

AGREEMENT WITH OCCA FOR PHASE VII OF PAC RENOVATIONS

Between: City of Newport, an Oregon municipal corporation

And: Oregon Coast Council for the Arts, an Oregon nonprofit corporation

Recitals

- A. The City of Newport (City) is a municipal corporation with home rule authority pursuant to its charter and the constitution of the State of Oregon.
- B. The Oregon Coast Council for the Arts (OCCA) is a nonprofit corporation organized under section 501(c)(3) of the Internal Revenue Code and the laws of the State of Oregon.
- C. City is the owner of the Newport Performing Arts Center (PAC), located at 777 W. Olive Street, Newport, OR 97365.
- D. City has contracted with OCCA to manage the PAC.
- E. City staff has experience and expertise in conducting public procurements and in overseeing public improvement projects.
- F. OCCA has been engaged in a capital campaign to raise funds for the expansion of the PAC. On June 4, 2018, the City Council authorized the City to pledge to OCCA funding for Phase VII of the PAC renovations as follows:
 - 1. \$600,000 from the City's annual budget, with \$200,000 in FY 2018-19, \$200,000 in FY 2019-20, and \$200,000 in FY 2020-21, toward the projects identified in Phase VII of the PAC renovations. Funds to be transferred to a city reserve fund on an annual basis.
 - 2. The pledge is based on OCCA's commitment to raise the balance of the estimated \$2.492 million for Phase VII of the PAC renovations, as described in OCCA's budget request included with the FY 2018-19 City budget message (attached Exhibit A).
 - 3. Requests are to be made by OCCA to transfer these funds from the city reserve fund into a capital outlay fund for expending these funds for construction activities related to the Phase VII PAC renovations.
- G. The \$200,000 pledged for FY 2020-21 has since been moved to FY 2021-22 to align with the current timing of the Phase VII PAC renovations.
- H. The estimated \$2.492 million for the Phase VII PAC renovations has since been changed to \$2.114 million as to funds anticipated for the Phase VII PAC renovations (attached Exhibit B).

- I. Separate from the projects in the Phase VII PAC renovations, the City has budgeted \$215,000 for replacement of the HVAC control system in the PAC.

Agreement

1. In consideration of the recitals set out above, which are made part of this Agreement, the parties agree to the following:
 - A. City will take the actions necessary to effectuate the Phase VII PAC renovations (attached Exhibits A and B), including procurement activities and entering into contracts for planning, architectural, engineering, and construction services. The City's representative for the projects in the Phase VII PAC renovations will be the City Engineer.
 - B. OCCA will have input in the projects identified in the Phase VII PAC renovations, but the City will determine the selection of contractors working on the projects, and the City will have sole authority for payment obligations, change orders, and any final approval and/or acceptance of work done on the projects that relate to physical improvements or permanent fixtures. The OCCA Board will designate a representative for the projects in the Phase VII PAC renovations authorized to provide direction and make decisions on behalf of OCCA for the projects.
 - C. Within 30 days from the date of this Agreement, OCCA will provide City with \$350,000 to fund the planning, architectural, and engineering services through final design for the Phase VII PAC renovations.
 - D. Once final design for the Phase VII PAC renovations is completed, and prior to award of a contract for construction services, OCCA will provide City with the balance of funds for the Phase VII PAC renovations in an amount and by a date to be determined through an amendment to this Agreement.
2. Term. This Agreement takes effect on the latest date signed by the parties, and ends on Dec. 31, 2022, unless earlier terminated under the terms of this Agreement.
3. City Obligations:
 - A. City will perform or contract for the performance of all work on the projects in the Phase VII PAC renovations that relate to physical improvements or permanent fixtures. City may, but is not required, to contract for the purchase of goods and services for the projects on behalf of OCCA.
 - B. City acknowledges and agrees that funds received by the City from OCCA under this Agreement will be used exclusively to perform work on the projects as described in attached Exhibits A and B.
 - C. City acknowledges and agrees that the City is responsible for the expenses of operation and maintenance of the projects, including adequate insurance and any taxes or special assessments applicable to the projects. The City may use funds provided by OCCA to pay expenses required by this paragraph.

