

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
AUGUST 6, 2013**

CALL TO ORDER

Mayor Ferguson called the 2155th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Council President Dave Hedges and Councilors Scott Churchill, Mark Gamba, and Mike Miller

Staff present: City Manager Bill Monahan, Assistant to the City Manager Teri Bankhead, City Attorney Tim Ramis, City Recorder Pat DuVal, Library Director Katie Newell, Planning Director/Interim Community Development Director Steve Butler, Engineering Manager Jason Rice, Light Rail Design Coordinator Stacy Bluhm, and Police Chief Bob Jordan

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Cycle Oregon Recognition

Chief Jordan reported that the Cycle Oregon Board of Directors has recognized the City of Milwaukie and Milwaukie Police Department Motorcycle Officers Downey and Odem for their contributions to the 2012 Cycle Oregon event. A framed photo of the two officers at Crater Lake was presented to the City.

B. Portland – Milwaukie Light Rail Project Update

Ms. Bluhm provided a status report on the Portland – Milwaukie Light Rail (PMLR) Project. She discussed the Trolley Trail and completed and upcoming street closures including McLoughlin Boulevard. Hwy 99E will close August 16 through Monday August 19 at 5 a.m. to vehicles, pedestrians, and bikes. She discussed the Kellogg Bridge Girders Noise Variance and potential temporary lane restrictions.

Councilor Churchill asked at what point would notification signs be on McLoughlin Boulevard for those going north.

Ms. Bluhm said the variable signs were already in place for both north and southbound traffic as well as River Road. She also placed smaller signs on Oatfield Road regarding delays.

Councilor Miller asked what would be done to alleviate problems for those living south of Lake Road. He felt the entire neighborhood would be land locked with a lot of upset residents.

Ms. Bluhm replied there would be some gaps on Lake Road due to traffic signals. The situation would be closely watched and flaggers will be on call. She agreed Lake Road would be carrying a lot of traffic, and Oatfield Road was the most likely to backup. She anticipated that people would make accommodations and adjust their driving habits.

Councilor Churchill asked how rapidly the flaggers would respond. He felt they should be able to report in 30 minutes or less and suggested the flaggers be staged in the downtown area. This was a serious volume of traffic, and it was important to care for the citizens.

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Mayor Ferguson observed the Lake Road Neighborhood had gone through a lot of pain with the recent improvement project, shared the concerns, and urged being sensitive.

Ms. Bluhm will email City Council after she talked with the supervisors.

Councilor Miller strongly recommended having two flaggers on site, not on call, to help drivers get onto Lake Road.

The group discussed a flagger at Vernie Avenue as well as Oatfield Road at Aldercrest Road.

Mr. Monahan added that the Police Department would have officers with authorized overtime on duty those two days.

Ms. Bluhm discussed the Tillamook Bridge Noise Variance and the problems with pouring concrete during high daytime temperatures.

C. Library Expansion Task Force Recommendation

Ms. Newell provided an update on the Library Expansion Task Force (LETF) and its unanimous support of the recommendation to expand the building up to 35,000 square feet.

Councilor Churchill discussed City Council's direction to the Task Force, the subsequent work with FFA Architecture and Interiors on the needs assessment, and the recent polling of the members. There was a significant amount of discussion of the site and the expansion it could accommodate. A majority of the LETF members recommended acceptance of the report. Costs were not part of this phase, but the Task Force could be reconvened to provide input on a tolerable bond amount. The first step would be direction from the City Council on the bond amount and then engage someone to recommend phasing. He commented on the potential of rising construction costs and the need to consider the right breaks at the right time. The LETF accepted the FFA recommendation at .76 square feet per capita in excess of 4,000 population and flexibility in phasing.

Ms. Newell discussed Oregon Library Association (OLA) standards which at .76 the facility would be 35,000 square feet. It would have to be at least 27,000 square feet and could be done in phases.

D. Shobi Dahl Code Concerns

Mr. Dahl chose not to address the City Council at this time.

CONSENT AGENDA

It was moved by Council President Hedges and seconded by Councilor Gamba to approve the consent agenda as presented.

A. City Council Meeting Minutes

- 1. June 20, 2013, Study Session;**
- 2. July 2, 2013, Work Session;**
- 3. July 2, 2013, Regular Session;**
- 4. July 16, 2013, Work Session; and**
- 5. July 16, 2013, Regular Session**

B. Board, Commission, and Committee Appointments

1. **Resolution 60-2013: A Resolution of the City Council of the City of Milwaukie, Oregon, appointing Lisa Fossen to the Milwaukie Arts Committee; and**
 2. **Resolution 61-2013: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Michael Osborne to the Milwaukie Citizens Utility Advisory Board**
- C. **Resolution 62-2013: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of the Contract for Towing Services to Olson Brothers Services, Inc.;**
- D. **OLCC Applications:**
1. **AM Kanso, 10966 SE McLoughlin Boulevard, change of ownership;**
 2. **Big Bee Café, 4630 SE International Way, new outlet;**
 3. **The Game Room, 1926 SE Scott Street, new outlet; and**
 4. **Vinifera Imports, Ltd., 4000 SE International Way, change of location**

Motion passed with the following vote: Councilors Miller, Churchill, Hedges, and Gamba and Mayor Ferguson voting “aye.” [5:0]

AUDIENCE PARTICIPATION

There was no new audience participation, and Mr. Monahan had no follow up from previous City Council meeting.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

A. 2013 Street Surface Maintenance Program (SSMP) Contract Awards – Resolution

Mr. Rice provided the staff report in which the City Council was requested to authorize the City Manager to sign construction contracts for two Capital Improvement Projects (CIP). He described the paving project and upgrade of 12 ADA ramps in the downtown area.

Councilor Gamba asked when the Railroad Avenue project was scheduled.

Mr. Rice replied it was scheduled for year 9 of the program, 2015 – 2016. He discussed infrastructure and adjusting the priority list.

Councilor Gamba requested a future discussion of borrowing money to fund paving projects while prices were low.

Mr. Monahan responded he would come back to City Council with the process and analysis based on Finance Director input.

It was moved by Councilor Gamba and seconded by Councilor Miller to adopt the resolution approving the award of contract for the pavement reconstruction of Harrison Street between Hwy 99E and Campbell Street and resurfacing Main Street between Washington and Scott Streets (CIP-2012-S06). Motion passed with the following vote: Councilors Miller, Churchill, Hedges, and Gamba and Mayor Ferguson voting “aye.” [5:0]

RESOLUTION 63-2013:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE AWARD OF CONTRACT FOR THE PAVEMENT RECONSTRUCTION OF HARRISON STREET BETWEEN HWY 99E AND CAMPBELL STREET AND PAVEMENT RESURFACING OF MAIN STREET BETWEEN WASHINGTON STREET AND SCOTT STREET (CIP-2012-S06)

Mr. Rice discussed the second SSMP contract which was for slurry seal projects in the Cedarcrest and Brookside neighborhoods. There was no grinding in this component, and the new surface could prolong the life of the roadway another 10 years.

Councilor Gamba noticed the slurry seal was coming in a bit higher and reconstruction was lower than the engineer's estimate and asked Mr. Rice if he had any idea why that was.

Mr. Rice felt it was a little late in the season to bid out slurry sealing, and the department hoped to go through the bid process earlier next year.

Councilor Churchill commented on how critical prep work was to the success of the project.

It was moved by Councilor Miller and seconded by Council President Hedges to adopt the resolution authorizing the City Manager to execute a contract for 2013 SSMP Slurry Seal Project (CIP-2013-S04) in the amount of \$119,094.30. Motion passed with the following vote: Councilors Miller, Churchill, Hedges, and Gamba and Mayor Ferguson voting "aye." [5:0]

RESOLUTION 64-2013:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR 2013 SSMP SLURRY SEAL PROJECT (CIP-2013-S04) IN THE AMOUNT OF \$119,094.30.

B. 17th Avenue Multi-Use Trail Intergovernmental Agreements with the Oregon Department of Transportation – Resolutions

Mr. Rice provided the staff report and requested that the City Council adopt resolutions necessary for the advancement of the 17th Avenue Multi-Use Trail Project. He briefly discussed the agreements, the project goals, and proposed typical cross section. The Local Agency Agreement laid out the framework for funding responsibility and the right-of-way services agreement authorized that phase. Staff did not anticipate acquiring right-of-way through this process but more likely construction easements.

The goals of this project were to complete the "last mile" between two regional trails, the Trolley Trail and the Springwater Corridor and to make it a safe facility for all users. He noted the project had received a lot of regional support. The design phase would begin fall 2013, the right-of-way phase spring through fall 2014, and construction spring and summer 2015 with completion in 2015. **Mr. Rice** discussed design phase communications that included an initial mailer to property owners and scheduling team bike and pedestrian tours. He would update the City Council on a regular basis, maintain the City's project website, and make a final design presentation. He brought several minor staff report corrections to the City Council's attention and noted eminent domain would be the last resort. The project would accommodate the current grave locations in the Pioneer Cemetery. He briefly commented on the grade separation that was dependent on the survey, but they may be able to raise the path and add a railing.

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Councilor Churchill wanted assurance there was good project management for effective tracking of construction and fuel costs as well as an awareness of any issues that might come up.

Councilor Miller asked if there was an estimate of consultant's costs.

Mr. Rice replied the estimate was approximately \$1 million.

Councilor Miller was concerned about what had happened with the Lake Road Improvement Project. He did not want consultant fees eating up the funds.

Mr. Rice explained the 17th Avenue project had a truncated design window and noted this was fast paced for ODOT. Lake Road had gone on for many years and drove up the consultant's costs.

It was moved by Councilor Gamba and seconded by Councilor Churchill to adopt the resolution granting signing authority of a Local Agency Agreement with the Oregon Department of Transportation (ODOT) for the design and construction of a multiuse path along 17th Avenue between McLoughlin Boulevard and Ochoco Street (CIP-2013-T05). Motion passed with the following vote: Councilors Miller, Churchill, Hedges, and Gamba and Mayor Ferguson voting "aye." [5:0]

RESOLUTION 65-2013:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, GRANTING SIGNING AUTHORITY OF A LOCAL AGENCY AGREEMENT AND A RIGHT-OF-WAY SERVICES AGREEMENT WITH THE OREGON DEPARTMENT OF TRANSPORTATION (ODOT) FOR THE DESIGN AND CONSTRUCTION OF A MULTIUSE PATH ALONG 17TH AVENUE BETWEEN MCLOUGHLIN BOULEVARD AND OCHOCO STREET (CIP-2013-T05)

It was moved by Council President Hedges and seconded by Councilor Gamba to adopt the resolution declaring the public necessity for the construction of the 17th Avenue Multiuse Project (CIP-2013-T05) and need to acquire real property and easements. Motion passed with the following vote: Councilors Miller, Churchill, Hedges, and Gamba and Mayor Ferguson voting "aye." [5:0]

RESOLUTION 66-2013:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DECLARING THE PUBLIC NECESSITY FOR THE CONSTRUCTION OF THE 17TH AVENUE MULTIUSE PROJECT (CIP-2013-T05) AND NEED TO ACQUIRE REAL PROPERTY AND EASEMENTS.

C. Council Reports

Councilor Churchill talked with downtown businesses regarding construction impacts and working to keep the area economically viable. He discussed finding a balance for saving downtown trees while making sidewalks safe.

Council President Hedges attended the recent unveiling of the K9 unit plaque and noted the Public Safety Foundation had raised about \$23,000 for the Milwaukie Police K9 program. He also attended the Clackamas County Coordinating Committee (C4) meeting where funding allocations were considered.

Councilor Miller participated in the North Clackamas Parks and Recreation District (NCPRD) tour of seven parks west of I-205 that included Milwaukie Riverfront Park and Klein Point. The District authorized \$80,000 to master plan for the four undeveloped

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Milwaukie neighborhood parks. The second NCPRD meeting related to budgeting and its role in parks and open space development. He encouraged keeping in mind the City had to work with its partners to ensure things happened.

Councilor Gamba attended the C4 meeting regarding funding allocations and the Joint Policy Advisory Committee on Transportation (JPACT) where the Regional Active Transportation Plan (ATP) was discussed. He believed there should be more attention paid to Milwaukie's needs and suggested some pushback on its Committee representatives to maintain safety and ensure equity.

