

**CITY OF OREGON CITY
PERSONAL SERVICES AGREEMENT**

Water Distribution System CIP Update (PS 17-019)

This PERSONAL SERVICES AGREEMENT ("Agreement") is entered into between the CITY OF OREGON CITY ("City") and Murraysmith ("Consultant").

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 **July 31, 2018**, 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 **sixty-seven thousand five hundred and two dollars and 00/100 dollars (\$67,502)**.

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 to 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.

To the City:

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

To Consultant:

Murraysmith
888 SW Fifth Avenue, Suite 1170
Portland, OR 97204
Attention: Brian Ginter

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 _____, 2017.

CITY OF OREGON CITY

Murraysmith

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

By: _____
Title: _____

DATED: _____, 2017.

DATED: _____, 2017.

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

ORIGINAL CITY COMMISSION APPROVAL (IF APPLICABLE):

DATE: November 1, 2017

APPROVED AS TO LEGAL SUFFICIENCY:

By: _____
City Attorney

EXHIBIT A

SCOPE OF WORK

WATER DISTRIBUTION SYSTEM

CAPITAL IMPROVEMENT PROGRAM UPDATE

CITY OF OREGON CITY

Background

The City of Oregon City (City) Water System Master Plan (WMP, 2012) identifies capital projects for the 20-year planning horizon to satisfy growth, and water system operational and hydraulic criteria. City staff have identified several issues related to capital project location and implementation including the following:

- Some of the piping loops and recommended improvements to future growth areas on the perimeter of the Upper Zone may not be feasible due to location of development or topography. These pipeline improvements require analysis to consider revised routing, potential pipe upsizing, and parallel piping options.
- The City has experienced leaking pipelines due to system condition and high pressures while operating the Mountain View Booster Station at peak demands, while the Boynton Reservoir altitude valve is simultaneously closed. Under this operational scheme, the Henrici Reservoir may be difficult to fill because of limited transmission capacity.
- Based on current development applications and customer feedback, City staff have specific questions about project implementation, pressure reducing valve (PRV) station locations, and settings.
- Alternate source water, transmission, pumping and storage options from the South Fork Water Board or Clackamas River Water require consideration as potential improvement alternatives.

This scope of work outlines tasks to evaluate capital improvements to address operational efficiency, system capacity, and condition. The deliverables for the project include an updated Capital Improvement Program (CIP) that addresses project location, alternatives, sizing, costs, and priorities.

Scope of Services

Consultant will perform the following services:

Task 1 – Develop Alternatives

Task 1 includes efforts to identify alternatives for further consideration for the updated CIP. Additional work will be performed to establish incremental (5-year) demands within the City's hydraulic model for phasing analysis. Work items include:

- A. Review City's current GIS mapping and update model to reflect improvements since last model update was completed.
- B. Meet with City staff to review the capital improvement map and identify questions and concerns related to recommended improvement locations. At the meeting, collaborate with City staff to identify potential improvement alternatives for consideration including pipeline routing. This meeting will also include a review of the updated model for errors and missing facilities.
- C. Review condition and operations data:
 - Discuss locations of high pressure and leak complaints
 - Confirm PRV settings relative to high or low pressure complaints. This will include collaboration with City staff regarding current PRV operations to identify PRVs requiring further evaluation
 - Review pipeline age and condition data, as available from City GIS and/or maintenance database
 - Confirm pump curves, settings, and operational controls for the Mountain View Booster Station
- D. Review system demands in 5-year increments based on City or County population and employment projections and master plan documentation. Confirm timing relative to City understanding of development
- E. Assess three alternatives to supply the southeast limits of the Upper Pressure Zone and higher elevation areas inside the UGB in the Beavercreek area. This analysis will focus on identifying specific capacity improvements required for each scenario to serve to the limits of the UGB and considering future service to the Urban Reserve Area. Specific scenarios, reflected in the Joint Engineering Study are:
 - 1. City service through upsized Upper Pressure Zone transmission, new pumping from the Upper Pressure Zone to the new Beavercreek Zone and gravity storage to serve this zone
 - 2. City/CRW service through a combination of existing and upsized transmission facilities from Holly Lane to City/CRW Henrici storage, upgraded/new pumping to CRW's Beavercreek zone storage (including future storage capacity improvements) and associated transmission and pressure reducing facilities to serve higher elevation areas within the UGB.
 - 3. Coordination with proposed CRW backbone project to feed the City's Henrici Reservoir during peak demand periods and to supply the upper elevation pressure zone required to serve to the limits of the UGB.

