

OREGON CITY PUBLIC WORKS PERSONAL SERVICES AGREEMENT

OC CRW JOINT ENGINEERING STUDY (CI 16-011)

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: Aleta Froman-Goodrich

and

MURRAY, SMITH & ASSOCIATES, INC.
("Consultant")

Murray, Smith & Associates, Inc.
121 SW Salmon, Suite 900
Portland, Oregon 97204-2919
Attention: Brian Ginter

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 May 31, 2017, 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 one hundred twenty-seven thousand and 00/100 dollars (\$127,000.00).

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 _____, 2016.

CITY OF OREGON CITY

MURRAY, SMITH & ASSOCIATES, INC.

By: _____
John M. Lewis
Title: Public Works Director

By: _____
Title: _____

DATED: _____, 2016.

DATED: _____, 2016.

ORIGINAL CITY COMMISSION APPROVAL (IF APPLICABLE):

By: _____
Anthony J. Konkol III
Title: City Manager

DATE: _____

DATED: _____, 2016.

APPROVED AS TO LEGAL SUFFICIENCY:

By: _____
City Attorney

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EXHIBIT A

MURRAY, SMITH & ASSOCIATES, INC.

PROPOSED SCOPE AND FEE FOR

CLACKAMAS RIVER WATER / CITY OF OREGON CITY JOINT ENGINEERING ANALYSIS

Clackamas River Water (CRW) and the City of Oregon City are engaged in discussions regarding adjustment of service area boundaries, including potential withdrawal and annexation of certain lands, to better reflect which entity actually serves certain areas and which entity is most likely able to serve future developable lands. Both entities request that Murray, Smith & Associates, Inc. (CONSULTANT) prepare this scope of engineering services to develop preliminary illustrations to support discussions between the two water providers and to participate in a workshop to better define a scope of service for further analysis and support.

SCOPE OF WORK

The work shall be completed by tasks outlined as follows:

Task 1 – Data Gathering and Review

Work under this task includes contacting CRW and Oregon City to obtain the latest GIS data for development of mapping under Task 2. It is anticipated that current GIS layers for water service boundaries, major facilities and pressure zone boundaries will be obtained. In preparation for subsequent tasks the CONSULTANT will review all existing IGA's and planning documents in order to:

- Become familiar with the terms and provisions set out within each
- Identify conflicts and inconsistencies within the various IGA's in comparison to one another
- Develop recommendations to clarify terms and provisions for replacement or for subsequent IGAs.
- Review of ORS 222.120 through 222.580 as well as any other pertinent state or federal regulations that may be deemed pertinent for task enumerated below.

These documents will include but are not limited to:

- HOPP IGA (Term through 2028, 30 year agreement)
- South End Road (Term)
- Meyers/Leland Road IGA (currently expired)
- City, SFWB, CRW Master Plans
- City Concept Plans – South End Road, Park Place, Beaver Creek Road
- CRW Water Management Plan

EXHIBIT A

- City Comprehensive Plan - sections related to water
- City and CRW Hydraulic Models
- City, SFWB, CRW Capital Improvement Projects
- City Highly Developable Land / Vacant Land Map

Assumption: The clients will provide access to all relevant documents, both physical and electronic for review.

Task Deliverables: None

Task Budget: \$7,000

Task 2 – Map Development

Work under this task includes development of a GIS-based map illustrating the limits of the study area. The map will be developed using the Metro RLIS tax lot base, topographic data and street grid and must be compatible with both CRW and City respective software systems. Current geopolitical and water service boundaries will overlay the base, as will relevant water system facilities and pressure zone service boundaries. It is anticipated that this map will serve as the basis for defining and illustrating further analysis of service boundary adjustments, necessary improvements to extend service to undeveloped areas, etc.

