

# OREGON CITY PUBLIC WORKS PERSONAL SERVICES AGREEMENT

## 2016 PUBLIC WORKS OPERATIONS MASTER PLAN UPDATE (CI 16-015)

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: Martin Montalvo

and

DECA ARCHITECTURE, INC. ("Consultant")

DECA Architecture, Inc.  
935 SE Alder Street  
Portland, OR 97214  
Attention: David Hyman

### 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 **October 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 **Seventy-six thousand nine hundred ninety-two and .00/100 dollars (\$76,992.00)**.

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 1st day of November, 2016.

CITY OF OREGON CITY

By: 

Title: John M. Lewis  
Public Works Director

DATED: 10-19, 2016.

DECA ARCHITECTURE, INC.

By: 

Title: Principal

DATED: 11-01, 2016.

By: 

Title: Anthony J. Konkol III  
City Manager

DATED: 10-19, 2016.

ORIGINAL CITY COMMISSION APPROVAL (IF APPLICABLE):

DATE: 10/19/16

APPROVED AS TO LEGAL SUFFICIENCY:

By: 

City Attorney

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**deca architecture.inc**

October 5, 2016

Martin Montalvo  
Operations Manager  
**OREGON CITY PUBLIC WORKS**  
122 S. Center Street  
Oregon City, OR 97045

RE: OCPW Master Plan Land Use Application

Dear Martin,

The following is a proposed scope of work and fee to assist the Oregon City Public Works Department in applying for an amendment to the General Development Master Plan for the Operations Center at 122 S. Center Street, approved in 2009 and a new Detailed Development Plan for Phase I of the master plan: Since some of the design materials required for the application will have been completed as part of the "2015 Public Works Operations Center Master Plan" (CI 15-010), currently in progress, this proposal includes the remainder of fee required to complete the land-use application. Our understanding is that the implementation of Phase I will include the following order of work:

**Phase I Plan**

- 1) Acquire armory, perform deferred maintenance
- 2) Move materials and equipment from existing upper site building into Armory
- 3) Demolish existing upper yard buildings
- 4) Regrade site, add underground utilities
- 5) Build new storage building on upper site. Build new office building, covered parking, paving, bins.
- 6) Move materials and equipment from Armory into the new Storage building
- 7) Remodel Armory, move Fleet Shop from lower yard into Armory
- 8) Landscape upper site
- 9) Build elevator

**Phase II Plan**

- 1) Demolish all buildings on lower site.
- 2) Demolish asphalt paving
- 3) Build new covered and indoor truck parking structures
- 4) Build public ROW improvements (sidewalk, curbs and curb-cuts)
- 5) Re-pave and re-stripe lower site

- 6) Install cistern, bins and stairway to upper level
- 7) Improve parking lots on west side of S. Center Street.

The following is a detailed description of our proposed scope of services required to complete the master plan application:

#### **SCOPE OF SERVICES**

- Prepare schematic site plan, floor plans and building elevations for all new buildings on the upper and lower sites and the Armory remodel
- Prepare utility and grading plan for the upper site
- Prepare landscape plan for the upper site
- Prepare one 3-D rendering of the upper site and one 3-D rendering of the lower site

#### **Cost Analysis**

- Prepare cost estimate of option

#### Deliverables

- Narrative response describing changes to the previously approved General Development Master Plan
- Narrative describing the Phase I Detailed Development Plan
- Architectural site plan
- Site utility and grading plan for Phases I and II development
- Landscape plan for Phase I development
- Schematic floor plans of all buildings in Phase I, including the Armory
- Exterior elevations of all new Phase I buildings and the sides of the Armory that will be modified
- (1) - Cost estimate for Phases I and II
- (2) 3D Renderings
- Powerpoint presentation for public meetings

#### **Meeting Summary**

- (2) – Meetings with Division Heads
- (4) – Meetings with Steering Committee
- (1) – Meeting with the McLoughlin Neighborhood Association
- (1) - Meeting with Citizen Involvement Committee
- (1) –Meeting with Planning Dept. prior to Pre-App Meeting
- (1) - Pre-App Meeting
- (2) - Meetings with HRB
- (1) - Meeting with City Commission
- (1) - Meeting with Planning Commission to present proposed design

#### **Sub-Consultants**

- Civil Engineer(see HHPR's attached scope of services and exclusions)

- Cost Estimator (see ACC's attached scope of services and exclusions)
- Lango Hansen (see LH's attached scope of services and exclusions)
- Barney & Worth (see B&W's attached scope of services and exclusions)

#### **Not Included in Scope of Work**

- Construction Documents
- Geotechnical Investigation
- Environmental Report
- Surveying
- Permit fees and system development charges
- Meetings in excess of those described above
- Changes to documents after client has approved design

#### **Estimated Fee**

Based on the assumptions for the scope of work listed above, we agree to provide architectural and engineering services on an hourly not-to-exceed basis. Since some of the work overlaps with the previous contract in progress, "Master Plan Update 2015", the following fee represents the estimated balance to complete the scope of work listed above after the fee from the previous contract has been expended:

Architectural Services.....	\$43,854
Public Engagement Coordinator - Barney and Worth (fee +10%)....	\$17,798
Landscape (upper site) – Lango Hansen (fee +10%).....	\$12,540
Reimbursable Expenses.....	<u>\$2,800</u>

**Total Architectural and Engineering..... \$76,992**

#### **Optional Services**

Landscape (lower site) – Lango Hansen (fee +10%).....	\$4,950
Additional 3D Renderings.....	\$1,600/each
Additional Meetings.....	hourly

DECA Architecture, Inc. will invoice on an hourly basis on a monthly cycle. Any additional authorized work beyond the scope of basic architectural and engineering services listed above will be billed on an hourly basis at the following rates (consultant rates may differ):

Principal:	\$130/hour
Senior Technical Architect:	\$95-110/hour
Technical and Design Support Staff:	\$55-75/hour
Clerical Staff:	\$45/hour

Reimbursable expenses, such as mileage, reproduction costs, postage and delivery, materials and supplies, etc. are billed at cost plus 10%. Owner approved Consultant Services under contract with DECA will be billed at invoice cost of services and expenses plus 10%.