- F. Perform early analysis to identify improvement sizing and PRV configuration for commercial service adjacent to the river associated with the mill redevelopment. Provide a brief tech memo documenting this analysis and recommendations
- G. Update project unit costs. Cost estimates will represent a Class 5 budget estimate, as established by the Association for the Advancement of Cost Engineering International. This preliminary estimate class is used for conceptual screening and assumes project definition maturity level below two percent. The expected accuracy range is -20 to -50 percent on the low end, and +30 to +100 percent on the high end. Costs estimates are intended to be used as guidance in establishing funding requirements at the project planning level based on information available at the time of the estimate. The cost estimates are capital costs only and exclude maintenance, right-of-way acquisition, and land acquisition.

Task 2 – Evaluate Alternatives and Develop Capital Improvement Program

Task 2 includes efforts to evaluate alternatives, recommend improvements, identify phasing, and work with City staff to set priorities. Work items include:

- A. Evaluate improvement alternatives identified in Task 1 based on City design criteria for minimum pressure and fire flow requirements
- B. Identify booster station pump operational recommendation and/or pump improvements
- C. Evaluate potential PRV location and setting modifications. This evaluation will include identifying operational changes, and/or removal of PRVs from the system that are deemed obsolete or because of changed operating requirements.
- D. Overlay condition and leak history data with capacity results and identify pipe replacement based on age/condition
- E. Perform cost estimates for each alternative and improvement
- F. Present results of alternatives evaluation and associated cost comparison to City staff in a capital project workshop. Work with City staff to select preferred alternatives
- G. Evaluate improvement phasing for 5-year, 10-year, and 20-year growth horizon. Develop prioritized capital improvement list. The list will include the proportional allocation of project costs to existing customers and growth for future rate and SDC analysis.
- H. Meet with City staff to identify improvement priorities and review capital project list
- I. Document the update Capital Improvement Program in a technical memorandum

Assumptions

- The analysis is limited to one iteration of alternatives evaluation. It is assumed that a draft set of alternatives will be presented in the capital project workshop and a final revised set of

recommended improvements provided to the City for final review and verification following the workshop

- Concept plan piping (Park Place and Beavercreek) will be evaluated at a high level based on City input during Task 1 workshop

Task Deliverables

- Draft Capital Improvement Program technical memorandum
- Final Capital Improvement Program technical memorandum

Task 3 – Project Management

Work under this task includes managing the team 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 approval, project tasks, task budgets and approaches will be modified to keep the overall project within budget and on schedule. This task also includes client and project team communications necessary to coordinate execution of the work.

Task Deliverables

- Monthly invoices, schedule updates, timely identification of out-of-scope work

Budget

The work will be billed on a time and expenses basis in accordance with the current standard Schedule of Charges in effect at the time the work is performed. The project will be managed and billed to an overall not to exceed value of \$67,502 as detailed in the proposed fee estimate.

Project Schedule

It is anticipated that Murraysmith will begin work after receipt of the notice to proceed. Final deliverables will be completed within 9 months from Notice to Proceed. Major project milestones assuming a notice to proceed of October 1, 2017 are presented in Table 1.

