

OREGON CITY PUBLIC WORKS PERSONAL SERVICES AGREEMENT

12th Street, 13th Street and Division Street Sanitary Sewer Improvements (CI 15-004)

This PERSONAL SERVICES AGREEMENT ("Agreement") is entered into between:

CITY OF OREGON CITY ("City")

City of Oregon City
PO Box 3040
625 Center Street
Oregon City, OR 97045
Attention: John M. Lewis

and

TETRA TECH, INC. ("Consultant")

Tetra Tech, Inc.
15350 SW Sequoia Parkway, Suite 220
Portland, Oregon 97224

RECITALS

A. City requires services that Consultant is capable of providing under the terms and conditions hereinafter described.

B. Consultant is able and prepared to provide such services as City requires under the terms and conditions hereinafter described.

The parties agree as follows:

AGREEMENT

1. Term. The term of this Agreement shall be from the date the contract is fully executed until **August 30, 2015**, unless sooner terminated pursuant to provisions set forth below. However, such expiration shall not extinguish or prejudice City's right to enforce this Agreement with respect to (i) breach of any warranty; or (ii) any default or defect in Consultant's performance that has not been cured.

2. Compensation. City agrees to pay Consultant on a time-and-materials basis for the services required. Total compensation, including reimbursement for expenses incurred, shall not exceed **ninety-two thousand three hundred twenty-nine and 00/100 dollars (\$92,329.00)**.

3. Scope of Services. Consultant's services under this Agreement shall consist of services as detailed in Exhibit A, attached hereto and by this reference incorporated herein.

4. Standard Conditions. This Agreement shall include all of the standard conditions as detailed in Exhibit B, attached hereto and by this reference incorporated herein.

5. Schedule. The components of the project described in the Scope of Services shall be completed according Term, above.

6. Integration. This Agreement, along with the description of services to be performed attached as Exhibit A and the Standard Conditions to Oregon City Personal Services Agreement attached as Exhibit B, contain the entire agreement between and among the parties, integrate all the terms and conditions mentioned herein or incidental hereto, and supersede all prior written or oral discussions or agreements between the

parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

7. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, by hand delivery or by electronic means. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

Consultant shall be responsible for providing the City with a current address. Either party may change the address set forth in this Agreement by providing notice to the other party in the manner set forth above.

8. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on this _____ day of February, 2015.

CITY OF OREGON CITY

TETRA TECH, INC.

By: _____

By: _____

John M. Lewis, P.E.
Title: Public Works Director

Title: _____

DATED: _____, 2015.

DATED: _____, 2015.

By: _____

ORIGINAL CITY COMMISSION APPROVAL (IF APPLICABLE):

David W. Frasher
Title: City Manager

DATE: February 4, 2015

DATED: _____, 2015.

APPROVED AS TO LEGAL SUFFICIENCY:

By: _____

City Attorney

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SCOPE OF WORK

This memorandum outlines Tetra Tech's scope of work for engineering services associated with predesign and final design of the following projects identified in the City of Oregon City's current Sanitary Sewer Master Plan:

- 12th Street Sewer—Replacement of 346 feet of existing gravity sewer in Madison Street from 11th to 12th Street, and 550 feet of existing gravity sewer in Barclay Park near Jefferson Street and 12th Street.
- 13th Street Sewer—Replacement of 1,010 feet of existing gravity sewer in 13th Street and Buchanan Street.
- Division Street Sewer—Replacement of 637 feet of existing gravity sewer in Division Street from 13th Street to 12th Street.

The scope of work is based on a discussion of the project with City staff, review of Master Plan and field reconnaissance. Figure 1 shows the project area.

TASK 1—PROJECT MANAGEMENT

Subtask 1.1 Project Administration/Progress Reports/Invoices

This subtask includes contract administration and invoicing. A monthly progress report provided with each billing will report the status of the project and the level of effort expended.

Subtask 1.2 Startup and Progress Meetings

The startup meeting will focus on such project and design issues as communication protocols, as-built drawings and other data to be transferred, pipe replacement criteria, utility conflicts, and project schedule.