Mayor Ferguson announced the upcoming Bike Milwaukie Event and the First Friday walking tour he led in downtown Milwaukie. He attended the recent Oregon Mayor's Conference and was duly impressed by the City of Albany's Talking Water Gardens. He met with two developers interested in potential downtown projects.

ADJOURNMENT

It was moved by Councilor Gamba and seconded by Council President Hedges to adjourn the meeting. Motion passed with the following vote: Councilors Miller, Churchill, Hedges, and Gamba and Mayor Ferguson voting "aye." [5:0]

Mayor Ferguson adjourned the regular session at 8:45 p.m.

Respectfully submitted,

Pat DuVal

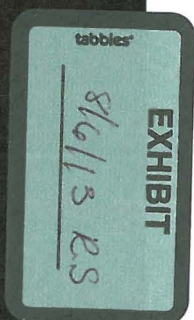
Pat DuVal, Recorder

REGULAR SESSION



LIGHT RAIL CONSTRUCTION UPDATE

August 6, 2013



TROLLEY TRAIL LANDSCAPING CHANGES

TriMet submitted the Type II for the Trolley Trail landscaping changes to the City the week of July 15th.



HARRISON STREET CLOSURE

- Harrison Street – Our second road closure to rebuild the track crossings and street was in July (opened Monday, July 15th).



HARRISON ST - BEFORE



HARRISON ST - NOW



MONROE STREET CLOSURE

21st Ave to 25th Ave – Local Access Only

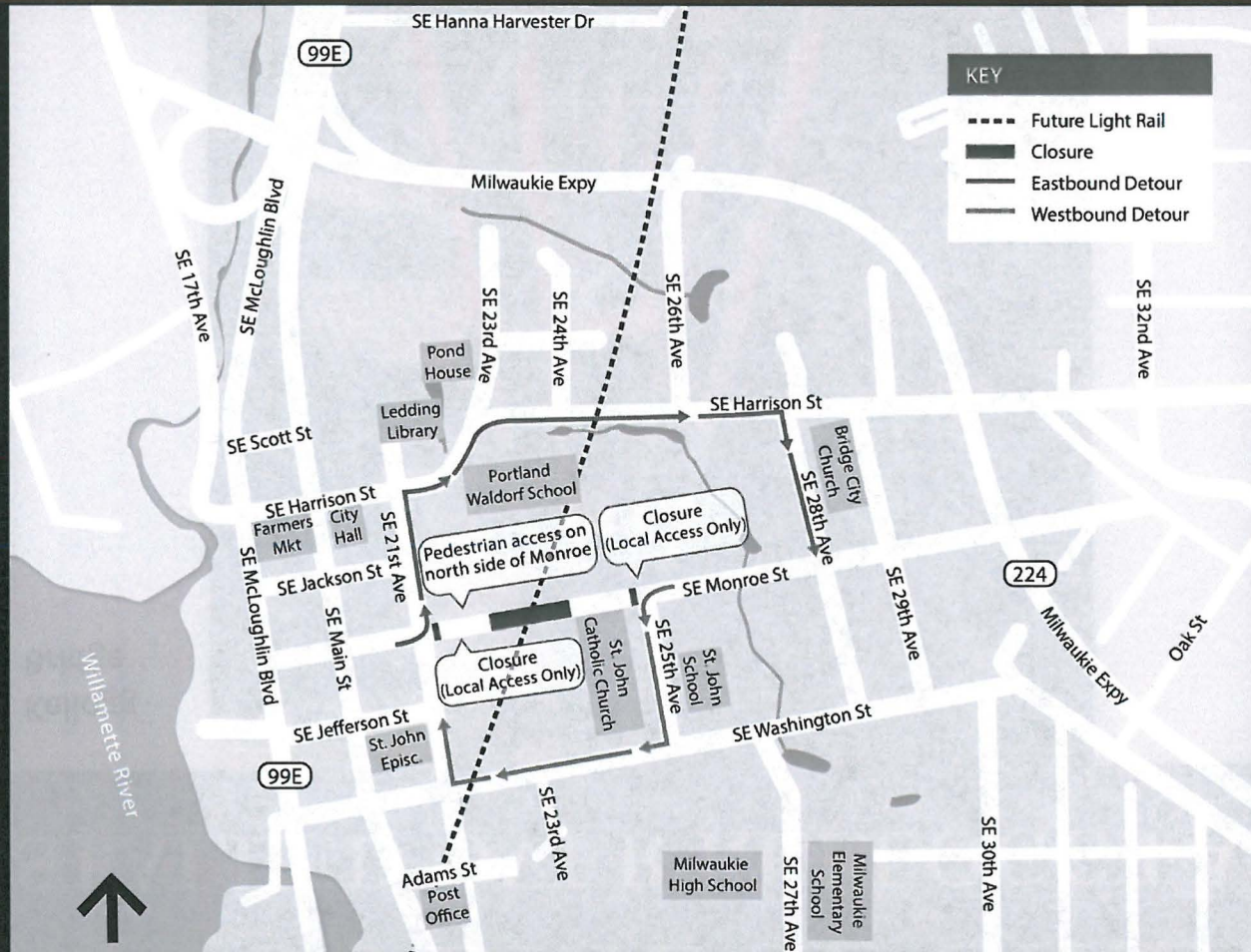
August 5th (Monday)

thru

August 25th (Sunday)



MONROE DETOUR



KELLOGG BRIDGE GIRDERS INSTALLED OVER KELLOGG LAKE

Kellogg
Bridge



MCLOUGHLIN CLOSURE

McLoughlin Blvd (Hwy 99E) between
Washington Street and River Road will
be closed:

Friday, August 16th at 10 pm

thru

Monday August 19th at 5 am



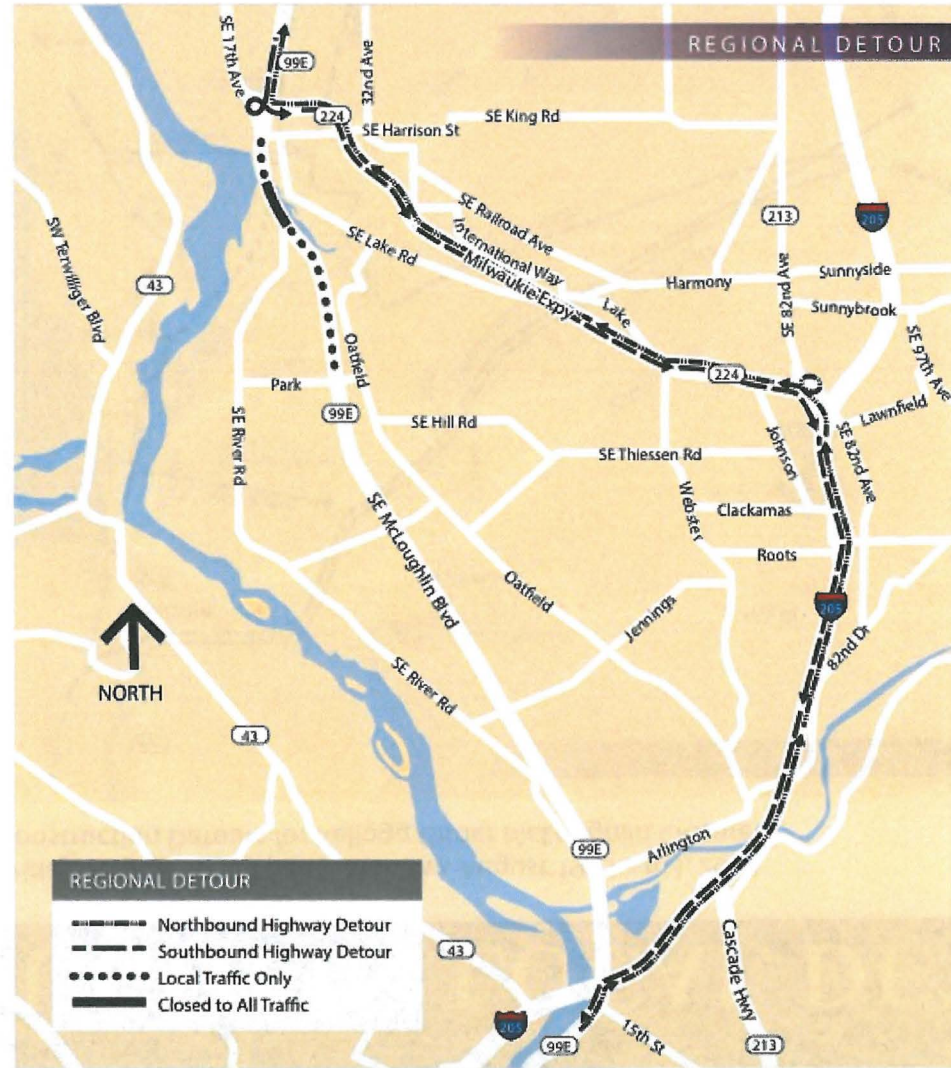
KELLOGG BRIDGE GIRDERS NOISE VARIANCE

- The original noise variance was requested for Friday, August 16th starting at 7 pm through Monday, August 19th at 7 am.
- ODOT lane restrictions (10 am to 3:30 pm) don't allow adequate time to set the two girders over the pier directly east of McLoughlin Blvd during regular work hours.
- Thus, the contractor has had to modify their noise variance request to include work on the east side of McLoughlin Blvd on Thursday night (August 15th) from 9 pm to 5 am on Friday morning.



MCCLOUGHLIN REGIONAL DETOUR

Friday, August 16 (10 p.m.)–Monday, August 19 (5 a.m.), 2013
 Construction Detours for Kellogg Girder McLoughlin Closure



MCCLOUGHLIN LOCAL DETOUR

Friday, August 16 (10 p.m.)–Monday, August 19 (5 a.m.), 2013
 Construction Detours for Kellogg Girder McLoughlin Closure



MCCLOUGHLIN BUS DETOUR ROUTES #33 & #34

- Southbound busses leaving downtown Milwaukie will be redirected to:
 - 21st Avenue
 - Lake Road
 - Oatfield
 - Park Avenue
- Northbound busses will do this in reverse.



MCLOUGHLIN PEDESTRIAN & BIKE DETOUR

Pedestrians and bikes will be detoured off McLoughlin (between Washington and Bluebird/River) to the existing path behind the Wastewater Treatment Plant.

