CEO

City of Newport
By: [Signature]
Name: City Manager
Title: Spencer R. Noelt

Consultant: John Russell
Signed: [Signature]
License # 2725704



EXHIBIT A – SERVICES

Subject to all other terms and conditions of this Agreement, PayneWest shall provide the following Services for the lines of coverage identified in Section II. Obligations of PayneWest.

1. Scope of Services

- ⚡ **Risk Management** - Daily account stewardship, communication and policy service with City and referred or direct inquiries from the general public
- ⚡ **Contract Review** – Provide consulting and review of contracts entered into by The City of Newport, its Vendors and Contractors as relates to insurance needs and requirements
- ⚡ **Certificate Review** – Review certificates presented or requested for use and/or services provided to the City of Newport from vendors or contractors. Issue certificates on behalf of The City upon request
- ⚡ **Claims Processing** – Respond to and process any claims presented to or by The City of Newport by providing notice to insurer. Provide claims management resources in conjunction with the CIS claims unit
- ⚡ **Policy Service** – Marketing account as necessary looking for best coverage while remaining cost efficient. Process all policy endorsements, changes and modifications not limited to addition/deletion or re-assignment of vehicles
- ⚡ **Safety and Compliance** – Assist City safety and compliance officers with training and resources as needed
- ⚡ **Loss Control** – Provide City of Newport with annual loss control assessment and assist if any compliance is requested by CIS
- ⚡ **Wellness** – Provide wellness assessment and coaching, propose and assist with implementation of “Health Check 360”
- ⚡ **Training** – EMS driver training, propose defensive driving and refresher training for City EMS drivers, specifically NPD