

OREGON CITY PUBLIC WORKS PERSONAL SERVICES AGREEMENT

NPDES MS4 PERMIT SUPPORT (PS 16-012)

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

BROWN & CALDWELL, INC. ("Consultant")

Brown & Caldwell, Inc.
6500 SW Macadam Ave, Suite 200
Portland, OR 97239
Attention: Alissa Maxwell

RECITALS

A. City requires services that Consultant is capable of providing under the terms and conditions hereinafter described.

B. Consultant is able and prepared to provide such services as City requires under the terms and conditions hereinafter described.

The parties agree as follows:

AGREEMENT

1. Term. The term of this Agreement shall be from the date the contract is fully executed until **July 31, 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 Fifty-two thousand four hundred eighty-eight and 00/100 dollars **(\$52,488.00)**.

3. Scope of Services. Consultant's services under this Agreement shall consist of services as detailed in Exhibit A, attached hereto and by this reference incorporated herein.

4. Standard Conditions. This Agreement shall include all of the standard conditions as detailed in Exhibit B, attached hereto and by this reference incorporated herein.

5. Schedule. The components of the project described in the Scope of Services shall be completed according Term, above.

6. Integration. This Agreement, along with the description of services to be performed attached as Exhibit A and the Standard Conditions to Oregon City Personal Services Agreement attached as Exhibit B, contain the entire agreement between and among the parties, integrate all the terms and conditions mentioned

herein or incidental hereto, and supersede all prior written or oral discussions or agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

7. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, by hand delivery or by electronic means. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

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

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

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on this _____ day of _____, 2016.

CITY OF OREGON CITY

By: _____

John M. Lewis
Title: Public Works Director

DATED: _____, 2016.

BROWN & CALDWELL, INC.

By:  _____

Title: VICE PRESIDENT

DATED: 6/21, 2016.

By: _____

Anthony J. Konkol III
Title: City Manager

DATED: _____, 2016.

ORIGINAL CITY COMMISSION APPROVAL (IF APPLICABLE):

DATE: _____

APPROVED AS TO LEGAL SUFFICIENCY:

By: _____

City Attorney

PDX_DOCS:309433.2 [34758-00100]
2/19/2016 3:02 PM

Exhibit A

Scope of Services

2016-2017 NPDES MS4 Permit Renewal (PS 16-012)

The City of Oregon City (City) is contracting with Brown and Caldwell (BC) to complete tasks associated with implementation of the City's Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) permit. This Scope of Work reflects work to be completed in the 2016-2017 fiscal year, associated with NPDES MS4 permit compliance and completion of the City's NPDES MS4 permit renewal application. This scope also assumes completion of Phase 3 (Monitoring Plan Update and Monitoring Objectives Matrix) by November 1, 2016 and completion of Phase 7 (Permit Renewal Application) by March 1, 2017 in conjunction with expiration of the City's NPDES MS4 permit and submittal of the permit renewal application.

Phase 1 Total Annual Pollutant Loads and Description of Service Area Expansion

- Objective** To prepare updated estimates of total annual pollutant loads consistent with the requirements of the NPDES MS4 permit.
- Activities** Using the spreadsheet loads model prepared under the previous contract, BC will calculate an estimated annual pollutant load for each required pollutant (i.e., applicable TMDL pollutants, biochemical oxygen demand (BOD5), chemical oxygen demand (COD), nitrate, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc) over the applicable MS4 area. Pollutant load estimates will reflect current land use coverage without implementation of Best Management Practices (BMPs).
- Based on data provided by the City, service area expansions will be incorporated into the model to calculate the total annual loads. The service area expansions will be described in narrative for inclusion in a Technical Memorandum (TM).
- Annual pollutant load calculations will be summarized in a TM for submission with the NPDES MS4 permit renewal application. The TM will reference load estimates submitted with the permit renewal application in 2008 and the original permit application in 1995, as necessary.
- Deliverables** Deliverables for Phase 1 include the following:
- Populated spreadsheet pollutant loads model (provided to the City electronically).
 - Draft and final TM summarizing total annual pollutant load estimates, to be submitted with the City's NPDES MS4 permit renewal application.
- Assumptions** Assumptions for Phase 1 include the following:
- Meetings with City staff to discuss service area expansions will be completed under separate contract, prior to July 1, 2016.

