

## AGREEMENT

This agreement is between the City of Newport, an Oregon municipal corporation (City) and the Oregon Coast Council for the Arts, an Oregon nonprofit corporation (OCCA).

### RECITALS

- A. City owns the Performing Arts Center (PAC) located at 777 W. Olive Street and the Visual Arts Center (VAC) located at 777 NW Beach Drive. The PAC and the VAC are referred to as the “facilities.”
- B. OCCA is a duly organized and registered non-profit corporation and tax-exempt entity.
- C. OCCA mission is to “develop, promote, and celebrate community arts” along the coast, and within Lincoln County and the City of Newport.
- D. The OCCA raised \$7,500 in 1982/83 for the construction of the VAC specifically to purchase wooden entry doors, sandblasted windows and the concrete sculpture retaining walls.

The OCCA contributed approximately \$600,000 of the \$1.7 million cost of the initial construction and furnishing of the PAC in 1987/88, with its contributions of raised funds, grants and contributed monies, totaling about 35% of the total costs.

In 2001-2003, OCCA raised \$122,700 toward the \$468,800 cost of the PAC renovation, side stage retro-fit, PA system, lobby flooring, signage, sound system, lobby and Silverman chairs, box office, and more.

In 2023, the City of Newport awarded a bid in the amount of \$2,038,475 for construction services for Phase VII renovations on the Newport Performing Arts Center backstage and artist support areas. Through fundraising efforts over many years, OCCA was able to contribute \$1,311,178 or 64% of the construction costs for this project.

#### Equipment funded by OCCA for the PAC include:

1990 Baldwin Grand Piano = \$25,000.

2005 Steinway D Grand = \$125,000. (The PAC is one of only a few Oregon venues to have two nine-foot concert grand pianos, plus a smaller Lobby grand.)

2009 HD Projection System = \$30,000

2018 stage floor in the Silverman Theatre using double-sided Plyron panels = \$8,000

#### PAC systems contributions funded by OCCA include:

2005 HVAC Timing System = \$19,000

2008 Energy-Efficient Lighting = \$14,409

2012-2013 Website coastarts.org to drive traffic to the PAC and VAC = \$39,000

2013 Online Ticketing and Digital Box Office = \$4,500

OCCA funded Capital Improvements and equipment for the VAC include:

2012 Coastal Oregon Visual Artists Showcase (COVAS) = \$10,000

2015 New paint and stained woodwork in classrooms and 3<sup>rd</sup> floor hallway and new flooring entrance in Room 205 = \$2,192

2016 New Runyan Gallery and 2<sup>nd</sup> floor hallway flooring, new carpet on entrance staircase, created Media Room, with equipment. = \$26,876

2018 Fourteen flip top classroom tables and 40 chairs with rolling carts, = \$11,700

2019 Purchase of roller blinds for Room 205 = \$4,800

OCCA “Entertain the Future” PAC Capital Campaign funded Improvements and equipment (2012 to date) include:

2013 Sound System for the Alice Silverman Theatre = \$132,506

2014 Acoustical System for the state-of-the-art Meyer Constellation Acoustical System (the only one north of San Francisco) = \$365,001

2015 Silverman Lighting replacing 25-year-old, non-energy-efficient lamps with new theatrical LED lighting as well as control system dimmers and more = \$205,840

2015 Signage, rope lighting on the building and electronic signage on the corner = \$46,861;

2017 Women’s Restroom remodel/reconfiguration including expansion ADA stall and three additional stalls, new paint, fixtures and airflow in both the women’s and men’s restrooms = \$108,467;

2017 Lobby Expansion by 612 square foot expansion to the north, also included sound and multi-media systems, expanded and upgraded lighting, new hard flooring, carpet and paint and increased seating capacity = \$394,223

Cumulative Value-Added Improvements as of FY 17/18:

As of FY 2017/2018, OCCA has contributed over \$2,299,775 toward the PAC and VAC. (In 2018 current US dollars that totals \$3,278,716.)