- D. City will comply with all federal, state, and local laws and regulations applicable to the projects, including workers' compensation laws and applicable provisions of ORS chapters 279A, 279B, and 279C.
- E. Portions of the projects are public works, as defined by ORS 279C.800(6)(a); therefore, the City will comply with all state laws regulating prevailing wage rates and will require compliance with state laws regulating prevailing wage rates from any contractors employed on the projects.
- F. City will keep an accounting of funds received from OCCA under this Agreement to ensure such funds are used as required by this Agreement. City will provide the accounting required by this paragraph to OCCA annually during the term of this Agreement.
- G. In the event the City completes the projects without using all the funds provided by OCCA, any unexpended OCCA funds will be returned to OCCA.

4. OCCA Obligations:

- A. OCCA will indemnify, defend, and hold harmless the City and its officers, employees, and agents from any and all claims, suits, or actions of any nature arising out of the acts or omissions and due to the negligence and/or fault of OCCA, its officers, employees, agents, contractors, and subcontractors pursuant to this Agreement. OCCA will not undertake its defense obligations under this paragraph without prior written consent of the City. The City may, at any time, elect to assume its own defense and settlement. The City reserves all rights to pursue any claims it may have against OCCA if the City elects to assume its own defense.
- B. OCCA acknowledges and agrees the City shall have reasonable access to OCCA's books, documents, papers, and records related to this Agreement during the term of this Agreement and for a period of six years after termination of this Agreement. OCCA will make copies of applicable records available to the City upon request.
- C. OCCA acknowledges and agrees that this Agreement does not create an employment relationship between the City and OCCA, its officers, employees, agents, or contractors. OCCA further agrees that OCCA is exclusively responsible for all costs and expenses related to OCCA's employment of individuals to perform work related to the projects, including but not limited to retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.

5. Default:

- A. The following constitute default by OCCA under this Agreement:
 - 1. Determination by the City that material statements, information, or

representations in attached Exhibits A and B are false, misleading, fraudulent, or misrepresentations.


2. Violation of any of the terms or conditions of this Agreement.
 3. Dissolution of OCCA.
 4. Appointment of a receiver, trustee, liquidator, or conservator for OCCA, to take possession of all or substantially all of OCCA's property; or the filing of a petition for bankruptcy, insolvency, dissolution, liquidation, or reorganization, or order for relief in which OCCA is named as debtor by, against, or with respect to OCCA pursuant to any federal or state statute, regulation or law for the protection of debtors; and, with respect to any such appointment or filing, failure of OCCA to secure a stay or discharge thereof within 45 days after such appointment or filing.
- B. In the event of a default by OCCA, the City will not exercise the remedies provided in paragraph C of this section unless and until the City notifies OCCA in writing of the default and OCCA fails to cure the default within 20 days of receipt of the notice; or if the default cannot reasonably be cured within 20 days, OCCA commences action to cure the default within 10 days of receipt of the notice and diligently pursues the cure to completion. In no event will the time for opportunity to cure exceed 60 days from the date of receipt of notice of default. If the default is not cured within the time provided in this paragraph, the City may elect to pursue any of the remedies provided in paragraph C of this section.
- C. In the event of default or failure to cure within the time period provided in paragraph B of this section, the City may pursue any one or more of the following remedies:
1. City withholding of unexpended City funds.
 2. Termination of this Agreement.
- D. The remedies provided by paragraph C of this section are cumulative, not exclusive, and are in addition to any other rights or remedies provided by law or under this Agreement.
6. Termination:
- A. City may terminate this Agreement effective upon delivery of written notice to OCCA or at such later date as may be determined by the City upon the following conditions:
1. Default by OCCA under this Agreement.
 2. Lack of City funds necessary to contribute to the projects.
- B. OCCA may terminate this Agreement effective upon delivery of written notice to the City if the City fails to make payments due under this Agreement or fails to abide by the terms and conditions of this Agreement.