- City GIS staff will take the lead in developing GIS shapefiles to represent service area expansions and zoning. By September 1, 2016, the City will provide an aerial breakdown by land use/zoning for the current permit area and anticipated future permit area reflecting service area expansions through 2022.
- Land use EMCs will be consistent with assumptions in the City's 2015 Pollutant Load Reduction Evaluation (PLRE). Pollutant load estimates will be provided as a range of loading.
- One compiled set of City comments will be provided to BC on the draft TM submittal.

Phase 2 TMDL Benchmarks

Objective To develop TMDL benchmarks for the next permit term, using the results of the PLRE as a starting point.

Activities Using the results from the previously submitted PLRE, BC will meet with the City to identify structural BMPs planned for construction over the next permit term (estimated to be 2017 to 2022). Identified structural BMPs should include public stormwater treatment facilities and reflect decisions and outcomes from City's Retrofit Assessment, submitted to DEQ in 2015. During the meeting, BC will present options for graphical documentation of the TMDL benchmarks.

The drainage area for BMPs identified for construction over the next permit term will be added to the spreadsheet loads model developed as part of the PLRE. Revised pollutant load reductions, reflective of the end of the next permit term, will be developed. Graphics reflecting the proposed pollutant load reduction benchmark in each TMDL watershed will be developed.

BC will document results of the TMDL benchmark development as a new section of the PLRE report, previously submitted to DEQ in 2015. The new PLRE and TMDL benchmark report will be resubmitted to DEQ as an appendix to the NPDES MS4 permit renewal application. BC will also document results of the TMDL benchmark development in a summary document that will be inserted directly into the NPDES MS4 permit renewal application.

Deliverables Deliverables for Phase 2 include the following:

- Updated, populated TMDL pollutant loads model (provided to the City electronically).
- Draft and final updated PLRE Report, reflecting the inclusion of TMDL benchmarks.
- Public review draft and final TMDL benchmark summary document.

Assumptions Assumptions for Phase 2 include the following:

- Meetings with City staff to discuss future structural BMPs will be completed under separate contact, prior to July 1, 2016.
- The City will be responsible for delineating drainage areas associated with future structural BMPs and completing aerial calculations for use in the spreadsheet loadings model.
- Land use EMCs and BMP effluent concentrations will be consistent with assumptions in the PLRE.
- City staff will be responsible for obtaining any required public review and comments.
- One compiled set of City comments will be provided to BC on the updated PLRE Report.

- The City will compile any public comments on the draft TMDL benchmark summary document and provide the compiled comments to BC. Public comments will be received by January 1, 2017 in order to address comments prior to finalization of the summary document for submittal with the City's NPDES MS4 permit renewal application.

Phase 3 Monitoring Plan Update and Monitoring Objectives Matrix

Objective	To provide assistance to participants of the Coordinated Clackamas County Stormwater Monitoring Plan (CCCSMP) in preparing an updated CCCSMP and monitoring objectives matrix.
Activities	<p>The permit renewal application requires permittees to submit a proposed stormwater monitoring plan and proposed monitoring objectives matrix. The BC team will coordinate with participants of the CCCSMP (including the City) to identify proposed adjustments to monitoring activities, methods, and locations in conjunction with long-term monitoring goals. Potential adjustments may include the following:</p> <ul style="list-style-type: none">• Removal of mercury monitoring and pesticide monitoring activities from the CCCSMP.• Addition of BMP effectiveness, physical condition monitoring, or other coordinated monitoring activity.• Adjustments to monitoring locations and associated updates to the mapping.• Addition of supporting documentation to justify monitoring program adjustments. <p>The updated CCCSMP will be developed for submittal to DEQ in conjunction with the annual compliance report by November 1, 2016.</p> <p>BC will prepare a letter template for the City to complete and submit to DEQ to initiate the 30-day review period.</p> <p>Based on the adjustments incorporated into the CCCSMP, the BC team will develop an updated monitoring objective matrix for inclusion in the NPDES MS4 permit renewal application.</p>
Deliverables	<p>Deliverables for Phase 3 include the following:</p> <ul style="list-style-type: none">• Draft and final monitoring objectives matrix.• Client draft, DEQ draft, and final updated CCCSMP as a print ready .pdf.• Letter template to DEQ to initiate the 30 day review period.
Assumptions	<p>Assumptions for Phase 3 include the following:</p> <ul style="list-style-type: none">• This phase has been budgeted as a time and materials effort not to exceed \$5,000.• It is anticipated that activities to update the CCCSMP will be cost shared by participating jurisdictions.• Meeting coordination and attendance related to development of the updated CCCSMP is budgeted under Phase 9.• The DEQ-draft CCCSMP will be submitted to DEQ by November 1, 2016. Following the 30-day review period, the CCCSMP will be finalized reflecting changes requested by DEQ. The final CCCSMP will be completed March 1, 2017 for submittal with the City's NPDES MS4 permit renewal application.

