

**CITY OF OREGON CITY  
PERSONAL SERVICES AGREEMENT**

This PERSONAL SERVICES AGREEMENT (“Agreement”) is entered into between the CITY OF OREGON CITY a municipal corporation of the State of Oregon (“City”), and Friends of Willamette Falls Media Center, an Oregon non-profit entity (“Consultant”) for a Community Media Center for Production and Channel Management.

**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 July 1, 2019 until June 30, 2021, 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. City shall have the option to extend the term of this agreement up to an additional two (2) years on the same terms and rates as shown in Exhibit A for the additional period. The City may exercise this option by so notifying Consultant.

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 \$170,000.00.

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. 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.

6. 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 below. 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: City Recorder

To Consultant:

Friends of Willamette Falls Media Center  
1101 Jackson Street  
Oregon City, OR 97045  
Attention: Melody Ashford, Executive Director

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

7. 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 17<sup>th</sup> day of July, 2019.

CITY OF OREGON CITY

FRIENDS OF WILLAMETTE FALLS MEDIA CENTER

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

By: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: July 17, 2019

DATED: \_\_\_\_\_, 20\_\_\_\_.

By: Kattie Riggs  
Kattie Riggs  
Title: City Recorder

APPROVED AS TO LEGAL SUFFICIENCY:

By: [Signature]  
City Attorney

To the City:

City of Oregon City  
PO Box 3040  
625 Center Street  
Oregon City, OR 97045  
Attention: City Recorder

To Consultant:

Friends of Willamette Falls Media Center  
1101 Jackson Street  
Oregon City, OR 97045  
Attention: Melody Ashford, Executive Director

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on this 17<sup>th</sup> day of July, 2019.

CITY OF OREGON CITY

FRIENDS OF WILLAMETTE FALLS MEDIA CENTER

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

By: Melody Ashford  
Title: EX Director

DATED: July 17, 2019

DATED: 8/7, 2019

By: Kattie Riggs  
Kattie Riggs  
Title: City Recorder

APPROVED AS TO LEGAL SUFFICIENCY:

By: [Signature]  
City Attorney



## Proposal for City of Oregon City Public/Government Access Services FY 2019-2021

### **Description of Organization**

Friends of Willamette Falls Media Center Inc. /dba Willamette Falls Media Center (WFMC) located at 1101 Jackson Street, Oregon City, OR 97045 is a 501 (c) (3), EIN 80-0762454 governed by a Board of Directors. The WFMC governing board creates policy, provides a budget for facility operations, and is composed of a minimum of five and maximum of fifteen citizens from the community. Detailed information regarding the selection, role and scope of authority of the Board of Directors can be found in the By-Laws of the organization.

Willamette Falls Media Center currently manages five community Public, Education and Government (PEG) channels for Comcast, which include Milwaukie, Oregon City, Wilsonville and Unincorporated Clackamas County, as well as contributes content metro-wide on the Cable Access Network (CAN) channel. WFMC is also the head-end for CenturyLink. Additionally, staff produces media content, provides consultation and technical support, and is proficient in working with all experience levels in media production. WFMC provides full-scale video production services, studio facilities, video equipment checkout, video production education, digital media training, and access to the community cable channel's playback system. Any resident in a contracted service area is welcome to participate in the Core Media Production Classes at no out of pocket cost. WFMC is working with School Districts throughout Clackamas County, to develop and expand media education programs. WFMC provides the community with access to opportunities in communication media, which supports the sharing of ideas and facilitates solutions to strengthen and support the educational, cultural and civic fabric of Clackamas County.

### **System Concept and Solution**

#### **PUBLIC ACCESS**

1. WFMC will provide Oregon City residents with full access to the WFMC studio to produce and edit TV programs for showing on the public access channel. WFMC maintains videography equipment and scheduling of equipment rentals for use by residents.
2. Residents of the City of Oregon City will be allowed to cablecast programs on public access channels.