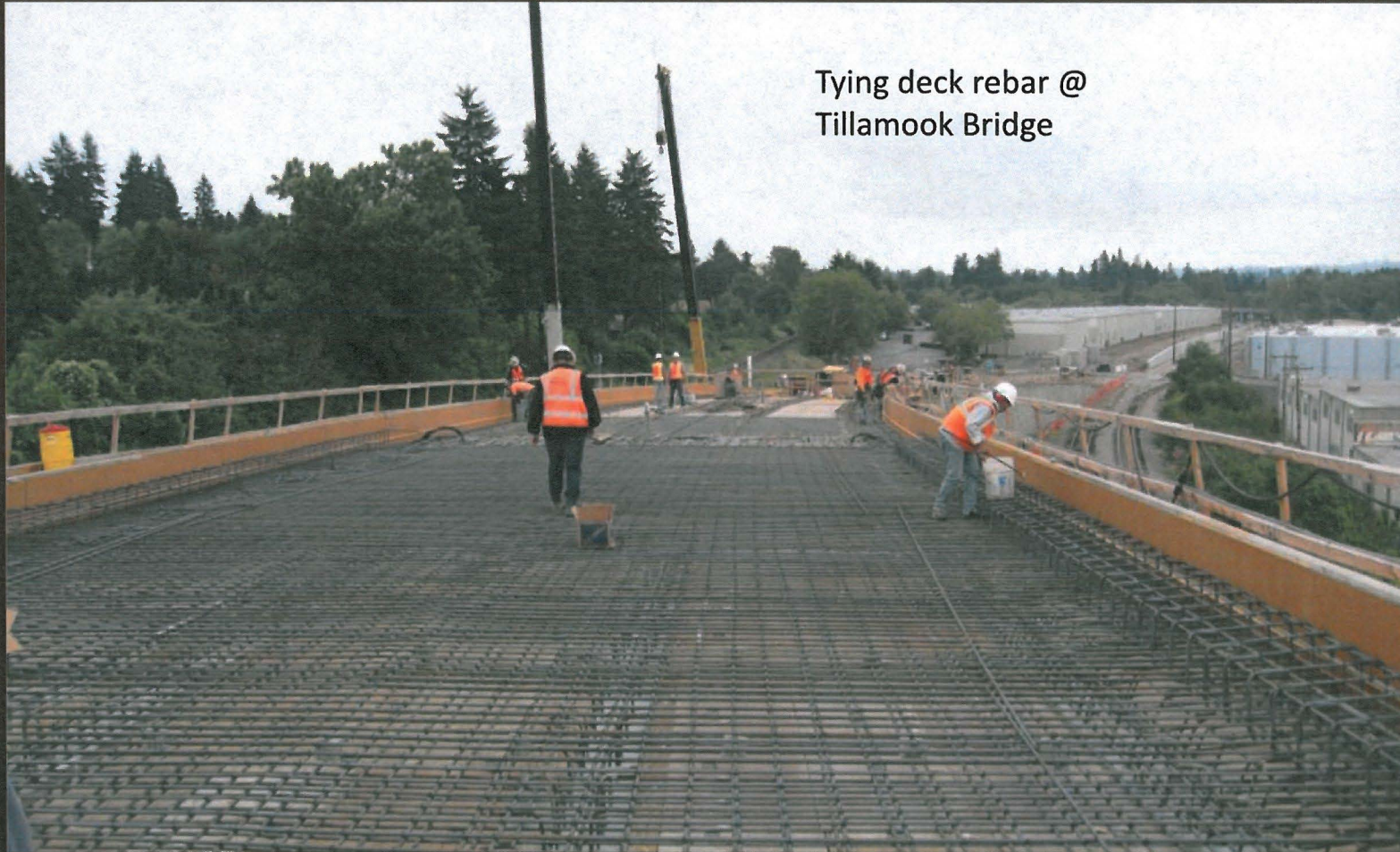


TriMet's Construction Hotline

503 962-2222



TILLAMOOK BRIDGE



Tying deck rebar @
Tillamook Bridge



TILLAMOOK BRIDGE NOISE VARIANCE

High daytime temperatures will not allow the bridge deck concrete to cure properly.

As such, the contractor needs to start work very early to complete the pour in the morning.

A noise variance is needed for the three deck spans that are to be poured later this month.

Current expectations are that this work would occur over the course of 3 different nights between August 12th and August 20th but the work is weather dependent.



CONSTRUCTION UPDATES

TriMet provides weekly construction updates on their website. These updates can be found at:

<http://trimet.org/pm/construction/index.htm#clackamas>



BUS DETOURS

Trimet provides bus route service alerts on their website at:

<http://trimet.org/alerts/>



AGENDA
MILWAUKIE CITY COUNCIL
REGULAR SESSION
AUGUST 6, 2013

MILWAUKIE CITY HALL
10722 SE Main Street

2155th MEETING

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| 1. CALL TO ORDER | |
| Pledge of Allegiance | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | |
| A. Portland – Milwaukie Light Rail Project Update | |
| Staff: Light Rail Design Coordinator Stacy Bluhm | |
| B. Library Expansion Task Force Recommendation | 2 |
| Staff: Library Director Katie Newell | |
| C. Shobi Dahl Code Concerns | |
| 3. CONSENT AGENDA <i>(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the “Consent” portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)</i> | |
| A. City Council Meeting Minutes | 5 |
| 1. June 20, 2013, Study Session; | |
| 2. July 2, 2013, Work Session; | |
| 3. July 2, 2013, Regular Session; | |
| 4. July 16, 2013, Work Session; and | |
| 5. July 16, 2013, Regular Session | |
| B. Board, Commission, and Committee Appointments – Resolutions | 26 |
| 1. Appoint Lisa Fossen to the Milwaukie Arts Committee | |
| 2. Appoint Michael Osborne to the Milwaukie Citizens Utility Advisory Committee | |
| C. Approve Contract for Towing Services between the City and Olson Brother Towing, Inc. – Resolution | 28 |
| D. OLCC Applications | 101 |
| 1. AM Kanso, 10966 SE McLoughlin Boulevard, change of ownership | |
| 2. Big Bee Café, 4630 SE International Way, new outlet | |
| 3. The Game Room, 1926 SE Scott, new outlet | |
| 4. Vinifera Imports, Ltd., 4000 SE International Way, change of location | |

4. **AUDIENCE PARTICIPATION** *(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are “not on the agenda” may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, “all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous.” The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)*

5. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*
 - A. **None scheduled**

6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*
 - A. **2013 Street Surface Maintenance Program (SSMP) Contract Awards – Resolutions**
 1. **Main Street and Harrison Street Paving Contract with S-2 Contractors (CIP-2012-S06)** **106**
 2. **Slurry Seal Projects Contract with Asphalt Maintenance Associates, Inc. in the Cedarcrest and Brookside Neighborhoods (CIP-2013-S04)** **112**
Staff: Engineering Manager Jason Rice
 - B. **17th Avenue Multi-Use Trail Intergovernmental Agreements with the Oregon Department of Transportation – Resolutions (CIP-2013-T05)** **118**
Staff: Engineering Manager Jason Rice
 - C. **Council Reports**

7. **INFORMATION**

8. **ADJOURNMENT**

Public Information

- Executive Session: The Milwaukie City Council may meet in executive session immediately following adjournment pursuant to ORS 192.660(2).
- All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

2.

PROCLAMATIONS,
COMMENDATIONS,
SPECIAL REPORTS,
AND AWARDS



Agenda Item: RS 2. B.

To: Mayor and City Council

Through: Bill Monahan, City Manager

From: Katie Newell, Library Director

Subject: Library Expansion Task Force Update

Date: August 6, 2013

ACTION REQUESTED

Receive the recommendation of Milwaukie's Ledding Library Expansion Task Force (LETF) to endorse the needs assessment report completed by FFA. The Task Force met on July 11, 2013, reviewed FFA's report and voted on the recommendation being presented to Council to expand the Library up to 35,000 sq. ft. at its current site.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

July 2, 2013, Work Session, FFA presentation of the completed needs assessment to Council.

February 26, 2013, Work Session, Council update of LETF and its recommendation to hire FFA to conduct needs assessment.

October 16, 2012, Work Session, Council progress report of LETF.

March 15, 2011, Work Session, Council authorized creation of LETF.

BACKGROUND

At its February 1, 2011 Work Session meeting, City Council met with the Ledding Library Board and discussed the space needs of the library as well as the process necessary to evaluate options for enlarging the Library. The availability of \$1 million of capital funds from the Library District of Clackamas County in 2012 requires the City undertake an analysis of how to use the funds and develop a plan to address space needs. The Council and Board discussion focused on the benefits of creating a task force to stimulate a broad based discussion of the community need for library facilities, the options available and the process needed to pursue locations and funding.

At its March 15, 2011 meeting, the Milwaukie City Council authorized the creation of the Library Expansion Task Force (LETF) to look into the issues surrounding the expansion of the Ledding Library. The first meeting of LETF was June 23, 2011, with representatives from City Council, Library Board, Library Foundation, Planning Commission, Budget Commission, Neighborhoods, Business, and Library staff.

The LETF developed a preliminary design program that supported the need of an expansion. A progress report was presented to Council on October 16, 2012, recommending that the Task Force be authorized to hire an outside consultant to complete an unbiased needs assessment/programming plan for the Ledding Library. Council agreed that the Task Force could move forward with this.

At the February 26, 2013 Work Session, LETF updated Council on the search for a firm to conduct the needs assessment/programming plan and recommended hiring the firm FFA to do this. Council directed staff to move forward with hiring FFA.

The LETF met June 13, 2013, to review the preliminary findings of FFA. The majority of the Task Force favored the direction the report is going; their next meeting was scheduled for July 11, 2013, to discuss the final report and vote on their recommendation to Council.

Troy Ainsworth and Karl Refi, both of FFA, presented the finalized needs assessment for Council's review at the July 2, 2013 Work Session. The report reviewed the results of the public survey, staff interviews and public meetings, as well as diagrams illustrating the possibility of expanding the Library to a size up to 35,000 sq. ft. at its current site. This final report had not yet been presented to the LETF at the time of the 7/2 Work Session; however, LETF met July 11, 2013, and voted to recommend to Council an expansion of the Ledding Library up to 35,000 sq. ft. at its current site.

CONCURRENCE

N/A

FISCAL IMPACTS

None to the City. \$35,000 has been set aside from the Library Endowment to be used for the needs assessment.

WORK LOAD IMPACTS

Library Director and Staff were interviewed by FFA; now that report is completed, no further workload impacts are anticipated at this time.

ALTERNATIVES

N/A

ATTACHMENTS

None.

3.

CONSENT AGENDA

MINUTES
MILWAUKIE CITY COUNCIL STUDY SESSION
JUNE 20, 2013

Mayor Ferguson called the study session to order at 5:07 p.m. in the City Hall Conference Room.

Council Present: Council President Hedges, Councilors Scott Churchill, Mark Gamba, and Mike Miller

Staff Present: City Manager Bill Monahan, City Recorder Pat DuVal, Business Analyst Pat Mobley, Human Resources Director Gary Rebello, and Library Director Katie Newell

Media: Michael Bamberger, Raymond Rendleman

UGMA

Mr. Mobley reviewed the initial report on the feasibility of annexing properties within the City's urban growth management area (UGMA). It was recommended that in order for annexation to be financially feasible that the 3 Creeks area and the Clackamas Town Center be separated and that the 3 Creeks area should be annexed first. The greatest impact would be on public safety with 5 additional officers needed to serve the annexed area. Each recruit would cost \$101,000 with indirect costs at \$60,000 for fleet, mentoring, recruitment costs, and things of that nature. He discussed fleet acquisition and maintenance. He noted he had not factored in insurance costs. The City vehicle replacement policy is 4 years or 80,000 miles.

He reviewed the scenarios related to cash flows and timelines highlighting expenditures associated with annexation and potential hiring of 5 police recruits. First positive cash flow would be 2016 / 2017 with cash hitting balance sheet November 2014 / 2015. He summarized the 11 and 22 month scenarios. The risk to the City was primarily allocation of public safety resources. In preparing the figures, he had assumed a conservative 2.5% increase. Another risk factor might be if major employers were recruited elsewhere, and the City lost revenue.

Mr. Monahan had some information on TriMet light rail property acquisitions and estimates partial properties that were lost. The final estimates would be ready shortly and could be \$40,000 to \$50,000.

The group discussed the strengthening Milwaukie real estate market. **Councilor Churchill** said values appeared to be increasing on paper, but it seemed the question was when would that cash come in. **Council President Hedges** thought the assessor was about a year behind.

Councilor Gamba noted that Milwaukie was already at the top of the number of FTEs per 1000 population. If 5 more officers were hired, Milwaukie would be far above the median.

Mr. Monahan replied given special assignments and call volumes made it difficult to compare various jurisdictions. He discussed a staffing structure analysis of the current environment along with the 3 Creeks annexation and the opening of light rail in 2015.

The group discussed staffing levels and factors that might contribute to the number and types of calls for service such as the economic environment, proximity to Portland, and contracting for public safety services.

Councilor Gamba asked if were feasible to bring officers on incrementally as the revenues increased rather than responding immediately to the worst case scenario.

Council President Hedges cautioned that crime would not be prevented in that case. Officers would no longer stop cars because they did not have the time and the risks increased.

Councilor Gamba observed both Portland and Clackamas County would likely respond. He wanted to know if that many officers had to be hired right off the bat.

Mayor Ferguson interested in finding out how often Milwaukie backs up other departments.

Council President Hedges said the nearest police department was in Gladstone and observed many times the Sherriff's deputies were up on Mt. Hood or in the southern part of the Council. He felt the residents should be asked what kind of police service they were willing to pay for and noted the survey results indicated public safety was a real selling point.

Mr. Monahan recommended looking at what might be done structurally in the department. Could some functions be done by a non-uniform officer? More information was needed both on light rail and this matter.

Council President Hedges's biggest concern was officer safety. The group discussed the quality of lateral transfers from other departments and promotional opportunities in Milwaukie.

Mr. Mobley recommended the 22 month option, further research on public safety and fleet, and updating certain intergovernmental agreements (IGA). He summarized the annexation process.