Phase 4 Stormwater Management Plan (SWMP) Assistance

- Objective** Provide support to the City to identify proposed program modifications based on current SWMP implementation.
- Activities** The permit renewal application requires permittees to submit proposed program modifications including the modification, addition, or removal of best management practices (BMPs) incorporated into the SWMP and associated measurable goals.
- BC will facilitate one meeting with stormwater program staff to outline programmatic issues, concerns, and opportunities for efficiencies in conjunction with current (2012) SWMP implementation and the City's current adaptive management process. The meeting will be used to discuss proposed BMP adjustments and refine measurable goals and tracking measure language. BMP descriptions will be updated to reflect current implementation methods and City organization.
- Following the meeting, BC will document the proposed changes in a "track changes" version of the SWMP for internal planning purposes. BC will also prepare a written summary of proposed SWMP changes and modifications for inclusion in the NPDES MS4 permit renewal.
- Deliverables** Deliverables for Phase 4 include the following:
- One meeting with City staff to discuss anticipated SWMP modifications. Brief summary meeting notes (in email format) will be provided from the meeting.
 - A redline/strikeout version of the City's SWMP to internally track proposed changes and modifications.
 - Draft and final written summary outlining proposed program modifications, for inclusion with the City's NPDES MS4 permit renewal application.
- Assumptions** Assumptions for Phase 4 include the following:
- The City will provide BC with the current SWMP in MS Word format.
 - The SWMP modifications meeting is assumed to be 3 hours in length (not including travel). Four hours (total) of meeting preparation and documentation (meeting minutes) has been incorporated into the budget for the meeting. Two BC staff members will attend the meeting.
 - The City will provide one consolidated set of comments on the track changes version of the SWMP and SWMP modifications written summary.
 - A final updated SWMP will not be submitted with the permit renewal application.
 - The SWMP modifications summary will require a public review and comment period. Solicitation of public review and comments will be coordinated by the City in conjunction with the permit renewal application deadline of March 1, 2017.

Phase 5 Maximum Extent Practicable (MEP) Documentation

- Objective** To assist the City in the development of an MEP statement to document how the City is implementing its SWMP to reduce pollutants to the MEP.
- Activities** The permit renewal application requires permittees to submit the information and analysis necessary to support the Oregon Department of Environmental Quality (DEQ)'s independent assessment that the permittee's 2012 SWMP addressed the requirements of the existing permit. Permittees must also describe how the proposed management practices, control techniques, and other provisions implemented as part of the stormwater program were

evaluated using a permittee-defined and standardized set of objective criteria. MEP statements were previously prepared as part of the previous permit renewal application in September 2008.

BC will review the previously submitted MEP statement and adaptive management process for the City. BC will also review any updates/adaptive management changes to the City's program since the previous statements were prepared, including proposed SWMP changes outlined under Phase 4 of this scope.

BC will prepare a MEP Evaluation Statement template for review with the City. After providing the draft template, BC will meet with City stormwater program staff to discuss current program and any proposed changes to the SWMP that may affect the MEP evaluation. During the meeting, BC will also summarize results of the ACWA Phase I Stormwater Committee meetings and help the City with selection of representative objective criteria for each of the three MEP evaluation factors that have already been developed in a coordinated effort as part of the ACWA Phase I meetings.

Based on the results of the meeting, BC will prepare a draft and final MEP Evaluation Statement for inclusion in the NPDES MS4 permit renewal application.

