

## CITY OF NEWPORT

### GOODS AND SERVICES CONTRACT

#### HVAC Preventive Maintenance – Newport Water Treatment Plant

BASED UPON the quote received for preventive maintenance on the HVAC system at the Newport Water Treatment Plant, as issued and administered by City of Newport (City), City and Comfort Flow Heating and Air Conditioning (Contractor) hereby enter into a contract for services in accordance with the specifications and quote provided.

All terms of the following exhibits are hereby incorporated by reference into this Contract, and Contractor agrees to comply with each:

- (1) ~~Exhibit A – Request for Quotes~~
- (2) Exhibit B – Contractor Quote
- (3) Exhibit C – Oregon Public Contracting Requirements for Goods and Service Contracts

1. Term. The term of this Contract shall extend from its execution to project completion, unless extended for additional periods of time upon written mutual agreement of both parties. Notwithstanding this Term, City reserves the right to terminate this Contract as outlined in this Agreement.

2. Scope of Work. Contractor shall provide all materials, labor, equipment, and all other services and facilities necessary for the services specified in the attached Exhibits B (Project). Work shall be completed on a bi-annual basis per the attached scope of work.

3. Compensation.

3.1 Basis of Payment. Contractor shall complete Project as defined above and in the attached exhibits for the prices in Exhibit B, with an estimated total fee of \$2,940.00 annually, not including replacement parts or associated installation labor.

3.2 Invoices. Payments shall be based upon Contractor's invoices submitted to City, detailing the previous month's fees and costs.

a. City will review Contractor's invoice and within ten (10) days of receipt notify Contractor in writing if there is a disagreement or dispute with the invoice or Project. If there are no such disputes, City shall pay the invoice amount in full within thirty (30) days of invoice date, subject to a five percent (5%) retainage to be paid only after full performance and acceptance by City.

b. If City fails to make any payment due Contractor for services and expenses within thirty (30) days of the date on Contractor's invoice therefore, late fees will be added to amounts due Contractor at the rate of 1.0 percent (1%) per month from original invoice date. Invoices in dispute are not subject to such late fees until such time as they are no longer in dispute.

4. Permits. City will be responsible for obtaining all permits, approvals and authorizations necessary for Contractor's performance.
5. Termination for Convenience.

This Contract may be terminated by mutual consent of the parties upon written notice. In addition, City may terminate all or part of this Contract upon determining that termination is in the best interest of City by giving seven (7) days' prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Upon termination under this paragraph, Contractor shall be entitled to payment in accordance with the terms of this Contract for Contract work completed and accepted before termination less previous amounts paid and any claim(s) City has against Contractor. Pursuant to this paragraph, Contractor shall submit an itemized invoice for all unreimbursed Contract work completed before termination and all Contract closeout costs actually incurred by Contractor. City shall not be liable for any costs invoiced later than thirty (30) days after termination unless Contractor can show good cause beyond its control for the delay.

6. Termination for Cause. City may terminate this Contract 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:

6.1 If City funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.

6.2 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 Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.

6.3 If any license or certificate required by law or regulation to be held by Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed.

7. Termination for Default. Either City or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured

the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

If Contractor fails to perform in the manner called for in this Contract or if Contractor fails to comply with any other provisions of the Contract, City may terminate this Contract for default. Termination shall be effected by serving a notice of termination on Contractor setting forth the manner in which Contractor is in default. Contractor shall be paid the Contract price only for equipment installed and services performed in accordance with the manner of performance as set forth in this Contract.

8. Remedies. In the event of breach of this Contract, the parties shall have the following remedies:

8.1 If terminated under paragraph 7 by City due to a breach by Contractor, City may complete the work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Contractor shall pay to City the amount of the reasonable excess.

8.2 In addition to the above remedies for a breach by Contractor, City also shall be entitled to any other equitable and legal remedies that are available.

8.3 If City breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

8.4 City shall not be liable for any indirect, incidental, consequential, or special damages under the Contract or any damages arising solely from terminating the Contract in accordance with its terms.

8.5 Upon receiving a notice of termination, and except as otherwise directed in writing by City, Contractor shall immediately cease all activities related to the services and work under this Contract.