- C. Termination of this Agreement will not prejudice any rights or obligations of the parties accrued prior to termination.
- D. City's entitlement to remedies provided in section 5 of this Agreement survives termination of this Agreement.
7. Notice. All notices given pursuant to this Agreement must be in writing and delivered to the parties at the following addresses. Notice given pursuant to this section will be deemed to have been received on the date of personal delivery, three calendar days after deposit in the United States mail postage prepaid, or on the date of confirmed delivery by: 1) facsimile; 2) registered mail, return receipt requested; or 3) overnight delivery. Either party may change its notice address under this section at any time by written notice to the other party.
- | | |
|---------------------|-----------------------------------|
| <u>City:</u> | <u>OCCA:</u> |
| City of Newport | Oregon Coast Council for the Arts |
| Attn: Spencer Nebel | Attn: Jason Holland |
| 169 SW Coast Hwy. | 777 W. Olive Street |
| Newport, OR 97365 | Newport, OR 97365 |
8. Assignment. OCCA may not assign any of its rights, interests, or obligations under this Agreement without the prior written consent of the City, which may be withheld in the City's sole discretion.
9. Modification. No modification of this Agreement will be valid unless it is in writing and signed by both parties.
10. Relationship of Parties. The parties acknowledge and agree that nothing in this Agreement is intended or shall be construed to create any form of partnership or joint venture relationship between the parties.
11. No Third-Party Beneficiaries. This Agreement is entered into for the sole benefit of the City and OCCA, and nothing contained herein is intended for the benefit of any other person or entity.
12. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, the remaining provisions will stay in full force and effect.
13. Waiver of Breach. The waiver by either party of a breach of any provision of this Agreement will not operate or be construed as a waiver of any other provision or of any subsequent breach of the same provision.
14. 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.
15. 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.

16. Entire Agreement. This Agreement constitutes the entire agreement of the parties relating to the subject matter herein, and supersedes all prior communications, representations or agreements, either verbal or written, between the parties relating to the subject matter herein.
17. Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.
18. Signatures. This Agreement is not effective until signed and dated by an authorized representative of each party.

City of Newport:

By: 
Spencer Nebel

Title: City Manager

Date: 05-26-21

Oregon Coast Council for the Arts:

By: 
Jason Holland

Title: Executive Director

Date: 5/24/2021



Budget Request

March 26, 2018

Spencer Nebel, City Manager
City of Newport
169 SW Coast Highway
Newport, Oregon 97365

Dear Spencer,

On behalf of the Oregon Coast Council for the Arts capital campaign we are pleased to submit this request for funding Phase VII of "Entertain the Future."

The City contributed approximately 16.6% of the \$1.5 million in expenditures to complete Phases I – VI. The other 83.4% was raised through private donations, foundations, and grants by the OCCA.

Phase VII is the culmination of the campaign and includes the most ambitious and expensive expansion and enhancement of the Performing Arts Center.

It includes complete renovation of the Studio Theatre to provide a new performance space, new sound and lighting systems, upgraded infrastructure and acoustics, additional back stage rooms, and new seating that will allow the Studio Theatre to operate as a stand alone and complimentary performance area to the Alice Silverman Theatre. The plans also include a new piano rehearsal space. The attached brochure fully explains the Phase VII expansion and enhancements.

The cost of this final phase is estimated to be \$2.492 million. Of this amount, OCCA has already raised approximately \$450,000. Working with a respected and successful consultant we believe we can raise an additional \$1.442 million in grants and donations leaving us with approximately \$600,000 to be raised from other sources.

(over please)



Our request is that the City provide this \$600,000 over two fiscal years (\$300,000 in FY 18-19 and \$300,000 FY 19-20). This constitutes a City contribution of approximately 24% of the total cost. That means we will raise and commit over three dollars for every one dollar the City provides towards completion of the campaign.

We understand that each fiscal year's decision making must stand alone; but a commitment to the first year's funding, and a pledge, subject to budget approval, in the second fiscal year, will allow us to leverage additional foundation and granting agency funding as we move forward to raise the remaining monies.

Since the Performing Arts Center is a public building owned the City of Newport we will continue to work closely with City officials and staff to comply with all requirements under law for completion of this project.

It is only through the cooperative efforts of OCCA and the City to provide public and private financing of these enhancements that the project has succeeded so far. With additional City funding we are on track to reach a successful conclusion of the final phase.

Thank you for consideration of our request.