There will be three meetings during the design of the project to keep City staff up to date on design issues and project status. The meetings are scheduled at predesign submittal, preliminary design (50%) submittal, and 90% design submittal.

Subtask 1.3 Subconsultant Coordination

This task provides the necessary supervision to ensure that the work of the surveying subconsultant is appropriately integrated into the design effort.

Subtask 1.4 Quality Assurance QA/QC

Tetra Tech in-house quality assurance provides for an independent review by a senior engineer separate from the project team. The quality assurance review includes a review of the predesign memorandum and a buildability and constructibility review at the 90% complete stage.

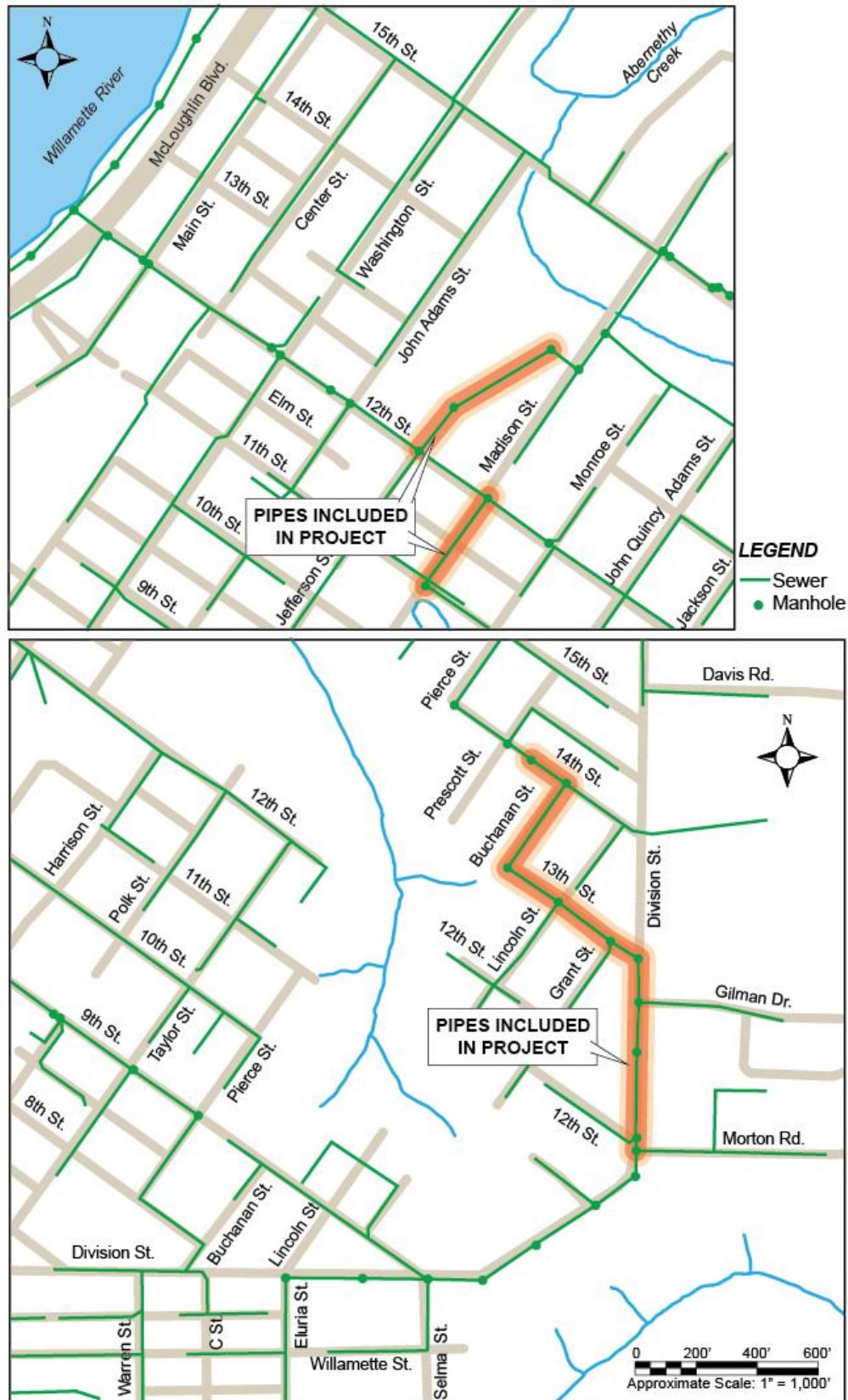


Figure 1. Project Area

TASK 2—PREDESIGN WORK

Subtask 2.1 Further Evaluate Master Plan Recommendations

The improvements recommended in the Master Plan will be evaluated with respect to factors such as the potential for house plumbing backups by determining the location, elevations and hydraulic grade line of service line connections. Other possible system overflow locations will be identified. Field data needed to complete this task will be identified in this subtask and performed in Subtask 2.2. Video scans needed to complete this task will be identified. The City will either perform the video scan services or hire a contractor to complete these services.

Subtask 2.2 Predesign Field Survey (by Compass Surveying)

Key elevations such as floor elevations to determine house plumbing elevations or questionable invert or rim elevations will be field surveyed. Elevations will be based on vertical control tied to a City of Oregon City or Clackamas County Survey benchmark (USGS vertical datum).

Subtask 2.3 Determine Sanitary Sewer Construction Methods

Based on review of City-provided video and scan reports, recommendations for specific improvements to each pipe will be determined. Factors to be considered include pipe condition, location, and pipe material. Improvement options generally will include pipe replacement or pipe bursting.

Subtask 2.4 Predesign Memorandum

The work performed in Subtasks 2.1 through 2.3 will be documented in a predesign memorandum. The memorandum will include the basis for all pipe improvements, as well as street restoration improvements. A preliminary cost estimate will be included with the memorandum.

Subtask 2.5 Neighborhood Open House