Deliverables Deliverables for Phase 5 include the following:

- One meeting with City stormwater program staff with brief summary meeting notes (in email format).
- MEP statement template.
- A draft and final MEP statement for inclusion in the City's NPDES MS4 permit renewal application.

Assumptions Assumptions for Phase 5 include the following:

- The meeting referenced under this task is assumed to be 2 hours in length. One BC staff member will attend the meeting.
- Example objective criteria for the three MEP evaluation factors have been developed in a coordinated effort as part of the ACWA Phase I meetings. The MEP statement will be prepared utilizing these objective criteria.
- Summaries of SWMP changes and/or adaptive management changes that have been made since the previous MEP statement was developed will be provided to BC and based on annual report documentation. Proposed SWMP changes will be identified under Phase 4.

Phase 6 MS4 Map Update

Objective To assist the City in preparing updated MS4 maps in conjunction with requirements outlined in Schedule B.6.g of the City's NPDES MS4 permit and under 40 CFR 122.26(d)(1)(iii)(B).

Activities BC will prepare a mapping outline based on the requirements outlined in Schedule B.6.g of the City's NPDES MS4 permit and under 40 CFR 122.26(d)(1)(iii)(B). BC will meet with City staff to discuss the development of updated MS4 maps that include the following information:

- Service boundary of the MS4 (current NPDES MS4 permit coverage area).
- Land use/ zoning coverage including runoff coefficients.
- Projected future growth areas.

- Location of permittee-owned (water quality) facilities.
- Stormwater outfalls.
- Locations of permittee-owned operations areas or properties with storm sewer systems.
- Locations of facilities issued industrial NPDES permits that discharge to the City's MS4.
- Current operating and closed municipal landfills.
- Locations of land use changes and population density changes.

During the meeting, BC will provide guidance to City staff in establishing criteria or metrics to aid in presentation of results.

BC will review and provide comment on draft MS4 maps, prepared by the City.

Deliverables Deliverables for Phase 6 include the following:

- One meeting with City stormwater program staff.
- Mapping outline.
- Redline comments on draft MS4 maps.

Assumptions Assumptions for Phase 6 include the following:

- The meeting referenced under this task is assumed to be 2 hours in length. One BC staff member will attend the meeting.
- BC staff time is limited to providing guidance and review comments on data and mapping prepared by City staff.

Phase 7 NPDES MS4 Permit Renewal Compilation

Objective Provide technical assistance to the City in conjunction with the preparation of the NPDES permit renewal application by March 1, 2017.

Activities BC staff will provide technical support in order to compile the NPDES MS4 permit renewal application for submittal to DEQ by March 1, 2017. Efforts shall include the following:

- Preparation of an annotated outline reflecting organization for the final NPDES MS4 permit renewal application.
- Review and comment on the fiscal evaluation documentation (provided by the City and due as part of the NPDES MS4 permit renewal application).
- Review and comment on the cover letter (provided by the City).
- Development of a summary paragraph introducing the various sections of the NPDES MS4 permit renewal application.
- Technical editing and word processing of the compiled documentation (technical content will be reviewed and formatted in conjunction with each deliverable in this scope).
- NPDES MS4 permit renewal submittal compilation and production.

Deliverables Deliverables for Phase 7 include the following:

- Draft compiled NPDES MS4 permit renewal application for City review.
- Final compiled NPDES MS4 permit renewal application in printable .pdf format by February 24, 2017.

Assumptions Assumptions for Phase 7 include the following:

- Technical content for the NPDES MS4 permit renewal application will be generated by the City or by BC during Phases 1 through 6. No additional technical content will be developed by BC as part of this phase.
- The City will submit the NPDES MS4 permit renewal application to DEQ by March 1, 2017.
- The City will prepare the fiscal evaluation for inclusion in the NPDES MS4 permit renewal application.
- The City will prepare the cover letter to DEQ for the NPDES MS4 permit renewal application.
- The City will provide a graphical cover. A generic cover template will be included if graphics are not provided.
- The draft, compiled permit renewal application will be provided to the City for final review one month prior to submittal to DEQ.

Phase 8 On-call Design Standards and BMP Sizing Tool Support

Objective To provide support to City staff in implementation of the City's updated stormwater design standards and BMP sizing tool.

