



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: Terminix Pest Control Service Plan Date: 3/14/24

Statement of Purpose: Monthly pest control service to mitigate ant issue at the Aquatic Center.

Department Head Signature: [Signature]

Remarks, if any: FAST TRACK REVIEW DUE TO ANTS

City Attorney Review and Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Other Signatures as Requested by the City Attorney: \_\_\_\_\_

					Name/Position
	Signature				Date: _____
Budget Confirmed:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>		
Certificate of Insurance Attached:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>		
City Council Approval Needed:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>		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] (ACTING) Date: 3/28/24

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: \_\_\_\_\_

## Life Guard

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**From:** Keeley Naughton  
**Sent:** Thursday, March 28, 2024 8:15 AM  
**To:** Life Guard  
**Subject:** FW: Terminix Agreement  
**Attachments:** Proposal\_CITYOFNEWP\_03142024094446 (1).pdf

-----Original Message-----

**From:** David Allen <D.Allen@NewportOregon.gov>  
**Sent:** Wednesday, March 27, 2024 5:40 PM  
**To:** Keeley Naughton <K.Naughton@NewportOregon.gov>; Michael Cavanaugh <M.Cavanaugh@NewportOregon.gov>  
**Cc:** Spencer Nebel <S.Nebel@NewportOregon.gov>; Erik Glover <E.Glover@NewportOregon.gov>; Melanie Nelson <M.Nelson@NewportOregon.gov>  
**Subject:** Re: Terminix Agreement

Attached updated contract looks okay. --David

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**From:** Keeley Naughton  
**Sent:** Tuesday, March 26, 2024 2:57 PM  
**To:** David Allen; Michael Cavanaugh  
**Cc:** Spencer Nebel; Erik Glover; Melanie Nelson  
**Subject:** RE: Terminix Agreement

Here is an updated contract with the terms and conditions in order. Let me know if this one works.

Thanks,

Keeley

-----Original Message-----

**From:** David Allen <D.Allen@NewportOregon.gov>  
**Sent:** Monday, March 25, 2024 11:28 AM  
**To:** Keeley Naughton <K.Naughton@NewportOregon.gov>; Michael Cavanaugh <M.Cavanaugh@NewportOregon.gov>  
**Cc:** Spencer Nebel <S.Nebel@NewportOregon.gov>; Erik Glover <E.Glover@NewportOregon.gov>; Melanie Nelson <M.Nelson@NewportOregon.gov>  
**Subject:** Re: Terminix Agreement

The change was made in the last sentence of section 15 to "Newport, OR" but the attached document has the terms/conditions out of order. --David

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**From:** Keeley Naughton  
**Sent:** Thursday, March 21, 2024 3:15 PM  
**To:** David Allen; Michael Cavanaugh



Customized Proposal for:

CITY OF NEWPORT

Prepared by: CHRISTOPHER CHRISTIANSEN

Phone:



March 14, 2024

**Inspection Results:**

**What We Heard**

Ants all around pool coming out of cracks.

**What We Saw**

Identified pest ant to be Pavement Ant \* Tetamorium Caespitum\*  
Heavy foraging activity noted.

**What We Recommend**

Terminix recommends Monthly Pest Control service to mitigate current issue and controlling future out breaks in the future. This will include Interior treatment when necessary and Treatment of the building exterior once every 90 day's

**Scope of Work**

Monthly Interior inspection and treatment when necessary. Only pool area is covered.

Quarterly Treatment on the building exterior.

**Covered Area(s)**

Bar/Lounge Area Basement Boiler Rooms Break/Vending Areas Building Exterior Cafeteria/Food Service Areas Compactor Areas Dock Areas  
Electrical Rooms Entrance/Lobby Areas Garages Janitor/Housekeeping Rooms Kitchen/Dining Areas Laboratories Laundry Rooms Locker Rooms  
Processing Areas Receiving/Delivery Areas Restrooms Shipping Areas Shop/Production Areas Storage/Warehouse Areas Other: Pool area

**Product Labels & Safety Data Sheets**

Product Labels & Safety Data Sheets, please visit: [https://licensed.com/orgs/terminix/public/chemical\\_documents](https://licensed.com/orgs/terminix/public/chemical_documents) For NY customers, please select 'NY' as your locale

**Summary of Services**

Service Location Service/Product Qty. Initial Recurring 1st Annual Amt 225 SE AVERY ST GPC MTHLY 1 120.00 80.00 1,000.00 Subtotal 1,000.00 Tax 0.00  
Total 1,000.00



Pest Control Service Plan

THIS AGREEMENT PROVIDES FOR SERVICES TO CONTROL FOR AND MITIGATE AGAINST INFESTATIONS OF CERTAIN INSECTS, SPIDERS AND RODENTS. TERMINIX SHALL NOT BE RESPONSIBLE FOR ANY INJURY, DISEASE OR ILLNESS RESULTING FROM BITES, INFESTATION OR CONTAMINATION OR FOR THE REPAIR OF ANY DAMAGE TO THE STRUCTURES ON THE PREMISES CAUSED BY SUCH INSECTS, SPIDERS AND RODENTS.

