

# OREGON CITY PUBLIC WORKS PERSONAL SERVICES AGREEMENT

## Alternate Mobility Standards (PS 16-024)

This PERSONAL SERVICES AGREEMENT ("Agreement") is entered into between:

CITY OF OREGON CITY ("City")

City of Oregon City  
PO Box 3040  
625 Center Street  
Oregon City, OR 97045  
Attention: John M. Lewis, PE

and

KITTELSON & ASSOCIATES, INC.  
("Consultant")

Kittelson & Associates, Inc.  
610 SW Alder St, Suite 700  
Portland, Oregon 97205  
Attention: Hermanus Steyn, PE

### 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, 2017**, unless sooner terminated pursuant to provisions set forth below. However, such expiration shall not extinguish or prejudice City's right to enforce this Agreement with respect to (i) breach of any warranty; or (ii) any default or defect in Consultant's performance that has not been cured.

2. Compensation. City agrees to pay Consultant on a time-and-materials basis for the services required. Total compensation, including reimbursement for expenses incurred, shall not exceed **thirty nine thousand eight hundred ninety four dollars (\$39,894)**.

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

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

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

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

parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

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

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

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

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on this 13 day of October, 2016.

CITY OF OREGON CITY

By: 

Title: John M. Lewis  
Public Works Director

DATED: 10-11, 2016

KITTELSON & ASSOCIATES, INC.

By: 

Title: Senior Principal

DATED: 10/13, 2016

By: 

Title: Anthony J. Konkol III  
City Manager

DATED: 10-12, 2016

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**Hwy 213 & Beavercreek Road Alternate Mobility Standards**  
**Oregon City Project # PS 16-024**  
*10/11/2016*

**Transportation Consultant Contract** *Now – Mid-October*

Contract with transportation consultant. Once under contract, they would begin working on assembling background information in memorandum #1.

**Create Membership of Technical and Citizen Advisory Group** *Now – Mid-November*

The members will be appointed by the Mayor upon submission of an application for specific seats, unless they position is noted as Nominated below. No alternates will be appointed. All materials, meeting notes and comments will be posted online on a project webpage, created and maintained by city staff.

Technical Advisory Group (TAG)

OC Departments – PW DS & Eng, Planning, Economic Development  
ODOT – Transit, Alt Mobility  
Clackamas County – Traffic, Trans Planning  
Metro  
DLCD  
TriMet

Citizen Advisory Group (CAG)

- (1) Planning Commission – Nominated by PC
- (1) City Commission – Nominated by CC
- (1) Citizen Involvement Committee – Nominated by CIC
- (1) Transportation Advisory Committee – Nominated by TAC
- (1) Representative from Forest Edge
- (1) Resident/Property Owner from the Maple Lane/Thayer Road area
- (1) Oregon City Resident/Property Owner
- (1) Advocate for Accessibility
- (1) Advocate for Transit or Cycling
- (1) Community Development Dept Stakeholder Group – Nominated by CDDSG
- (1) Oregon City Chamber – Nominated by Chamber
- (1) Oregon City Business Alliance – Nominated by OCBA
- (1) Clackamas Community College – Nominated by CCC
- (1) Beavercreek Employment Area Steering Committee
- (1) Developers or Commercial/Industrial Land Owners – (one industrial/commercial and one residential)
- (1) Hamlet of Beavercreek – Nominated by the Hamlet

**Scope of Work**

1. Summarize Background Information *Mid-October – Mid December*

- a. Analyze 2016 existing conditions, including crash data, at the Hwy 213/Beavercreek Road intersection. Note any changes from 2013 TSP. City will provide Synchro files from the TSP existing conditions analysis.

- b. The City will identify any existing and planned projects in the 2013 TSP and RTP that may impact the Hwy 213/Beavercreek Road intersection including:
  - i. Network of streets
  - ii. Operational improvements
  - iii. TSMO/TDM
  - iv. Other modes
  - v. Land use to reduce demand
- c. Perform intersection operational analyses to determine the forecast the v/c with the improvements listed in the TSP. This will use the same traffic volumes as utilized in the TSP with the planning horizon of 2035. City will provide Synchro files from the TSP future conditions analysis.
- d. Conduct an alternatives analysis considering alternative intersection forms in addition to traditional improvements such as additional lanes or grade-separation. Operations analysis will be tested on up to four alternatives and conceptual level sketches to identify potential project footprint will be provided for up to two alternatives.
- e. Determine based on rough calculation what additional improvements it would take to meet the existing target in 2035 (e.g., seven lanes; grade-separated interchanges, roundabout, alternative intersection form) and a rough order of magnitude cost estimate.
- f. Determine whether meeting existing target is feasible or practical or if it is:
  - i. In conflict with regional land use or transportation policy framework (RTP, 2040 Growth Concept). (ODOT or City staff will provide assistance on this factor)
  - ii. Has financial constraints
  - iii. In conflict with other state or locally adopted policies (e.g., greenhouse gas reduction, air quality, economic development, Special Transportation Area). (The City will identify any potential conflicts).
  - iv. Has environmental, natural resources, land use, socioeconomic, environmental justice, and/or R/W constraints. (The City will identify any potential constraints.)