OCCA Capital Campaign
Committee

OCCA Board

Catherine Rickbone
OCCA Executive Director



OREGON COAST COUNCIL FOR THE ARTS

OCCA promotes and provides high-caliber arts experiences on the Oregon coast.

Budget Request – Revised

March 27, 2018

Spencer Nebel, City Manager
City of Newport
169 SW Coast Highway
Newport, Oregon 97365

Dear Spencer,

Staff is key to any organization or governmental entity. Staff carries out our mission and assigned tasks and duties. Recently OCCA experienced an unprecedented situation when three longtime key employees at the Newport Performing Arts Center retired in a span of 12 months. They had been with us for 29, 28 and 25 years. OCCA is in the process of filling major staff positions, and we now have a new OCCA Bookkeeper/Business Manager and a new PAC Operations & Rentals Manager/Technical Director.

Additionally, OCCA is working to retain other staff positions (at the PAC and VAC) at fair and competitive wages and benefits while trying to attract support staff. With the low unemployment rate, competition for fewer workers, coupled with little affordable housing in the county, the impact on our ability to attract employees is significant.

The days of hiring and retaining support staff for \$10-\$12 per hour are gone. The days of attracting and retaining middle management for \$12 - \$15 per hour and attracting and retaining senior leadership at \$20-\$22 per hour are over.

The management and operations of any City-owned building are a significant undertaking that necessitate qualified staff to run the operations. The management arrangement between OCCA and the City is an enormous benefit to the City and the challenge of putting together a competitive employment package plus modest benefits, still well below those enjoyed by most city employees, require more funds. OCCA must recruit qualified people that are acceptable in these highly visible positions that impact the buildings, the community and are a reflection on the OCCA and the City.

Last year OCCA proposed increased funding for management of the PAC and VAC over several years so that by FY '19 - '20 the amount would be \$173,065. In an email last April 12 you indicated that this was doable. We appreciate Year One of this multiyear catch up and we now are requesting \$15,519 for FY '18 - '19 for a management total of \$160,000 for FY '18 - '19. (OCCA realizes that a new five-year agreement is in progress and when it is negotiated and resolved adjustments can be made later from a revised management agreement.)



OREGON COAST COUNCIL FOR THE ARTS

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From our yearly Management Highlights Reports to the City, OCCA provides a significant share of the total management costs of the PAC and VAC. The ability of OCCA to increase its portion of this partnership, through earned and contributed income, is reaching its limit. Please see below.

FY '16 - '17 = \$258,745 total PAC/VAC management cost.
City Contract = \$129,605 (50.1%) and OCCA Funds of \$129,140 (49.9%).

FY '15-'16 = \$254,980 total PAC/VAC management cost.
City Contract = \$116,453 (45.7%) and OCCA Funds of \$138,527 (54.3%).

FY '14-'15 = \$234,066 total PAC/VAC management cost.
City Contract = \$115,300 (49.3%) and OCCA Funds of \$118,766 (50.7%).

FY '13-'14 = \$223,666 total PAC/VAC management cost.
City Contract = \$112,500 (50.03%) and OCCA Funds of \$111,166 (49.7%).

Some further information about this beneficial public/private business relationship is noted below.

ONGOING Facilities Upgrades: OCCA has launched the \$2.5M Phase 7 "Entertain The Future" Newport Performing Arts Center Capital Campaign.

OTHER facilities upgrades PAC: OCCA raised over \$1.5M for the PAC "Entertain the Future" Capital Campaign that includes Sound, Meyer Constellation Acoustic System, Alice Silverman Lighting and Signage, expanded PAC Lobby and Women's Restroom. OCCA also implemented upgrades to the PAC security system in excess of \$2,500.

OTHER facilities upgrades VAC: An Oregon Community Foundation donor advised grant of \$25,000 has been received to apply toward VAC upgrades. Also, a grant for \$15,000 from the Ford Family Foundation was secured by OCCA and VAC capital improvements in the Runyan Gallery flooring, front stairs, 2nd floor hallway, etc., were completed. The VAC Steering Committee, started by the OCCA, is made up of community members, VAC building partners, OCCA board and staff and the City of Newport and meets monthly to help govern the building.

Ongoing expenses: PAC & VAC liability insurance and PAC utilities.

