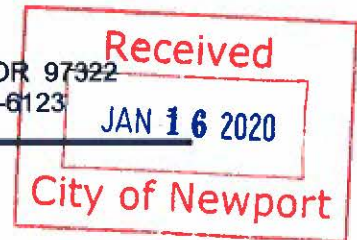




1400 Queen Ave SE • Suite 201 • Albany, OR 97322  
(541) 967-8720 • FAX (541) 967-6123



January 6, 2020

City of Newport  
69 SW Coast Hwy.  
Newport, OR 97365

To Whom It May Concern:

This letter serves as notice of our intent to terminate our Non-Exclusive Lease with City of Newport, executed on July 30, 2015, which last automatically renewed on June 30<sup>th</sup>, 2019.

The effective date of this termination shall be March 6, 2020.

We are terminating that Lease in favor of your proposed Non-Exclusive Use Agreement with a term of January 1, 2020 to January 1, 2021, with automatic renewal. We are currently working to execute that Agreement.

We thank you for your continued support of Meals on Wheels.

Sincerely,

Rachael Maddock-Hughes  
Deputy Director

Sue Forty  
Finance Director

Enc.

## NON-EXCLUSIVE USE AGREEMENT

THIS USE AGREEMENT ("Agreement") is made and entered into on this 1<sup>st</sup> day of January, 2020, by and between the CITY OF NEWPORT, hereafter called CITY, and the OREGON CASCADES WEST COUNCIL OF GOVERNMENTS, hereafter called COG.

1. Description of Premises:

The CITY hereby permits COG to use the commercial kitchen and dining room portion of the building known as the 60+ Center (formerly known as the Newport Senior Activity Center, Adult Activity Center), at 20 SE 2<sup>nd</sup> Street in Newport, OR 97365, and incidentally to use adjacent portions of the building, parking areas, and access ways, including the personal property on the premises. It is understood that such use is non-exclusive, and other persons or groups are permitted to use the premises. The parties agree that the commercial kitchen portion of the premises shall be reserved for use of the COG and its Meals on Wheels, hereafter called MOW, program on each Monday, Tuesday, Wednesday, Thursday, and Friday between the hours of 6:00 A.M. and 4:00 P.M., and the dining room portion of the premises on Monday, Wednesday and Friday between the hours of 8:30 A.M. and 1:00 P.M.; excepting the following holidays: New Year's Day, Martin Luther King's birthday holiday (the third Monday in January); President's Day (the third Monday in February); Memorial Day (last Monday in May); Independence Day, July 4<sup>th</sup>; Labor Day (first Monday in September); Veteran's Day, November 11<sup>th</sup>, Thanksgiving holiday (fourth Thursday & Friday in November; and the Christmas holiday, December 24<sup>th</sup> and 25<sup>th</sup>.

2. Consideration:

The COG shall pay to the CITY as consideration for this Agreement the sum of Four Hundred Fifty Dollars (\$450.00) per month, payable in advance each month during the term of this Agreement. In addition, COG will reimburse CITY for one-half the expense of garbage service at the premises.

3. Term:

The term of this Agreement shall be from January 1, 2020 to January 1, 2021. This Agreement shall be renewed automatically upon the same terms and conditions for a period of one additional year upon the anniversary date of this Agreement, unless notice to the contrary is provided by either party to the other at least thirty (30) days prior to the date of termination of the initial or any renewal term hereof.

4. Use of Premises:

The COG shall use and occupy the premises solely for the purpose and operation of a food and nutrition program for the elderly and disabled persons (who qualify for the program) in Lincoln County, Oregon. Operation of the MOW Program includes the procurement, preparation, storage, and delivery of food, packaging and service of meals in the dining room, and the delivery of meals to homebound people who qualify. Also various types of education and entertainment may occur around the noon meal time. Occasionally, other activities, such as fund raisers, may be held with the prior agreement of the CITY. COG agrees that this Agreement does not create either a lease interest or any property interest in the Premises in favor of COG.