Activities The BC team will provide assistance on an on-call basis to support implementation of the City's updated stormwater design standards and BMP sizing tool. Potential activities include the following:

- Assist the City with preparing a one year look back of the Stormwater and Grading Design Manual.
- Finalization of the BMP Sizing Tool User Guide (effort currently cost shared with Wilsonville and Clackamas WES).
- Preparation of technical appendices and case studies for the BMP Sizing Tool User Guide (effort may be cost shared with Wilsonville and Clackamas WES).
- Assisting the City in responding to questions from developers.
- Making minor modifications to the BMP sizing tool.

Deliverables Deliverables for Phase 8 include the following:

- Draft and final BMP Sizing Tool User Guide.
- Other deliverables vary based on requested activity.

Assumptions Assumptions for Phase 8 include the following:

- BC's effort will be billed on a time and materials basis, not to exceed \$10,000 for this task.
- A preliminary level of effort (cost and timeframe) will be provided by BC to the City via email prior to initiating work when an activity is requested under this task.
- Some activities requested under this task may be cost shared with other jurisdictions.

Phase 9 Meeting Attendance and Facilitation

- Objective** To help facilitate and attend up to three Clackamas co-permittee coordination meetings on behalf of the City.
- Activities** BC will facilitate and attend up to three Clackamas co-permittee meetings to ensure consistency, efficiency, and coordination on specific permit renewal requirements. Potential topics for discussion include:
- Land use compatibility statements (LUCS) requirements.
 - MEP proposed approaches.
 - Proposed Monitoring Plan changes and updates.
- Deliverables** Deliverables for Phase 9 include the following:
- Attendance and facilitation of up to three Clackamas co-permittee coordination meetings by two BC staff.
 - Meeting agendas prior to the meetings.
 - Meeting presentation materials.
 - Meeting minutes.
- Assumptions** Assumptions for Phase 9 include the following:
- BC will coordinate scheduling of the meetings among interested Clackamas co-permittee. Meeting venues will be provided by Clackamas co-permittees.
 - Four hours per meeting for each BC staff has been budgeted to account for meeting scheduling, attendance, and preparation.
 - This task will be cost-shared among other Clackamas co-permittees as contracts allow.

Phase 10 Project Management

- Objective** Oversee project schedule, scope, and budget and maintain communications with the City.
- Activities** Activities budgeted under Phase 6 include:
- Overall budget and schedule management (i.e., 50 percent project review).
 - Monthly invoicing with detailed progress reports.
- Deliverables** Deliverables for Phase 10 include the following:
- Monthly Project Reports with invoices.
- Assumptions** Assumptions for Phase 10 include the following:
- Project will be completed by June 30, 2017 (including public review and comment). The estimated project duration is 12 months.
 - Invoicing will be monthly with status reports.

Compensation

Oregon City NPDES MSA (PS 16-012)
May 25, 2016

Oregon City, City of (OR) -- Oregon City MSA NPDES 2016-17													
		Reininga, Krista	Gage, Eva D	Maxwell, Alissa M	Sandera, Kyle A	Draheim, Daniel P	Pare, Wendy M	Vasquez, Jesus E					
Phase	Description	Project Management	Project Admin	Project Engineer	Project Oversight	Tech Editor	Word Processing	Accountant	Total Labor Hours	Total Labor Cost	Expenses	Total Cost	
001	Annual Loads and Service Area Expansions	\$203	\$88	\$148	\$160	\$105	\$109	\$88					
001	Modeling	4	0	20	0	2	4	0	30	4,418	0	4,418	
002	Documentation	2	0	8	0	0	0	0	10	1,590	0	1,590	
				12	0	2	4	0	20	2,828	0	2,828	
002	TMDL Benchmarks												
000	Modeling	4	0	38	0	4	4	0	50	7,292	0	7,292	
000	Documentation	0	0	12	0	0	0	0	12	1,776	0	1,776	
		4	0	26	0	4	4	0	38	5,516	0	5,516	
003	Monitoring Plan												
										5,000		5,000	
004	SWMP	6	0	20	0	2	4	0	32	4,824	25	4,849	
005	MEP Statement	2	0	22	0	2	2	0	28	4,090	25	4,115	
001	Assessment	0	0	10	0	0	0	0	10	1,480	25	1,505	
002	Documentation	2	0	12	0	2	2	0	18	2,610	0	2,610	
006	MS4 Mapping	0	0	12	0	0	0	0	12	1,776	25	1,801	
007	Permit Renewal Completion	4	0	26	0	0	10	0	40	5,750	25	5,775	
008	Design Standards/Sizing Tool												
										10,000		10,000	
009	Meeting Attendance	12	0	12	0	0	0	0	24	4,212	50	4,262	
010	Project Management	0	14	16	2	0	0	12	44	4,976	0	4,976	
GRAND TOTAL		106	14	166	2	10	24	12	334	52,338	150	52,488	

