

**OREGON CITY PUBLIC WORKS
PERSONAL SERVICES AGREEMENT**

Construction Site Inspection Services – Beavercreek Road Sewer Project (CI 16-013)

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

CITY OF OREGON CITY (“City”)

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

and

CMTS, Inc. (“Consultant”)

CMTS, Inc.
3220 SW 1st Avenue, Suite 150
Portland, Oregon 97239

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 **April 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. **Scope of Services.** Consultant’s services under this Agreement shall consist of site inspection, attending progress meetings, and other owner’s representative related duties services as detailed in the emailed offer of services, attached hereto as Exhibit A, and as performed by an employee of the Consultant whose resume is attached hereto as Exhibit B.

3. **Compensation.** City agrees to pay Consultant at an hourly rate of \$88.00/hour regular time and \$114.00/hour overtime for the services described above. Total compensation (\$88 x 400 hours), shall not exceed **thirty-five thousand two hundred and 00/100 dollars (\$35,200.00)**.

4. **Standard Conditions.** This Agreement shall include all of the standard conditions as detailed in Exhibit C, 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, the resume attached as Exhibit B and the Standard Conditions to Oregon City Personal Services Agreement attached as Exhibit C, 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.

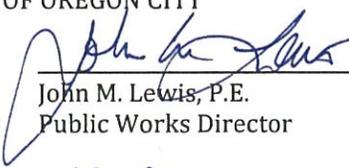
Consultant shall be responsible for providing the City with a current address. Either party may change the address set forth in this Agreement by providing notice to the other party in the manner set forth above.

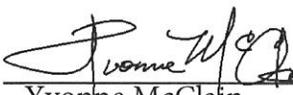
8. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on this 29 day of December, 2017.

CITY OF OREGON CITY

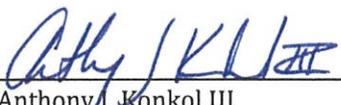
CMTS, Inc.

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

By: 
Yvonne McClain
Title: Chief Operating Officer

DATED: 12-20, 2017.

DATED: December 29, 2017.

By: 
Anthony J. Konkol III
Title: City Manager

DATED: 12-20, 2017.

From: [Kim Bria](#)
To: [John M. Lewis](#); [Jonathan Archibald](#)
Subject: Beaver Creek Inspection Services
Date: Wednesday, November 08, 2017 7:03:05 PM

Hello,

We can offer Cary Gaynor, PE to cover site inspection, progress meetings and other owner's representative related duties for \$88/hr regular time, overtime (1.3 x regular rate) at \$114.40. Should the need arise, we can offer Cary for engineering at \$125/hr.

The expectation, based on current known conditions, is that the first two weeks will be full time at night (total 80 hours). Then moved to 4-6 hour shifts, 2-3 times/week, based on assessment. Overtime and engineering is not anticipated and will only done with prior approval.

Keeping the task order of less than \$50,000, that allows up to 568 regular hours (14 weeks FT). We should be well under that from start to finish even with project variables.

Let me know how this works for your project.

Kim Bria

Operations Manager/NW Region

9320 SW Barbur Blvd, Suite 155

Portland, OR 97219

Office: 503-242-1388

Fax: 503-242-0094



www.cmtsinc.com



CARY GAYNOR, P.E.

Resident Engineer/Inspection Manager

EDUCATION

- B.S., Engineering, University of Nevada, Las Vegas, 1974
- Army Corps of Engineers 400+ Hours of Course Work in: Contract Administration, Project Mgmt, Scheduling, Construction Mgmt, Hazardous Materials, Energy Mgmt & Control, Emergency Mgmt, and several Building Systems courses.
- 40-Hr EPA Hazardous Materials Incident Response
- 2000+ hours various continuing education to maintain professional registrations
- State of CA Safety Assessment Program Evaluator #77014

PROFESSIONAL REGISTRATION

- P.E., Civil and Environmental Engineering, Oregon No. 15157
- P.E., Civil Engineering, California No. C 046619

PROFESSIONAL ORGANIZATION

- American Society of Civil Engineers (2003-pres)

EMPLOYMENT HISTORY

- CMTS— Resident Engineer (2010 – present)
- City of Salem- Senior Project Manager (1991-2009)
- US Army Corps of Engineers, Resident Engineer and Project Manager (1979 – 1991)
- EG&G, Field Engineer (1974-1979)

GENERAL

Mr. Gaynor has more than thirty five years of increasingly responsible experience in design, construction management, design management, overall project management, and inspection supervision. He has experience in both Federal and Municipal employment, was a Federal Contracting Officer, and as a Resident Engineer working in the contractor environment. His experience includes Federal classified work including design and construction projects for Edwards and Nellis Air Force Bases, NASA, working with union and non-union contractors, a variety of municipal water and wastewater design and construction projects, and several building projects.