5. On Site Management:

COG, through its designee, the MOW Newport Site Manager, shall be responsible for the day to day management of the MOW Program at the 60+ Center. Any conflicts that arise between the participants in the MOW Program, accidents, or incidents which arise therefrom, shall be managed by and be the responsibility of the COG. The kitchen shall be managed by a food service contractor as selected by COG.

6. COG's Cleaning Responsibilities:

The COG and its designee food service contractor shall be responsible for the following:

- A. Kitchen equipment, counter, floor and serving areas after each use by the COG's MOW Program.
- B. Sweep the kitchen and dining area as needed to keep free of crumbs and dropped food or materials.
- C. Clean and sanitize the dining tables after each use. Clean any crumbs or spilled food from the chairs.
- D. Wash and store all dishes and pots and pans after each day's use.
- E. Leave kitchen and dining area in a clean and sanitary manner, consistent with applicable Department of Health standards.

7. City's Cleaning Responsibilities:

- A. Have the kitchen and dining areas clean and sanitary when the COG's staff and food service designee arrives to begin the MOW's Program each day. No dirty dishes or left over food shall be left anywhere in the kitchen or dining area. Sweep and mop the kitchen floor if needed. Follow the *Procedures for Kitchen Use* that is attached to this Agreement. (Give a copy of the list to all people and/or groups using the kitchen.)
- B. Have the public restrooms clean, sanitary and well supplied.
- C. Wet mop and buff the dining room on a periodic basis. Strip floor and wax the dining room once a year to provide a clean and attractive appearance.
- D. Strip and wax kitchen floor two times a year to make it easier to keep the floor clean on an ongoing basis.

8. COG's Equipment Responsibilities:

- A. Provide all utensils, dishes, pots, pans and other small equipment used in the preparation, cooking, packaging, and service of COG meals. COG shall supply a list to the CITY of existing inventory annually.
- B. Maintain, repair, and replace on a timely basis, all kitchen equipment, except to the extent that the loss or damage is determined to have been caused by the CITY or a third party other than an agent employee, invitee, of COG.
- C. Repair damage or provide maintenance of the building or its equipment due to the negligence or abuse by the COG.
- D. Notify the CITY, in a timely manner, of needed repairs or maintenance of equipment owned by the CITY.
- E. The COG may, at its option, make repairs of an emergency basis necessary to prevent disruption of its MOW services.
- F. The COG shall not install any such equipment or trade fixtures in the kitchen without the express written consent of the CITY. If during the term of this Agreement, the COG shall desire to install any such equipment or fixtures, the COG shall first obtain the express written consent of the CITY. The COG may concurrently request that such equipment or fixtures shall at all times be considered personal property and remain the property of COG, and if so agreed, the COG shall have the right to remove all of such property at the termination of the Agreement. Any damage to the premises occasioned by any removal of the items shall be repaired at the expense of the COG immediately upon removal.
- G. The COG shall be responsible for the maintenance, cleaning and inspection of refrigerator equipment. The COG shall be responsible for the maintenance and cleaning of the ventilation and fire-hood, fire suppression equipment and grease-trap.

9. The CITY's Equipment Responsibility:

The City shall be responsible for the following equipment maintenance and repair as follows:

- A. Except as allocated to the COG, all equipment in the building, including, but not limited to heating, ventilation, hot water, plumbing, and drainage systems will be maintained and repaired in a timely manner, so as to avoid safety and health hazards and disruption of the MOW Program.
- B. The CITY shall be responsible for the upkeep of the building itself so as not to pose any safety or health hazard.
- C. The City will arrange for inspections of the ventilation and fire-hood, fire suppression equipment and grease traps. The City will obtain a report from the inspection vendor. COG will be responsible for the costs of these inspections and will be billed directly by the vendor.