3. WFMC professional staff will assist with production, editing and broadcasting of reader board notices submitted by City residents and staff on the City's regular reader board computer and public and government access channels.
4. Residents will be provided with full access to education and training for media production classes.
5. WFMC will maintain accessibility of services to Oregon City residents by:
  - Scheduling, monitoring and maintaining editing, production facilities, and studios
  - Monitoring equipment and performing maintenance as needed
  - Managing and coordinating cablecast of programming on the Public Access channel, according to an established cablecast schedule.

#### **GOVERNMENT ACCESS**

6. WFMC can and will provide the City with a videographer to operate the City-owned on-site audio/video equipment located at City Hall, 625 Center Street for two (2) Commission meetings, two (2) Planning Commission meetings, and one (1) Commission Work Session each month, for a total of sixty (60) meetings annually. The City will be provided with a videographer, as needed on call, for any additional meetings, which will be contracted according to rate schedule A.
7. In the event a meeting is cancelled, the City must notify WFMC of the cancellation 24 hours prior to the start of the meeting. If a 24 hour notification is not, given the City will incur a charge of \$100.00.
8. WFMC will produce audio/video media copies of meetings as needed.
9. WFMC will create community video boards with the information and event announcements provided by the city.
10. WFMC will monitor audio and video output of each meeting cablecast on the government channel to ensure the highest quality within equipment capacity.
11. WFMC can and will coordinate, develop, maintain, and manage the programming and playback of an established schedule for all programs and meetings.
12. As a Non-profit entity, WFMC has the benefit of providing cost effective strategies for your City. WFMC staff will work with City staff and the City's cable provider to enhance audio and video quality of all cablecasts and will coordinate selection and purchase of appropriate equipment.
13. WFMC will monitor City-owned equipment and perform basic maintenance as needed. (ie. On-site trouble shooting and assessment. Minor adjustments and repair of cables, cords or connectors replacement.) Materials will be billed at cost. Other repairs will be charged at an additional rate plus vendor fee.

14. WFMC will provide media transport, as necessary.

1. WFMC can provide staff on call (by phone) to trouble shoot playback errors, within one hour of when they are identified.
2. Videographers will arrive on site no less than one (1) hour prior to the meeting start time.

### **Program Management Structure**

WFMC Executive Director will be the direct contact to the City of Oregon City. The Executive Director will assign appropriate WFMC staff for all projects. Assigned WFMC staff will provide lead on the project with ongoing communications with WFMC Executive Director. Any changes in scope of project will be agreed upon and approved between WFMC Executive Director and designated City of Oregon City Staff. WFMC's professional staff is cross trained with similar skills in all aspects of media production.

Staffing will be included in the contract base rates, unless otherwise stated.

#### **PUBLIC ACCESS OPERATIONS**

- Executive Director: Melody Ashford.
- Executive Assistant: Shelly Ostrowski
- Instruction/Studio Operation: Primary - Steve Tarantola; Support Staff - Steve Johnson, and Melody Ashford.
- IT/Playback Operations and Community Boards: Primary - Joshua Reynolds; Support Staff - Steve Tarantola, Steve Johnson, and Melody Ashford.
- Consultations, Facility Engineering, and Maintenance/Upgrades: Primary - Steve Johnson; Support Staff - Melody Ashford and Steve Tarantola.
- Content Delivery Specialists: Steve Tarantola.
- Production and Outreach Projects: Melody Ashford, Steve Johnson, and Steve Tarantola.
- Finance/Billing/Invoicing: Primary – Shelly Ostrowski; Support Staff - Melody Ashford, Friends of WFMC Board, and contracted CPA services.