Council President Hedges thought the timing for annexation was wrong because of the City's financial status and its more immediate needs. He had been supportive of going forward, but these figures showed the City did not have the money.

Councilor Churchill commented on the property tax rate and increases to those annexing.

Mayor Ferguson liked idea of doing the Police Department study whether Milwaukie annex or not to gather data on the health of the City operations.

Councilor Churchill would like information on the top 10 properties.

County Cost Recovery Fee

Mr. Monahan discussed the County Cost Recovery fee that had previously been paid to Clackamas County Service District #1 (CCSD#1) through a true-up. He summarized some issues that had come up in the North East Sewer Extension (NESE) area. He discussed outreach efforts to the residents regarding the recovery fee and recommended that the City honor its commitments. He suggested that the recovery fee not be prepaid in the event the fees were lowered. He noted if septic systems failed repair was not an option, and the properties would be required to connect to the City's system.

The City Council agreed to consider a resolution at its July 16, 2013, regular session that adopted a list of accepting properties.

Bond Measure

Mr. Monahan updated the City Council on the Riverfront Park grants, the Library needs assessment, and the Wildlands Habitat Development Agreement.

Mayor Ferguson said come of the Good Neighbor funds would go toward landscaping around the treatment plant.

Councilor Churchill reported on the Library Expansion Task Force work.

Mr. Monahan discussed the strategist's report that indicated November 2013 might not be the appropriate time and the community survey results that indicated voters valued Milwaukie's small town feel and preservation of services. When staff analyzed savings in this fiscal year, results indicated that Milwaukie could take care of the next TriMet payment if

there were no emergencies. He commented on potential effects on the biennial budgeting process.

Council President Hedges was concerned about delaying a measure while increasing voter expectations.

Councilor Gamba would prefer putting a measure on the ballot sooner than later. He was concerned people will feel the City could do without if the measure were delayed much longer and noted a number of important community development projects coming up very shortly.

Mayor Ferguson put forth a recommendation that Councilors Gamba and Miller work with the strategist to dig into the figures and inform the Council in its decision making.

The group discussed the necessity of forming a political action committee, the upward trend in Milwaukie home prices, and the feasibility of bundling project versus a standalone measure.

Discussion of County Road Funding

Mr. Monahan would attend County Mangers' meeting on July 1 and sought input on the City Council's position. The City of Milwaukie already had a local gas tax, and there was concern about the impacts of a County gas tax.

Council President Hedges commented there would be a push from the NDA leadership to repair the City's secondary streets. He found the Clackamas County Coordinating Committee (C4) meetings strong on rhetoric with no meat on the bones.

The City Council members agreed they would like to know what Milwaukie's share would be and look into the feasibility of an opt out clause. The group discussed a vehicle registration fee.

Mayor Ferguson adjourned the study session at 7:28 p.m.

Respectfully submitted,

Pat DuVal, Recorder

MINUTES
MILWAUKIE CITY COUNCIL WORK SESSION
JULY 2, 2013

Mayor Ferguson called the work session to order at 5:00 p.m. in the City Hall Conference Room.

Council Present: Council President Hedges and Councilors Scott Churchill, Mark Gamba, and Mike Miller

Staff Present: City Manager Bill Monahan, City Recorder Pat DuVal, Library Director Katie Newell, Planning Director and Interim Community Development Director Steve Butler, Parks and Sustainability Director JoAnn Herrigel, Public Works Director Gary Parkin, Public Affairs Coordinator Grady Wheeler, and Finance Director Rina Byrne.

Manager's Report

Mr. Monahan provided copies of the policy for wastewater treatment connection fees arising in the North East Sewer Extension area. He discussed staff's efforts to contact the property owners that included mailings and phone calls. He discussed downtown parking efforts and the sale of parking permits.

Community Development Department Projects

Mr. Rice reported the Clay Pipe Replacement – Wastewater Capital Improvement Project was nearing completion, and the contractor is clearing up the materials. The Oregon Department of Transportation (ODOT) received proposals from three qualified design consultants, so the 17th Avenue Bike/Pedestrian Path project should be ready for City Council consideration at the August 6 City Council meeting. Clackamas County staff would report on the Transportation System Plan at the July 18, 2013, study session.

Mr. Butler reported on the Planning Department projects including the Tacoma Station Area Plan (TSAP) and future planning project for the area west of McLoughlin Boulevard. Staff interviewed four consultant teams for the Commercial Core Enhancement Program (CCEP) and selected a team led by ECONorthwest and Fregonese Associates. A contract and scope of work was scheduled to be before the City Council for action at its July 16, 2013, regular session.

On the building side, permits increased by 20% over the previous year with a 5% increase in revenue. Eight new single family residence permits had been processed.

Ms. Herrigel and **Mr. Parkin** reported on the Swale/Median maintenance contract. They met with Dion Shepard and walked around downtown to discuss current and potential median and public space maintenance. Staff will update the City Council on its proposals at the August 20, 2013, City Council meeting.

Ms. Herrigel announced the award of the Oregon Marine Board Grant in the amount of \$1.2 million for Riverfront Park. Construction will begin June, 2014.

Disabled Parking Violations

Ms. Byrne discussed the fine amounts and recommended setting the presumptive fine for violation of Milwaukie Municipal Code (MMC) Section 10.20.060(B), subsection 15 and 16 at \$450 and \$250 respectively.

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City Council supported the proposed fine amount and approved putting the proposed resolution on the consent agenda.

Library Expansion Update – Presentation of Findings

Ms. Newell was joined by Troy Ainsworth and Karl Refi of FFA to discuss the Ledding Library Needs Assessment Project. Councilor Churchill was the lead on the Library Expansion Task Force (LETF) and acted as City Council liaison.

Mr. Ainsworth said the team had been working on the project since mid-April by documenting existing service and operations and looking at overarching needs out to the year 2035. Mr. Ainsworth reviewed the project goals and vision that included being the family room for the community, serving as a third place, a 21st Century Library with a hometown feel, realizing the public Library's potential, and enhancing the Library's connection to the natural resource. There were more than 300 responses to the survey which indicated strong community support, a desirable location, the natural setting, the children's programs, the need for more space, and a strong connection to the print collection with access to technology. Priority service roles were to provide a comfortable space, create young readers, connect to the online world, satisfy curiosity and stimulate the imagination, and celebrate cultural diversity.

The limitations were noncompliance with ADA standards, tall shelves that were not seismically secured, a complicated interior layout that was difficult to maneuver, too few seats and computers, noise and crowding, and lack of meeting rooms. He showed a diagram of the Ledding Library Service area population. The planning horizon of 2035 was projected based on Portland State University (PSU) statistics and Oregon Library Association (OLA) standards. The present 12,250 square foot (sf) building served a little over 39,000 patrons (0.31 sf per capita), and the projected 33,461 sf building would serve a projected 44,000 patrons (.76 sf per capita). He noted the OLA would release new standards in the fall.

Ms. Newell noted the effect of technology and downloadable books was a controversial subject, and the space standards might stay about the same as people will go to their libraries to download books. She counted all available seating including the children's library but not the Pond House.

The report identified the need for 4 – 5 study room that seated about 26 people. **Mr. Ainsworth** showed diagrams of the space allocations based on the space needs recommendations. The space was counted in a scaled manner and allowed the designer to start organizing based on adjacencies. There were certain inefficiencies inherent to using an existing building. Dollar wise it was more cost effective to keep the existing building but eliminating the Ledding House as it no longer had any historical value. The 1960's building had its own qualities. The Library was in a great location for those who relied on public transportation.

Councilor Churchill noted the discussion of a satellite library was not within FFA's purview, and the direction at the time was to look at expansion on the site.

Mr. Refi reviewed site constraints that included the Water Quality Resource (WQR) Setback and the Habitat Conservation Area (HCA). The amphitheater was directly to the north, but there was a good opportunity to expand on the Ledding House portion of the property. There was also an opportunity to expand to the south toward Harrison Street. He showed drawings of a possible layout. He showed a concept that included more views of the Pond with contrasting vertical and horizontal elements. The materials of new building had not yet been defined but would be a warm and natural pallet.

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Councilor Gamba discussed the possible meeting space in the Pond House and feasibility of connecting it to the main Library via a pedestrian bridge.

Ms. Newell said the Pond House was about 1773 sf and had a 49 person capacity. The renovation costs would likely be high.

Councilor Miller added the bridge footings may encroach upon WQR, and parking was very limited.

The group discussed cost estimates and the willingness of 20,000 Milwaukie taxpayers to expand the library to serve 40,000 people. **Council President Hedges** felt that issue should be discussed in the LETF.

Councilor Churchill said the group had been tasked with building a needs assessment appropriate to OLA standards. They looked to see if the .76 sf standards would be applied on the site and if the needs assessment could be achieved. The City Council would have to consider support and if the project were bondable. About 80% to 90% of the Task Force members thought the needs assessment was accurate.

Mr. Monahan said the City could only float a bond within the City of Milwaukie unless the Clackamas County Board of Commissioners allowed taxing properties outside the Milwaukie City limits. He discussed the original allocation and District contribution. Milwaukie was assigned a certain area which it was likely to serve.

The group discussed the LETF's making a recommendation to the City Council. **Councilor Churchill** commented on the difficulty of making a bondable decision and said he would relay the City Council's comments at the next Task Force meeting and find out how the members felt about the financial element. He noted the hard and soft cost estimates had recently been completed.

The group reviewed and commented on the design concepts.

Tree Program Options

Ms. Herrigel reviewed the staff report and sought the City Council's direction. She summarized four program groups that might be considered: Tree City USA, Friends of Trees, tree ordinances, and Heritage Tree.

Councilor Gamba said the overarching purpose for him was to protect the tree canopy, and he discussed the recent experience with TriMet and light rail construction. He discussed private property and commercial development. Putting a dollar figure on a program like Tree City USA could be platitudes. He asked for a breakdown of what the City was already spending and what kinds of activities qualified. He understood it might be a couple of years before this type of program was monetarily feasible.

Councilor Miller was fully in favor of doing something that protected the canopy and heritage trees. He discussed his involvement in an earlier effort and resistance that was encountered. There were tough choices related to protecting the environment, and he suggested the City consider incentive programs.

Council President Hedges felt if trees were cut, there needed to be some form of mitigation in the City boundaries and on the subject property if possible. He felt Tree City USA seemed a bit rigid and favored Friends of Trees and the Heritage Tree Program. He liked the current right-of-way ordinance but did not wish to restrict what was done on one's own property. He asked that Ms. Herrigel research Clackamas County programs.

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Councilor Churchill was torn between programs and commented both the Lake Oswego and Portland ordinances were off the scale for him. He liked the Tree City USA or Friends of Trees model or some combination thereof.

Mayor Ferguson said in goal setting he had been most familiar with the Tree City USA program, and he like the budget element. He had no strong opinion about what program Milwaukie should adopt but did feel strongly about protecting the tree canopy. He also had a strong desire to have a strict right-of-way and public property ordinance. He did not wish to restrict property owners. He suggested dedicating funds to go toward public outreach to inform the community of the benefits of tree canopy in an urban environment.

Councilor Gamba said the City should absolutely engage with Friends of Trees, and he urged beginning to plan immediately. He suggested a community meeting to talk about the best concept.

Councilor Miller added that the Friends of Trees had done a lot of work in North Clackamas Park.

Mayor Ferguson announced he and Council President Hedges would be co-interviewers for board and commission applicants for the next six months. Later in the evening he planned to discuss something that came up in the Good Neighbor Committee meeting.

Portland General Electric (PGE) Schedule Letter

Councilor Gamba provided background information on the rate proposal and distribution of increases of which the residential and small business customers paid the most. Industry had lobbyists whereas individuals did not. He proposed Milwaukie as a City push back and that the City Council lobby for residential and small business customers. He recommended that the increases be leveled out.

Councilor Miller did not have a problem with Councilor Gamba's proposal and asking for some kind of balance for citizens.

Council President Hedges asked by what criteria the Public Utilities Commission (PUC) made its judgment.

Mayor Ferguson asked Councilor Gamba to research the criteria, guidelines, or process so the City might craft its best response.

Councilor Churchill commented he did not remember seeing a substantial response to the question about the lower rate being based on a favorable load factor. He did not carry any weight on that response. He was interested in reducing costs and that larger customers were drawing the largest consumption and suggested there was room for improvement in utilization.