Tetra Tech will attend and assist the City with an open house by providing presentation materials, including suitable graphics showings the proposed utility improvements. The City will handle public notice (media). A short presentation on the project will be provided by Tetra Tech if desired and Tetra Tech staff will answer questions as needed.

TASK 3—FINAL DESIGN

Subtask 3.1 Field Survey (by Compass Surveying)

A detailed design field survey of the design corridor within the project area will be provided. Utility locates will be ordered. The survey area will generally be from back of sidewalk to back of sidewalk in addition to any utilities beyond the back of sidewalk (or 5 feet beyond the edge of the street where there is no sidewalk). Front of house locations, floor elevations and sewer cleanouts at houses will also be surveyed. The field survey will include utility related surface features, all driveway cuts, sidewalks and rim and invert elevations. The location of sanitary sewer services will be based on information provided by the City. Available property monumentation will be located with approximate delineation of right-of-way lines.

Elevations will be based on vertical control tied to a City of Oregon City or Clackamas County Survey benchmark (USGS vertical datum). The final product of this subtask will be survey base drawings in AutoCAD format.

Subtask 3.2 Submit 50% Complete Design Drawings

Should all the project area Master Plan recommendations be needed, twelve sheets are expected in the design package:

1. Cover Sheet, Sheet Index, Design Data
2. Legend, Abbreviations, General Notes
3. Project Key Map
4. Plan and Profile
5. Plan and Profile
6. Plan and Profile
7. Plan and Profile
8. Plan and Profile
9. Plan and Profile
10. Civil Details
11. Civil Details
12. Erosion Control Plan
13. Erosion Control Details

All new sewers will be on plan and profile drawings (1"=20' horizontal and 1"=5' vertical scale). Twelve halfsize sets of drawings and a .pdf plan set will be submitted to the City for review. Tetra Tech will attend a meeting with City staff to review the design and answer questions. Comments from the City will be incorporated into the 90% design submittal.

Subtask 3.3 Submit 90% Complete Technical Specifications and Bid Documents

This task includes the preparation of a 90% bid document package including design drawings and specifications. Technical specifications will use the standard Construction Specifications Institute project manual format. Specification Divisions 0 and 1 will use EJCDC documents supplemented by City-provided standard sections and modified by Tetra Tech as required for the project. An electronic copy will be submitted to the City for review.

