

**CITY OF OREGON CITY
PERSONAL SERVICES AGREEMENT**

SCATTER CANYON WATER QUALITY/CHANNEL STABILIZATION PROJECT (CI 19-012)

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, 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-nine thousand, one hundred twelve and no/100 dollars (\$69,112.00)**.

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, Inc.
6500 SW Macadam Avenue #200
Portland, OR 97239
Attention: R. Todd Martinez, P.E.

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 16th day of October, 2019.

CITY OF OREGON CITY

BROWN AND CALDWELL, INC.

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

By: Kelly Kimball
Kelly Kimball
Title: Director, Oregon Operations

DATED: October 16, 2019.

DATED: 10/24, 2019.

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

DATED: 10-16-, 2019.

APPROVED AS TO LEGAL SUFFICIENCY:

By: Carme R...
City Attorney

\\deposit\Departments\Public Works\CIP_PS_RFQ_RFP\CIP_Open\CI 19-012 Scatter Canyon Stormwater Improvements\CONSULTANT\Contract\CI 19-012 PSA Brown & Caldwell - Scatter Canyon.docx

Scatter Canyon Water Quality/ Channel Stabilization Project

Scope of Services

This Scope of Services (Scope) describes the engineering services to be performed by Brown and Caldwell (Consultant) for the City of Oregon City (City), Oregon, in order to finalize the design of the Scatter Canyon Water Quality/Channel Stabilization project (Scatter Canyon Project or Project).

Project Description

The following Scope outlines the tasks necessary to advance the 30 percent plan design of the Scatter Canyon Project to the 90 percent and Final (100 percent) completion design levels. The project site is located along an unnamed tributary to Newell Creek, commonly referred to as Scatter Canyon, located at Mountain View Cemetery in Oregon City. The initial site investigations included a wetland delineation, site survey, Phase I site assessment and cultural resources review. Based on information collected through site investigations, a conceptual design was developed and refined. The purpose of the Scatter Canyon Project is to stabilize the existing stream channel at this site in order to improve water quality and reduce channel down cutting. Aesthetics and access will also be important in the project design, as the project site is used as a spiritual visiting place for patrons of the adjacent cemetery to scatter ashes of loved ones.

Deliverables for this project include 90 percent complete and Final plans and specifications submittals, and an engineer's cost estimate.

Phase 1 Project Management

Objective To provide management of engineering services in support of design including oversight of project schedule, scope, and budget and maintain communications with the City.

Activities Phase 1 includes the following activities:

- Manage schedule, budget, and scope.
- Document meeting decisions and action items, assign activities to appropriate team members, and follow up to ensure timely resolution.
- Monitor project progress, including work completed, work remaining, budget expended, and schedule.
- Manage the quality control review of all work activities and project deliverables.
- Prepare and submit a monthly invoice with invoice summary report.
- Coordinate with subconsultants.
- Coordinate with the City's Project Manager and project review team.

Deliverables Phase 1 deliverables are listed below.

- Project schedule
- Monthly invoices with work summary



Assumptions Effective duration of the project will be approximately 6 months from Notice to Proceed.

Phase 2 Design Support Services

Objective To provide geotechnical, landscape architect, and permitting services to support final design.

Task 2.1 Geotechnical Services

Activities The firm of Shannon & Wilson, Inc., (SW) will serve as the geotechnical engineer for the Project. SW will conduct field explorations and other design-support activities that include the following:

- **Literature Review, Reconnaissance and Explorations.** SW will review existing information and perform site reconnaissance and explorations that will include the following tasks:
 - A geologic literature search, including review of relevant and available geologic mapping, well logs, digital aerial photos, and LiDAR.
 - Site reconnaissance to map geotechnical features, erosion, bank failures, observe soil types and groundwater seepage in the channel sidewalls, and mark exploration locations for utility locates. A SW engineer or geologist will perform this work.
 - Two hand-auger borings to a depth of 15 feet, or refusal, along the channel. The sites will be selected based on the field reconnaissance and will be selected to correspond to the steepest or most critical bank slope section. A SW engineer or geologist will perform the hand augers, log the borings, and collect soil samples.
- **Geotechnical Hazards Evaluation and Report.** The geotechnical evaluation will include the following tasks:
 - Provide a discussion of soil conditions and prepare graphical logs of the soils in gINT software.
 - Provide a discussion on the presence of observed or mapped landslide hazards.
 - Provide a review of site findings, including observations or any tension cracks, scarps, or evidence of global stability issues.
 - Provide up to 2 hours of post report consultation to answer geotechnical related questions.