#### **DURATION OF AGREEMENT**

The terms of this agreement will be valid for a period of 12 months from the date of signature.

#### **AGREEMENT**

If the scope of services, the proposed fee listed above and the attached Terms and Conditions meet with your approval, please sign and date below:

Signed: \_\_\_\_\_  
(Authorized Representative)

Date: \_\_\_\_\_

Sincerely,



David Hyman, AIA, LEED AP  
Principal

**BARNEY & WORTH, INC.****www.barneyandworth.com**1211 SW FIFTH AVE, STE 2330  
PORTLAND, OR 97204-3732  
503/222-0146 phone247 COMMERCIAL ST NE, STE 204  
SALEM, OR 97301-3411  
503/585-4043 phone320 SW UPPER TERRACE DR, STE 102  
BEND, OR 97702-1384  
541/389-7614 phone**Oregon City Public Works Master Plan**  
**Public Engagement Scope of Work (Rev. 9/15/16)****Introduction**

Oregon City is moving ahead with gaining land use approval for their updated Master Plan. The site plan for the future Public Works Facility has been updated with extensive public input. The changes to the site include more neighbor friendly buffers, smaller building footprints and other improvements. Staff is committed to continued public engagement through the land use process. The recommended scope of work presented below covers activities through land use applications submittal.

**Tasks****1. Public Engagement Plan**

Barney & Worth will draft a concise public engagement plan for the land use process. The plan would include public engagement tasks, tools, schedule and assignments.

**2. Facilitate Public Meetings**

The consultant will provide meeting facilitation services for two MNA meetings.

**3. Support Land Use Meetings**

The consultant will support team development of a PowerPoint and an information sheet and will attend two Steering Committee meetings.

**4. Land Use Applications**

Barney & Worth will write an executive summary for the land use applications that covers the need for the facility, the public engagement effort, key neighborhood friendly updates, and other application highlights. The consultant will also prepare a Public Engagement section for the application that documents public input in the site layout and design.

**Schedule**

September/October 2016 – February/March 2017

### Proposed Budget

Barney & Worth, Inc. proposes to complete the assignment for a not-to-exceed amount of \$16,815, including professional services and reimbursable expenses:

Tasks	Estimated Hours			Totals
	Libby Barg Principal	Kimi Sloop Associate	Julie Hunter Research Associate	
Hourly Rate	\$210	\$160	\$120	
<b>1. Public Engagement Plan</b>	2	2	2	<b>6</b>
<b>2. Facilitate Public Meetings</b>	16	12	4	<b>32</b>
<b>3. Support Land Use Meetings</b>	12	12	4	<b>28</b>
<b>4. Land Use Applications</b>	12	8	6	<b>26</b>
<b>Totals</b>	<b>42</b>	<b>34</b>	<b>16</b>	<b>92</b>
Labor Cost	\$16,180			
Expenses*	<u>635</u>			
<b>Total</b>	<b>\$16,815</b>			

\*Expenses include: Printing & photocopies, travel, telecommunications, postage & delivery, meeting expenses.



August 26, 2016

David Hyman, AIA, LEED AP, Principal  
deca ARCHITECTURE . INC  
935 SE Alder Street, Portland, Oregon 97214

Dear David:

Thank you for the opportunity to submit this proposal for the updated land-use review for the City of Oregon City's Public Works Yard. We understand that Lango Hansen will primarily provide landscape plans for this land-use effort. The Oregon City code requirements include: "A landscaping plan, drawn to scale, showing the location and types of existing trees (six inches or greater in caliper measured four feet above ground level) and vegetation proposed to be removed and to be retained on the site, the location and design of landscaped areas, the varieties, sizes and spacings of trees and plant materials to be planted on the site, other pertinent landscape features, and irrigation systems required to maintain plant materials."

Based on our experience, we will need to provide full planting plans that will include the size, spacing and species of all plant materials. The code also requires an irrigation system however we have just provided notes with previous land-use submittal that state an irrigation system will be provided. We anticipate attending the following meetings:

2 Steering Committee Meetings  
2 Neighborhood Meetings  
Coordination Meetings  
Land Use Meetings

Once the building layout and parking/loading areas are determined, we will provide a series of design overlays for potential landscape planting strategies. Based on feedback we receive, we will consolidate the ideas into a single plan and provide documentation. We assume that there may be some minor tree removal and potential mitigation will be included in our plans.

Products:  
Illustrative Site Plan  
Planting Plan

We have provided separate fees for the upper site and lower site.

Upper Site	\$11,400
Lower Site	\$4,500
<hr/>	
TOTAL	\$15,900

Thank you for the opportunity to submit this proposal. Please let me know if you have any questions or comments.

Sincerely,  
Lango Hansen Landscape Architects



Kurt Lango  
Principal



## 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.

(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.

10. Compliance With Applicable Law.

Consultant shall comply with all federal, state, and

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

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 attorney fees, in connection with any action, suit, or claim 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

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

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 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

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

person of recognized competence, and the three arbitrators shall, as promptly as possible, determine such matter, provided, however, that:

(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.