10. Owner of Personal Property:

Each of the parties hereto shall retain ownership of any small equipment such as pots, pans, serving utensils, and other personal property acquired by its own funds, by funds received from grants and donations or other funds to such party solely for the purpose of its own programs, or other personal property that may be donated to each party, will remain the property of said party. Use, of each other's personal property, is allowed by mutual agreement.

11. Licenses, Sanitation, Fire Safety and Emergency Procedures:

- A. The COG or its designee shall obtain any and all licenses, sanitary, and fire safety equipment for the kitchen for the use in its operation.
- B. The CITY shall provide and maintain fire safety equipment and procedures required by appropriate fire officials and each party's insurance carrier including, but not limited to, appropriate fire extinguishers, and testing of fire extinguishers throughout the building.

12. Non-Exclusive Use of Kitchen:

- A. Any person, or persons, or group who use the kitchen, other than the COG's food service designee, may not use any food stuffs found in the kitchen, in bins, cupboards, on counters, or in refrigerators or freezers that belong to the COG. Such food stuff belongs to the food service contractor, or to the COG and is carefully inventoried and accounted for in the inventory. That includes such items as: salt, pepper, spices, herbs, flour, sugar, juice, milk, frozen meals, frozen bread or desserts, and/or any other food found in the kitchen, refrigerators, and freezers. The same shall apply to any other supplies such as paper towels, aluminum foil, plastic wrap, cleaning supplies and any other disposable item in the kitchen or dining room belonging to COG or its food service contractor.
- B. Other parties shall have the right to utilize the kitchen and the equipment of COG located thereon, and in the event of damage for any equipment, the CITY shall be responsible for any equipment which is lost, damaged or destroyed by any permitted user.

13. Assignments:

This Agreement shall not be assigned without prior written approval of the CITY.

14. Indemnification:

In accordance with the Oregon Tort Claims Act and the Oregon Constitution, each party agrees to indemnify, defend and hold harmless the other and its officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands for the acts or omissions of the indemnifying party and the indemnifying party's officers, agents and employees, in performance of this Agreement. In the event any action or proceeding is brought against a party subject to indemnification herein, that party may, at its option, require that the other party resist and defend such action or proceeding at the other party's own cost and expenses and by legal counsel reasonably satisfactory to each party.

liability and property damage insurance under which the insurer agrees to indemnify and hold the CITY and its designees harmless from any cost, expense, and/or liability arising out of or based upon any claims, accidents, injuries, and damages referred to in Paragraph 14 above. Each such policy may be in a blanket form covering other locations of the COG, as well as the premises used hereunder, and shall be with a company as is reasonably approved by the CITY and is at the time authorized by the State of Oregon to issue such policy, which shall be non-cancellable with respect to the CITY without thirty (30) days written notice to the CITY. The minimum limits of liability of such insurance shall be \$100,000 for injury (or death) to any one person, and \$300,000 for injury (or death) to more than one person in any one accident or other occurrence and \$50,000 with respect to the damage of property.

16. Fire Insurance, Waiver of Subrogation:

The parties shall obtain from their respective insurance carrier waiver of subrogation against the other party its agents, employees, volunteers and invitees. COG shall supply proof of insurance upon request of CITY. Neither party shall be liable to the other for any loss or damage caused by fire or any of the risks enumerated in standard fire insurance policy with an extended coverage endorsement if such insurance was obtainable at the time of such loss or damage.

17. Termination:

Either party may terminate this Agreement at any time without cause by providing sixty (60) days written notice to the other party of the intent to terminate.

18. Severability:

If any terms or provisions of this Agreement shall be held invalid, the remaining terms and provisions hereof shall have full force and effect to the extent that they remain reasonably practicable.

19. Other Conditions:

Policies and procedures of the COG Senior Meals Program shall govern practices and conditions not specifically addressed in this Agreement.