Structure(s) Covered

Summary of Charges	
Service Location Service/Product Qty. Initial Recurring 1st Annual Amt	
225 SE AVERY ST, NEWPORT, OR	
97365 GPC MTHLY 1 120.00 80.00 1,000.00 Subtotal 1,000.00 Tax 0.00	
	Total 1,000.00
In addition to service fees and applicable taxes, Terminix invoices contain an Environmental and Safety surcharge. This surcharge accounts for ongoing costs of maintaining environmental, health, and safety initiatives for Terminix employees and customers. Surcharge is subject to change.	
TARGET PESTS FOR STANDARD SERVICE (selected pests indicated here): Pavement Ants, Ants, Centipedes, Ground Beetles, Silverfish, Spiders, Millipedes, Crickets, Earwigs, Oriental Roaches	
SERVICES FOR SELECTED PREMIUM PESTS (selected pests indicated here): Carpenter Ants	

Terminix has provided the Customer with a copy of the manufacturer's specimen label or other state-required documents for the pesticide(s), which will be used to treat the above-named property.

Customer accepts and agrees to the Terms and Conditions on pages 1- 2 of this Agreement, including the MANDATORY ARBITRATION and CLASS ACTION WAIVER provisions in Sections 15 and 16 of the Terms and Conditions on page 2 of this Agreement

X *Derrick Tokos* DERRICK TOKOS 3/28/24  
 Customer Name CITY OF NEWPORT Customer's Authorized Representative (signature) Customer Authorized Representative (Print Name)  
 Acting City Manager  
 KEELEY NAUGHTON

Customer Authorized Representative (Title) Date March 14, 2024 Terminix Representative (signature) Date March 14, 2024 Terminix Representative (print name)

CHRISTOPHER CHRISTIANSEN Terminix Branch Telephone [REDACTED]

Terminix Branch Address [REDACTED] Terminix Branch Charter No. In the event you have any questions or complaints, you may contact a Terminix representative by calling [REDACTED] Supplier shall provide the "Notice to Owner/Tenant" as required by Cal. Bus. & Prof. Code section 8538.

In order to establish an account and provide you with service, we may collect personal information about you, such as your name or alias(es), physical address, phone number, and/or email address. During the course of business, we will maintain service records related to your established account. If financing a service via our internal financing options, we will also collect your social security number and date of birth in order to process a credit check for loan purposes. We do not sell your personal information. For additional information about your rights related to data privacy, please review our privacy policy, available at www.terminix.com/privacy.

GEORGIA: The Georgia Structural Pest Control Act requires all pest control companies to maintain insurance coverage. Information about this coverage is available from this pest control company. TEXAS: Licensed and regulated by: [REDACTED]

TERMS AND CONDITIONS

- INITIAL TERM, RENEWAL. The term of this Agreement shall be a period of one (1) year beginning on the date executed (the "Initial Term"). Thereafter, this Agreement shall automatically renew for additional one (1) year periods (each a "Renewal Term") unless earlier terminated in accordance with this Agreement. Notwithstanding the foregoing, either Party may terminate this Agreement by providing the other Party with at least 30 days advance written notice prior to the start of any Renewal Term.
- CHARGES. Customer shall pay the charges for Initial Service Visit and subsequent Service Visits (either monthly or quarterly as selected by Customer) for the Initial Term and any Renewal Term in accordance with the payment terms set forth above based upon the Payment Option selected by Customer.

### 3. PEST CONTROL SERVICE PLAN.

Terminix shall control for and mitigate against infestations of Standard Pests designated by Customer on Page 1 of this Agreement located in and around the structures on the Customer's premises through regular delivery of standard pest control service.

For an additional charge, Terminix shall perform pest control services to control for and mitigate against infestations of Premium Pests selected by Customer on Page 1 of this Agreement, located in and around the structures on the Customer's premises through delivery of regular pest control service.

All services shall be performed using products and procedures recognized in the pest control industry and scientific community as effective for their intended purpose. THIS AGREEMENT DOES NOT COVER AND TERMINIX SHALL HAVE NO OBLIGATION WHATSOEVER, WHETHER EXPRESS OR IMPLIED, TO REPAIR ANY DAMAGE TO THE STRUCTURES ON THE PREMISES OR THE CONTENTS THEREIN CAUSED BY ANY PESTS OR TO COMPENSATE CUSTOMER FOR ANY SUCH DAMAGE.