Mr. Monahan asked Ms. Bankhead to research Oregon Revised Statutes and Oregon Administrative Rules.

Mayor Ferguson adjourned the work session at 6:58 p.m.

Respectfully submitted,

Pat DuVal, Recorder

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**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JULY 2, 2013**

CALL TO ORDER

Mayor Ferguson called the 2153rd meeting of the Milwaukie City Council to order at 7:08 p.m. in the City Hall Council Chambers.

Present: Council President Dave Hedges and Councilors Scott Churchill, Mark Gamba, and Mike Miller

Staff present: City Manager Bill Monahan, City Attorney Damien Hall, City Recorder Pat DuVal, Planning Director/Interim Community Development Director Steve Butler, Senior Planner Ryan Marquardt, Light Rail Design Coordinator Stacy Bluhm, Parks and Sustainability Coordinator JoAnn Herrigel, and Engineering Manager Jason Rice

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Clackamas County Outreach Program

Clackamas County Commissioner Martha Schrader described the pilot program recently implemented by the Clackamas County Commissioners to help identify local issues and concerns throughout Clackamas County. Commissioners were assigned outreach areas so they can attend meetings and events and meet constituents to learn about and advocate for local issues. She discussed special districts such as the North Clackamas Parks and Recreation District (NCPRD) and the County parks system.

Councilor Miller served on the District Advisory Board and commented on the limitations of the funding mechanism.

Mayor Ferguson invited Commissioner Schrader to the Kellogg Good Neighbor Committee meeting and the Sunday Farmers' Market community booth.

B. Portland – Milwaukie Light Rail Project Update

Ms. Bluhm updated the City Council and public on the anticipated and completed Light Rail Project street closures in Milwaukie. Project staff met with Milwaukie residents to further discuss their request for additional large canopy evergreen trees, and TriMet modified its plans to include 25 additional trees.

Councilor Miller was concerned about Lake Road neighborhood access during the weekend McLoughlin Boulevard is closed.

Ms. Bluhm said there was no way to forecast vehicle volume. Traffic flaggers would be on call for Lake Road and the Hwy 224 ramp if there was a lot of backup.

Councilor Churchill understood Oatfield Road and Lake Road would be left as signalized with no flaggers unless there was a problem. He thought it was advisable to have flaggers on hand particularly at the intersection of Lake and Oatfield Roads.

Ms. Bluhm said staff would look at split signaling and making on site adjustments.

Councilor Churchill discussed the upcoming Harrison Street closure and asked the feasibility of shorter feeds and possibly shortening the pocket. He asked if there would be a flagger at 28th Avenue and Monroe Street to make it clear to drivers. He felt there

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should at least be signage to let people know about construction delays. He would like to hear there was at least a backup plan to get flaggers in the area. He felt the Lake Road issues were the same in terms of people being able to get out of the neighborhood when McLoughlin Boulevard was closed.

Councilor Miller added there was only one way for the neighborhoods to the south to get out, and that was Lake Road. Kellogg Creek divided those residences from Aldercrest Road.

Claudia Steinberg, TriMet Community Affairs, discussed public outreach that included a mailing, going door to door with a map, posting the map online, and staffing the Sunday Farmers' Market Community Booth. People would continue to have access to their driveways even though there were hard closures. There will be a list of key people and their phone numbers in the event the situation escalated.

CONSENT AGENDA

It was moved by Councilor Gamba and seconded by Councilor Churchill to approve the consent agenda as presented

A. City Council Meeting Minutes:

- 1. May 21, 2013, Work Session;**
- 2. May 21, 2013, Regular Session;**
- 3. May 23, 2013, Study Session;**
- 4. June 4, 2013, Work Session; and**
- 5. June 4, 2013, Regular Session**

B. Resolution 50-2013: A Resolution of the City Council of the City of Milwaukie, Oregon, Establishing Fines for Violations of the Milwaukie Municipal Code Sections 10.20.060B, Sections 15 and 16

Motion passed with the following vote: Councilors Hedges, Gamba, Miller and Churchill and Mayor Ferguson voting "aye." [5:0]

AUDIENCE PARTICIPATION

Mr. Monahan gave an update on audience participation comments made at the previous City Council meeting. Staff engaged in a dialogue with Kim Keehner and Scott Barbur and some modifications were made to the parking proposal. The parking controls would go into effect on July 8.

Michael Schiess, Milwaukie, appreciated City Council's interest in his comments and concerns related to the Tacoma Station Area Plan (TSAP).

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

A. Adoption of the Tacoma Station Area Plan, CPA-13-01 and ZA-13-01

Mr. Marquardt provided the staff report and brief comments on the Tacoma Station Area Plan and direction from the June 18, 2013, meeting. One other item for follow up had to do with the Manufacturing (M) Zone rezoning for the areas west of McLoughlin Boulevard and south of Ochoco Street. He reviewed the recommended motions. Preliminary outreach to property owners would begin this July with the project

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commencement dependent on the Planning Department's workload and after July 1, 2014.

Brian Dunn, Kittleson & Associates, read the letter dated July 2, 2013, from Peter Stark to the Milwaukie City Council into the record. He read the main excerpts and added his own comments pertaining to transportation. Based on his involvement in the TSAP and discussions with Mr. Stark and property owners, he believed a better grid pattern west to east would result in more access to the Tacoma Station. He discussed the future of bike and pedestrian access and compliance with the Transportation Planning Rule.

Council Discussion:

The group discussed the proposed motions, and **Mr. Hall** said only one motion amended the code and added three additional permitted uses.

Councilor Churchill thought the intent was good, and his only comment was that he thought July 1, 2014, was too late. He was concerned the project would lose momentum and would prefer a January 1, 2014, start date.

Mr. Butler felt the Planning Department could commit to a January 2014 check in. With other projects such as the Transportation System Plan (TSP) and Commercial Core Enhancement Program (CCEP), he felt July 2014 was a realistic deadline.

Councilor Churchill thought the owners might have higher expectations in light of outreach efforts. He did not want to lose momentum on the west side, and he found the language rather soft.

Mayor Ferguson thought this matter could be addressed in the January Council goal setting and subsequent consideration of the funding sources. He was concerned there was neither the capacity nor the budget at this time. He encouraged the business owners to come up with a funding plan to perhaps execute before the end of the fiscal year.

Councilor Churchill suggested the project start could be as soon as January 1 but not later July 1, 2014.

Council President Hedges was not sure the funding offered by Mr. Dietrich was the appropriate thing to do and could not support anything with a firm date. He wanted the City Council to have time to look at the budget.

Councilor Churchill stated his major concern was not to lose momentum and lose sight of the west side.

Councilor Miller agreed with Councilor Churchill and did not wish to lose momentum.

Council President Hedges was concerned about impacts to adjacent properties.

It was moved by Council President Hedges and seconded by Councilor Gamba to direct the City Manager to initiate a project for rezoning the M-Zone areas west of McLoughlin Boulevard and south of Ochoco St with the start of the project dependent on the Planning Department's workload and after July 1, 2014. Motion passed with the following vote: Councilors Hedges, Gamba, Miller, and Churchill and Mayor Ferguson voting "aye." [5:0]

It was moved by Councilor Gamba and seconded by Councilor Miller to add the clause "and impacts to adjacent properties" to the end of the second to the last sentence in the description of Project #11. Motion passed with the following vote: Councilors Hedges, Gamba, Miller, and Churchill and Mayor Ferguson voting "aye." [5:0]

It was moved by Councilor Gamba and seconded by Councilor Churchill for the first and second readings by title only and adoption of the Tacoma Station Area Plan as a Comprehensive Plan Ancillary Document, amending text and maps with the Comprehensive Plan, Amending Title 19, Zoning Ordinance, and amending the Zoning Map as amended by the motion, File CPA-13-01 and ZA-13-01. Motion passed with the following vote: Councilors Hedges, Gamba, Miller, and Churchill and Mayor Ferguson voting “aye.” [5:0]

Mr. Monahan read the ordinance two times by title only.

Ms. DuVal polled the City Council: Councilors Hedges, Gamba, Miller, and Churchill and Mayor Ferguson voting “aye.” [5:0]

ORDINANCE NO. 2071:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING THE TACOMA STATION AREA PLAN AS A COMPREHENSIVE PLAN ANCILLARY DOCUMENT, AMENDING TEXT AND MAPS WITHIN THE COMPREHENSIVE PLAN, AMENDING TITLE 19, ZONING ORDINANCE, AND AMENDING THE ZONING MAP (FILE #CPA-13-01; ZA-13-01)

Mayor Ferguson read the Land Use Board of Appeals (LUBA) information.

B. Garbage Hauler Franchise Transfer – Resolution

Ms. Herrigel provided the staff report. She discussed franchised hauler actions in the past. This would include the Island Station Neighborhood and would impact 175 residents, 10 commercial customers, and 3 drop box customers.

It was moved by Council President Hedges and seconded by Councilor Miller to adopt the resolution approving the proposed transfer of Oak Grove Disposal Company, Inc.’s franchise area (Area 6) to Waste Management of Oregon, Inc. and repealing Resolution 56-2005 and amending the list of franchised haulers and the solid waste service area map to reflect the Area 6 transfer. Motion passed with the following vote: Councilors Hedges, Gamba, Miller, and Churchill and Mayor Ferguson voting “aye.” [5:0]

RESOLUTION 51-2013:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE PROPOSED TRANSFER OF OAK GROVE DISPOSAL COMPANY, INC.’S FRANCHISE AREA (AREA 6) TO WASTE MANAGEMENT OF OREGON, INC., REPEALING RESOLUTION 56-2005, AND AMENDING THE LIST OF FRANCHISED HAULERS AND THE SOLID WASTE SERVICE AREA MAP TO REFLECT THE AREA 6 TRANSFER.

Michael Borg, Oak Grove disposal, said he planned to retire and expressed his appreciation for being able to serve and to be involved with the community

C. Establish Policy on County Cost Recovery Fee in the North East Sewer Extension Area – Resolution

Mr. Monahan said at a recent study session that the City Council talked about the implementation of the Clackamas County Service District #1 (CCSD #1) agreement and its impacts on North East Sewer Extension (NESE) area. In 2010 the City created a reimbursement district for the project area to repay the City for the cost of constructing

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sewer facilities and offered terms to the affected owners. When the reimbursement district was created the City did not pay the wastewater treatment connection fee at the time a property connected but rather used a true-up method at the end of the year that spread the cost across all the ratepayers. In order to honor its commitments to property owners in the NESE area who accepted the City's invitation to participate in the reimbursement district, City staff and the City Attorney proposed a resolution that covered the County Cost Recovery Fee for 66 properties. He discussed the eligibility criteria.

Mr. Hall felt the proposed resolution embodied the Council's direction. The list of eligible properties was attached as Exhibit 1 of the resolution and gave the City authority to pay the fee to the County without seeking reimbursement from those properties.

It was moved by Councilor Miller and seconded by Council President Hedges to adopt the resolution establishing a policy for wastewater treatment connection fees arising in the North East Sewer Extension area. Motion passed with the following vote: Councilors Hedges, Gamba, Miller, and Churchill and Mayor Ferguson voting "aye." [5:0]

RESOLUTION 52-2013:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ESTABLISHING A POLICY FOR PAYMENT OF CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 ("CCSD#1") WASTEWATER CONNECTION FEES THAT ARE CHARGED TO THE CITY OF MILWAUKIE FOR CONNECTIONS TO CCSD#1 WASTEWATER FACILITIES.

Kellogg Good Neighbor Committee Update

Mayor Ferguson reported the Kellogg Good Neighbor Committee would like to earmark \$150,000 for master planning the landscaping around Kellogg and phase 1 of the planting to make the site more attractive.

It was consensus that was the understanding from the previous discussion.

D. Council Reports

Councilor Miller encouraged people to attend the First Friday event and enjoy Downtown Milwaukie.

Councilor Gamba heard a talk by former Pittsburgh Mayor Tom Murphy, participated in a Bike Transportation Alliance (BTA) and Bike Milwaukie ride during Pedalpalooza to look at bike greenways, and toured the TriCity Treatment Plant with the Citizens Utility Advisory Committee (CUAB).