#### **GOVERNMENT ACCESS OPERATIONS**

- Government Channel and Site Management: Melody Ashford, Executive Director.
- City Government Meetings: Professional videographer staff as assigned
- Consultations and Maintenance: Melody Ashford, Steve Johnson and contracted services as needed
- Playback Operations and Community Boards: Joshua Reynolds and Melody Ashford.
- Additional Government Videography, Productions Services and Training: Melody Ashford, Steve Tarantola, Steve Johnson, Josh Reynolds.

### **Prior Experience**

Willamette Falls Media Center staffing currently employs six part-time staff members, as follows:

- *Executive Director:* Melody Ashford, over 30 years in media production with 27 of those years in community media services and operating an independent production company.
- *Executive Assistant/Bookkeeper:* Shelly Ostrowski, 20 years' experience in business administration, accounting, and customer service.
- *Engineering:* Steve Johnson, degree in Television Technology, 39 years in technical A/V services and engineering. Worked for WFTV/WFMC for 27 yrs.
- *Studio & Playback Operations:* Joshua Reynolds, Associate Degree in Computer Applications; 6 years' in Radio broadcasting; 4 years' experience in Playback Operations and professional-level audio and video recording equipment; Skilled in computer hardware and professional-level media production software.
- *Location Videographer:* Carl Wikman, Multi-Media Producer, over 40 years of professional production experience. The last 16 yrs. working as primary videographer for WFMC assigned to City of Milwaukie and Wilsonville. Vast background in all phases of production, design, instruction, and familiar with Granicus.
- *Location Videographer:* Steve Tarantola, A graduate of Florida State University B.S. in Media Production. 26 years' professional field production experience. digital video post-production, editing and instructor in the field of digital media and television

### **WFMC Board of Directors**

James Kunze – President

Dave Hedges – Vice-Chair/Treasurer

Karen Sorbel – Board Member

Ken Pryor – Board Member

Richard Marlow – Board Member

Kerry Brown – Board Member

Jordan Morris – Board Member

Jessica Morris – Secretary

Sherry Morisch – Board Member

### **Authorized Negotiator**

Melody Ashford, WFMC Executive Director

1101 Jackson Street, Oregon City, OR 97045

Cell Phone: 503-422-7128

Email: Melody@wfmstudios.org



**Proposed Budget**

<b>Fiscal Year 2019/20</b>		
PROGRAM AREA-Schedule A	MONTHLY AMOUNT	BUDGET AMOUNT
Public Access Operation	\$2,946.22	\$35,354.64
Government Access Operation	\$2,946.22	\$35,354.64
	<b>\$5,892.44</b>	<b>\$70,709.28</b>

<b>Fiscal Year 2020/21</b>		
PROGRAM AREA-Schedule A	MONTHLY AMOUNT	BUDGET AMOUNT
Public Access Operation	\$3,093.53	\$37,122.36
Government Access Operation	\$3,093.53	\$37,122.36
	<b>\$6,187.06</b>	<b>\$74,244.72</b>

Proposal for City of Oregon City Public/Government Access Services submitted on the 31 day of May, 2019 by:

  
 \_\_\_\_\_  
 Melody Ashford,  
 Executive Director, Willamette Falls Media Center



**RATE SUMMARY SHEET FY 19/20 EST**

Public Channel and Operations Management	\$35,355
Government Channel and Operations Management	\$34,355
Population-Based Rate for Municipalities (\$5,500 PER 10,000)	
Oregon City based on 34,240 population (Certified Estimate US Census 2016)	\$18,832
Contract 5% increase is associated with facilities overall cost ranging from 3% for lease up to 10% for other increasing operations costs to support facility and employees. The 5% determination by WFMC board is determined to be equitable for all service contracts.	\$3,367

**Additional Government Meetings**

Additional Meeting - 12 meetings per year – Annual Rate (included up to 6-hour on site)	\$2,700
Half-Day Field Production Rate (productions requiring remote camera)	\$275
Full-Day Field Production Rate (productions requiring remote camera)	\$500

