

**CITY OF OREGON CITY  
PERSONAL SERVICES AGREEMENT**

**Gaffney Lane Street Widening (CI 15-008)**

This PERSONAL SERVICES AGREEMENT ("Agreement") is entered into between the CITY OF OREGON CITY ("City") and **WALLIS ENGINEERING, PLLC** ("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 **twenty-three thousand five hundred sixty and 45/100 dollars (\$23,560.45)**.

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  
**Wallis Engineering, PLLC**  
**215 W 4<sup>th</sup> Street, Suite 200**  
**Vancouver, WA 98660**  
**Attention: Wes Wegner**

To Consultant:

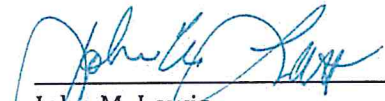
Consultant shall be responsible for providing the City with a current address. Either party may change the address set forth in this Agreement by providing notice to the other party in the manner set forth above.


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 17 day of May, 2019.

CITY OF OREGON CITY

WALLIS ENGINEERING, PLLC

By:   
John M. Lewis  
Title: Public Works Director

By:   
Title: Principal Engineer

DATED: \_\_\_\_\_, 20\_\_.

DATED: May 17, 2019.

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**CITY OF OREGON CITY  
GAFFNEY LANE IMPROVEMENTS  
WALLIS ENGINEERING, PLLC  
EXHIBIT A – SCOPE OF WORK  
MAY 2019  
WE#1348C**

## PROJECT BACKGROUND

This project consists of finalizing Engineering Plans and Contract Documents to reconstruct Gaffney Lane near the frontage of 13445 Gaffney Lane. The existing right-of-way in front of this property is approximately 10 feet farther south than the adjacent property, constraining the vehicular and pedestrian travel way. The project is also adjacent to Gaffney Lane Elementary School and there are no existing provisions for pedestrians to pass the property on either side of the street which hinders access to the school.

Wallis Engineering prepared engineering improvement plans to a 90% completion level under a previous contract to provide for pedestrian movement on both sides of Gaffney Lane, extend sanitary sewer and storm sewer through the project site, reduce the offset in the existing vehicular travel way, add provisions for bike lanes and parking as appropriate, and provide traffic calming improvements.

This proposed scope of work includes finalizing the design and producing Engineering Plans and Contract Documents for public bidding as well as providing bidding services.

## CONTRACT DURATION

Contract term shall be from the date contract is fully executed until June 30, 2020.

## PROJECT TEAM

Wallis Engineering, PLLC will serve as the prime consultant for this project, leading subconsultants to complete all the services identified in the specific scope of work. Each subconsultant is listed below with the primary tasks which they will complete.

Consultant - Discipline	Responsibilities
Compass Land Surveyors, Inc (Compass) – Surveying	Post Construction Record of Survey

## SPECIFIC SCOPE OF WORK

### TASK 1 PROJECT MANAGEMENT AND ADMINISTRATION

**Objective:** Wallis Engineering (Wallis) will provide project management, administration, and coordination between City staff, all project team members and project stakeholders. This task includes technical and financial management of the project.

**Task 1.1 Project Management and Coordination.** Provide project management, coordination, and direction to the City staff and design team to successfully complete the project. Confirm the goals, objectives and potential impacts of the project with the City project manager. Establish quality control management and procedures and designate responsibility for all technical work and deliverables. Project management tasks will include the following:

- Comprehensive project management to ensure the scope, schedule and budget are met. Provide a point contact person for the City while coordinating with the project team.
- Prepare a simplified project schedule outlining all milestones and deliverables to complete the project.
- Monthly progress reports will be submitted with invoices. Monthly progress reports will include task level budget status, schedule status, and brief summary of work completed along with any upcoming scope, schedule or budget concerns. Billings will include staff, title, hourly rate, and hours charged to the project.
- Attend one (1) project meeting with City Staff to overview previous work completed and identify remaining tasks to be completed by Wallis and the City.

**Task 1.2 Franchise Utility Coordination.** Wallis will review previous coordination efforts in regard to relocating the existing private utilities in conflict with the proposed improvements and re-initiate coordination and contact with the private utilities. An allotment of 12 hours is assumed to complete the relocation coordination.

**Task 1 Assumptions:**

- This contract will span a 2-month design period (May 2019 – June 2019) and a 1-month bidding phase.
- Weekly project coordination conference calls will be held with the City project manager as needed.
- No public involvement is anticipated.
- One (1) project meeting with City staff and one (1) onsite meeting with the franchise utility representatives are assumed.