PROFESSIONAL EXPERIENCE

Relevant Project History

CMTS

Construction QC for City of Eugene EmX Project (bus rapid transit). Performed direct quality control and coordinated testing for this project set up as permit-constructed public works as opposed to CIP. Daily observation, photo and written progress and quality documentation, verify grades and dimensions for 12-ft concrete bus lane, sidewalk and ADA access, traffic signal installation and compliance.

EIC and Construction Observation for Trimet Light Rail, Portland Oregon. Primarily Track access and safety coordination of construction contractors on behalf of Tri County Metropolitan Transit (Trimet). Included general construction observation and light and heavy rail track access training.

Construction Manager, CMTS for ACI, Medford Airport. Retail space remodel on secure and non-secure sides of terminal area. TSA access card.

CMTS for City of Portland Bureau of Environmental Services

Construction Manager, Columbia Building, 2012-14. \$6,900,000, LEED Gold, earth sheltered office building for Columbia Bl. WWTP.

Construction Manager, NW 18th and Elizabeth Sewer Rehab, 2011-12, \$1,900,000. 750 LF of 12" vitrified clay pipe by Pilot Tube Microtunnel methods, 1800 LF of 15" PVC by Vermeer Axis Microtunnel boring methods, and 450 LF of 24" Class V concrete pipe by open cut. Included installation of laterals and street reconstruction.

Construction Manager, SW 86th Sewer Pump Station, 2010-12. \$16,000,000. QA/QC for constructability and design issues. 25 MGD Cap. with four sets of two stage pumps in a 50 foot diameter caisson 85 feet deep.

Construction Manager, Various other sewer pump stations, sewer main upgrade and replacement projects, DI force mains, street restoration.



City of Salem

Inspector Supervisor, Various CIP and Permit projects, 1991-99, direct supervision of seven City inspectors on all aspects of public works construction, including direct inspection and/or intervention on specific projects.

Project Manager, Downtown Interceptor, 2002-04. CM/GC project resulting in completion two months ahead of schedule and \$2,000,000 under the \$6,500,000 budget. Produced the RFP for design and construction of a 6000-foot, 48-inch diameter concrete interceptor sewer in the downtown core and business area and preliminary design for Phase Two, 14,000 LF, 72-inch diameter CMP extension.

Project Manager and Contract Administrator, Boone Road Water Reservoir, 2001-02, \$5,000,000. 5,500,000 gallon circular DYK style post tensioned partially buried reservoir including a 900-foot Balanced Earth Pressure 72 inch micro tunnel for the 24-inch riser main.

Project Manager and Contract Administrator, Airport Sewer Pump Station Replacement, 1999-2000, \$6,000,000. Wet well/dry well style, 25 MGD, with four 200 HP dry pit submersible pumps, discharge manifold supplies 36-inch and 24-inch force mains with a 10,000 gallon surge tank.

Project Manager and Contract Administrator, Battle Creek Sewer Pump Station Replacement, 1999-2000, \$3,500,000. 12 MGD wet well/dry well style station, four 90 HP 2-speed dry pit submersible pumps, 14,000 LF 20" DI force main and 7000 GAL surge tank.

Project Manager and Contract Administrator, Mission Street Sewer Pump Station Replacement, 1999-2000, \$3,500,000, 9 MGD self-cleaning wet well style pump station with three 120 HP submersible sewer pumps.

Senior Project Manager, Design of Boone Road Water Pump Station Upgrade and Replacement, 2007-09, \$16,000,000. Designed as a dual pressure zone pump station, consisting of five 400 HP turbine pumps with total capacity of 12,000 GPM on the higher zone, and three 150 HP turbine pumps, capacity of 2400 GPM, on the lower pressure zone, and new discharge and intake manifolds.

Army Corps of Engineers

Twelve years as Design Project Manager, Resident Engineer/Contracting Officer, and Construction Engineer. Work under Los Angeles and Sacramento Districts with assignments at both Nellis AFB and Edwards AFB for various airfield improvements, support buildings, hanger upgrades with AFFF fire protection, and high tech facilities including R&D laboratories, Data Acquisition Facility for NASA at Edwards AFB, and an En Route Air Traffic Control Center (EARTS) at Nellis AFB for the Red Flag aerial combat training mission.

EG&G

Four years in Construction and Facilities Engineering including work with the early Hughes Tool Company TBM prototype (9 foot class), conventional mining with steel sets/lagging and rock bolt/mesh reinforcement, roadway construction, utility installation including heavy ventilation and medium voltage distribution, and airfield facilities and maintenance.

**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
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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

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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.