3.1 INITIAL SERVICE VISIT, SUBSEQUENT SERVICE VISITS. On the initial service visit, Terminix shall apply pesticides to the interior of the structures and/or the exterior perimeter of the structures on the premises at its discretion as necessary to control for and mitigate against the pests indicated on Page 1 as covered by this Agreement (the "Initial Treatment"). Subsequent to the Initial Treatment, Terminix shall apply pesticides to the interior of the structures and/or the exterior perimeter of the structures on the premises at its discretion as necessary to control for and mitigate against the pests covered by this Agreement at the frequency selected by Customer in this Agreement during the Initial Term and any Renewal Term. Additionally, for control of certain pests, Terminix may utilize other pest control strategies including but not limited to, use of traps and glue boards.

3.2 STANDARD PESTS. Includes: cockroaches, mice, rats, silverfish, "house" ants (other than ants listed in Section 3.c. below), centipedes, millipedes, earwigs, house crickets and paper wasps.

3.3 PREMIUM PESTS. Includes: flies (including small flies), fleas, ticks, Carpenter Ants, Pharaoh Ants, Fire Ants, Tawny Crazy Ants, Black Widow Spiders, Brown Recluse Spiders and bees (Yellow Jackets, Hornets and Wasps excluding Paper Wasps), Clothes Moths and Stored Product Pests.

3.4 EXCLUDED PESTS. This Agreement does not cover and Terminix shall have no obligation to control for or mitigate against the following pests: Termites (subterranean, dry wood, damp wood), wood boring beetles, bed bugs (all species), mosquitoes or any other pests not specified in Section 3.2. and 3.3. above, unless otherwise agreed to in writing by Terminix and Customer via a separate agreement.

3.5 INTERIM SERVICE VISITS. Subject to the limitations in Section 5 – Customer Cooperation, Terminix shall, upon the request of Customer and at no additional costs to Customer, make a service visit to reapply pesticides to the structures on the premises as is reasonably necessary to control for and mitigate against acute infestations of the pests indicated on Page 1 of the Agreement which occur between the regularly scheduled monthly or quarterly service visits.

4. ACCESS TO PROPERTY. Customer must allow Terminix access to the structures for any purpose contemplated by this Agreement, including but not limited to reinspections, whether the inspections were requested by the Customer or considered necessary by Terminix. The failure to allow Terminix such access will terminate this Agreement without further notice.

5. CUSTOMER COOPERATION. Customer's cooperation is important to ensure the most effective results from Services. Whenever conditions conducive to the breeding and harborage of pests covered by this Agreement are reported in writing by Terminix to the Customer, and are not corrected by Customer, Terminix cannot ensure effective Services. If Customer fails to correct the conditions noted by Terminix within a reasonable time period, all guarantees as to the effectiveness of the Services in this Agreement shall automatically terminate. Further, additional treatments in areas of such conditions that are not corrected as required shall be paid for by Customer as an extra charge.

6. LIMITATION OF LIABILITY. LIMITED WARRANTY. EXCEPT AS OTHERWISE PROHIBITED BY LAW, TERMINIX DISCLAIMS AND SHALL NOT BE RESPONSIBLE FOR ANY LIABILITY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE AND/OR LOSS OF ENJOYMENT DAMAGES. THE OBLIGATIONS OF TERMINIX SPECIFICALLY STATED IN THIS AGREEMENT ARE GIVEN IN LIEU OF ANY OTHER OBLIGATION OR RESPONSIBILITY, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS AGREEMENT DOES NOT PROVIDE FOR THE REPAIR OF ANY DAMAGE CAUSED BY PESTS. THIS AGREEMENT DOES NOT GUARANTEE, AND TERMINIX DOES NOT REPRESENT, THAT PESTS WILL NOT RETURN SUBSEQUENT TO SERVICE TREATMENTS.

7. WATER LEAKAGE. Water leakage in treated areas, in interior areas or through the roof or exterior walls of the structures on the premises, may destroy the effectiveness of treatment by Terminix and is conducive to new infestation. Customer is responsible for making timely repairs as necessary to stop the leakage. Customer's failure to make timely repairs will terminate this Agreement automatically without further notice. Terminix shall have no responsibility for repairs with respect to water leakage.

8. OWNERSHIP TRANSFER. Upon transfer of ownership of the structures Services may be continued upon request of the new owner and upon payment of the Ownership Transfer Fee set forth on page 1 of this Agreement. In addition, Terminix reserves the right to revise the service

charges upon transfer of ownership. In the event the new owner fails to request continuation of this Agreement or does not agree to pay the transfer fee of the revised service charges, this Agreement will terminate automatically as of the date of the change of ownership.