Subtask 3.4 Prepare 90% Cost Estimate

A 90% cost estimate will be prepared to update the cost estimate provided in the predesign memorandum.

Subtask 3.5 Final Design Drawings and Specifications

After comments are received from the City and from Tetra Tech's internal quality assurance review, final construction plans and specifications will be prepared. One original reproducible full-size plan set will be provided as well as two half-size sets. The final bid document and technical specifications will be provided in Microsoft Word format. Electronic files of the design drawings (.pdf files) will also be provided for use by the City.

TASK 4—BIDDING ASSISTANCE

Subtask 4.1 Respond to Bidder's Questions

Tetra Tech staff working on the project will answer questions arising from contractors and suppliers. The City will be notified of all clarifications and any recommendations with respect to addenda items.

Subtask 4.2 Pre-Bid Meeting, Addenda/Clarifications

Tetra Tech will attend the pre-bid meeting at which contractor questions will be addressed. Assistance to the City with addenda preparation will be provided as requested.

TO BE PROVIDED BY THE CITY

- As-built drawings of the project area
- Video of selected pipelines
- Information regarding backups and overflows
- Available service line information

<div><div><div><div><div><div></div></div></div><div></div></div></div><div>Price Proposal</div></div> <div>12th St., 13th St., and Division St. Sewer Improvement</div>							Labor Plan				Price Summary / Totals							
							4 Resource				Task Pricing Totals92,329							
Submitted to: City of Oregon City (Attn: Erik Wahrgren, P.E.)							Proj Area >				Specify Add'l Fees on Setup0							
											Technology Use Fee							
											Total Price92,329							
Contract Type: T&M							Pricing by Resource											
							Task Pricing Totals											
Project Phases / Tasks		Schedule			Work Days Off	Work Days	Total Labor Hrs	Project Manager	Project Engineer	Design Engineer/CADD	Administrator	Labor Rate Esc.	Labor	Subs	Travel	Mat'l's & Equip	ODCs	Task Pricing Totals
		From	Thru	Months														
							488	180	168	134	6	0.00%	75,877	16,346	107	-	-	92,329
Task 1 Project Management							46	28	12	-	6		7,708	-	72	-	-	7,780
1.1 Project Administration/Progress Reports/Invoices							12		6		6		1,703					1,703
1.2 Start-up and Progress Meetings (4)							24	12	12				4,066		72			4,138
1.3 Subconsultation Coordination							4	4					775					775
1.4 Quality Assurance QA/QC							6	6					1,163					1,163
Task 2 Predesign Work							144	68	52	24	-		23,603	5,632	18	-	-	29,253
2.1 Further Evaluate Master Plan Recommendations							84	32	36	16			13,344					13,344
2.2 Predesign Survey							4			4			480	5,632				6,112
2.3 Determine Sanitary Sewer Construction Methods							16	8	8				2,711					2,711
2.4 Predesign Memorandum							32	24	8				5,813					5,813
2.5 Neighborhood Meeting							8	4		4			1,255		18			1,273
Task 3 Final Design							284	74	100	110	-		42,046	10,714	-	-	-	52,760
3.1 Field Survey							4			4			480	10,714				11,194
3.2 Submit 50% Complete Design Drawings							128	28	50	50			18,678					18,678
3.3 Submit 90% Complete Design Drawings							108	28	40	40			16,028					16,028
3.4 Prepare 90% Cost Estimate							10	4		6			1,495					1,495
3.5 Final Design Drawings and Specifications							34	14	10	10			5,364					5,364
Task 4 Bidding Assistance							14	10	4	-	-		2,519	-	18	-	-	2,536
4.1 Respond to Bidders Questions							4	4					775					775
4.2 Pre-bid Meeting, Addenda Clarifications							10	6	4				1,743		18			1,761
Totals							488	180	168	134	6	0.00%	75,877	16,346	107	-	-	92,329

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

1. Consultant Identification. Consultant shall furnish to City its taxpayer identification number, as designated by the Internal Revenue Service, or Consultant's social security number, as City deems applicable.