9. Standard of Care. Contractor warrants that the work to be performed pursuant to this Contract shall be done in a good and workmanlike manner and will conform to the highest standards prevalent in the industry or business most closely involved in providing the equipment and services City is purchasing.
10. Reports. The Contractor shall provide City with reports as detailed in Contractor's proposal, at a minimum of once per month, outlining the Project progress, issues of concern and budget status.
11. Change Orders. Contractor and City reserve the right to order changes to the equipment and services to be provided herein. Contractor and City shall

- determine a fair and equitable cost and, if required, additional time for such changes. All such changes shall be ordered and agreed to in writing by both parties.
12. Confidentiality. Contractor shall maintain the confidentiality, both external and internal, of any confidential information to which it is exposed by reason of this Contract. Contractor warrants that its employees assigned to this Contract shall maintain necessary confidentiality.
13. Security and Substance Check. Contractor agrees that each of its employees and subcontractor's employees involved in this Project may, at the option of City and in compliance with Contractor policy, be subject to a security background check and/or substance abuse testing.
14. Access to Records. For a period of not less than three years after City's final payment to Contractor, Contractor shall permit the City, the State of Oregon and the Federal Government (if State or Federal funding is involved) to have access to all books, documents, papers and records of Contractor which are pertinent to the Services provided hereunder for purposes of audit, examination, excerpts and transcripts. Contractor shall retain those records for at least three years, or until litigation is resolved if litigation is instituted.
15. Notice. Any required or permitted notices hereunder must be given in writing at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, by one of the following methods: hand delivery; registered, express, or certified mail, return receipt requested, postage prepaid; or nationally-recognized private express courier:

CITY:

Attn: Timothy Gross  
City of Newport

169 SW Coast Highway  
Newport, OR 97365  
Phone: (541) 574-3366  
t.gross@newportoregon.gov

CONTRACTOR:

Attn: Lantz Ward  
Comfort Flow Heating and Air  
Conditioning.  
1951 Don Street,  
Springfield, OR 97477  
Phone: (541) 228-1713  
lantzw@comfortflow.com

16. Warranty. Contractor's warranty is as stated within Exhibit B. Contractor further warrants that all materials, equipment, and/or services provided under this Agreement shall be fit for the purpose(s) for which intended, for merchantability, that material and equipment shall be properly packaged, that proper instructions and warnings shall be supplied, and that the Project shall conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto by City shall not alter or affect the obligations of Contractor or the rights of City.

17. 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:

17.1. Commercial General Liability Insurance

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, 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 contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$1,300,000
Products-Completed Operations Aggregate	\$1,300,000
Personal & Advertising Injury	\$1,300,000
Errors & Omissions	\$1,300,000
Each Occurrence	\$1,300,000
Fire Damage (Any one fire)	\$50,000
Medical Expense (Any one person)	\$5,000

17.2. Commercial Automobile Insurance

Contractor shall also obtain, at Contractor's expense, and keep in effect during the term of the contract, 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 \$1,200,000.

17.3. Workers' Compensation Insurance

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers or employers that are 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.

#### 17.4. 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.

#### 17.5. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage of Contractor's insurance without 30 days prior 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 prior notice of cancellation to the City.

#### 17.6. Certificates of Insurance

As evidence of the insurance coverage required by the Agreement, the Contractor shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this Agreement. A renewal certificate will be sent to the City 10 days prior to coverage expiration.

#### 17.8. 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.

#### 17.9. 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.

18. Indemnity. To the extent permitted by law, Contractor shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, trademark or trade secret, arising out of the work performed or goods provided under this Agreement or Contractor's violation of any law,



ordinance or regulation, contract provision or term, or condition of regulatory authorization or permit, except for damages resulting from the sole negligence of City.

19. Force Majeure. This section applies in the event that either party is unable to perform the obligations of this Agreement because of a Force Majeure event as defined herein, to the extent that the Agreement obligation must be suspended. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body which prevents performance. Should either party suffer from a Force Majeure event and be unable to perform, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance. Upon receipt of such notice, the parties shall be excused from such performance as it is effected by the Force Majeure event for the period of such event. If such event effects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such event.
20. Independent Contractor. It is the intention and understanding of the parties that Contractor is an independent contractor and that City shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. Contractor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of Contractor shall not be deemed to convert this contract to an employment contract. It is recognized that Contractor may or will be performing work during the term for other parties and that City is not the exclusive user of the services that Contractor provides.
21. Assignment. Contractor shall not assign or subcontract any of its obligations under this Agreement without City's prior written consent, which may be granted or withheld in City's sole discretion. Any subcontract made by Contractor shall incorporate by reference all the terms of this Agreement. City's consent to any assignment or subcontract shall not release Contractor from liability under this Agreement or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.
22. Governing Law. This Agreement is to be governed by and under the laws of the State of Oregon.
23. Consent to Jurisdiction. The parties hereby consent to jurisdiction of the Lincoln County Circuit Court, Lincoln County, Oregon, over all legal matters pertaining to this Agreement, including, but not limited to, its enforcement, interpretation or rescission.
24. Public Contracting Requirements. Contractor shall comply with all federal, state and local laws and ordinances applicable to the work under this agreement,