Deliverables Task 2.1 deliverables are listed below.

- An electronic copy of the draft geotechnical hazards report will be prepared and submitted for review and comment. Review comments will be incorporated into the final letter report.

Assumptions Task 2.1 assumptions are listed below.

- The City will provide site access.
- Permits will not be required for explorations.
- No environmental testing will be performed.
- The site soils, surface water, and groundwater are not contaminated.
- The one-call Utility Notification Center will be used to locate utilities and no private utility locator will be required.
- No detailed limit equilibrium analysis will be performed using specialized software, such Slope-W.

- This Scope does not include recommendations for landslide stabilization (if global instability of the slope is observed).
- This Scope does not include geotechnical evaluation of bioengineering of outfall channel enhancements.
- Survey results of the channel will be provided to Consultant.

Task 2.2 Environmental Permitting

Activities The firm of Pacific Habitat Services, Inc., (PHS) will perform the permitting consulting services for the Project. PHS has already performed a wetland delineation report which has been submitted to the Oregon Department of State Lands (DSL) for approval. PHS will also assist in obtaining permits and approvals for anticipated impacts to wetlands or waterways, as required by the DSL and the U.S. Army Corps of Engineers (Corps).

Deliverable Joint Permit Application for proposed impacts to the tributary to Newell Creek

Assumptions Task 2.2 assumptions are listed below:

- Impacts to wetlands or waterways are temporary and will result in a net enhancement of existing conditions in the tributary; the project should therefore meet the criteria of the State Local Operating Procedures for Endangered Species (SLOPES). A biological assessment is therefore not required. No net loss of resource area or function means that no additional wetland or waterway mitigation will be required (proposed actions will be self-mitigating).
- The City will handle all permit fees.
- Enhancement projects in stream, wetland, riparian, and/or upland areas are allowed within Oregon City's Natural Resources Overlay District (NROD) and will not require the issuance of an NROD permit; the proposed action is exempted from the NROD regulations. No project elements requiring NROD permitting are part of proposed actions.
- A Joint Permit Application (to be submitted for review to both the DSL and Corps) will be prepared by PHS.
- Prior to application submittal, the project team will attend one, on-site pre-application meeting with State and Federal regulatory agencies. Attendees should include representatives from the DSL, Corps, Oregon Department of Fish and Wildlife, and Oregon Department of Environmental Quality.
- The Stream Function Assessment Method for Oregon will be completed and submitted as part of the Joint Permit Application.
- JPA does not ensure permit

Task 2.3 Landscape Architecture

Activities The firm of GreenWorks, P.C. (GreenWorks) will act as the landscape architect on the Project and provide revegetation and planting plans to advance the design to Final plans and specifications.

Deliverables Task 2.3 deliverables are listed below:

- 90 percent complete and Final plans and specifications
- Cost estimate

Assumptions Task 2.3 assumptions are listed below:

- GreenWorks is not responsible for parking lot layout, site grading, or drainage.
- Structural engineering necessary for design of walls, trellises, fences, and other landscape features, will be provided by others.
- The fee for a consulting arborist, if necessary, is not included.
- The following services are excluded from Greenworks' scope of work: subsurface condition evaluations, soil issue evaluations (including suitability for plant material, soil content, level of compaction), lot line location, drainage, utilities' location, signage, security, and lighting.
- The City acknowledges and agrees that proper project maintenance will be required after the project is complete. Without adequate maintenance and care on the part of the City, portions of the landscape may never mature and function in the manner intended, resulting in a design that does not achieve the original intent expressed by the designer to the City. GreenWorks cannot be responsible for conditions or events that result from inadequate or improper maintenance.

Phase 3 Design Development

Objective Conduct analysis and evaluation to support development of the 90 percent design.

Assumptions Phase 3 assumptions are listed below:

- City staff will participate in one review meeting.
- City staff will include internal or external stakeholders in any meetings or gather stakeholder feedback, as appropriate.
- Draft TM (limited to 4 pages plus attachments) will be brief and limited to information necessary to inform the design.

Task 3.1 Project kickoff and plan review

Activities Meet with City staff and review the previously developed 30 percent plan set. The meeting is intended to revisit the 30 percent design and discuss recommended refinements/modifications to be incorporated into the final design in Phase 4.