2. Payment.

(a) Invoices submitted in connection with this Agreement shall be properly documented and shall identify the pertinent agreement and/or purchase order numbers.

(b) City agrees to pay Consultant within thirty (30) days after receipt of Consultant's itemized statement. Amounts disputed by City may be withheld pending settlement.

(c) City certifies that sufficient funds are available and authorized for expenditure to finance the cost of the services to be provided pursuant to this Agreement.

(d) City shall not pay any amount in excess of the compensation amounts set forth above, nor shall City pay Consultant any fees or costs that City reasonably disputes.

3. Independent Contractor Status.

(a) Consultant is an independent contractor and is free from direction and control over the means and manner of providing labor or services, subject only to the specifications of the desired results.

(b) Consultant represents that it is customarily engaged in an independently established business and is licensed under ORS chapter 671 or 701, if the services provided require such a license. Consultant maintains a business location that is separate from the offices of the City and bears the risk of loss related to the business as demonstrated by the fixed price nature of the contract, requirement to fix defective work, warranties provided and indemnification and insurance provisions of this Agreement. Consultant provides services for two or more persons within a 12 month period or routinely engages in advertising, solicitation or other marketing efforts. Consultant makes a significant investment in the business by purchasing tools or equipment, premises or licenses, certificates or specialized training and Consultant has the authority to hire or fire persons

to provide or assist in providing the services required under this Agreement.

(c) Consultant is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law (including applicable City or Metro business licenses as per Oregon City Municipal Code Chapter 5.04). Consultant shall furnish the tools or equipment necessary for the contracted labor or services. Consultant agrees and certifies that:

(d) Consultant is not eligible for any federal social security or unemployment insurance payments. Consultant is not eligible for any PERS or workers' compensation benefits from compensation or payments made to Consultant under this Agreement.

(e) Consultant agrees and certifies that it is licensed to do business in the state of Oregon and that, if Consultant is a corporation, it is in good standing within the state of Oregon.

4. Early Termination.

(a) This Agreement may be terminated without cause prior to the expiration of the agreed-upon term by mutual written consent of the parties or by the City upon ten (10) days written notice to the Consultant, delivered by certified mail or in person.

(b) Upon receipt of notice of early termination, Consultant shall immediately cease work and submit a final statement of services for all services performed and expenses incurred since the date of the last statement of services.

(c) Any early termination of this Agreement shall be without prejudice to any obligation or liabilities of either party already accrued prior to such termination.

(d) The rights and remedies of City provided in this Agreement and relating to defaults by Consultant shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

5. No Third-Party Beneficiaries. City and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

6. Payment of Laborers; Payment of Taxes.

(a) Consultant shall:

(i) Make payment promptly, as due, to all persons supplying to Consultant labor and materials for the prosecution of the services to be provided pursuant to this Agreement.

(ii) Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of this Agreement.

(iii) Not permit any lien or claim to be filed or prosecuted against City on account of any labor or materials furnished.

(iv) Be responsible for all federal, state, and local taxes applicable to any compensation or payments paid to Consultant under this Agreement and, unless Consultant is subject to back-up withholding, City will not withhold from such compensation or payments any amount(s) to cover Consultant's federal or state tax obligation.

(v) Pay all employees at least time and one-half for all overtime worked in excess of forty (40) hours in any one week, except for individuals excluded under ORS 653.100 to 653.261 or under 29 U.S.C. §§ 201 to 209 from receiving overtime.

(b) If Consultant fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with this Agreement as such claim becomes due, City may pay such claim to the person furnishing the labor or services and shall charge the amount of the payment against funds due or to become due Consultant by reason of this Agreement.

(c) The payment of a claim in this manner shall not relieve Consultant or Consultant's surety from obligation with respect to any unpaid claims.

(d) Consultant and subconsultants, if any, are

subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires provision of workers' compensation coverage for all workers.

