

**CITY OF OREGON CITY  
PERSONAL SERVICES AGREEMENT**

**2018-19 NPDES MS4 AND TMDL SUPPORT (PS 18-014)**

This PERSONAL SERVICES AGREEMENT ("Agreement") is entered into between the CITY OF OREGON CITY ("City") and BROWN AND CALDWELL, INC. ("Consultant").

**RECITALS**

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

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

The parties agree as follows:

**AGREEMENT**

1. Term. The term of this Agreement shall be from the date the contract is fully executed until **June 30, 2019**, unless sooner terminated pursuant to provisions set forth below. However, such expiration shall not extinguish or prejudice City's right to enforce this Agreement with respect to (i) breach of any warranty; or (ii) any default or defect in Consultant's performance that has not been cured.

2. Compensation. City agrees to pay Consultant on a time-and-materials basis for the services required. Total compensation, including reimbursement for expenses incurred, shall not exceed **Sixty thousand seven hundred forty-six and 00/100 dollars (\$60,746.00)**.

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 to Term, above.

6. Integration. This Agreement, along with the description of services to be performed attached as Exhibit A and the Standard Conditions to Oregon City Personal Services Agreement attached as Exhibit B, contain the entire agreement between and among the parties, integrate all the terms and conditions mentioned herein or incidental hereto, and supersede all prior written or oral discussions or agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

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

To the City:

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

To Consultant:

Brown and Caldwell, Inc.  
6500 SW Macadam Ave, Suite 200  
Portland, OR 97239  
Attention: Krista Reininga

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 \_\_\_\_\_, 2018.

CITY OF OREGON CITY

BROWN AND CALDWELL, INC.

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

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

DATED: \_\_\_\_\_, 2018.

DATED: \_\_\_\_\_, 2018.

By: \_\_\_\_\_  
John M. Lewis  
Title: Public Works Director

ORIGINAL CITY COMMISSION APPROVAL (IF APPLICABLE):

DATE: \_\_\_\_\_

APPROVED AS TO LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
City Attorney

## Exhibit A

# 2018-2019 NPDES MS4 Permit and TMDL Compliance Support

## Scope of Work

The City of Oregon City (City) is contracting with Brown and Caldwell (BC) to complete tasks associated with implementation of the City's National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit. This Scope of Work reflects activities to be completed in the 2018-2019 fiscal year, associated with NPDES MS4 permit and Total Maximum Daily Load (TMDL) compliance, and includes potential NPDES MS4 permit negotiations with the Oregon Department of Environmental Quality (DEQ).

### Phase 1 General Program Support for NPDES MS4 Permit Compliance

<b>Objective</b>	To assist the City in preparation of its NPDES MS4 annual compliance report to summarize activities for the 2017/2018 permit year.
<b>Activities</b>	<p>The 2017/2018 reporting year covers the time period between July 1, 2017, through June 30, 2018, and is due to DEQ on November 1, 2018.</p> <p>BC previously developed a tabular matrix for the City to use in compiling information to summarize activities conducted during the reporting period. The matrix includes columns for reporting the status of meeting measurable goals and tracking measures as identified in the City's stormwater master plan (SWMP).</p> <p>City staff will complete the tabular matrix documenting City activities and progress toward measurable goals during the reporting period. The City will also update the narrative portions of the annual report. Based on information provided by the City, BC will review and comment on the tabular matrix, the narrative report, and any associated data (including monitoring data) for completeness and clarity. Given recent transitions in City staff, BC will also provide support via phone and/or in person to assist the City with this process up to the hours allotted for this phase.</p>
<b>Deliverables</b>	A reviewed copy of the NPDES MS4 annual report with suggested revisions completed in track changes and comments provided in the document margins.
<b>Assumptions</b>	<p>Assumptions for Phase 1 include the following:</p> <ul style="list-style-type: none"><li>• BC assumes the draft annual report will be provided to BC by September 30, 2018.</li><li>• BC will provide comments on the draft annual report within 2 weeks of receiving the draft report from the City.</li><li>• Coordinated efforts between participants involved in the <i>Coordinated Clackamas County Stormwater Monitoring Plan</i> (CCCSMP) may be conducted to develop a joint annual monitoring report. Contracting and coordination for this report has not been included as part of this phase.</li></ul>