Hourly rates will be revised on a calendar basis each January.

EXHIBIT A

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

1. Consultant Identification. Consultant shall furnish to City its taxpayer identification number, as designated by the Internal Revenue Service, or Consultant's social security number, as City deems applicable.

2. Payment.

(a) Invoices submitted in connection with this Agreement shall be properly documented and shall identify the pertinent agreement and/or purchase order numbers.

(b) City agrees to pay Consultant within thirty (30) days after receipt of Consultant's itemized statement. Amounts disputed by City may be withheld pending settlement.

(c) City certifies that sufficient funds are available and authorized for expenditure to finance the cost of the services to be provided pursuant to this Agreement.

(d) City shall not pay any amount in excess of the compensation amounts set forth above, nor shall City pay Consultant any fees or costs that City reasonably disputes.

3. Independent Contractor Status.

(a) Consultant is an independent contractor and is free from direction and control over the means and manner of providing labor or services, subject only to the specifications of the desired results.

(b) Consultant represents that it is customarily engaged in an independently established business and is licensed under ORS chapter 671 or 701, if the services provided require such a license. Consultant maintains a business location that is separate from the offices of the City and bears the risk of loss related to the business as demonstrated by the fixed price nature of the contract, requirement to fix defective work, warranties provided and indemnification and insurance provisions of this Agreement. Consultant provides services for two or more persons within a 12 month period or routinely engages in advertising, solicitation or other marketing efforts. Consultant makes a significant investment in the business by purchasing tools or equipment, premises or licenses, certificates or specialized training and

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

(c) Consultant is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law (including applicable City or Metro business licenses as per Oregon City Municipal Code Chapter 5.04). Consultant shall furnish the tools or equipment necessary for the contracted labor or services. Consultant agrees and certifies that:

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

(e) Consultant agrees and certifies that it is licensed to do business in the state of Oregon and that, if Consultant is a corporation, it is in good standing within the state of Oregon.

4. Early Termination.

(a) This Agreement may be terminated without cause prior to the expiration of the agreed-upon term by mutual written consent of the parties or by the City upon ten (10) days written notice to the Consultant, delivered by certified mail or in person.

(b) Upon receipt of notice of early termination, Consultant shall immediately cease work and submit a final statement of services for all services performed and expenses incurred since the date of the last statement of services.

(c) Any early termination of this Agreement shall be without prejudice to any obligation or liabilities of either party already accrued prior to such termination.

(d) The rights and remedies of City provided in this Agreement and relating to defaults by Consultant shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

5. No Third-Party Beneficiaries. City and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

6. Payment of Laborers; Payment of Taxes.

(a) Consultant shall:

(i) Make payment promptly, as due, to all persons supplying to Consultant labor and materials for the prosecution of the services to be provided pursuant to this Agreement.

(ii) Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of this Agreement.

(iii) Not permit any lien or claim to be filed or prosecuted against City on account of any labor or materials furnished.

(iv) Be responsible for all federal, state, and local taxes applicable to any compensation or payments paid to Consultant under this Agreement and, unless Consultant is subject to back-up withholding, City will not withhold from such compensation or payments any amount(s) to cover Consultant's federal or state tax obligation.

(v) Pay all employees at least time and one-half for all overtime worked in excess of forty (40) hours in any one week, except for individuals excluded under ORS 653.100 to 653.261 or under 29 U.S.C. §§ 201 to 209 from receiving overtime.

(b) If Consultant fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with this Agreement as such claim becomes due, City may pay such claim to the person furnishing the labor or services and shall charge the amount of the payment against funds due or to become due Consultant by reason of this Agreement.