7. Subconsultants and Assignment.

Consultant shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Consultant.

8. Access to Records. City shall have access to all books, documents, papers and records of Consultant that are pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcripts.

9. Ownership of Work Product; License. All work products of Consultant that result from this Agreement (the "Work Products") are the exclusive property of City. In addition, if any of the Work Products contain intellectual property of Consultant that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Consultant hereby grants City a perpetual, royalty-free, fully paid, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use, in whole or in part (and to authorize others to do so), all such Work Products and any other information, designs, plans, or works provided or delivered to City or produced by Consultant under this Agreement. The parties expressly agree that all works produced (including, but not limited to, any taped or recorded items) pursuant to this Agreement are works specially commissioned by City, and that any and all such works shall be works made for hire in which all rights and copyrights belong exclusively to City. Consultant shall not publish, republish, display or otherwise use any work or Work Products resulting from this Agreement without the prior written agreement of City. **Consultant shall not be held liable for reuse of documents or modifications thereof, including electronic documents, by City or its representatives for any other purpose or project.**

10. Compliance With Applicable Law.

Consultant shall comply with all federal, state, and local laws and ordinances applicable to the services

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

to be performed pursuant to this Agreement, including, without limitation, the provisions of ORS 279B.220, 279C.515, 279B.235, 279B.230 and 279B.270. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans With Disabilities Act of 1990 (Pub. L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation and other applicable statutes, rules and regulations.

11. Professional Standards. Consultant shall be responsible, to the level of competency presently maintained by others practicing in the same type of services in City's community, for the professional and technical soundness, accuracy and adequacy of all services and materials furnished under this authorization.

12. Modification, Supplements or Amendments. No modification, change, supplement or amendment of the provisions of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

13. Indemnity and Insurance.

(a) Indemnity. Consultant acknowledges responsibility for liability arising out of Consultant's negligent performance of this Agreement and shall hold City, its officers, agents, Consultants, and employees harmless from, and indemnify them for, any and all liability, settlements, loss, costs, and expenses, including attorney fees, in connection with any action, suit, or claim **but only to the extent** caused or alleged to be caused by the negligent acts, omissions, activities or services by Consultant, or the agents, Consultants or employees of Consultant provided pursuant to this Agreement.

(b) Workers' Compensation Coverage. Consultant certifies that Consultant has qualified for workers' compensation as required by the state of Oregon. Consultant shall provide the Owner, within ten (10) days after execution of this Agreement, a certificate of insurance evidencing coverage of all subject workers under Oregon's workers' compensation statutes. The insurance certificate and policy shall indicate that the policy

shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. All agents or Consultants of Consultant shall maintain such insurance.

(c) Comprehensive, General, and Automobile Insurance. Consultant shall maintain comprehensive general and automobile liability insurance for protection of Consultant and City and for their directors, officers, agents, and employees, insuring against liability for damages because of personal injury, bodily injury, death, and broad-form property damage, including loss of use, and occurring as a result of, or in any way related to, Consultant's operation, each in an amount not less than \$1,000,000 combined, single-limit, per-occurrence/annual aggregate. Such insurance shall name City as an additional insured, with the stipulation that this insurance, as to the interest of City, shall not be invalidated by any act or neglect or breach of this Agreement by Consultant.

(d) Errors and Omissions Insurance. Consultant shall provide City with evidence of professional errors and omissions liability insurance for the protection of Consultant and its employees, insuring against bodily injury and property damage arising out of Consultant's negligent acts, omissions, activities or services in an amount not less than \$500,000 combined, single limit. Consultant shall maintain in force such coverage for not less than three (3) years following completion of the project. Such insurance shall include contractual liability.

Within ten (10) days after the execution of this Agreement, Consultant shall furnish City a certificate evidencing the dates, amounts, and types of insurance that have been procured pursuant to this Agreement. Consultant will provide for not less than thirty (30) days' written notice to City before the policies may be revised, canceled, or allowed to expire. Consultant shall not alter the terms of any policy without prior written authorization from City. The provisions of this subsection apply fully to Consultant and its Consultants and agents.