**RATE SUMMARY SHEET FY 20/21 EST**

Public Basic Channel Management (4) Meetings and Management	\$37,122
Government Basic Channel Management and complete facility	\$37,122
Population-Based Rate for Municipalities (\$5,500 PER 10,000)	
Oregon City based on 34,240 population (Certified Estimate US Census 2016)	\$18,832
Contract 5% increase is associated with facilities overall cost ranging from 3% for lease up to 10% for other increasing operations costs to support facility and employees. The 5% determination by WFMC board is determined to be equitable for all service contracts.	\$3,535

**Additional Government Meetings**

Additional Meeting - 12 meetings per year – Annual Rate (included up to 6-hour on site)	\$2,700
Half-Day Field Production Rate (productions requiring remote camera)	\$275
Full-Day Field Production Rate (productions requiring remote camera)	\$500

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

1. Contractor Identification. Contractor shall furnish to City its taxpayer identification number, as designated by the Internal Revenue Service, or Contractor'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 Contractor within thirty (30) days after receipt of Contractor'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 in this Agreement, nor shall City pay Contractor any fees or costs that City reasonably disputes.

3. Independent Contractor Status.

(a) Contractor 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) Contractor 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. Contractor 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. Contractor provides services for two or more persons within a 12 month period or routinely engages in advertising, solicitation or other marketing efforts. Contractor makes a significant investment in the business by purchasing tools or equipment, premises or licenses, certificates or specialized training and

Contractor has the authority to hire or fire persons to provide or assist in providing the services required under this Agreement.

(c) Contractor 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). Contractor shall furnish the tools or equipment necessary for the contracted labor or services. Contractor agrees and certifies that:

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

(e) Contractor agrees and certifies that it is licensed to do business in the State of Oregon and that, if Contractor 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 Contractor, delivered by certified mail, email, or in person.

(b) Upon receipt of notice of early termination, Contractor 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 the City provided in this Agreement and relating to defaults by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

5. No Third-Party Beneficiaries. City and

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

Contractor 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) Contractor shall:

(i) Make payment promptly, as due, to all persons supplying to Contractor 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 the 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 the Contractor under this Agreement and, unless Contractor is subject to back-up withholding, the City will not withhold from such compensation or payments any amount(s) to cover Contractor'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 the Contractor 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, the 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 to the Contractor by reason of this Agreement.

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

(d) Contractor and subcontractors, 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. SubContractors and Assignment.

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

8. Access to Records. City shall have access to all books, documents, papers and records of Contractor 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 Contractor 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 Contractor that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Contractor 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 Contractor 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. Contractor 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.



## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

Contractor 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, Contractor 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. Contractor 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. Contractor acknowledges responsibility for liability arising out of Contractor's negligent performance of this Agreement and shall hold City, its officers, agents, Contractors, 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 Contractor, or the agents, Contractors or employees of Contractor provided pursuant to this Agreement.

(b) Workers' Compensation Coverage. Contractor certifies that Contractor has qualified for workers' compensation as required by the State of Oregon. Contractor 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 Contractors of Contractor shall maintain such insurance.

(c) Comprehensive, General, and Automobile Insurance. Contractor shall maintain comprehensive general and automobile liability insurance for protection of Contractor 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, Contractor's operation, each in an amount not less than \$2,000,000 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 Contractor.

14. Legal Expenses. In the event legal action is brought by City or Contractor 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.

**STANDARD CONDITIONS TO OREGON CITY  
PERSONAL SERVICES AGREEMENT**

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. To the extent there is a conflict, the terms of the Personal Services Agreement will control over the terms of the standard conditions. To the extent there is a conflict between the terms of the standard conditions and any other document, including the scope of services, the terms of the standard conditions shall control those other terms.

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 Contractor 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. Contractor 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. Contractor 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 Contractor. Copies as requested shall

be provided free of cost to City.

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

24. Arbitration.

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

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

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

(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.

**STANDARD CONDITIONS TO OREGON CITY  
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(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.