Deliverables Meeting notes

Task 3.2 Design calculations

Activities Task 3.2 includes the following activities:

- Complete a hydrologic study of the drainage catchment contributing to Scatter Canyon and determine peak and channel forming flows at the project location. Based on the channel shape proposed in the 30 percent design, Consultant will calculate stream depth and expected velocity for critical rain events.
- Refine the proposed channel geometry to accommodate the expected flows and size rip rap and channel stabilization measures for the project area.
- Prepare a draft technical memorandum (TM) to summarize findings and document the design calculations.

Deliverables Draft TM and attachments



Phase 4 Detailed Design for Scatter Canyon

Objective: To provide engineering services and develop Final plans. The design will build on and advance the 30 percent plans. The design will incorporate water quality, aesthetics, channel stabilization, conveyance, and replanting of the area. The Final design will employ a natural, yet functional and aesthetic design, to meet the goals of stakeholders.

Assumptions Phase 4 assumptions are listed below:

- The City will provide the 30 percent design files, including survey base map, in electronic CAD format.
- No additional survey will be completed.
- The plans will be designed in accordance with City's public works standards and Oregon APWA/ODOT Standard Specifications (2015)
- 22X34 plans and specifications, in PDF format, will be submitted for 90 percent design review and comment by the City.
- 90% design review meeting will be attended by two BC staff for up to two hours.
- City engineering will participate in one plan review meeting and provide information, as necessary, for review and comment of the design in the form of a comment log.
- City to compile plan comments from City staff and stakeholders and resolve conflicting comments prior to delivery to Consultant.
- No services during construction are included in this Scope.
- Special provisions specifications will be limited to three.
- Cost estimate will be based on 2018 ODOT bid tabs and 2018 RSMeans.
- Design will not be in compliance with ADA code.

Task 4.1 90 percent Design Activities

Activities Task 4.1 includes the following activities:

- Prepare construction plans to a 90 percent design level. The plans will provide the information necessary for construction of the Scatter Canyon Project.
- Develop a list of bid items based on the 90 percent plans.
- Prepare a preliminary engineers' cost estimate.

Deliverables 22X34 90 percent plans in electronic PDF format

Task 4.2 Specifications

Activities Develop special provisions to be included in the project specifications.

Deliverables Draft special provisions in electronic PDF format

Task 4.3 Engineers Cost Estimate

Activities Prepare a preliminary engineers' cost estimate.

Deliverables 90 percent bid items list and preliminary cost estimate

Task 4.4 Design Review Meeting

Activities Hold one project review meeting in person with the City to review and collect comments on the 90 percent package before finalizing plan set.

Task 4.5 Final Design Activities

Activities Task 4.2 includes the following activities:

- Prepare Final (100 percent) plans and specifications for the City to use for obtaining the necessary construction permits for the project.
- Prepare a Final engineers' estimate based on the Final plans.
- Prepare a response spreadsheet to document the manner in which the Final plans address the City's comments on the 90 percent plan submittal.

Deliverables Task 4.2 deliverables are listed below:

- 22X34 plan documents plans, specifications, and engineer's estimate in PDF format
- 100 percent comments and response spreadsheet

Task 4.6 QA/QC

Activities Conduct an internal QA/QC and constructability review on the 90 percent and Final design package.

Brown and Caldwell Budget

July 29, 2019

Oregon City, City of (OR) -- Oregon City Scatter Canyon Design																		
Phase	Phase Description	Martinez, Robert T	Eldon, Miranda	Retzlaff, Ryan G	Suesser, Thomas	Bell, Janice	Whirly, Nathan S	Wilson, Joanna B	Paire, Wendy M	Total Labor Hours	Total Labor Effort	Shannon and Wilson Cost	Pacific Habitat Cost	Greenworks Cost	Total Sub Cost	Total Expense Cost	Total Expense Effort	Total Effort
001	Project Management	12	8	0	0	0	0	7	0	27	4,344	0	0	0	0	0	0	4,344
002	Design Support Services	0	0	0	0	0	0	0	0	0	0	6,545	15,974	8,000	30,519	30,519	32,045	32,045
003	Design Development	3	0	11	19	2	0	0	4	39	5,649	50	0	0	50	50	53	5,702
004	Detailed Design	7	0	44	48	22	54	0	8	183	26,969	50	0	0	50	50	53	27,022
TOTAL		22	8	55	67	24	54	7	12	249	38,034	6,645	15,974	8,000	30,619	30,619	32,150	69,112

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 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 \$2,000,000 combined, single-limit, per-occurrence, with annual aggregate of \$4,000,000. 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 \$1,000,000 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
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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
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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.