Economic Impact: For FY '16 - '17 PAC and VAC programming contributed \$907,758 in economic impact to Newport.



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Economic Impact: The 2016 Americans for the Arts “Arts & Economic Prosperity 5” national study reveals, through local surveys, that the arts are a \$10.4 million industry in Lincoln county. Of course, arts organizations across the county participated, but we know the Newport Performing Arts Center is a major contributor to these figures.

The arts mean business in Newport and Lincoln County and the Performing Arts Center and the Visual Arts Center are major players in cultural tourism.

Thank you for your consideration of our FY 2018-2019 budget request and the opportunity to manage two outstanding community resources and tourist attractions. OCCA has always experienced a good relationship with the City and we thank you for the public/private partnership.

Mark Farley
OCCA Board President

Wayne Belmont
OCCA Board Secretary

Catherine Rickbone
OCCA Executive Director



Capital Campaign Update

April 30, 2021

Spencer Nebel, City Manager
City of Newport
169 SW Coast Highway
Newport, Oregon 97365

Dear Spencer,

On behalf of the Oregon Coast Council for the Arts capital campaign we are pleased to submit this revised request for funding Phase VII of "Entertain the Future." Due to the unprecedented events of the last year which have had an enormous effect on our art community and fundraising ability, we are hoping to schedule a meeting to discuss the appropriate steps going forward to complete Phase VII.

The City contributed approximately 16.2% of the \$1.593 million in expenditures to complete Phases I – VI. The other 83.8% was raised through private donations, foundations, and grants by the OCCA.

Phase VII is the culmination of the campaign and includes the most ambitious and expensive expansion and enhancement of the Performing Arts Center for the benefit of our entire community.

It includes complete renovation of the Stiers Theatre and sound-proofing which will allow the Stiers Theatre to operate as a stand-alone and complimentary performance space to the Alice Silverman Theatre – crucial for expanded performance opportunities for residents and visitors which translates to much needed revenue increases. Phase VII will also provide new sound and lighting systems and additional backstage rooms. The plans also include a new piano rehearsal space.

(over please)



The cost of this final phase was estimated to be \$2.492 million. Despite having been shuttered for the past thirteen months, OCCA has already raised approximately \$1,564,000 towards that goal. Based on the previous \$400,000 from the City for FY 18-19 and 19-20, the City has contributed 25.6% of the total amount raised to date (400/1564) for Phase VII.

With the anticipated final \$200,000 from the city for FY 21-22, this percentage would change to 34% (600/1764) to date for Phase VII. We also currently anticipate matching funds and "top off" grants of approximately \$350,000, which would change that percentage to 28%.

Since the Performing Arts Center is a public building owned by the City, we will continue to work closely with City officials and staff to comply with all requirements under the law for completion of this project as scheduled.

It is only through the cooperative efforts of OCCA and the City to provide public and private financing of these enhancements that the project has succeeded for many years and will benefit our community for many more. We are grateful for such a partnership.

We would appreciate an opportunity to meet and discuss options for coordinating the successful completion of Phase VII construction and funding at your earliest convenience. Thank you for consideration of our request.

A handwritten signature in black ink, appearing to read "Akia Woods".

Akia Woods
OCCA Board President

A handwritten signature in black ink, appearing to read "Jason Holland".

Jason Holland
OCCA Executive Director



**AUTHORIZATION FOR
AGREEMENTS, MOUs, OR
OTHER DOCUMENTS OBLIGATING
THE CITY**

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: Agreement with OCCA for Phase VII of PAC Renovations

Date: 5/26/21

Statement of Purpose: Funding Agreement for PAC Renovations

Department Head Signature: _____

Remarks, if any: None

City Attorney Review and Signature: _____

Date: 5/27/2021

Other Signatures as Requested by the City Attorney: _____

Name/Position

Date: _____

Budget Confirmed: Signature
Yes ☒ No ☐ N/A ☐

Certificate of Insurance Attached: Yes ☐ No ☐ N/A A

City Council Approval Needed: Yes ☒ No ☐ Date: 5/17/21

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: _____

Date: 5/26/21

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: _____

Date: 5/27/2021

Date posted on website: 6/3/21