

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

THIS AGREEMENT is between the City of Newport, an Oregon municipal corporation (City), and Shelly Spangler 4-H (Contractor). This Agreement shall be effective when signed and dated by an authorized representative of each party.

### **RECITALS**

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

### **TERMS OF AGREEMENT**

#### **1. SERVICES TO BE PROVIDED**

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

#### **2. TERM**

This Agreement shall expire, unless otherwise terminated or extended, on July 31, 2022.

#### **3. COMPENSATION**

Contractor shall be compensated as described in attached 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 Agreement, except to the extent that the liability arises out of the negligence of the City and its employees. Contractor's indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the validity of the remainder of this indemnification.

## **7. INSURANCE**

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this Agreement. The insurance shall cover all activities of the contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverages:

### **A. Commercial General Liability Insurance**

Contractor shall obtain, at contractor's expense, and keep in effect during the term of this Agreement, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. The following insurance will be carried:

<b>Coverage</b>	<b>Limit</b>
General Aggregate	2,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one fire)	50,000
Medical Expense (Any one person)	5,000

**B. Commercial Automobile Insurance**

Contractor shall also obtain, at contractor's expense, and keep in effect during the term of this Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.

**C. Workers' Compensation Insurance**

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Agreement that are either subject employers that will comply with ORS 656.017 or employers exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

**D. Additional Insured Provision**

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City as an additional insured with respect to this Agreement.

**E. Notice of Cancellation**

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days' notice of cancellation to City.

**F. Certificates of Insurance**

As evidence of the insurance coverage required by this Agreement, the Contractor shall furnish a Certificate of Insurance to the City. No contract shall be effective until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within the Agreement. A renewal certificate will be sent to the City's address 10 days prior to coverage expiration.

G. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

H. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution, and errors and omissions policies required by this Agreement.

The procuring of required insurance shall not be construed to limit contractor's liability under this Agreement. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this Agreement.

**8. METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS**

All notices, bills and payments shall be made in writing and may be given by personal delivery or mail. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices and other information:

City:

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Spencer R. Nebel, City Manager  
City of Newport  
169 SW Coast Highway  
Newport, Oregon 97365  
Business Phone: 541-574-0604



**Contractor:**

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Shelly Spangler  
4-H  
1211 SE Bay Blvd.  
Newport, OR 97365  
Business Phone: 541-270-6349

Notices mailed to the address provided for notice in this section shall be deemed given upon deposit in United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery.

**9. MERGER**

This writing is intended both as a final expression of the agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of this Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

**10. TERMINATION WITHOUT CAUSE**

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the Agreement pursuant to this paragraph, it shall pay Contractor for services rendered to the date of termination.

**11. TERMINATION WITH CAUSE**

- A. City may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:
1. If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified, or terminated, to accommodate a reduction in funds.
  2. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
  3. If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the

services required by this Agreement is for any reason denied, revoked, or not renewed.

4. If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.
5. If City determines that termination of this Agreement is in the best interest of the City.

Any such termination of this Agreement under paragraph (A) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:

1. If Contractor fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
2. If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.
3. If Contractor fails to eliminate a conflict as described in Section 11 of this Agreement.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (B), Contractor shall be entitled to receive payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall be those allowed by Oregon law, reasonable attorney fees, and other costs of litigation at trial and upon appeal.

## **12. ACCESS TO RECORDS**

**13. FORCE MAJEURE**

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of nature or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disenabled shall within 10 days from the beginning of the delay, notify the other party in writing of the cause of delay and its probable extent. The notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate the cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under this Agreement.

**14. NON-WAIVER**

The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

**15. NON-DISCRIMINATION**

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

**16. ERRORS**

Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delay and without additional cost.

**17. EXTRA WORK**

Only the City Manager may authorize additional work not described in Exhibit A. Failure of Contractor to secure written authorization for work not described in Exhibit A shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.

**18. ATTORNEY FEES**

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

**19. GOVERNING LAW**

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

**20. COMPLIANCE WITH STATE AND FEDERAL LAWS / RULES**

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers' compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapter 279B, the provisions of which are hereby made a part of this Agreement. (See attached Exhibit C.)

**21. SEVERABILITY / COUNTERPARTS**

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



By: Authorized by Acting City Manager Peggy Hawker

08/04/2022  
Date

CONTRACTOR

Shelly Spangler  
By: Contractor's Name

07/06/2022  
Date

**EXHIBIT A**  
**SERVICES TO BE PROVIDED**

Contractor shall operate an archery camp while teaching the basic archery skills and techniques to youth participants.

Contractor will 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 the contractor from future work for the City.

Contractor will furnish all of the equipment and supplies necessary under this contract. However, it is anticipated that Contractor will provide services at a City facility and Contractor shall have use of the City facility, including all necessary or appropriate fixtures and equipment at the facility, to provide the services.

**EXHIBIT B**  
**RATES/COSTS**

Contractor shall be paid 60% of the fees paid by class participants for instructing the class as advertised.

Payment will be made monthly on or before the 31st day of the month. The City may withhold payment of any disputed amount.

City will report all payments made to the contractor required by the Federal Internal Revenue Service and the State of Oregon Department of Revenue.

**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.





LINCCOU-03

APITTMAN

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
7/27/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> McMinnville Office PayneWest Insurance, a Marsh McLennan Agency LLC Company 1411 NW Adams McMinnville, OR 97128	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b> (503) 472-2121 <b>FAX (A/C, No):</b> (503) 434-5872 <b>E-MAIL ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Great American Assurance Company <b>INSURER B:</b> Great American Alliance Insurance Co <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	
<b>INSURED</b>  Lincoln County 4H Leaders Association 1211 SE Bay Blvd Newport, OR 97365	<b>NAIC #</b> 26344 26832	

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			PAC461739208	3/15/2022	3/15/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
		<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			UMB4803870-08	3/15/2022	3/15/2023	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
		<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

## CERTIFICATE HOLDER

## CANCELLATION

City of Newport Parks & Recreation 225 SE Avery Street Newport, OR 97365	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Andrea Pittman</i>





**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: Personal Services Contract Date: 07/06/2022

Statement of Purpose: Contract with Archery Instructor  
4-H Shelly Spangler

Department Head Signature: [Signature] 7-6-22

Remarks, if any: \_\_\_\_\_

City Attorney Review and Signature: [Signature] Date: 8/24/2022

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 ☐

City Council Approval Needed: Yes ☐ No ☒ Date: \_\_\_\_\_

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: [Signature] Date: 8/26/2022

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: \_\_\_\_\_

Date posted on website: \_\_\_\_\_