Councilor Churchill reported the Library Expansion Task Force (LETF) was busy preparing for the City Council work session. He had served on the board, commission, and committee interview panels with Mayor Ferguson. He had received feedback from downtown businesses some of which were still adjusting to the parking changes. The Audit Committee had its first meeting with the auditor, and he felt there would be good information for the Budget Committee.

Council President Hedges attended the State of the School District event where he learned there was an increase to both attendance and graduation rates.

Mayor Ferguson said board, commission, and committee appointments would be prepared for approval in the next City Council packet. He announced the domain name change, and Leading Library programs for the month of July including the Scott Park noon concerts.

ADJOURNMENT

It was moved by Councilor Gamba and seconded by Councilor Churchill to adjourn the meeting. Motion passed with the following vote: Councilors Hedges, Gamba, Miller, and Churchill and Mayor Ferguson voting “aye.” [5:0]

Mayor Ferguson adjourned the regular session at 8:58 p.m.

Respectfully submitted,

Pat DuVal, Recorder

MINUTES
MILWAUKIE CITY COUNCIL WORK SESSION
JULY 16, 2013

Mayor Ferguson called the work session to order at 5:00 p.m. in the City Hall Conference Room.

Council Present: Council President Hedges and Councilors Scott Churchill, Mark Gamba, and Mike Miller

Staff Present: Assistant to the City Manager Teri Bankhead, City Recorder Pat DuVal, Library Director Katie Newell, Planning Director/Interim Community Development Director Steve Butler, Parks and Sustainability Director JoAnn Herrigel, Associate Planner Brett Kelder, Associate Planner Li Alligood, Public Affairs Coordinator Grady Wheeler, Civil Engineer Brad Albert, Administrative Specialist III Hannah Wells, Administrative Specialist II Scott Stauffer, and Finance Director Rina Byrne

Manager's Report

Ms. Bankhead provided information on the evening's agenda. She noted the tax impacts spreadsheet showing the full and partial acquisitions for the Portland-Milwaukie Light Rail (PMLR). **Councilor Churchill** was curious why properties sold prior to July 1 2012, were scrubbed from the list and why those were reflected at lower values.

Ms. Bankhead reported on the PGE rate schedule and noted Portland General Electric (PGE) had renegotiated with the Public Utilities Commission (PUC) for a lower rate.

Ms. Bankhead distributed a "Welcome to Milwaukie" brochure created by Beth Ragel.

City Hall Diamond Jubilee Planning Report

Ms. Wells, Mr. Stauffer, and Ms. DuVal reported on plans for the City Hall Diamond Jubilee Celebration scheduled for September 6, 2013, in conjunction with First Friday.

Community Development Department Projects

Mr. Albert reported staff received the necessary paperwork to release an advertisement for quiet zone implementation at the UP Mainline intersection of 37th Avenue and Oak Street. Bids were due July 30, and staff anticipated a permitted quiet zone by year's end. Staff has conducted a 50% design plan review for the Adams Street Connector. Stacy and Witbeck was asked for a cost estimate for doing this work, and if the estimate is favorable the project will be performed as a light rail betterment. The subcontractor responsible for maintaining the planted area performed its final weeding, and the salal will be monitored until the maintenance period is up in November. The City will take over full responsibility for the planted areas of the Lake Road project. He confirmed that Moonlight Broom, rather than Scotch Broom, had been planted.

Councilor Gamba referred to the action item authorizing the City Manager to sign a Community Development Block Grant (CDGG) intergovernmental agreement (IGA) with Clackamas County to upgrade ADA sidewalk ramps in the City and asked for clarification of the County administrative fees.

Mr. Albert explained the total grant was \$140,000, and \$10,000 was deducted from that total for administrative fees. As many ramps as possible will be upgraded using the \$130,000.

Ms. Alligood discussed the Commercial Core Enhancement Program (CCEP) and selection of the ECONorthwest team as consultants. **Councilor Churchill** expressed some aversion to layers of consultants. **Mr. Butler** responded that Angelo Planning focused on code preparation while ECONorthwest and Fregonese Associates combined economic market analysis and public process. **Ms. Alligood** added there was a clear structure with ECONorthwest managing its subcontractors. She reviewed next steps of the two-year project. The Mayor and Councilors expressed their support of the CCEP.

Mr. Butler reviewed the Building Department activities that included processing a permit for a \$1.2 million grit blaster for Precision Castparts.

Transportation System Plan Update

Mr. Kelver provided a status report on the Transportation System Plan (TSP) update. The document was a long-range guide for all modes that contributed to the City's transportation system. The staff report contained a summary of the June 3, 2013, community meeting that included detail of the discussion as well as comments submitted by various individuals and Neighborhood District Associations (NDA). The focus was to get a sense of overall priorities and collect ideas of transportation-related issues that might not be in the TSP.

The latest project timeline called for proposed revisions to the TSP for public review, open house events in late August and early September, a Planning Commission work session on August 27, 2013, and followed by Planning Commission hearings. The first City Council hearing was scheduled for October 15, 2013, with adoption at the following meeting. A compliance report would be prepared for Metro by the end of 2013.

The group discussed the public engagement worksheet and NDA responses. **Mr. Kelver** reviewed the key issues with the main ones being funding.

Ms. Byrne briefly commented on the Street Surface Maintenance Program (SSMP) and Gas Tax Funds. She was compiling information for the July 18, 2013, City Council study session but noted there was little available for capital projects.

Mr. Butler added the list of projects was long and ability to fund was difficult.

Mr. Kelver encouraged the City Council to review TSP Chapter 13, *Funding and Implementation Plan*. The philosophy was to use available funds to seed grants for bigger projects and to leverage more money. The TSP was a guide and not a working budget. Some things, such as development and systems development charges (SDC) will vary.

Council President Hedges was concerned about the current state of the pavements which he believed was terrible.

Mr. Kelver said state gas taxes and franchise fees constituted the bulk of the money the City had available.

Mr. Butler noted most of the money available went toward operations. He asked at what point did one go from maintenance to capital projects.

Council President Hedges understood the basic assumption of the TSP was that the roads were in good condition. He further understood that as nice as it was to have a TSP it could be shelved until the City had a good system of roads.

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Mr. Albert noted the SSMP had focused on higher classification roadways and understood the TSP did not take into consideration the condition of the roads leading up to a project.

Mr. Butler added what constituted a basic transportation system was a policy discussion.

Councilor Gamba discussed Metro requirements for a certain amount of planning and changes that needed to be taken over the next 30 years. The ability to maintain current streets was a separate issue from State and Metro requirements.

Council President Hedges thought it was like putting the cart before the horse. In his mind the priority was to maintain the basic road structure while the TSP focused on new projects.

Mr. Kelver replied the TSP was a guide to future capital improvements when funds were available, and the document would help link projects together.

Mr. Butler added that instead of simply paving roads the TSP pointed out elements to help bikes and pedestrians while making efficient use of funds.

Garbage Rate Discussion

Ms. Herrigel was joined by **Rick Winterhalter**, Clackamas County Office of Sustainability. They updated the City Council on the proposed rate increase and research that had been done in response to City Council direction. The three issues were: (1) revise the rate increases to result in a projected rate of return for the coming year that fall within the 8% to 12% return on revenue (ROR); (2) integrate any added rate increases into the large can/cart services levels to provide an incentive for customers to downsize; and (3) research integration of a yard debris exemption program.

Ms. Herrigel provided a table showing the distribution of cart and can sizes in Milwaukie, Clackamas County, Gresham, and Beaverton. There was already a good distribution of can sizes that indicated people were moving toward smaller containers. The cost difference between the 20-gallon and 90-gallon containers was \$19.50 which was found to be generally similar throughout the region. She discussed proportionality of disposal.

Ms. Herrigel commented that some haulers were concerned that people might potentially move to smaller cans without generating less waste. She recommended taking a year to find out if people were recycling and what could be done to educate people to generate less.

Councilor Miller pointed out there were no options to downsize yard debris and recycling carts.

Ms. Herrigel said the blue cart was designed for automated pick up.

Council President Hedges understood having a basic flat rate made it easier resulting in cost savings for the hauler. He felt the message needed to go to solid waste customers in a way that was understandable.

Mayor Ferguson commented on the importance of an education piece to help customers grasp the rate concepts.

Councilor Churchill noted some costs, for example manpower and vehicle expenses, were fixed no matter the size of the container. The truck and driver made a loop, and

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the cost of the arm going out to grab the container was relatively little. The only way to cut down on those fixed costs was to implement a system wide, every other week route.

The group discussed disposal costs, and **Mr. Winterhalter** indicated those were based on pounds and was a multiplier of the 32-gallon can.

Ms. Herrigel said the City of Gresham and other areas of East Multnomah County had yard debris exemption programs. Customers applied annually and were asked how yard debris would be handled to discourage illegal dumping. She suggested working on this issue in the upcoming year through education and public outreach. Those who applied and qualified could save \$2.85 per month on their garbage bills. Over the next year she would work on rates and noted there could be some additional costs to hire a consultant or increase Mr. Winterhalter's time.

The City Council was agreeable to staff's proposal to study these issues for a year prior to the next rate proposal.

Mayor Ferguson thought it gave the City more time to talk with the haulers and get into the details in order to level things out and initiate changes on the County level.

Council President Hedges understood a major portion of the increase had to do with Metro's increasing the tip fee. He felt a conversation with Metro was in order.

Ms. Herrigel would provide the City Council with rate options at its August 20, 2013, meeting.

Mayor Ferguson announced the work session would reconvene after the regular session to discuss ballot measure options.

Mayor Ferguson recessed the work session at 6:40 p.m. and reconvened it at 7:32 p.m.

Ballot Measure Discussion

Councilors Miller and **Gamba** had been asked to work with Mr. Wheeler on a recommendation for a ballot measure and subsequently met with Clark Worth of the strategic planning firm of Barney & Worth. Because of the compressed timeline, the recommendation was to forego the November 2013 election and rather go out for a measure on the May 2014. At this time there was no recommendation of what might be included with the TriMet light rail funding question, but the City was advised to make its decision quickly. It was generally believed a November election was not practical given the short timeline.

Councilor Gamba said the November election would give the City Council only three weeks to determine what the measure would look like. The recent poll was not specific enough, and those surveyed did not have enough information to give a definitive answer. The subsequent poll would have hard numbers about actual costs.

Council President Hedges agreed November was no good because the City had dawdled; however, the community was expecting a bond measure.

Mayor Ferguson explained the issue had been discussed in goal setting before Councilors Churchill and Gamba were on the City Council.

Councilor Churchill agreed the timeframe was too short and recommended putting a timeframe on the communication program as well.

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Mayor Ferguson said the scope of work for the consultant needed to be identified and recommended the subcommittee's work continue. He discussed creating a communication action plan for the City Council to determine the ballot title package.

Mr. Wheeler said the survey could be done quickly with good numbers to put with the questions. Mr. Worth advocated for determining what would be included in the measure and developing the message.

Councilor Churchill agreed in principle to the structure and felt it was critical to have a strategy, roadmap, and milestones.

Councilor Miller strongly recommended that citizens understand what services would be lost if the TriMet light rail funding measure failed.

Council President Hedges added the City would have to be prepared to follow through with reductions in service.

Mayor Ferguson suggested an October 1 timeline to complete the poll and have a decision package ready. The City would have five months to conduct citizen involvement and education and then turn the work over to a citizen only group.

There was consensus on the May 2014 election date. Mr. Wheeler would continue to work with Councilors Gamba and Miller and Mr. Worth. It was agreed to devote a portion of each City Council work session to a ballot measure update.

Mayor Ferguson adjourned the work session at 7:59 p.m.

Respectfully submitted,

Pat DuVal, Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JULY 16, 2013**

CALL TO ORDER

Mayor Ferguson called the 2154th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Council President Dave Hedges and Councilors Scott Churchill, Mark Gamba, and Mike Miller

Staff present: Assistant to the City Manager Teri Bankhead, City Attorney Tim Ramis, City Recorder Pat DuVal, Planning Director/Interim Community Development Director Steve Butler, and Civil Engineer Brad Albert

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

None scheduled.