*Memo #1:* The consultant will produce a 3-5 page memorandum plus tables and figures with the above background information, identify improvements that could meet the existing mobility target and concluding whether an alternate mobility target is needed. The consultant will refine the draft memo based on City staff comments prior to distribution to the TAG and CAG. The consultant will prepare a final version of the memo after the TAG and CAG meetings.

Estimated TAG/CAG meeting timeframe: Mid-December 2016.

**TAG Meeting #1:** Summarize background information (Memo #1), explain decision making process and agree on codes of conduct. Discuss alternatives considered in Memo #1. Discuss reasonable improvements to increase the capacity and/or safety of the intersection. Initiate preliminary discussion of options for alternative mobility targets. This meeting will be up to two hours in length and does not include a specialized facilitator. Consultant will lead the meeting and present Memo #1.

**CAG Meeting #1:** Summarize background information (Memo #1), explain decision making process and agree on codes of conduct. Discuss alternatives considered in Memo #1. Discuss reasonable improvements to increase the capacity and/or safety of the intersection. This meeting will be up to two hours in length and includes a consultant facilitator in addition to the technical team. Consultant will lead the meeting and present Memo #1.

2. Develop Alternate Mobility Standard Methodology and List of Feasible Improvements *Mid December – Late January*

Based on the options suggested by the TAC in TAG Meeting #1, Consultant shall identify a menu of measures and a reasonable range for a standard to replace the v/c ratio currently utilized to analyze the intersection. For example:

- Volume-to-capacity ratio or demand-to-capacity ratio for different or longer periods (mid-day periods, two-hour peak, or six-hour peak);
- Travel time on Highway 213;
- Reliability;
- Predicted time for a car to get through the intersection in a certain number of light cycles for most of the legs through the intersection;
- Changing the analysis period used to predict operations from the 30th highest hour to an “average weekday peak hour”,

The measure and standard must be:

- a. Clear and objective
- b. Have standardized procedures for calculation and application
- c. Be consistent with and support locally adopted plans

Based on the findings of Memo #1, the Consultant shall develop a list of feasible improvements to increase capacity and/or safety and prepare a qualitative SWOT analysis and cost estimate for each. The improvements will be reviewed for feasibility; cost and compliance with the criteria utilized for solutions in the TSP. This task does not include operational analysis. It will rely on the operational analysis conducted in Task 1.

*Memo #2:* The consultant will produce a 3-5 page memorandum plus figures and tables with a menu of measures and standards for alternative mobility targets and a qualitative assessment of strengths, weaknesses, opportunities and threats (SWOT) for each. The memorandum will also identify solutions to increase the capacity and/or safety of the intersection and will include a qualitative SWOT analysis for each, as well as planning level cost estimates. The consultant will refine the draft memo based on City staff comments prior to distribution to the TAG and CAG. The consultant will prepare a final version of the memo after the TAG and CAG meetings.

Estimated TAG/CAG meeting timeframe: Late January 2017.

**TAG Meeting #2:** Discussion of options for alternative mobility targets and reasonable ranges (Memo #2). The TAG will choose a target methodology and associated reasonable

range. Discuss solutions to increase the capacity and/or safety of the intersection. TAG will recommend a package of solutions. This meeting will be up to two hours in length and does not include a specialized facilitator. Consultant will lead the meeting and present Memo #2.

**CAG Meeting #2:** The CAG will discuss target methodology and refine a reasonable range (Memo #2). The CAG will also discuss improvements to increase the capacity and/or safety of the intersection and the TAG's recommendation. This meeting will be up to two hours in length and includes a consultant facilitator in addition to the technical team. Consultant will lead the meeting and present Memo #2.

3. Amending Plans and Implementing the Project February – July

The consultant will prepare draft & final reports that include:

- a. Revised Oregon City Municipal Code language (City will provide)
- b. Amendments to the TSP, including projects, refined planning level cost estimates and possible funding opportunities for the projects
- c. Summary of the outreach & public involvement process
- d. Findings of Compliance with OAR 731-0015-0055 (City will provide).
- e. Final memos

The draft report will be 5-10 pages in length plus attachments and will be reviewed by the technical and citizen advisory groups at a TAG & CAG Joint Meeting. The groups will suggest amendments to the document for review by the consultant. Once all major issues are identified, the groups will vote to support the draft report.

*Draft & Final Report:* The consultant will refine the draft report based on City staff comments prior to distribution to the TAG and CAG at Joint Meeting #3. The consultant will prepare a final report after the TAG and CAG meetings that addresses any comments from the joint TAG & CAG meeting.

Estimated TAG/CAG meeting timeframe: Mid-April 2017.

**TAG & CAG Joint Meeting 3:** Review of the draft report, the group may suggest amendments to the document for review by the consultant. Once all major issues are identified, the groups will vote to support the project. This meeting will be up to two hours in length and includes a consultant facilitator in addition to the technical team. Consultant will lead the meeting and present the Draft Report.