Table 1 - Project Schedule and Milestones

Milestone/Task	Estimated Date
Notice to Proceed	November 2, 2017
Data Collection and Review	November 2017
Early PRV Analysis near River	December 2017

Alternatives Development Workshop	December 2017
Unit Cost Development	January 2017
Alternatives Evaluation	Jan 2018 – Feb 2018
Alternatives Results Workshop	March 2018
Phasing Analysis	Mar – Apr 2018
CIP Review and Prioritization Workshop	April 2018
Draft CIP Documentation	May 2018
Final CIP Documentation	June 2018

**WATER DISTRIBUTION SYSTEM CAPITAL IMPROVEMENT PROGRAM UPDATE
CITY OF OREGON CITY
PROPOSED FEE ESTIMATE**

							ESTIMATED FEES		
	Principal Engineer I	Professional Engineer VIII	Engineering Designer III	Engineering Designer I	Administrative II	Hours	Labor	Expenses	Total
	\$191 Brian Ginter	\$174 Shad Roundy	\$135 Sven MacAller	\$114 Claire DeVoe	\$88 Kelsey Pitts				
Task 1 - Develop Alternatives									
Task 1.1 - A. Review background data and documents and prepare updated mapping	2	4	8	12		26	\$ 3,526	\$ 120	\$ 3,646
Task 1.2 - B. Existing CIP review and alternatives workshop	3	4	4		1	12	\$ 1,897	\$ 25	\$ 1,922
Task 1.3 - C. Review condition and operations data	1	4	16	16		37	\$ 4,871	\$ -	\$ 4,871
Task 1.4 - D. Review system demands for future conditions		4		16		20	\$ 2,520	\$ 100	\$ 2,620
Task 1.5 - E. Identify Beavercreek Concept Area Supply Options	6	12	8	8		34	\$ 5,226	\$ -	\$ 5,226
Task 1.6 - F. Early analysis of PRV configuration (near river, mill redevelopment)		8	16			24	\$ 3,552	\$ 120	\$ 3,672
Task 1.7 - G. Update unit costs	2	12				14	\$ 2,470	\$ -	\$ 2,470
Task 1 Subtotal	14	48	52	52	1	167	\$ 24,062	\$ 365	\$ 24,427
Task 2 - Evaluate Alternatives and Develop Capital Improvement Program									
Task 2.1 - A. Evaluate improvement alternatives		8	40			48	\$ 6,792	\$ 240	\$ 7,032
Task 2.2 - B. Identify booster station improvements	3	6	8			17	\$ 2,697	\$ 85	\$ 2,782
Task 2.3 - C. Evaluate PRV configuration and settings	2	4	16			22	\$ 3,238	\$ 110	\$ 3,348
Task 2.4 - D. Overlay condition and capacity, identify pipe replacement	1	4		16		21	\$ 2,711	\$ 105	\$ 2,816
Task 2.5 - E. Cost estimation		4		16		20	\$ 2,520	\$ -	\$ 2,520
Task 2.6 - F. Alternatives results workshop	4	16	16			36	\$ 5,708	\$ -	\$ 5,708
Task 2.7 - G. Phasing analysis	1	6	16			23	\$ 3,395	\$ 115	\$ 3,510
Task 2.8 - H. Prioritization workshop	3	6	4			13	\$ 2,157	\$ -	\$ 2,157
Task 2.9 - I. Draft and Final Documentation	6	16	16	16		54	\$ 7,914	\$ -	\$ 7,914
Task 2 Subtotal	20	70	116	48	0	254	\$ 37,132	\$ 655	\$ 37,787
Task 3 - Project Management									
Task 3.1 - Project coordination	8					8	\$ 1,528	\$ -	\$ 1,528
Task 3.2 - Monthly invoicing	8				8	16	\$ 2,232	\$ -	\$ 2,232
Task 3.3 - QA/QC coordination	8					8	\$ 1,528	\$ -	\$ 1,528
Task 3 Subtotal	24	0	0	0	8	32	\$ 5,288	\$ -	\$ 5,288
TOTAL - ALL TASKS	58	118	168	100	9	453	\$ 66,482	\$ 1,020	\$ 67,502

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