CONSENT AGENDA

Mayor Ferguson removed item D.3, a resolution to reappoint Linda Hedges to the Public Safety Advisory Committee for a separate vote. It was moved by Council President Hedges and seconded by Councilor Gamba to approve the consent agenda as presented

A. City Council Meeting Minutes:

- 1. June 18, 2013, Work Session;**
- 2. June 18, 2013, Regular Session;**
- 3. June 18, 2013, Study Session;**

B. Resolution 53-2013: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager or Designee to Sign a Personal Services Agreement with ECONorthwest for Planning and Design Services for the Commercial Code Enhancement Program;

C. Resolution 54-2013: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of a Contract for Water Meter Reading Services for Fiscal Years 2014 – 2015;

D. Board, Commission, and Committee Appointments:

- 1. Resolution 55-2013: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Val Ballestrem to the Milwaukie Design and Landmarks Committee;**
- 2. Resolution 56-2013: A resolution of the City Council of the City of Milwaukie, Oregon, Appointing Sherry Grau to the Milwaukie Design and Landmarks Committee;**
- 4. Resolution 57-2013: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Sherri Dow to the Riverfront Task Force.**

Motion passed with the following vote: Councilors Gamba, Miller, Churchill, and Hedges and Mayor Ferguson voting “aye.” [5:0]

It was moved by Councilor Miller and seconded by Councilor Churchill to adopt the resolution reappointing Linda Hedges as Member At-Large to the Public Safety Advisory Committee. Motion passed with the following vote: Councilors Gamba, Miller, and Churchill and Mayor Ferguson voting “aye” and Councilor Hedges abstaining. [4:0:1]

3. Resolution 58-2013: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Linda Hedges as Member At-Large to the Public Safety Advisory Committee; and

AUDIENCE PARTICIPATION

None. There were no action items from previous meeting.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

A. Intergovernmental Agreement for Community Development Block Grant (CDBG) Funds for ADA Ramps – Resolution

Mr. Albert provided the staff report in which the City Council was requested to authorize the City Manager to sign an intergovernmental agreement (IGA) with Clackamas County for Community Development Block Grant (CDBG) funds to upgrade ADA ramps at various locations throughout the City. The grant will provide \$130,000 for sidewalk improvements on Harrison Street, Monroe Street, and the Milwaukie Public Safety Building and Johnson Creek Boulevard facility sites.

It was moved by Councilor Miller and seconded by Councilor Churchill to adopt the resolution establishing an intergovernmental agreement between the City of Milwaukie and Clackamas County Department of Health, Housing, and Human Services Community Development Division for a Community Development Block Grant. Motion passed with the following vote: Councilors Gamba, Miller, Churchill, and Hedges and Mayor Ferguson voting “aye.” [5:0]

RESOLUTION 59-2013:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO ESTABLISH AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MILWAUKIE AND CLACKAMAS COUNTY DEPARTMENT OF HEALTH, HOUSING AND HUMAN SERVICES COMMUNITY DEVELOPMENT BLOCK GRANT.

B. Council Reports

Councilor Miller reported he attended the North Clackamas Parks and Recreation District tour of seven parks on the west side of I-205 that included Milwaukie Riverfront Park and Klein Point.

Councilor Gamba attended the Joint Policy Advisory Committee on Transportation (JPACT) meeting and felt Milwaukie’s representatives, Clackamas County Commissioner Paul Savas and Lake Oswego Councilor Donna Jordan, were pushing back on what Milwaukie was hoping to achieve. He planned to attend the 2013 Rail-Volution conference and encouraged others to attend as well.

Councilor Churchill spoke at the July 9, 2013, Department of Environmental Quality (DEQ) hearing about the City's position on coal trains and read the resolution into the record. He toured the Portland-Milwaukie Light Rail (PMLR) alignment with Bobby Lee from the Governor's Office. He planned to deliver the Library Expansion Task Force (LETF) recommendation on the FFA needs assessment report during the next City Council work session if Library Director Newell was available.

Council President Hedges volunteered at the Sunday Farmers' Market community booth. He attended the Island Station Neighborhood District Association (NDA) meeting and saw a presentation on the Park Avenue Station and Trolley Trail art work and attended the Special Olympic Torch Run.

Councilor Gamba met with Ms. Ragel and Ms. Herrigel regarding placement of the bike rack in Riverfront Park.

Mayor Ferguson reported the July First Friday Art Walk was very successful as was the networking event at the Marla Baggetta Studio. He announced the City Hall Diamond Jubilee in conjunction with the September First Friday.

Mayor Ferguson announced the City Council would reconvene its work session immediately following adjournment of the regular session.

ADJOURNMENT

It was moved by Mayor Ferguson and seconded by Councilor Gamba to adjourn the meeting. Motion passed with the following vote: Councilors Gamba, Miller, Churchill, and Hedges and Mayor Ferguson voting "aye." [5:0]

Mayor Ferguson adjourned the regular session at 7:24 p.m.

Respectfully submitted,

Pat DuVal, Recorder

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING LISA FOSSEN TO THE MILWAUKIE ARTS COMMITTEE.

WHEREAS, a vacancy exists on the Milwaukie Arts Committee; and

WHEREAS, Milwaukie Charter Section 26 provides that, “the mayor, with the consent of the council, shall appoint the various committees provided for under the rules of the council or otherwise and fill all vacancies in committees of the council from that body,” and

WHEREAS, Lisa Fossen possesses the necessary qualifications to serve on the Milwaukie Arts Committee.

Now, therefore, the City of Milwaukie, Oregon resolves as follows:

SECTION 1: That Lisa Fossen is appointed to the Milwaukie Arts Committee, filling the remainder of the term for position #6.

SECTION 2: That her term of appointment shall commence immediately and shall expire on March 31, 2014.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on **Aug 8, 2013**.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
APPOINTING MICHAEL OSBORNE TO THE MILWAUKIE CITIZENS UTILITY
ADVISORY BOARD.**

WHEREAS, a vacancy exists on the Milwaukie Citizens Utility Advisory Board;
and

WHEREAS, Milwaukie Charter Section 26 provides that “the mayor, with consent
of Council, shall appoint the various committees provided for under the rules of the
council or otherwise and fill all vacancies in committees of the council from that body;
and

WHEREAS, Michael Osborne possesses the necessary qualifications to serve
on the Milwaukie Citizens Utility Advisory Board;

**NOW, THEREFORE, the City Council of the City of Milwaukie, Oregon
resolves that:**

Section 1: Michael Osborne is appointed to the Milwaukie Citizens Utility
Advisory Board.

Section 2: His term shall commence immediately and shall expire on March 31,
2015.

Section 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on **August 8, 2013.**

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney



Agenda Item: **3. C.**
Meeting Date: **8/6/13**

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Contract for Towing Services

Prepared By: Chief Jordan

Dept. Head Approval: Chief Jordan

City Manager Approval: 7/24/13

ISSUES BEFORE THE COUNCIL

Adopt the Resolution authorizing the City Manager to approve a three year contract between the City of Milwaukie and Olson Brothers Towing Incorporated for towing and impound services as required by the Milwaukie Police Department.

STAFF RECOMMENDATION

Staff recommends Council authorize the City Manager to enter the Agreement with Olson Brothers Towing for towing and impound services.

KEY FACTS & INFORMATION SUMMARY

Olson Brothers Towing held the contract for towing service for the Police department for the previous contract period which started August 7, 2007. They have performed very well during the previous contract period and have not changed pricing in this new contract proposal. Olson Brothers has consistently met the Police Department's requirements for rapid response and also providing a safe and secure environment to vehicles that have been towed and impounded by the Department.

OTHER ALTERNATIVES CONSIDERED

No other responses to the RFP (request for proposals) were received.

FISCAL NOTES

Fiscal impact to the City of Milwaukie is minimal. Almost all of the vehicles towed by the Police will be the responsibility of the vehicle owner to pay all associated fees.

WORK LOAD IMPACT

No change in work load impact to city staff

ALTERNATIVES

Open the bid process again and seek additional bidders

ATTACHMENT LIST

1. Council Staff Report
2. Request for Proposals Packet
3. Proposed Resolution
4. Proposed Personal Services Agreement



To: Mayor and City Council

Through: Bill Monahan, City Manager

From: Bob Jordan, Chief of Police

Subject: Staff Report Regarding Police Department Towing Contract

Date: July 5, 2013

ACTION REQUESTED

Adopt the Resolution authorizing the City Manager to approve a personal services agreement with Olson Brothers Towing Incorporated to provide contract towing and vehicle impound services to the Milwaukie Police Department.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

The City of Milwaukie Police Department has contracted with Olson Brothers Towing since at least July 1st, 2001 for contract towing services of vehicles impounded by the Police Department. I am unable to find any record of the towing process prior to that date or which vendors may have been used. More recently, Olson Brothers was awarded the contract after a Request for Proposals process in 2007 which expired this year.

A bid proposal was distributed on May 9th, 2013 and ended on May 20th 2013. Olson Brothers Towing was the only respondent to the bid process. Olson Brothers Towing was evaluated by Sergeant Scott Guy and found to meet the required criteria of the Request for proposal.

BACKGROUND

It is a frequent occurrence that the Police Department is required to use vehicle towing and impound services from private vendors. Examples of situations that require cars to be towed and impounded are as follows: vehicles that have to be towed after the driver has been arrested, recovered stolen cars, cars involved in traffic accidents and cars that are abandoned or are road hazards.

It is important that the chosen vendor is able to respond to the scene and take custody of the car in a timely manner. It is equally important that the vendor also provides safe and secure storage of the vehicle until it is returned to the owner. Olson Brothers has consistently met or exceeded these requirements in its history with our Department.

The logistical importance of a timely response and of safe storage of vehicles is key to the effective management of an accident scene. Police Officers are not able to leave a vehicle that has been impounded until it is released to the tow company. When the tow company takes custody of the vehicle it then becomes the responsibility of the tow company and the Police Officer is able to work on other duties.

In a case where a tow company is slow to respond Officers are unavailable for other calls for service and this significantly affects the operational effectiveness of the entire Department. In regards to safe storage it is very important to the positive reputation of our City and a moral responsibility that vehicles are well taken care of when taken into custody by the Police Department.

Olson Brothers Towing has historically been able to meet the police department's strict demands related to response time and responsible handling. In addition, they have been able to provide safe storage for the impounds thereby minimizing complaints related to the towing and impound process.

FISCAL IMPACTS

No significant fiscal impact to the City of Milwaukie because the impound expense is the responsibility of the owner of the vehicle, not the responsibility of the City of Milwaukie. The contract also covers the towing of police cars; however the need for that service is very limited. Olson Brothers has retained the same pricing since 2007.

WORK LOAD IMPACTS

No work load impact to City of Milwaukie Staff

ALTERNATIVES

- Only one response to the proposal request was received.
- Reject this proposal and start a new process to attempt to attract additional bidders.



Request for Proposals

for

Towing Services

May 9, 2013

City of Milwaukie
Milwaukie Police Department
3200 SE Harrison Street
Milwaukie, OR 97222
(503) 786-7400

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Request for Proposals

City of Milwaukie—Towing Services

The City of Milwaukie is seeking proposals from qualified and experienced respondents to provide towing services. Proposals for towing services will be received at the Milwaukie Police Department Public Safety Building located at 3200 SE Harrison Street, Milwaukie, OR 97222 until 5:00PM on Monday, May 20, 2013. Proposals received after the 5:00 PM deadline will not be considered and will be returned unopened to the proposer(s).

The Request for Proposal documents may be obtained at <http://bids.teamaha.com/milwaukie>. Interested parties will need to create a free login account to view and download contract documents. The account will be used to notify document holders of any addenda throughout the proposal process.

Proposals shall be submitted in a sealed envelope plainly identifying requested services and proposer's name and address. Proposals shall be addressed to Sergeant Scott Guy, Milwaukie Police Department, 3200 SE Harrison Street, Milwaukie, OR 97222.

For additional information regarding this Request for Proposal, please contact Sergeant Scott Guy at (503) 786-7420 or by email at guys@milwaukieoregon.gov. The City of Milwaukie reserves the right to reject any and all proposals or to negotiate individually with one or more contractors, and to select one or more contractors on the basis if determined to be in the best interest of the City.

Dated this 9th day of May 2013.