The focus area for the aforementioned maps should focus on the areas of anticipated overlap. These areas include but are not limited to the following sub-service areas:

- HOPP
- Park Place Concept Plan
- Country Village Estates
- Beaver Creek Rd Concept Plan
- Henrici Rd Area/Beaver Creek Reservoir (elevations)
- South End Rd
- Leland McCord area
- Canyon Ridge
- Central Point Rd
- Other areas that are identified

At a minimum the prepared maps for each of the defined areas should identify the following items:

- Existing water infrastructure including reservoirs, pump stations, conveyance systems (both size and type), valves, PRV, nodes, condition information including relative age, and known failure history

EXHIBIT A

- Hydraulic Grade Line
- Respective pressure zone areas for existing facilities
- Leak History
- Customer service lines

Task Deliverables: E-size Plotted Maps for Workshop Discussion; Relevant electronic files

Task Budget: \$24,000

Task 3 – Identification of Future and Existing Water Service Conflict Areas

Based on the information gathered within Task 1 and 2 of this scope the CONSULTANT shall clearly define all the areas of potential existing or future conflict within each of the service areas identified within the previous task. This analysis should identify the various service related issue(s) within the each of the areas and determine the most effective and most efficient way to better serve these areas with the existing and future resources. The analysis should propose potential options that are possible based on data gathering and each agencies service potentials. The CONSULTANT shall meet with each of the agencies to determine their respective priorities to address the issues identified within the task. Recommendations shall be prepared for each of the options based on identified pros and cons. This analysis shall also take into consideration areas of future growth within each of the respective districts and identify potential conflicts that would be anticipated.

Task Deliverables: White Paper report for review, discussion and approval at Workshop 1.

Task Budget: \$38,000

Task 4 – Workshop 1

The CONSULTANT shall facilitate a workshop at which both agencies' representatives will be present to review all information prepared from Tasks 1, 2, and 3. The CONSULTANT shall identify and discuss each areas previously mentioned with the intent of achieving consensus on the information that has been prepared. The various options will be presented with each of the agencies representatives providing feedback on their respective preference(s). The intent of the workshop is to develop consensus on a preferred option for each of the respective identified conflict areas. The preferred option may be one of the previously prepared options or an amalgamation of various options that the attendees mutually agree to. The CONSULTANT will work with CRW/City staff to prepare an agenda for the meeting. The CONSULTANT will also prepare workshop minutes and prepare a summary of key decision points, for review and confirmation by CRW and City staff. Final meeting minutes and decision points will be distributed following review and comment.

EXHIBIT A

Task Deliverables: Workshop 1 Agenda and subsequent Minutes; Summary of Key Decisions – Draft and Final; Revisions to previously prepared maps

Task Budget: \$14,000

Task 5 – Valuation Study and Methodology

The intent of this task is to develop a method for assigning cost for remuneration of assets that are transferred from one agency to another both at the present and future state. The CONSULTANT shall develop a methodology for determining the current value of assets within the respective study areas. The valuation methodology should account for the various vagaries associated with the respective assets including but not limited to: size, type, age, condition, maintenance history, overall complexity, accessibility, etc... This method should also define a method for determining asset depreciation and future value. The CONSULTANT shall prepare two case studies based on the previously identified information utilizing the prepared method for explanatory purposes.

FCS Group, as a subconsultant to MSA, will serve as the lead for this task and the CONSULTANT advising and assisting.

Note: Consideration should be made in the analysis as to how future private development can contribute its proportionate share to potential remuneration.

Task Deliverables: Draft Remuneration Methodology; Analysis of the two case studies

Task Budget: \$18,000

Task 6 – Workshop 2

The CONSULTANT shall facilitate a workshop at which both agencies representatives will be present to review all information prepared from Task 5. The CONSULTANT shall present their preferred method with the intent of achieving consensus on the information that has been prepared. The previously prepared case studies shall be presented in order to exemplify how the method would be utilized. Any items that are identified as decision points for all parties to mutually agree upon shall be presented with participants providing feedback on their respective preference(s). The intent of the workshop is to develop consensus on a preferred option(s) for final methodology. The CONSULTANT will work with CRW/City staff to prepare an agenda for the meeting. The CONSULTANT will also prepare workshop minutes and prepare a summary of key decision points, for review and confirmation by CRW and City staff. Final meeting minutes and decision points will be distributed following review and comment.

