

**CITY OF OREGON CITY
PERSONAL SERVICES AGREEMENT**

2019-20 NPDES MS4 AND TMDL SUPPORT (PS 19-012)

This PERSONAL SERVICES AGREEMENT ("Agreement") is entered into between the CITY OF OREGON CITY ("City") and **BROWN AND CALDWELL** ("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, 2020**, 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-eight thousand one hundred ninety-eight and no 00/100 dollars (\$68,198.00)**.

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: John M. Lewis

To Consultant:

Brown and Caldwell
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 _____, 20____.

CITY OF OREGON CITY

BROWN AND CALDWELL

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

By: _____
Title: _____

DATED: _____, 20____.

DATED: _____, 20____.

By: _____
John M. Lewis
Title: Public Works Director

ORIGINAL CITY COMMISSION APPROVAL (IF APPLICABLE):

DATED: _____, 20____.

DATE: _____

APPROVED AS TO LEGAL SUFFICIENCY:

By: _____
City Attorney

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Exhibit A

2019-2020 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 2019-2020 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 Support for NPDES MS4 and TMDL Annual Reporting

Objective	To assist the City in preparation of its NPDES MS4 and TMDL annual compliance reports to summarize activities for the 2019/2020 permit year.
Activities	<p>The 2018/2019 reporting year covers the time period between July 1, 2018, through June 30, 2019, and is due to DEQ on November 1, 2019.</p> <p>For the NPDES MS4 annual compliance report, 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 and TMDL 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. 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>
Deliverables	A reviewed copy of the NPDES MS4 and TMDL annual report with suggested revisions completed in track changes and comments provided in the document margins.
Assumptions	<p>Assumptions for Phase 1 include the following:</p> <ul style="list-style-type: none">• BC assumes the draft annual report will be provided to BC by September 30, 2019.• BC will provide comments on the draft annual report within 2 weeks of receiving the draft report from the City.• 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.

Phase 2 Co-permittee Meetings

Objective	To facilitate (as requested) and attend Clackamas co-permittee coordination meetings and meetings with DEQ, on behalf of the City.
Activities	BC will facilitate (as requested) and attend Clackamas co-permittee meetings to ensure consistency, efficiency, and coordination on specific permit compliance issues with other co-permittees. 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.
Deliverables	Agendas, presentation materials, and meeting minutes will be provided for meetings facilitated by BC, or as requested by the City.
Assumptions	<p>Assumptions for Phase 2 include the following:</p> <ul style="list-style-type: none">• BC's effort will be billed on a time-and-materials basis for a not to exceed amount as shown in the budget table at the end of this Exhibit.• As necessary, BC will coordinate scheduling of the meetings among interested Clackamas co-permittees.• Meeting venues will be provided by Clackamas co-permittees.• This phase will be cost-shared among other Clackamas co-permittees, as contracts allow.

Phase 3 Permit Negotiation

Objective	To assist the City and Clackamas co-permittees in negotiating feasible, implementable, permit terms for the next issuance of the NPDES MS4 permit.
Activities	<p>Up to the hours allotted, activities under Phase 3 may include:</p> <ul style="list-style-type: none">• Review and evaluate proposed draft permit language from DEQ with respect to the City's current program.• Conduct research regarding issues of concern in draft permit language.• Attend meetings to negotiate draft permit language with DEQ.• Prepare comment letters documenting the City's response related to draft permit language.
Deliverables	Draft and final letters providing the City's comments on the applicant review draft and public review draft of the permit.
Assumptions	<p>Assumptions for Phase 3 include the following:</p> <ul style="list-style-type: none">• The City will provide one set of consolidated comments on the draft comment letters prepared by BC.• BC's effort for meetings and negotiations will be billed on a time-and-materials basis for a not to exceed amount as shown in the budget table at the end of this Exhibit.• This phase will be cost-shared among other Clackamas co-permittees, as contracts allow.

Phase 4 Development Review and Design Manual Support

Objective	To provide support to City staff in implementation of the City's updated stormwater design standards and Best Management Practices (BMP) sizing tool.
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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: <ul style="list-style-type: none"> Assist the City with adaptive management of the Stormwater and Grading Design Manual. Assist the City in responding to questions from developers.
Deliverables	Deliverables vary based on the requested activity.
Assumptions	BC's effort will be billed on a time-and-materials basis for a not to exceed amount as shown in the budget table at the end of this Exhibit.