**Task 1 Deliverables:**

- Project Scope and Fee
- Meeting minutes and agendas
- Monthly progress reports submitted with invoices. Billings will include staff classification, hourly rate, and hours charged to the project.
- Coordination and incorporation of proposed private utility relocation plans into plan set as work by others.

## **TASK 2 EXISTING DATA REVIEW AND EVALUATION**

**Objective:** To review all previously completed work and correspondence on the project to identify all remaining tasks to be completed. To provide City staff with a comprehensive understanding of all remaining coordination and production needs.

A detailed review of the following will be conducted by the design team:

- 90% design plans dated November 15, 2015.
- Email and phone conversation notes from previous design efforts.
- Coordination with City Staff to determine if any utility work has been completed in the area since the recent design work.
- Status of private utility relocation design.

## **TASK 3 FINAL CONTRACT DOCUMENT DEVELOPMENT**

**Objective:** To prepare final contract documents and an opinion of cost at the final submittal stage.

The design team will assemble and submit final plans, specifications, and opinion of cost to the City for review prior to bidding. Specifications will use the “2018 Oregon/APWA Standard Specifications for Public Works Construction” and will conform to the City of Oregon City’s Design Standards. The contract drawings format will follow those included in the 90% design package previously completed.

**Task 3 Assumptions:**

- All necessary permits will be completed by the City.
- All Right-of-Way dedications and needs will be completed by the City.

- No revision to the stormwater management approach shown in the previously completed 90% contract plans is necessary.

**Task 3 Deliverables:**

- Final Plans, Specifications and Opinion of Cost

## **TASK 4 BIDDING PHASE SERVICES**

**Objective:** To assist City staff with soliciting contractor bids to perform the work in conformance with City requirements.

**Subtask 4.1 Project Bidding.** Contract documents prepared by Wallis Engineering in Task 3 will be used to bid the project. The City will be responsible for advertising the project, preparing and distributing Contract Documents to prospective bidders and maintaining a planholder's list. Wallis Engineering will respond to questions that come up during bidding, and coordinate responses to questions with project subconsultants as they arise.

**Subtask 4.2 Project Addenda.** Wallis Engineering will prepare addenda and submit to the City for distribution as needed.

**Subtask 4.3 Project Award.** City will be responsible for reviewing and processing all received bids and preparing a recommendation of award. Wallis Engineering will review bid prices with City project manager. Wallis will review the low bidder's documents and make a recommendation as to contract award.

**Task 4 Assumptions:**

- Up to two (2) addenda may be necessary.
- Advertisement and plan distribution will be through the City's online plan center.
- City will prepare and maintain a planholder's list, review and process all bids, and prepare a bid tabulation.
- City will prepare a recommendation of award.
- Wallis will not attend the bid opening.

**Task 4 Deliverables:**

- Addenda will be prepared and provided to the City in electronic format for distribution to bidders.
- Recommendation to Award.

## **TASK 5 POST CONSTRUCTION RECORD OF SURVEY**

**Objective:** To complete the Post Construction Record and Survey.

Compass will replace any disturbed or destroyed monuments shown on SN 2016-129 after the completion of Construction and submit the Post Construction Record of Survey. The survey will be submitted to Clackamas County Surveying office following completion.

**Task 5 Deliverables:**

- Post Construction Record of Survey

**Agreement**  
**Exhibit A - Fee Estimate**  
**City of Oregon City - Gaffney Lane Improvements**  
**WE #1348C**  
**May 2019**