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Task Deliverables: Workshop 2 Agenda and subsequent Minutes; Defined Decision Matrix; Final Remuneration Methodology

Task Budget: \$9,000

Task 7- Administrative Approval

Upon successful completion of Task 6, both agencies will be required to present and obtain administrative approval from their respective governing bodies. CONSULTANT will attend and present the methodology for approval at up to 2 public meetings per agency. The Overall Project Schedule assumes up to 3 months between the completion of Task 6 and completion of presentations to accommodate this overall task.

Task Deliverables: None

Task Budget: \$9,000

Task 8- Infrastructure Evaluation Using Approved Methodology (OPTIONAL TASK)

Utilizing the agreed upon final Remuneration Methodology the CONSULTANT shall analyze each of the respective conflict areas identified within the previous task. The CONSULTANT shall assign current state cost to each of the existing facilities and determine applicable depreciation schedules. The final scope and fee for this task, if authorized, will be developed in coordination with the City/CRW following completion of Task 7.

Task Deliverables: Final Report detailing the Evaluation of Assets within the conflict areas utilizing the approved method; Final revised maps and GIS files detailing prepared information.

Preliminary Estimated Task Budget: \$20,000

Task 9- Project Management and Coordination

Work under this task includes CONSULTANT team management to maintain the project schedule and budget, providing Quality Assurance/Quality Control (QA/QC) of deliverables and preparing and submitting monthly invoices along with progress reports and schedule updates. Project activities will be monitored for potential changes and, with City/CRW approval, project tasks, task budgets and approaches will be modified to keep the overall project within budget and on schedule. This subtask also includes client and project team communications necessary to coordinate execution of the work.

Task Deliverables: Monthly invoices, detailed project schedule and budget reporting.

Task Budget: \$8,000

EXHIBIT A

PROPOSED PROJECT FEE

CONSULTANT will perform this work on a time and expenses basis with a total not to exceed amount of \$127,000 (not including Optional Task 8) in accordance with the current Schedule of Charges in effect at the time the work is performed (2016 City of Oregon City Schedule of Charges attached).

PROPOSED PROJECT SCHEDULE

It is anticipated that Tasks 1 through 6 will be completed within 6 months of receiving Notice to Proceed. A detailed project schedule based on the final approved scope will be developed for the project kick-off.



EXHIBIT A

CITY OF OREGON CITY SCHEDULE OF CHARGES - 2016

Personnel:

Labor will be invoiced by staff classification at the following hourly rates, which are valid from January 1, 2016 to December 31, 2016. After this period, the rates are subject to adjustment.

Classification	Billing Rate
Principal Engineer VI	\$220.00
Principal Engineer V	212.00
Principal Engineer IV	205.00
Principal Engineer III	197.00
Principal Engineer II	189.00
Principal Engineer I	180.00
Professional Engineer IX	174.00
Professional Engineer VIII	165.00
Professional Engineer VII	156.00
Professional Engineer VI	148.00
Professional Engineer V	140.00
Professional Engineer IV	134.00
Engineering Designer IV	134.00
Professional Engineer III	125.00
Engineering Designer III	125.00
Engineering Designer II	115.00
Engineering Designer I	105.00
Technician IV	125.00
Technician III	112.00
Technician II	98.00
Technician I	82.00
Administrative III	88.00
Administrative II	82.00
Administrative I	72.00

The hourly rate for each position listed above shall be adjusted on the following January 1 of each year. The adjustment shall be based on the increase or decrease of the United States Bureau of Labor Statistics' Consumer Price Index for all Urban Wage Earner and Clerical Workers (CPI-W), US City average (<http://www.bls.gov/CPI/>), or its successor report issued by the Federal Government covering the change for the year ending in September as follows:

- The second term January 1, 2016, to December 31, 2016, adjusted for the CPI-W US City Average Percent Change year ending September 2015.
- The third term (if contract extended) January 1, 2017, to December 31, 2017, adjusted for the CPI-W City Average Percent Change year ending September 2016.
- The Fourth term (if contract extended) January 1, 2018, to December 31, 2018, adjusted for the CPI-W City Average Percent Change year ending September 2017.
- The fifth term (if contract extended) January 1, 2019, to December 31, 2019, adjusted for the CPI-W City Average Percent Change year ending September 2018.