14. Legal Expenses. In the event legal action is brought by City or Consultant against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

pay the prevailing party such reasonable amounts for attorney fees, costs, and expenses as may be set by a court. "Legal action" shall include matters subject to arbitration and appeals.

15. Severability. The parties agree that, if any term or provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected.

16. Number and Gender. In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall be deemed to include the others or other whenever the context so requires.

17. Captions and Headings. The captions and headings of this Agreement are for convenience only and shall not be construed or referred to in resolving questions of interpretation or construction.

18. Hierarchy. The conditions contained in this document are applicable to every Personal Services Agreement entered into by the City of Oregon City in the absence of contrary provisions. Should contrary provisions be included in a Personal Services Agreement, those contrary provisions shall control over these conditions.

19. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the state of Oregon, except that, if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day that is not a Saturday, Sunday or legal holiday.

20. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, postage prepaid, or personally delivered to the addresses listed in the Agreement attached hereto. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

21. Nonwaiver. The failure of City to insist upon or enforce ~~strict~~ performance by Consultant of any of the terms of this Agreement or to exercise any rights hereunder shall not be construed as a

waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights of any future occasion.

22. Information and Reports. Consultant shall, at such time and in such form as City may require, furnish such periodic reports concerning the status of the project, such statements, certificates, approvals, and copies of proposed and executed plans and claims, and other information relative to the project as may be requested by City. Consultant shall furnish City, upon request, with copies of all documents and other materials prepared or developed in relation with or as a part of the project. Working papers prepared in conjunction with the project are the property of City, but shall remain with Consultant. Copies as requested shall be provided ~~free of cost~~ to City at Consultant's cost.

23. City's Responsibilities. City shall furnish Consultant with all available necessary information, data, and materials pertinent to the execution of this Agreement. City shall cooperate with Consultant in carrying out the work herein and shall provide adequate staff for liaison with Consultant.

24. Arbitration. All disputes arising out of or under this Agreement shall be timely submitted to nonbinding mediation prior to commencement of any other legal proceedings. The subsequent measures apply if disputes cannot be settled in this manner.

(a) Any dispute arising out of or under this Agreement shall be determined by binding arbitration.

(b) The party desiring such arbitration shall give written notice to that effect to the other party and shall in such notice appoint a disinterested person of recognized competence in the field as arbitrator on its behalf. Within fifteen (15) days thereafter, the other party may, by written notice to the original party, appoint a second disinterested person of recognized competence as arbitrator on its behalf. The arbitrators thus appointed shall appoint a third disinterested person of recognized competence, and the three arbitrators shall, as promptly as possible, determine such matter, provided, however, that:

**STANDARD CONDITIONS TO OREGON CITY
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(i) If the second arbitrator is not appointed as described above, then the first arbitrator shall proceed to determine such matter; and

(ii) If the two arbitrators appointed by the parties are unable to agree, within fifteen (15) days after the second arbitrator is appointed, on the appointment of a third arbitrator, they shall give written notice of such failure to agree to the parties and, if the parties fail to agree on the selection of the third arbitrator within fifteen (15) days after the arbitrators appointed by the parties give notice, then, within ten (10) days thereafter, either of the parties, on written notice to the other party, may request such appointment by the presiding judge of the Clackamas County Circuit Court.

(c) Each party shall each be entitled to present evidence and argument to the arbitrators. The determination of the majority of the arbitrators or the sole arbitrator, as the case may be, shall be conclusive on the parties, and judgment on the same may be entered in any court having jurisdiction over the parties. The arbitrators or the sole arbitrator, as the case may be, shall give written notice to the parties, stating the arbitration determination, and shall furnish to each party a signed copy of such determination. Arbitration proceedings shall be conducted pursuant to ORS 33.210 et seq. and the rules of the American Arbitration Association, except as provided otherwise.

(d) Each party shall pay the fees and expenses of the arbitrator appointed by such party and one-half of the fees and expenses of the third arbitrator, if any.

25. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.