## Phase 2 Co-permittee Meetings

<b>Objective</b>	To facilitate and attend Clackamas co-permittee coordination meetings and meetings with DEQ, on behalf of the City.
<b>Activities</b>	BC will facilitate and attend Clackamas co-permittee meetings to ensure consistency, efficiency, and coordination on specific permit compliance issues. In addition, BC will attend and assist with meetings that may be held with DEQ to negotiate permit terms for the next issuance of the permit.
<b>Deliverables</b>	Agendas, presentation materials, and meeting minutes will be provided for meetings facilitated by BC, or as requested by the City.
<b>Assumptions</b>	<p>Assumptions for Phase 2 include the following:</p> <ul style="list-style-type: none"><li>• BC's effort will be billed on a time-and-materials basis, not to exceed \$4,200.</li><li>• As necessary, BC will coordinate scheduling of the meetings among interested Clackamas co-permittees.</li><li>• Meeting venues will be provided by Clackamas co-permittees.</li><li>• This phase will be cost-shared among other Clackamas co-permittees, as contracts allow.</li></ul>

## Phase 3 Permit Negotiation

<b>Objective</b>	To assist the City and Clackamas co-permittees in negotiating feasible, implementable, permit terms for the next issuance of the NPDES MS4 permit.
<b>Activities</b>	<p>Up to the hours allotted, activities under Phase 3 may include:</p> <ul style="list-style-type: none"><li>• Review and evaluate proposed draft permit language from DEQ with respect to the City's current program.</li><li>• Conduct research regarding issues of concern in draft permit language.</li><li>• Attend meetings to negotiate draft permit language with DEQ.</li><li>• Prepare letters documenting the City's response related to draft permit language.</li></ul>
<b>Deliverables</b>	Draft and final letters providing the City's comments on the applicant review draft and public review draft of the permit.
<b>Assumptions</b>	<p>Assumptions for Phase 3 include the following:</p> <ul style="list-style-type: none"><li>• The City will provide one set of consolidated comments on the draft comment letters prepared by BC.</li><li>• This phase will be cost-shared among other Clackamas co-permittees, as contracts allow.</li></ul>

## Phase 4 Development Review

<b>Objective</b>	To provide support to City staff in implementation of the City's updated stormwater design standards and Best Management Practices (BMP) sizing tool.
<b>Activities</b>	<p>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:</p> <ul style="list-style-type: none"><li>• Assist the City with adaptive management of the Stormwater and Grading Design Manual.</li><li>• Assist the City in responding to questions from developers.</li></ul>

<b>Deliverables</b>	Deliverables vary based on the requested activity.
<b>Assumptions</b>	BC's effort will be billed on a time-and-materials basis, not to exceed \$8,448 for this phase.

## **Phase 5      Sizing Tool Updates**

<b>Objective</b>	Update the sizing tool to address agreed upon changes requested by the City, Clackamas County Water Environment Services (WES), and the City of Wilsonville.
<b>Activities</b>	Activities budgeted under Phase 5 include: <ul style="list-style-type: none"><li>• Prepare a list of requested changes to the BMP sizing tool and associated costs.</li><li>• Work with the City, WES, and the City of Wilsonville to develop a finalized list of requested changes to the tool.</li><li>• Make requested revisions to the BMP sizing tool.</li><li>• Perform testing on the updated BMP sizing tool.</li><li>• Update the BMP User's Guide to reflect any changes made to the tool.</li></ul>
<b>Deliverables</b>	Deliverables for Phase 5 include the following: <ul style="list-style-type: none"><li>• Draft and final lists of requested changes to the BMP Sizing Tool.</li><li>• Draft and final versions of the updated BMP Sizing Tool User's Guide reflecting changes.</li></ul>
<b>Assumptions</b>	Changes to the tool will be cost-shared with WES and the City of Wilsonville, as contracts allow.