including, without limitation, applicable provisions of the Oregon Public Contracting Code including ORS 279B.020, 279B.220, 279B.230, and 279B.235, as more particularly set forth in Exhibit C, attached hereto and incorporated herein by this reference.

25. Arbitration. If any disputes, disagreements, or controversies arise between the parties pertaining to the interpretation, validity, or enforcement of this Agreement, the parties shall, upon the request of City, submit such dispute to binding arbitration under the Oregon Uniform Arbitration Act, ORS 36.600 et seq. Arbitration shall be requested by delivering to the other party a written request for arbitration. Within five (5) days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually agreeable rules of arbitration. If the parties cannot agree upon an arbitrator within five (5) days, an arbitrator may be appointed by the presiding judge of the Lincoln County Circuit Court, upon the request of either party submitted in accordance with ORS 36.645. If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall adopt rules for the arbitration. The arbitrator's decision shall be binding upon the parties.
26. Attorney Fees. If suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this Agreement, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for City to incur the services of an attorney to enforce any provision of this Agreement without initiating litigation, Contractor agrees to pay City's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.
27. Facsimile Signatures. The delivery of signatures to this Agreement by facsimile transmission shall be binding as original signatures.
28. Entire Agreement. This Agreement shall be the exclusive agreement between the parties for the Project. No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of both parties, except as otherwise authorized herein.



29. Signatures. This Agreement is not effective unless and until it is approved, signed and dated by an authorized representative of each party.

CITY:

CITY OF NEWPORT

By: [Signature]

Title: City Manager

Date: 01-24-20

CONTRACTOR:

Comfort Flow Heating & Air Conditioning

By: [Signature]

Title: Accounts MANAGER

Date: 01-27-2020



1951 Don Street, Springfield, OR 97477 Phone: 541-228-1713 Office: 541-726-0100 Fax: 541-726-4799

City Of Newport Water Treatment  
2810 NE Big Creek Rd.  
Newport, Oregon 97365  
Steve Stewart

Phone: (541) 265-7421, (541) 574-5871, Cel (541) 961-4723, Fax: (541) \_\_\_\_\_

[s.stewart@newportoregon.gov](mailto:s.stewart@newportoregon.gov)

We would like to thank you for the opportunity to bid the maintenance for 2810 Big Creek Rd, Newport, Oregon.  
The preventative maintenance recommended for the equipment listed, consists of the following services.

#### Major Maintenances which include:

- |  |  |
|--|--|
| ✓ Chemical cleaning of evaporative coils at one of two majors                    | ✓ Test all voltages and amp draws                              |
| ✓ Chemical cleaning of condensing coils at one of two majors                     | ✓ Check electrical wiring and connections                      |
| ✓ Inspection and cleaning of all condensate pans and drains                      | ✓ Tightening of all electrical terminals                       |
| ✓ Test all starters for proper operation   | ✓ Check burner assembly  |
| ✓ Check and oil/grease all motors and bearings per manufacturer's specifications | ✓ Check and inspect heat exchangers                            |
| ✓ Test Freon charges by super heat and sub cooling with gauges                   | ✓ Test reversing valve for proper operation                    |
| ✓ Test for proper operation of all safeties                                      | ✓ Check/replace burnt wiring at any heating element connection |
| ✓ Replace belts annually. Inspect belts pulleys/sheaves and adjust as needed     | ✓ Test crank case heaters for proper operation                 |
| ✓ <del>Replacement and disposal of all filters not requested</del>               | ✓ Clean and inspect overall equipment                          |
| ✓ Economizer screen filters cleaning   | ✓ Performance test on both heating and cooling cycles          |
| ✓ Test economizer function   | for maximum efficiency   |