9. **FORCE MAJEURE.** Terminix shall not be liable to Customer for any failure to perform or delay in the performance under this Agreement attributable in whole or in part to any cause beyond its reasonable control and without its fault or negligence, including but not limited to acts of God, fires, floods, earthquakes, strikes, unavailability of necessary utilities, blackouts, government actions, war, civil disturbance, insurrection, or sabotage.

10. **ADDITIONAL DISCLAIMERS.** This Agreement does not cover and Terminix will not be responsible for damage resulting from or services required for: (a) termites and/or any other wood-destroying organisms except as specifically provided herein; (b) moisture conditions, including but not limited to fungus damage and/or water leakage caused by faulty plumbing, roofs, gutters, downspouts and/or poor drainage; (c) masonry failure or grade alterations; (d) inherent structural problems, including but not limited to, wood to ground contacts; (e) termites entering any rigid foam, wooden or cellulose containing components in contact with the earth and the Structures regardless of whether the component is a part of the Structures; and (f) the failure of Customer to properly cure at Customer's expense any condition that prevents proper treatment or inspection or is conducive to pest infestation.

11. **CHANGE IN LAW.** Terminix performs its services in accordance with the requirements of law. In the event of a change in existing law as it pertains to the services herein, Terminix reserves the right to revise the service charges or terminate this Agreement.

12. **NON-PAYMENT, DEFAULT.** In case of non-payment or default by the Customer, Terminix has the right to terminate this Agreement. In addition, cost of collection including reasonable attorney's fees shall be paid by the Customer, whether suit is filed or not. In addition, interest at the highest legal rate will be assessed for the period of delinquency.

13. **CHANGE IN TERMS.** At the time of any renewal of this Agreement, Terminix may change this Agreement by adding, deleting or modifying any provision, charges, or pricing. Terminix will notify the Customer in advance of any such change, and Customer may decline to accept such a change by declining to renew this Agreement. Renewal of this Agreement will constitute acceptance of any such changes.

14. **SEVERABILITY.** If any part of this Agreement is held to be invalid or unenforceable for any reason, the remaining terms and conditions of this Agreement shall remain in full force and effect.

15. **MANDATORY ARBITRATION.** Any claim, dispute or controversy, regarding any contract, tort, statute, or otherwise ("Claim"), arising out of or relating to this agreement or the relationships among the parties hereto shall be resolved by one arbitrator through binding arbitration administered by the American Arbitration Association ("AAA"), under the AAA Commercial or Consumer, as applicable, Rules in effect at the time the Claim is filed ("AAA Rules"). Copies of the AAA Rules and forms can be located at [www.adr.org](http://www.adr.org), or by calling 1-800-778-7879. The arbitrator's decision shall be final, binding, and non-appealable. Judgment upon the award may be entered and enforced in any court having jurisdiction. This clause is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act. Neither party shall sue the other party other than as provided herein or for enforcement of this clause or of the arbitrator's award, any such suit may be brought only in Federal District Court for the District or, if any such court lacks jurisdiction, in any state court that has jurisdiction. The arbitrator, and not any federal, state, or local court, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, unconscionability, arbitrability, enforceability or formation of this Agreement including any claim that all or any part of the Agreement is void or voidable. However, the preceding sentence shall not apply to the clause entitled "Class Action Waiver." Venue for arbitration hereunder shall lie in Newport OR.

16. **CLASS ACTION WAIVER.** Any Claim must be brought in the parties' individual capacity, and not as a plaintiff or class member in any purported class, collective, representative, multiple plaintiff, or similar proceeding ("Class Action"). The parties expressly waive any ability to maintain any Class Action in any forum. The arbitrator shall not have authority to combine or aggregate similar claims or conduct any Class Action nor make an award to any person or entity not a party to the arbitration. Any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void, or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. **THE PARTIES UNDERSTAND THAT THEY WOULD HAVE HAD A RIGHT TO LITIGATE THROUGH A COURT, TO HAVE A JUDGE OR JURY DECIDE THEIR CASE AND TO BE PARTY TO A CLASS OR REPRESENTATIVE ACTION. HOWEVER, THE PARTIES UNDERSTAND AND CHOOSE TO HAVE ANY CLAIMS DECIDED INDIVIDUALLY, THROUGH ARBITRATION.**

17. **GOVERNING LAW.** Except for the Mandatory Arbitration Clause in Section 15 of this Agreement which is governed by and construed in accordance with the Federal Arbitration Act, this Agreement shall be governed by, and construed in accordance with, the laws of the state in which the dispute arises without regard to the conflict of laws provisions.

18. **ENTIRE AGREEMENT.** This Agreement, together with all exhibits thereto, constitutes the entire agreement between the parties, supersedes all proposals, oral or written, and all other communications between the parties relating to such subject matter and no other representations or statements will be binding upon the parties. This Agreement may not be modified or amended in any way without the written consent of both parties.