- E. The contribution by OCCA was based on the mutual understanding that the OCCA and City would engage in a public-private partnership under which OCCA would have certain rights and responsibilities in managing the City’s art and cultural facilities and programs associated with those facilities, subject to the City’s ownership and responsibility to maintain those facilities as public and community assets. This partnership has continued for over 35 years.
- F. City and OCCA wish to continue and expand the public-private agreement under principles that more uniformly reflect the facilities as public buildings under city control, but recognizes the unique obligations and rights relating to the management of the facilities by OCCA.
- G. This agreement is not subject to competitive bidding because the agreement effectuates the rights the OCCA acquired through its investment in the PAC. Furthermore, it is exempt from competitive bidding because it is a contract for personal services and management of the facility requiring professional-level management services. Furthermore, the City has determined that no other entity is capable of and willing to provide the management services under this agreement. The competitive selection procedures in the City’s Public

Contracting Rules do not apply to this agreement, or any extension, amendment, modification or supplement to this agreement. [Public Contracting Rule Exemption E-17.]

## TERMS OF AGREEMENT

### Basic Term

OCCA will continue to manage the PAC and the VAC, pursuant to this agreement. The City will provide funds to OCCA for the management of the facilities, while OCCA will continue to generate financial support for management of the facilities through imposition and collection of fees and other nonprofit fundraising mechanisms. It is recognized that management of the facility requires this shared public-private funding partnership.

### Detailed Terms

1. This agreement is effective July 1, 2024, and shall remain in effect for five years, subject to the annual budgeting process of the City of Newport. This agreement may be extended by mutual agreement of the parties. The agreement shall extend beyond its termination date for successive one-year periods, unless and until one year prior to the expiration date City provides written notice to OCCA of its intent not to renew or extend the agreement. The parties recognize and acknowledge that events at the facilities are often scheduled a year or more in advance and will make reasonable efforts to accommodate OCCA commitments to third parties.
2. OCCA shall manage and operate the PAC and VAC subject to the right of the City to use the facilities in whole or in part. The City has the right to use any portion of the facilities at any time that the facilities have not been committed to other use. (Historically that has included up to three usages per year, for each facility, which is not intended to be a limitation on City use).
3. City shall pay OCCA \$170,683 for FY 24-25 budget year, July 1, 2024 to June 30, 2025. Payments shall be made quarterly. The amount the City pays for future fiscal years shall be set through the City's budgeting process, and shall be based on an amount sufficient, when considered with other sources of revenue, to pay OCCA's costs incurred in the management of the facilities. The parties anticipate that there will be reasonable increases in the amount paid in future years. OCCA may terminate this agreement within 30 days of the final adoption of any annual city budget or amendment of the budget items authorizing expenditures if OCCA determines in good faith that the budgeted amount is insufficient.
4. OCCA's responsibilities are to manage both the long-term and day-to-day operation of the PAC and VAC including booking and scheduling of activities, providing for minor interior maintenance, cleaning, and security.  
In its operation of the facilities, OCCA shall act as if it were a public entity in providing equal treatment, due process, and other constitutional rights to the users of the facilities, and shall not engage in any unlawful discrimination relating to the uses or users of the facilities.

5. This agreement for management of the facilities is not a transfer of an interest or a lease, and the City remains the sole owner of the facilities, which are not subject to taxation, given the City's status as a governmental entity. If for any reason this agreement is determined to result in the facilities or operations of the facilities being subject to taxation, the agreement shall be considered void.
6. The sole purpose of the city in owning the facilities and of OCCA in operating the facilities is to have the facilities available for the purposes of civic engagement, and public cultural enrichment, education, and other public purposes which include the mission and purposes of the OCCA. No party expects to receive any net income from operation of the facilities, and all incomes from the facilities shall be used for the facilities and programs offered by the facilities and OCCA.
7. OCCA shall provide a manager for each facility and the staff (paid and volunteer) necessary to operate each facility. OCCA may use contractors to provide services, including but not limited to food services or janitorial. OCCA shall be responsible for booking, organizing, publicizing events at the facilities, as well as for ticket sales, collecting other payments, and other activities related to operation of the facilities and events at the facilities.
8. The City shall be responsible for utilities at the PAC and VAC including sewer, water, natural gas, electricity, phone and internet access. OCCA shall be responsible for any garbage service and waste hauling associated with its operations. If phone and internet access are no longer provided by City, there will be an increase in the amount of the City's payments to OCCA to compensate accordingly.
9. OCCA shall be responsible for cleaning, general maintenance, and minor repairs of the PAC and VAC. City shall be responsible for major repairs to the structure and essential components (exterior maintenance and roofing, parking lot and associated facilities and amenities such as lighting, heating, ventilation, plumbing and basic building electricity) of the PAC and VAC. OCCA shall be responsible for any repairs caused by its acts or omissions.
10. Revenue for use of the PAC and VAC shall be paid to OCCA and used as provided in paragraph 6 above. City shall maintain insurance on the structure and public liability insurance. OCCA shall obtain and maintain workers compensation insurance, and appropriate professional/commercial liability insurance for its employees and volunteers, activities and use of the facilities, as well as insurance on any OCCA personal property within the facilities. OCCA shall provide proof of insurance annually to the City. City and OCCA shall work toward an updated list of property and equipment in the PAC and VAC so that it is clear to both parties who owns what. City and OCCA shall maintain an inventory of the respective personal property of the parties.
11. The parties recognize that OCCA has and will continue fundraising efforts for enhancement of the facilities. The parties agree and acknowledge that once placed in the facilities, furnishings, furniture, and fixtures, including trade-fixtures, whether funded by