20. Legal Expenses:

In the event either party retains an attorney to enforce this Agreement or files a suit or action to enforce rights arising as a result of this Agreement, or commences arbitration, the prevailing party shall be entitled to reasonable attorney fees whether or not actual suit is filed or arbitration occurs, and in any appeal therefrom. These fees shall be fixed by the court or arbitrator therein if suit or arbitration is commenced or by arbitration for the purpose of determining the reasonableness of claimed fees if no suit or arbitration of the merits of a dispute is commenced.

21. Arbitration:

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the rules promulgated by the American Arbitration Association or as agreed by the parties.

22. Notices:

Any notices required or deemed necessary shall be sent to the following addresses for respective parties:

CITY: City of Newport  
169 SW Coast Hwy.  
Newport, OR 97365

COG: Senior & Disability Services  
Oregon Cascades West Council of Governments  
1400 Queen Avenue, SE, Suite 206  
Albany, OR 97322

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

The City of Newport



Spencer R. Nebel, City Manager

~~10/15~~ 1/15/20

Date

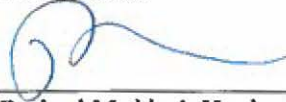
Approved as to Form:



City Attorney

Ross Williamson 1/14/2020

Oregon Cascades West Council of  
Governments



Rachael Maddock-Hughes, Deputy Director

1/7/2020

Date



Sue Forty, Finance Director

1/13/2020

Date

### Procedures to Follow for Use of the Newport Kitchen

- **Notification:** Notify Kitchen Manager and MOW Manager 72 hours in advance of the use of the kitchen by any person/persons or group.
- **Supervision:** Kitchen will be supervised at all times by a person who is knowledgeable in the use of the kitchen equipment and has a current Food Handler's Card issued by the Lincoln County Health Department.
- **Cleaning of the Kitchen After Each Use/Event:**
  1. Ovens will be cleaned of any spills.
  2. Kitchen will be arranged back to the original position following any event.
  3. All food contact surfaces will be cleaned and sanitized after each event.
  4. Floors will be swept to remove all food and soil. Floors will be mopped with floor cleaning solution and rinsed. Move and clean under the floor mats.
  5. All pots and pans will be washed in the dishwasher and returned to the proper storage location and stored upside down.
  6. All small ware utensils will be cleaned, sanitized, air dried and returned to the proper storage location.
  7. All dishes will be washed, air dried (or dried with paper towels) and put in their proper storage location. No cloth towels are allowed for drying any dishes, utensils, or pans.
  8. All equipment will be clean, sanitized and put back in proper storage area.
  9. The removable piece of the can opener should be washed through the dishwasher if it has been used.
- **Dining Room Cleaning:**
  1. The floor will be swept of all food particles and spot mopped of any spills.
  2. Tables will be cleaned and returned to the formation where they were found.
  3. Any items found on the dining tables will be replaced back on the tables.
- **Equipment Use:**
  1. Persons using the equipment will be instructed on how to properly use it. Manufacturer's instructions will be followed.
  2. Knives will be used on cutting boards only. Knives will be used to cut food only. They will be cleaned, sanitized and stored properly after each event.
  3. Hand carts will be cleaned and returned to their original location.
  4. Any damage to equipment will immediately be told to the MOW Site Manager and Kitchen Manager. *The group damaging the equipment will be held responsible for the cost of its repair.*
- **Disposable Products:**
  1. The 60+ Center staff will provide all paper towels, garbage bags, film, foil or other disposable products for use in the kitchen and dining room.
  2. No use of any food stuff (condiments, spices, or any products in the bins) found anywhere in the kitchen may be used. They belong to either MOW or the 60+ Center staff, and must be accounted for.
- **Garbage Disposal and Recycling:** All garbage and trash will be taken outside and disposed of in the dumpster after each event. Cans can be recycled. The bottom should be removed, as well as the label, and flattened outside on the concrete. (Using the kitchen floor will dent it.)
- **Smoking** is not permitted on the premises or any CITY owned property.