## **Phase 6      Manual Updates**

<b>Objective</b>	To update the City's stormwater design manual based on the City's desired revisions identified since establishment of the manual.
<b>Activities</b>	Activities budgeted under Phase 6 include: <ul style="list-style-type: none"><li>• Work with the City to finalize a list of desired revisions.</li><li>• Prepare a draft and final version of the manual with desired revisions.</li><li>• Prepare a summary sheet for distribution to the public as necessary to summarize changes to the manual.</li></ul>
<b>Deliverables</b>	Deliverables for Phase 6 include the following: <ul style="list-style-type: none"><li>• Draft and final copies of the design manual.</li><li>• Draft and final public notice to summarize changes.</li></ul>
<b>Assumptions</b>	The City will provide one consolidated set of comments on the updated draft design manual.

## Phase 7 TMDL Reporting

<b>Objective</b>	To assist the City in completing DEQ's required 5-year look-back report.
<b>Activities</b>	<p>The City will review and prepare responses to the DEQ survey related to the 5-year look-back report for the Willamette River TMDL. Activities budgeted under Phase 7 include the following:</p> <ul style="list-style-type: none"><li>• Provide support to the City with interpretation of survey requests and recommendations on how to respond.</li><li>• Provide review of, and comments on, the City's draft responses to survey questions.</li></ul>
<b>Deliverables</b>	Comments on the City's draft responses to DEQ's 5-year look-back report.
<b>Assumptions</b>	<p>Assumptions for Phase 7 include the following:</p> <ul style="list-style-type: none"><li>• The City will compile the first draft of responses to the 5-year look-back survey.</li><li>• The draft of responses will be provided to BC by September 30, 2018.</li><li>• BC will provide comments on the City's survey responses no later than 2 weeks after receipt.</li></ul>

## Phase 8 Project Management

<b>Objective</b>	To oversee project schedule, scope, and budget and maintain communications with the City.
<b>Activities</b>	<p>Activities budgeted under Phase 8 include:</p> <ul style="list-style-type: none"><li>• Overall budget and schedule management</li><li>• Monthly invoicing with detailed progress reports</li></ul>
<b>Deliverables</b>	Monthly project progress reports with invoices
<b>Assumptions</b>	The estimated project duration is 12 months.

Oregon City, City of (OR) -- Oregon City FY 2018-19 Budget Est															
		Reininga, Krista	Gage, Eva D	Wieland, Angela M	Maxwell, Alissa M	Davis, Matthew H	Glass, Michael R	Vasquez, Jesus E	Pare, Wendy M						
Phase	Phase Description	PM	PA							Total Labor Hours	Total Labor Effort	Total ODCs	Total Expense Cost	Total Expense Effort	Total Effort
		\$242.00	\$105.00	\$187.00	\$187.00	\$219.00	\$120.00	\$105.00	\$120.00						
001	Support for Annual Report	0	0	30	0	0	0	0	0	30	5,610	0	0	0	5,610
002	Co-permittee Meetings	8	0	12	0	0	0	0	0	20	4,180	20	20	20	4,200
003	Permit Negotiations	8	0	12	0	0	0	0	0	20	4,180	20	20	20	4,200
004	Development Review	4	0	0	40	0	0	0	0	44	8,448	0	0	0	8,448
005	Sizing Tool Updates	20	0	0	0	40	40	0	0	100	18,400	20	20	20	18,420
006	Updates to the Manual	6	0	0	8	0	24	0	8	46	6,788	0	0	0	6,788
007	TMDL Reporting	4	0	24	0	0	0	0	0	28	5,456	0	0	0	5,456
008	Project Management	18	12	4	0	0	0	12	0	46	7,624	0	0	0	7,624
GRAND TOTAL		68	12	82	48	40	64	12	8	334	60,686	60	60	60	60,746

Hours and Dollars are rounded to nearest whole number. To display decimals, change the format of the cells.

## 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.