• Phase 5 Sizing Tool Updates

Objective	Update the sizing tool to address agreed upon changes requested by the City, Clackamas County Water Environment Services (WES), and the City of Wilsonville.
Activities	Activities budgeted under Phase 5 include: <ul style="list-style-type: none"> Prepare a list of requested changes to the BMP sizing tool and associated costs. Work with the City, WES, and the City of Wilsonville to develop a finalized list of requested changes to the tool. Make requested revisions to the BMP sizing tool. Perform testing on the updated BMP sizing tool. Update the BMP User's Guide to reflect any changes made to the tool.
Deliverables	Deliverables for Phase 5 include the following: <ul style="list-style-type: none"> Draft and final lists of requested changes to the BMP Sizing Tool. Draft and final versions of the updated BMP Sizing Tool User's Guide reflecting changes.
Assumptions	<ul style="list-style-type: none"> Changes to the tool will be cost-shared with WES and the City of Wilsonville, as contracts allow. Given that changes are not currently known, BC's effort will be billed on a time-and-materials basis for a not to exceed amount as shown in the budget table at the end of this Exhibit.

Phase 6 TMDL Compliance Support

Objective	To assist the City in addressing new requirements as they arise related to the anticipated Willamette River Mercury TMDL.
Activities	BC will review draft Willamette River mercury TMDL documents as they are issued by DEQ and provide comments. In addition, as the mercury TMDL is finalized and requirements are included in the new MS4 permit, support will be provided for compliance activities such as updating the monitoring plan to address mercury, preparing a mercury minimization document, etc.
Deliverables	Comments on DEQ's draft documents related to the Willamette River mercury TMDL update.
Assumptions	Assumptions for Phase 6 include the following:

- This phase will be cost-shared among other Clackamas co-permittees, as contracts allow.
- BC's effort will be billed on a time-and-materials basis for a not to exceed amount as shown in the budget table at the end of this Exhibit.

Phase 7 Project Management

Objective To oversee project schedule, scope, and budget and maintain communications with the City.

Activities Activities budgeted under Phase 8 include:

- Overall budget and schedule management
- Monthly invoicing with detailed progress reports

Deliverables Monthly project progress reports with invoices

Assumptions The estimated project duration is 12 months.

Brown and Caldwell
Budget

June 14, 2019

Oregon City, City of (OR) -- Oregon City NPDES 2019-20														
Phase	Phase Description	Reininga, Krista PM	Eldon, Miranda PA	Wieland, Angela M	Maxwell, Alissa M	Davis, Matthew H	Bell, Janice	Wilson, Joanna B	Pare, Wendy M	Total Labor Hours	Total Labor Effort	Total ODCs	Total Expense Effort	Total Effort
		\$247.00	\$92.00	\$191.00	\$191.00	\$224.00	\$141.00	\$92.00	\$123.00					
001	Support for Annual Report	2	0	14	0	0	0	0	0	16	3,168	0	0	3,168
002	Co-Permittee Meetings	8	0	24	0	0	0	0	0	32	6,560	50	50	6,610
003	Permit Negotiations	40	0	8	0	0	0	0	0	48	11,408	100	100	11,508
004	Development Review	4	0	0	40	0	0	0	0	44	8,628	0	0	8,628
005	Sizing Tool Updates	20	0	0	0	40	40	0	0	100	19,540	50	50	19,590
006	TMDL Reporting	24	0	32	0	0	0	0	0	56	12,040	0	0	12,040
007	Project Management	18	12	0	0	0	0	12	0	42	6,654	0	0	6,654
TOTAL		116	12	78	40	40	40	12	0	338	67,998	200	200	68,198

Hours and Dollars are rounded to nearest whole number.

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 in this Agreement, 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, email, 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 the 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.

5. No Third-Party Beneficiaries. City and

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

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 the City on account of any labor or materials furnished.

(iv) Be responsible for all federal, state, and local taxes applicable to any compensation or payments paid to Consultant under this Agreement and, unless Consultant is subject to back-up withholding, the 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 the 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, the City may pay such claim to the person furnishing the labor or services and shall charge the amount of the payment against funds due or to become due to the 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 the City. The City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to the 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 \$2,000,000 combined, single-limit, per-occurrence with a \$4,000,000 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

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

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

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

20. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, postage prepaid, or personally

delivered to the addresses listed in the Agreement attached hereto. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

21. Nonwaiver. The failure of City to insist upon or enforce strict performance by 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

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

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.