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The City may, at its sole discretion, accept or reject any proposed change in cost schedule beyond the scope of adjustments described in this section.

Project Expenses:

Expenses incurred in-house that are directly attributable to the project will be invoiced at actual cost. These expenses include the following:

CADD Hardware/Software	\$18.00/hour
Modeling and GIS Hardware/Software	\$10.00/hour
Mileage	Current IRS Rate
Postage and Delivery Services	At Cost
Printing and Reproduction	At Cost
Travel, Lodging and Subsistence	At Cost

Outside Services:

Outside technical, professional and other services will be invoiced at actual cost plus 10 percent to cover administration and overhead.

EXHIBIT A

JOINT ENGINEERING ANALYSIS
CLACKAMAS RIVER WATER / CITY OF OREGON CITY
PROPOSED FEE ESTIMATE

								ESTIMATED FEES			
	Principal Engineer II	Principal Engineer I	Professional Engineer V	Engineering Designer I	Technician IV	Administrative III	Hours	Labor	Subconsultants	Expenses	Total
	\$189 Carr	\$180 Ginter	\$140 Springer	\$105	\$125 Harjala	\$88			FCSG		
Task 1 - Data Gathering and Review											
Task 1 Subtotal	1	16	0	32	2	3	54	\$ 6,943	\$ -	\$ 57	\$ 7,000
Task 2 - Map Development											
Task 2 Subtotal	0	18	0	72	90	2	182	\$ 22,226	\$ -	\$ 1,774	\$ 24,000
Task 3 - Identification of Future and Existing Water Service Conflict Areas											
Task 3 Subtotal	4	60	20	200	18	0	302	\$ 37,606	\$ -	\$ 394	\$ 38,000
Task 4 - Workshop 1											
Task 4 Subtotal	8	24	0	36	9	0	77	\$ 10,737	\$ 3,100	\$ 163	\$ 14,000
Task 5 - Valuation Study and Methodology											
Task 5 Subtotal	4	24	0	16	0	2	46	\$ 6,932	\$ 11,000	\$ 68	\$ 18,000
Task 6 - Workshop 2											
Task 6 Subtotal	5	18	0	8	0	4	35	\$ 5,377	\$ 3,520	\$ 103	\$ 9,000
Task 7 - Administrative Approval											
Task 7 Subtotal	0	14	0	10	0	12	36	\$ 4,626	\$ 4,300	\$ 74	\$ 9,000
Task 8 - Infrastructure Evaluation Using Approved Methodology (OPTIONAL TASK)											
Task 8 Subtotal	0	0	0	0	0	0	0	\$ -	\$ -	\$ -	\$ -
Task 9 - Project Management and Coordination											
Task 9 Subtotal	18	24	0	0	0	2	44	\$ 7,898	\$ -	\$ 102	\$ 8,000
TOTAL - ALL TASKS	40	198	20	374	119	25	776	\$ 102,345	\$ 21,920	\$ 2,735	\$ 127,000

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.

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES 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 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. **Reuse or modification of such Work Products by City or others for purposes outside this Agreement shall be without liability to Consultant, and City agrees to indemnify and**

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

hold Consultant harmless from all claims, damages and expenses, including reasonable attorneys' fees, arising out of such reuse by City or others acting through City.

10. **Compliance With Applicable Law.**

Consultant shall comply with all federal, state, and local laws and ordinances applicable to the services 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 **reasonable** attorney fees, in connection with any action, suit, or claim **to the extent** caused ~~or alleged to be caused~~ by the negligent acts, omissions, activities or services by Consultant, ~~or the agents,~~ Consultants **of Consultant,** 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

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

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 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.

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

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

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:

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.

(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