CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 06-60

A RESOLUTION OF THE TIGARD CITY COUNCIL APPROVING A PERSONAL SERVICES AGREEMENT WITH MICHAEL J. O'BRIEN, MUNICIPAL COURT JUDGE

WHEREAS, Section 10 of the Tigard City Charter provides for the office of Municipal Judge; and

WHEREAS, Michael O'Brien served as a Municipal Court Pro-tem Judge from October 23, 1989 to June 30, 1992 and has served as Municipal Judge since July 1, 1992; and

WHEREAS, the Tigard City Council has found Judge O'Brien's performance to be satisfactory; and

WHEREAS, the City Council wishes to continue the understood reporting procedure between the City and Municipal Judge;

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: A personal services agreement is entered into by mutual agreement of the parties as set forth in the attached Exhibit "A". This agreement will take effect September 26, 2006 and shall repeal and replace all prior verbal and written agreements.

SECTION 2: This resolution is effective immediately upon passage.

PASSED: This 26th day of September 2006.

Mayor - City of Tigard

ATTEST:

Carol A. Krager
Dep. City Recorder - City of Tigard

CITY OF TIGARD, OREGON
PERSONAL SERVICES AGREEMENT

THIS AGREEMENT made and entered into this 26th of September, 2006, by and between the CITY OF TIGARD, a municipal corporation of the State of Oregon, hereinafter called City, and Michael J. O'Brien, hereinafter called Contractor.

RECITALS

City has need for the services of a company with a particular training, ability, knowledge, and experience possessed by Contractor, and

City has determined that Contractor is qualified and capable of performing the professional services as City does hereinafter require, under those terms and conditions set forth:

Therefore, the parties agree as follows:

SCOPE OF WORK

Contractor shall initiate services on 26th of September, 2006 upon receipt of City's notice to proceed, together with an executed copy of this Agreement. Contractor agrees to provide the following services as the Municipal Court Judge:

- Preside over arraignments, trials, and hearings for the following case types: civil infractions, criminal cases, juvenile violations, traffic violations, and parking citations;
- Oversee the Municipal Court judicial function;
- Update court orders and rules as needed;
- Provide an annual report to City Council;
- Research and additional projects as agreed to by the Municipal Court Judge and Administrative Services Manager.

EFFECTIVE DATE AND DURATION

This Agreement shall become effective upon the 26th of September, 2006 and shall expire, unless otherwise terminated or extended, on the 30th of June, 2008.

COMPENSATION

City agrees to pay Contractor an amount not to exceed thirty-nine thousand dollars ($39,000.00) in the 2006–2007 fiscal year for performance of those services described in this

Agreement, including any payments made during the current fiscal year prior to the date of this Agreement.

Compensation will be reviewed at the end of the 2006-2007 fiscal year to determine what adjustment is appropriate. If the court's caseload increases significantly, and results in a substantial increase in the Municipal Court Judge's hours, both parties agree to negotiate an appropriate adjustment in Municipal Court Judge's rate of compensation.

Payment will be made based on Contractor's invoice, subject to the approval of Nadine Robinson, Administrative Services Mananger and not more frequently than bi-monthly. Payment shall be payable within fifteen (15) days from the date of receipt by the City.

CONTACT INFORMATION

All notices, bills, and payments shall be made in writing and may be given by personal delivery, mail, or fax. Payments may be delivered by personal delivery, mail, or electronic transfer. The following addresses and contacts shall be used to transmit notices, bills, payments, and other information:

Contact Manager for City:	**Contact Manager for Contractor:**
City of Tigard	Company: Michael J. O'Brien
Attn: Nadine Robinson, Admin Services Mananger	Address: : PO Box 711
13125 SW Hall Blvd., Tigard, Oregon 97223	Address: Forest Grove, OR 97116
Phone: 503-639-4171 ext. 2481	Phone: 503-357-0144
Fax: 503-684-7297	Fax: 503-359-4539
Email Address: Nadine@tigard-or.gov	Email Address: rune777@verizon.net

CONTRACTOR AS INDEPENDENT CONTRACTOR

Contractor acknowledges that for all purposes related to this Agreement, Contractor is and shall be deemed to be an independent contractor as defined by ORS 670.600 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of said finding.

Contractor acknowledges that for all purposes related to this Agreement, Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

INDEMNIFICATION

City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed in

accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a contractor's work by City shall not operate as a waiver or release.

City will defend and indemnify Municipal Court Judge for all actions taken while Municipal Court Judge is performing within the scope and responsibilities of the municipal court judge as provided in this agreement to the extent of the City's obligation pursuant to the Oregon Revised Statutes.

TERMINATION

The parties agree that any decision by either party to terminate this Agreement before 30th of June, 2007 shall be accompanied by sixty (60) days written notice to the other party prior to the date termination would take effect. There shall be no penalty for early termination. If City terminates the contract pursuant to this paragraph, it shall pay Contractor for services rendered prorated to the date of termination.

AGREEMENT MODIFICATIONS

Modifications to this Agreement are valid only if made in writing and signed by all parties.

OWNERSHIP OF WORK PRODUCT

City shall be the owner of and shall be entitled to possession of any and all work products of Contractor which result from this Agreement, including any computations, correspondence or pertinent data and information gathered by or computed by Contractor prior to termination of this Agreement by Contractor or upon completion of the work pursuant to this Agreement.

GOVERNING LAW

Contractor shall comply with all applicable federal, state and local laws; and rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or disability. The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. All provisions required by ORS Chapter 279 to be included in a contract of this type are incorporated into this Agreement as though fully set forth herein. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

COMPLETE AGREEMENT

This Agreement and attached exhibit constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor, by the signature of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Contractor has executed this Agreement on the date hereinabove first written.

CITY OF TIGARD	**CONTRACTOR**
_____	_____
By: Authorized City staff	By: Contractor
_____	_____
Date	Date