(c) The payment of a claim in this manner

shall not relieve Consultant or Consultant's surety from obligation with respect to any unpaid claims.

(d) Consultant and subconsultants, if any, are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires provision of workers' compensation coverage for all workers.

7. Subconsultants and Assignment.

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

8. Access to Records. City shall have access to all books, documents, papers and records of Consultant that are pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcripts.

9. Ownership of Work Product; License. All work products of Consultant that result from this Agreement (the "Work Products") are the exclusive property of City upon full payment to the Consultant. 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. City's reuse of Consultant's Work Products for any other purpose shall be at City's sole risk. 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.

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

10. Compliance With Applicable Law.

Consultant shall comply with all federal, state, and local laws and ordinances applicable to the services to be performed pursuant to this Agreement, including, without limitation, the provisions of ORS 279B.220, 279C.515, 279B.235, 279B.230 and 279B.270. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans With Disabilities Act of 1990 (Pub. L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation and other applicable statutes, rules and regulations.

11. Professional Standards. Consultant shall be responsible, to the level of competency presently maintained by others practicing in the same type of services in City's community, for the professional and technical soundness, accuracy and adequacy of all services and materials furnished under this authorization.

12. Modification, Supplements or Amendments. No modification, change, supplement or amendment of the provisions of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

13. Indemnity and Insurance.

(a) Indemnity. Consultant acknowledges responsibility for liability arising out of Consultant's negligent performance of this Agreement and shall hold City, its officers, agents, ~~Consultants~~, and employees harmless from, and indemnify them for, any and all liability, settlements, loss, costs, and expenses, including reasonable attorney fees, in connection with any action, suit, or claim ~~caused or alleged and to be the extent~~ 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 Commercial, 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 to the extent 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

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

Consultants and agents.

14. **Legal Expenses.** In the event legal action is brought by City or Consultant against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorney fees, costs, and expenses as may be set by a court. "Legal action" shall include matters subject to arbitration and appeals.

15. **Severability.** The parties agree that, if any term or provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected.

16. **Number and Gender.** In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall be deemed to include the others or other whenever the context so requires.

17. **Captions and Headings.** The captions and headings of this Agreement are for convenience only and shall not be construed or referred to in resolving questions of interpretation or construction.

18. **Hierarchy.** The conditions contained in this document are applicable to every Personal Services Agreement entered into by the City of Oregon City in the absence of contrary provisions. Should contrary provisions be included in a Personal Services Agreement, those contrary provisions shall control over these conditions.

19. **Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the state of Oregon, except that, if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day that is not a Saturday, Sunday or legal holiday.

20. **Notices.** Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, postage prepaid, or personally delivered to the addresses listed in the Agreement attached hereto. All notices shall be in writing and

shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

21. **Nonwaiver.** The failure of City to insist upon or enforce strict performance by Consultant of any of the terms of this Agreement or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights of any future occasion.

22. **Information and Reports.** Consultant shall, at such time and in such form as City may require, furnish such periodic reports concerning the status of the project, such statements, certificates, approvals, and copies of proposed and executed plans and claims, and other information relative to the project as may be requested by City. Consultant shall furnish City, upon request, with copies of all documents and other materials prepared or developed in relation with or as a part of the project. Working papers prepared in conjunction with the project are the property of City, but shall remain with Consultant. Copies as requested shall be provided free of cost to City.

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

24. **Arbitration. Any dispute, controversy or claim arising out of or in connection with the interpretation or performance of any term or condition of this Agreement or any breach or alleged breach of this Agreement, shall be submitted to non-binding mediation by a neutral and independent mediator, who shall be selected by the parties by mutual agreement, or if the parties are unable to agree upon the selection of a mediator, then in accordance with the rules of the American Arbitration Association for selection of a mediator. The mediation shall take place in Oregon City, Oregon.**

The cost of the mediator and any other mediation costs shall be borne equally by the

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

parties. The mediation process and the outcome of the mediation shall remain confidential. Notwithstanding the foregoing terms, the parties shall make every reasonable effort to resolve disputes, controversies or claims between themselves in a cooperative fashion prior to submitting a dispute to mediation. Unless otherwise mutually agreed in writing by the parties, no action at law or equity may be commenced by either party until the mediation provided herein has been concluded.

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.

(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.