the City or OCCA, belong to the City unless specifically provided otherwise (including as listed in paragraph 10 above).


12. City and OCCA shall meet quarterly on PAC and VAC building topics of maintenance and other current or upcoming matters to establish mutual timelines for work. In addition, an annual report from the PAC and from the VAC will be provided to the City to discuss upcoming projects and maintenance needs.
13. City and OCCA work together vis-à-vis City vendors and contractors so OCCA is apprised of upcoming work schedules. OCCA does not interact with City contractors.
14. OCCA shall prepare and present to the City an annual report on activities at the PAC and VAC, including a summary of revenue and expenditures. In addition to the annual report, OCCA shall submit a request for funding for the next fiscal year by March of each year.
15. OCCA shall defend, indemnify, and hold harmless the City and its officers, employees, and agents from all liability and claims, including attorney fees, relating to any acts or omissions of OCCA or its officers, employees, or agents.
16. OCCA shall comply with all provisions required to be included in an agreement of this type under the city's public contracting rules. A copy of relevant provisions is attached as Attachment A.
17. The rights and obligations created and imposed by this agreement are not transferable.
18. OCCA shall comply with all applicable federal, state, and local laws and ordinances, including federal equal rights laws.
19. OCCA is an independent contractor and its employees are not employees of the City for any purpose. Although OCCA may be an agent of the City for purposes of the Oregon Tort Claims Act (ORS 30.260 to 30.300), it is not an agent of the City for other purposes and has no authority to bind the City.
20. The parties may terminate this agreement by mutual agreement. Either party may terminate this agreement on written notice provided at least 360 days before the proposed termination date.
21. In the event this agreement is determined to be subject to any competitive solicitation requirements, the agreement shall terminate on selection of a contractor to manage and operate the facilities through a competitive selection process. OCCA shall not be prohibited from bidding. OCCA shall continue to manage and operate the facilities until a contractor has been selected.
22. Contact Information. The contacts for notice and other purposes are:

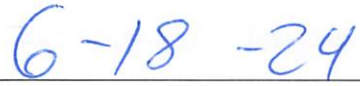
For City:  
City Manager  
City of Newport  
169 SW Coast Highway  
Newport, OR 97365  
541-574-0601

For OCCA:  
Jason Holland  
Executive Director  
Oregon Coast Council for the Arts  
PO Box 1315  
Newport, OR 97365  
541-265-2652

23. This agreement may be executed in counterparts, each of which will be considered an original and all of which taken together will constitute one and the same agreement.
24. Each person executing this agreement on behalf of a party to this agreement hereby covenants that they are duly authorized by that party to bind that party to this agreement.

On behalf of the City of Newport:

  
\_\_\_\_\_  
Spencer R. Nebel, City Manager

  
\_\_\_\_\_  
Date

On behalf of the OCCA:

\_\_\_\_\_  
Jason Holland, Executive Director

\_\_\_\_\_  
Date

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On behalf of the City of Newport:

  
\_\_\_\_\_  
Spencer R. Nebel, City Manager

  
\_\_\_\_\_  
Date

On behalf of the OCCA:

  
\_\_\_\_\_  
Jason Holland, Executive Director

06/23/2024  
\_\_\_\_\_  
Date



## ATTACHMENT A

### **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.