TASK	E1	E2	E3	E4	E5	T1	C1	Staff Cost	Expenses	Subconsultants Compass	Total Cost
	\$160.19	\$149.72	\$130.88	\$106.80	\$100.52	\$100.52	\$73.30				
<b>Task 1 Project Management and Administration</b>											
1.1 Project Management and Coordination		16					6	\$ 2,835.32	\$ 32.00 (M)		\$ 2,867.32
1.2 Franchise Utility Coordination		4		8				\$ 1,453.28	\$ 32.00 (M)		\$ 1,485.28
<b>TASK 1 SUBTOTAL</b>	<b>0</b>	<b>20</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>\$ 4,288.60</b>	<b>\$ 64.00</b>	<b>\$ -</b>	<b>\$ 4,352.60</b>
<b>Task 2 Existing Data Review and Evaluation</b>											
Existing Data Review and Evaluation		8			4			\$ 1,599.84			\$ 1,599.84
<b>TASK 2 SUBTOTAL</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>\$ 1,599.84</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,599.84</b>
<b>Task 3 Final Contract Document Development</b>											
Final Construction Drawings	2	4			16	12		\$ 3,733.82	\$ 32.00 (M)		\$ 3,765.82
Final Contract Specification	2	4	32				4	\$ 5,400.62			\$ 5,400.62
Final Opinion of Cost	1	2			8			\$ 1,263.79			\$ 1,263.79
<b>TASK 3 SUBTOTAL</b>	<b>5</b>	<b>10</b>	<b>32</b>	<b>0</b>	<b>24</b>	<b>12</b>	<b>4</b>	<b>\$ 10,398.23</b>	<b>\$ 32.00</b>	<b>\$ -</b>	<b>\$ 10,430.23</b>
<b>Task 4 Bid Phase Services</b>											
4.1 Project Bidding		4	4					\$ 1,122.40			\$ 1,122.40
4.2 Project Addenda			6			2	2	\$ 1,132.92			\$ 1,132.92
4.3 Project Award		2					1	\$ 372.74			\$ 372.74
<b>TASK 4 SUBTOTAL</b>	<b>0</b>	<b>6</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>3</b>	<b>\$ 2,628.06</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 2,628.06</b>
<b>Task 5 Post Construction Record of Survey</b>											
Post Construction Record of Survey		1						\$ 149.72		\$ 4,400.00	\$ 4,549.72
<b>TASK 5 SUBTOTAL</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$ 149.72</b>	<b>\$ -</b>	<b>\$ 4,400.00</b>	<b>\$ 4,549.72</b>
<b>GRAND TOTAL</b>	<b>5</b>	<b>45</b>	<b>42</b>	<b>8</b>	<b>28</b>	<b>14</b>	<b>13</b>	<b>\$ 19,064.45</b>	<b>\$ 96.00</b>	<b>\$ 4,400.00</b>	<b>\$ 23,560.45</b>

Depending on availability, actual staff usage may not match the above estimated hours breakdown. Billing rates for all staff are listed in the Fee Summary.

<b>FEE SUMMARY</b>			
Staff	Hours	Rate	Fees
SE - Senior Engineer	0	\$ 184.28	\$ -
E1- Engineer 1	5	\$ 160.19	\$ 800.95
E2 - Engineer 2 (PM)	45	\$ 149.72	\$ 6,737.40
E3 - Engineer 3	42	\$ 130.88	\$ 5,496.96
E4 - Engineer 4	8	\$ 106.80	\$ 854.40
E5- Engineer 5	28	\$ 100.52	\$ 2,814.56
E6 -Engineer 6	0	\$ 88.99	\$ -
SD- Senior Designer	0	\$ 127.74	\$ -
Inspector	0	\$ 95.28	\$ -
T1 - Technician 1	14	\$ 100.52	\$ 1,407.28
TW- Technical Writer	0	\$ 88.99	\$ -
C1 - Clerical 1	13	\$ 73.30	\$ 952.90
<b>Total Fees from Staff</b>			<b>\$ 19,064.45</b>
<b>Subconsultant</b>			<b>Fees</b>
Compass		\$	4,400.00
<b>Total Fees from Subconsultants</b>			<b>\$ 4,400.00</b>
NOTE: Fee includes 10% markup			
<b>Expenses</b>			<b>Cost</b>
Printing (P)		\$	-
Mileage (M)		\$	96.00
<b>Total Fees from Expenses</b>			<b>\$ 96.00</b>
<b>TOTAL BUDGET</b>			<b>\$ 23,560.45</b>



## EXHIBIT A

### RATE SCHEDULE

Rates are effective thru December 31, 2019

<u>Staff</u>	<u>Hourly Rate</u>
Senior Engineer	\$184.28
Engineer 1	\$160.19
Engineer 2	\$149.72
Engineer 3	\$130.88
Engineer 4	\$106.80
Engineer 5	\$100.52
Engineer 6	\$88.99
Senior Designer	\$127.74
Inspector	\$95.28
Technician 1	\$100.52
Technical Writer	\$88.99
Clerical 1	\$73.30

These hourly rates include in-house office expenses, photocopying, and other incidental items. Mileage will be reimbursed at the current standard IRS rate. Outside expenses will be billed at cost plus 10%.

## 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.