The Consultant will submit the final report to City staff after addressing any comments from the joint TAG & CAG.

City staff will prepare the staff report, presentation, and present the final report to the Planning Commission and City Commission at the public meetings as required by the Legislative review process. **Consultant will attend up to two public meetings of 2 hours each to provide Q&A support, exact meetings & dates to be determined.**

Preliminary schedule related to the public hearing is:

- Pre-Application Meeting with Planning Staff – February
- Application Submittal to Planning – March/April (this will required draft code language)
- Joint Planning Commission & City Commission Work Session – May
- Planning Commission – Late May/Early June (anticipate two meetings)
- City Commission – June & July (anticipate two meetings)

After City Commission approval, City staff will work with ODOT to initiate the Oregon Highway Plan (OHP) amendment and Oregon Transportation Commission (OTC) adoption process. *This scope of work does not include consultant participation in the OHP amendment process.*

# Project Budget Form

Project Name: Hwy 213 & Beavercreek Rd. Alt. Mobility Stnds.  
 Project Manager: Susan Wright  
 KAI Project Number: 20651  
 Date: Sep 26, 2016

## LABOR ESTIMATE - Hwy 213 & Beavercreek Rd. Alt. Mobility Stnds.

Task	Notes	Staff	Wright, Susan	Steyn, Hermanus	Scarbrough, Wade	Connolly, Kristine	Cullimore, Brad		Kirstin Greene		SUBTASK/ TASK HOURS	SUBTASK/ TASK COST
			SLY	HJS	WES	KMC	BSC					
001 Summarize Background Info												
	1.a Analyze existing conditions		1			4					5	\$575
	1.b Review existing conditions and planned projects		1			4					5	\$575
	1.c Perform intersection ops analysis with TSP and code improvements		1			4	2				7	\$726
	1.d Prepare new alternatives analysis		4	4		8	2				18	\$2,547
	1.e Cost estimate alternatives		1	1		8					10	\$1,188
	1.f Determine target feasibility		4	1		6					11	\$1,538
	Draft Tech Memo #1		4	1		10					15	\$1,931
	Revised Tech Memo #1		1			3					4	\$477
	TAG Meeting #1		8	1		10					19	\$2,659
	CAG Meeting #1		6			8			6		20	\$2,928
	Final Tech Memo #1		2			4					6	\$757
											0	\$0
	Reimbursable Expense											\$100
Task #001 - Subtotal			33	8	0	69	4	0	6	0	120	\$16,000
002 Develop Alt. Mobity Standard Methodology												
	Develop measures, ranges, SWOT analysis		4	1		12					17	\$2,127
	Develop improvement list, SWOT analysis, cost estimates		2	1		6					9	\$1,174
	Draft Tech Memo #2		4	1		12					17	\$2,127
	Revised Tech Memo #2		2	1		4					7	\$977
	TAG Meeting #2		8	1		10					19	\$2,659
	CAG Meeting #2		8			8			6		22	\$3,292
	Final Tech Memo #2		1	1		2					4	\$599
	Reimbursable Expense											\$100
Task #002 - Subtotal			29	6	0	54	0	0	6	0	95	\$13,056
003 Amend Plans and Implement Project												
	Prepare Draft Report including amendments, findings, and compliance		8	4		12	2				26	\$3,668
	Revised Report		2	1		4					7	\$977
	Joint TAC/CAG Meeting		8	1		10			6		25	\$3,709
	Final Report		2	1		4					7	\$977
	Attend PC and CC for Q&A		8								8	\$1,457
											0	\$0
											0	\$0
	Reimbursable Expense											\$50
Task #003 - Subtotal			28	7	0	30	2	0	6	0	73	\$10,839
004												
											0	\$0
											0	\$0
											0	\$0
											0	\$0
											0	\$0
											0	\$0
											0	\$0
	Reimbursable Expense											\$0
Task #004 - Subtotal			0	0	0	0	0	0	0	0	0	\$0
TOTAL HOURS			90	21	0	153	6	0	18	0		
LABOR RATE			\$182.09	\$220.50	\$191.68	\$98.19	\$75.54		\$175.00			
LABOR COST			\$16,388	\$4,630	\$0	\$15,023	\$453	\$0	\$3,150	\$0		
											TOTAL HOURS	TOTAL LABOR
											288	\$39,644

TOTAL REIMBURSABLES
\$250
TOTAL KAI FEES
\$39,894
TOTAL SUB FEES
\$0
TOTAL PROJECT BUDGET
\$39,894



## 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.

(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. 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 \$1,000,000 combined, single-limit, per-occurrence/annual aggregate. Such insurance shall name City as an additional insured, with the stipulation that this insurance, as to the interest of City, shall not be invalidated by any act or neglect or breach of this Agreement by Consultant.

(d) Errors and Omissions Insurance. Consultant shall provide City with evidence of professional errors and omissions liability insurance for the protection of Consultant and its employees, insuring against bodily injury and property damage 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 brought by City or Consultant against the other to

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

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. 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

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

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.