#### Minor Inspections which include:

- |  |  |
|--|--|
| ✓ Test crank case heaters for proper operation             | ✓ Check electrical wiring and connections                          |
| ✓ Checking of condensate drains and pans                   | ✓ <del>Replacement and disposal of all filters not requested</del> |
| ✓ Check condition of all indoor and outdoor coils          | ✓ Test Freon pressure by TD  |
| ✓ Check all belts and pulleys/sheaves and adjust as needed | ✓ Performance test on both heating and cooling cycles              |
| ✓ Check for proper operation of all safeties               | for maximum efficiency   |

**City Of Newport Water Treatment  
2810 NE Big Creek Rd.**

**Equipment List:**

MANUFACTURER/QTY	UNIT TYPE	MODEL #	SERIAL #	FILTERS/BELTS
JOHNSON CONTROLS	FCU	JUNX0762	00011104	
JOHNSON CONTROLS	FCU	JUNX0762	TBD	
JOHNSON CONTROLS	FCU	JUNX0762	TBD	
JOHNSON CONTROLS	FCU	JUNX0762	TBD	
JOHNSON CONTROLS	FCU	JUNX0762	TBD	
JOHNSON CONTROLS	FCU	JUNX0762	TBD	
JOHNSON CONTROLS	FCU	JUNX0762	TBD	
JOHNSON CONTROLS	C/U HTP-7020-1	JCHDX07263	0001312	
JOHNSON CONTROLS	C/U CU-7012-1	J25Y COOA48LD1A	N1F1144921	No Service Requested
YORK	MAU MAU-7012-1	XTI-063-FAJA046A	AGXMXT0051	2-BX-39
GREENHECK	EX/FAN EF-7023	ESQ-240-20-X	12550803 1108	
HASTINGS	MAU MAU-7011-1		6103	BX-62
GREENHECK	EX/FAN EF-7022-1	N/A TBD	TBD	3-BX-81
HASTINGS	MAU MAU-7010-1	BIRHVA-400V	61016	A-77
BRY-AIR	DE/HUM DH-7013	MP-1200	2011E9217	
BRY-AIR	DE/HUM	MP-1200	TBD	

## City Of Newport Water Treatment

### Maintenance Cost Option 1

<u>Maintenance</u>	<u>Visits/Year</u>	<u>Cost Per Visit</u>	<u>Annual Cost</u>	<u>Initial Choice</u>
Major	2	\$1,456.00	\$2,912.00	N/A
Minor	2	\$623.00	<del>\$1,246.00</del>	
			\$4,158.00	

### Maintenance Cost Option 2

<u>Maintenance</u>	<u>Visits/Year</u>	<u>Cost Per Visit</u>	<u>Annual Cost</u>	<u>Initial Choice</u>
Major	2	\$1,470.00	\$2,940.00	X
Minor	0	\$623.00	<del>\$0.00</del>	
			\$2,940.00	

- ❖ All authorized repairs include a **15% parts discount provided with quarterly service.**
- ❖ Any additional coil cleanings, filter changes, and cleaning of economizer screen filters will be proposed as needed
- ❖ Any work requiring Man-lift rental at additional cost.

Make-ready on equipment will be necessary to prepare units for regular maintenance billed at T&M, 1st visit.

Initial Acknowledgement

Make-ready billed within 30 days of service. Not To Exceed \$1,872.00

N/A

❖ All demand service requests discounted \$10.00 per hr. from Comfort Flow Heating's current service rates with quarterly service.

#### Billing Options: Choose one.

Annual cost of option 2 divided into twelve monthly billings of \$245.00

Initial Choice

Billed within 30 days of service

Please contact **Lantz Ward** at (541) 228-1713 if you have any questions or are in need of further service.

  
Lantz Ward  
Commercial Account Manager

Date: 1-21-2020

#### Acceptance of Proposal

I hereby accept this contract and agree to all prices and conditions set forth above. I am returning one signed copy.

Accepted by: \_\_\_\_\_ Date: \_\_\_\_\_

Note: This proposal is valid for 30 days.

Disclosure: Any and all additional repairs will be done as quoted and performed however they are not included in the price of this agreement. Services will be billed as they are rendered and payment for same will be due and payable within 30 days of service. These services are offered for the sums listed and are guaranteed for a minimum of one year from the date of this proposal and will not be altered thereafter without 30 days written notice to the customer. The maintenance cost listed above is subject to a 3% annual price increase. This agreement bears no expiration date and either party may cancel at any time with 30 days written notice to the other. \_\_\_\_\_ (Initial)

AGR#5614hr 1/21/2020