Section 2 – Introduction & General Information

2.1 Introduction

The City of Milwaukie (City) invites qualified independent contractors to complete and submit proposals to provide towing services as described in the following Request for Proposal (RFP). The purpose of this process is to obtain high quality towing services at a competitive price. The selected Contractor shall be designated as the City's Towing Services Contractor for a three-year period. The City shall reserve the right to extend the term of this contract one time for an additional two years. Fees proposed shall remain fixed for the first three years of the contract and may be adjusted for the additional two years in accordance with the most recent calendar year consumer price index (all urban consumers component) for the Portland Standard Metropolitan Statistical Area (SMSA), or the Respondent's then current standard fees, whichever is lower. The contract period will begin upon approval by the Milwaukie City Council, on or about June 24, 2013.

2.2 Issuance of Request for Proposals

The Request for Proposal documents may be obtained at no cost from the City of Milwaukie website at: <http://bids.teamaha.com/milwaukie>.

Interested parties will need to create a free login account to view and download RFP documents. The account will be used to notify document holders of any addenda throughout the proposal process.

Sergeant Scott Guy of the Milwaukie Police Department is the sole point of contact for all questions, concerns, and protests. He can be reached at 503-786-7420 or by email at guys@milwaukieoregon.gov.

2.3 Submission for Proposals

Each proposer shall provide three copies of their proposal, sealed in an envelope plainly identifying requested services and proposer's name and address. Proposals shall be addressed and submitted to the following location by 5:00 PM on Monday, May 20, 2013.

City of Milwaukie
Milwaukie Police Department
Sergeant Scott Guy
3200 SE Harrison Street
Milwaukie, OR 97222

All proposals must arrive at the Milwaukie Police Department on or before the time and date due. Electronically mailed, phone, and facsimile proposals will not be accepted.

2.4 Request for Proposals Schedule

The City anticipates the following general timeline for receiving and evaluating the proposals and selecting a firm/individual for towing services. This schedule is subject to change if it is in the City's best interest to do so.

- Advertise Request for Proposal May 9, 2013
- Deadline to submit changes to RFP May 13, 2013, 5:00 PM
- Deadline to request additional information May 13, 2013, 5:00 PM
- Last date for Addenda May 14, 2013
- Proposals due May 20, 2013, 5:00 PM
- Evaluations of proposals complete May 22, 2013
- Final contract amount negotiation May 28, 2013
- Notice of Intent to Award May 29, 2013
- City Council hearing June 18, 2013
- Notice of award June 19, 2013
- Commencement of contract June 24, 2013

2.5 Changes to the Solicitation by Addenda

The City reserves the right to make changes to the RFP by written addendum, which shall be issued to all those who have obtained the RFP through the City of Milwaukee's website at:

<http://bids.teamaha.com/Milwaukee>

Proposers are advised to check the City's website regularly for addenda.

A prospective Proposer may request a change in the RFP by submitting a written request to the address set forth in Subsection 2.3. The request must specify the provision of the RFP in question, and contain an explanation of the requested change. All requests for changes to the RFP must be submitted to the City no later than the date set forth in Subsection 2.4.

The City will evaluate any request submitted, but reserves the right to determine whether to accept the requested change. Changes that are accepted by the City shall be issued in the form of an addendum to the RFP.

All addenda shall have the same bidding effect as though contained in the main body of the RFP. Oral instructions or information concerning the scope of work of the project given out by anyone other than Sergeant Scott Guy shall not bind the City.

No addenda will be issued later than the date set in Subsection 2.4, except an addendum, if necessary, postponing the date for receipt of Proposals, withdrawing the invitation, modifying elements of the proposal resulting from delayed process, or requesting additional information, clarification, or revisions of proposals leading to obtaining best offers or best and final offers.

Each Proposer is responsible for obtaining all addenda prior to submitting a Proposal. Receipt of each addendum shall be acknowledged in writing as part of the Proposal.

2.6 Confidentiality

All information submitted by Proposers shall be public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions of the Proposals for which Proposer requests exception from disclosure consistent with Oregon Law. All requests shall be in writing, noting specifically which portion of the Proposal the Proposer requests exception from disclosure. Proposer shall not copyright, or cause to be copyrighted, any portion of any said document submitted to the City as a result of this RFP. Proposer should not mark the entire proposal document "Confidential."

2.7 Cancellation

The City reserves the right to cancel contract award for Towing Services at any time before execution of the contract by both parties if cancellation is deemed to be in the City's best interest. In no event shall the City have any liability for the cancellation of contract award.

2.8 Late Proposals

All Proposals that are not received by the Proposal Due Date in Subsection 2.4 will not be considered and will be returned unopened to the Proposer(s). Electronically mailed, phone, and faxed proposals will not be accepted. Delays due to mail and/or delivery handling, including, but not limited to delays within the City's internal distribution systems, do not excuse the Proposer's responsibility for submitting the Proposal to the correct location by the Proposal Due Date.

2.9 Disputes

In case of any doubt or differences of opinions as to the items or service to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of the City shall be final and binding upon all parties.

2.10 Proposer's Representation

Proposers, by the act of submitting their Proposals, represent that:

- A. They have read and understand the Proposal Documents and their Proposal is made in accordance therewith;
- B. They have familiarized themselves with the local conditions under which the work will meet their satisfaction;
- C. Their Proposal is based upon the requirements described in the Proposal Documents with exception, unless clearly stated in the response.

2.11 Conditions of Submittal

By the act of submitting a Proposal in response to this Request for Proposals, the Proposer certifies that:

- A. The Proposer and each person signing on behalf of any Proposer certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no elected official, officer, employee, or person, whose salary is payable in whole or part by the City, has a direct or indirect financial interest in the Proposal, or in the services to which it relates, or in any of the profits thereof other than as fully described in the Proposer's response to this solicitation.
- B. The Proposer has examined all parts of the Request for Proposals, including all requirements and contract terms and conditions thereof, and, if its Proposal is accepted, the Proposer shall accept the contract documents thereto unless substantive changes are made in same without the approval of the Proposer.
- C. The Proposers, if an individual, is of lawful age; is the only one interested in this Proposal; and that no person, firm, or corporation, other than that named, has any interest in the Proposal, or in the proposed contract.
- D. The Proposer has quality experience providing towing services in a capacity similar to the duties outlined within the scope of services.

2.12 Proposer Requests Interpretation of Request for Proposal Documents

Proposers shall promptly notify the City of any ambiguity, inconsistency or error, which they may discover upon examination of the Proposal Documents. Proposers requiring clarification or interpretation of the Proposal Documents shall make a written request for the same to Sergeant Scott Guy.

The City shall make interpretations, corrections, or changes to the Proposal Documents in writing by published Addenda in accordance with Subsection 2.5. Interpretations, corrections, or changes to the Proposal Documents made in any other manner will not be binding, and Proposers shall not rely upon such interpretations, corrections, and changes.

2.13 Proposer Requests for Additional Information

Requests for information regarding City services, programs, or personnel, or any other information shall be submitted in writing to Sergeant Scott Guy prior to the deadline to request additional information stated in Subsection 2.4.

The City shall respond to requests for additional information in writing by published Addenda in accordance with Subsection 2.5. Responses to requests for additional information made in any other manner will not be binding.

2.14 Competition

Respondents are encouraged to comment, either with their Proposals or at any other time, in writing, on any specification or requirement with this Request for Proposals, which the respondent believes, will inordinately limit competition.

2.15 Complaints and Inequities

All complaints or perceived inequities related to the Request for Proposals or award of work referenced herein shall be in writing and directed to Sergeant Scott Guy. Such submittals will be reviewed upon receipt and will be answered in writing.

2.16 Cost of Request for Proposals and Associated Responses

The City is not liable for any costs incurred by a Proposer in the preparation and/or presentation of a Proposal. The City is not liable for any cost incurred by a Proposer in protesting the City's selection decision.

2.17 City Requests for Clarification, Additional Research, & Revisions

The City reserves the right to obtain clarification of any point in a Proposal or to obtain additional information necessary to properly evaluate a particular Proposal. Failure of a Proposer to respond to such a request for additional information or clarification may result in a finding that the Proposer is non-responsive and consequent rejection of the Proposal.

The City may obtain information from any legal source for clarification of any Proposal or for information of any Proposer. The City need not inform the Proposer of any intent to perform additional research in this respect or of any information thereby received.

The City may perform, at its sole option, investigations of the responsible Proposer. Information may include, but shall not necessarily be limited to current litigation and contracting references. All such documents, if requested by the City, become part of the public records and may be disclosed accordingly.

The City reserves the right to request revisions of proposals after the submission of proposals and before award for the purpose of obtaining best offers or best and final offers.

2.18 Rejection of Proposals

The City reserves the right to reject any or all Proposals received as a result of this Request for Proposals. Proposals may be rejected for one or more of the following reasons, including but not limited to:

- A. Failure of the Proposer to adhere to one or more of the provisions established in the Request for Proposals.
- B. Failure of the Proposer to submit a Proposal in the format specified herein.
- C. Failure of the Proposer to submit a Proposal within the time requirements established herein.
- E. Failure of the Proposer to adhere to ethical and professional standards before, during, or following the Proposal process.

The City may reject any Proposal not in compliance with all prescribed public procurement procedures and requirements, and may reject for good cause any or all Proposals upon a finding of the City that it is in the public interest to do so.

2.19 Modification or Withdrawal of Proposal by Proposer

A Proposal may not be modified, withdrawn, or canceled by the Proposer for sixty calendar days following the time and date designated for the receipt of Proposals. Proposals submitted early may be modified or withdrawn only by notice to the City, at the Proposal submittal location, prior to the Proposal Due Date. Such notice shall be in writing over the signature of the Proposer and submitted to Sergeant Scott Guy. All such communication shall be so worded as not to reveal material contents of the original Proposal.

Withdrawn proposals may be resubmitted up to the Proposal Due Date provided that they are then fully in conformance with the Request for Proposals.

2.20 Proposal Ownership

All Proposals submitted become and remain the property of the City and, as such, are considered public information and subject to public disclosure within the context of the federal Freedom of Information Act and Oregon Revised Statutes (ORS) 192.501 and ORS 192.502. Unless certain pages or specific information are specifically marked "proprietary" and qualify as such within the context of the regulations stated in the preceding paragraph, the City shall make available to any person requesting information through the City processes for disclosure of public records, any and all information submitted as a result of this Request for Proposals without obtaining permission from any Proposer to do so after the Notice of Intent to Award has been released.

2.21 Duration of Proposal

Proposal prices, terms and conditions shall be firm for a period of at least ninety days from the Proposal Due Date. The successful proposal shall not be subject to future price escalation or changes of terms if accepted during the ninety day period. Price decreases or changes in terms by others after the acceptance of a proposal will not be considered.

2.22 Affirmative Action/Nondiscrimination

By submitting a proposal, the Proposer agrees to comply with the Fair Labor Standard Act, Civil Rights Act of 1964, Executive order 11246, Fair Employment Practices, Equal Employment Opportunity Act, Americans with Disabilities Act, and Oregon Revised Statutes. By submitting a proposal, the Proposer specifically certifies, under penalty of perjury, that the Proposer has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

Section 3 - Scope of Work

3.1 Introduction

The City of Milwaukie is seeking high quality and responsible services from a qualified and experienced individual or firm to deliver quality and cost effective towing services as ordered by the City of Milwaukie.

3.2 Term of Service

The contract resulting from this Request for Proposals (RFP) shall be for a period of three years, commencing in June 2013. The City shall reserve the right to extend the term of this contract one time for an additional two years.

3.3 Scope of Work

Prior to commencement of service City and Contractor shall mutually agree to:

1. Provide twenty-four (24) hours per day, seven (7) days per week, three hundred and sixty-five days (365) per year service. This requirement includes gatekeeper service when tow lot is not open. Contractor must guarantee one-hour response by gatekeeper after telephone/radio notification for release of vehicle.
2. Contractor must have complete geographical knowledge of all streets in the immediate vicinity of the City of Milwaukie.
3. Tow lot must be easily locatable and accessible. Lot must be located within five miles of the City limits of the City of Milwaukie. Lot must be well lit at night and appropriately signed. Outside storage lot must be fenced and of sufficient size to accommodate tows ordered by the City. Secure inside storage must be available for at least two vehicles (maximum order anticipated by the City) at any one time.
4. All drivers will be licensed, trained and insured appropriate to the legal requirements to operate the equipment to which they are assigned.
5. Contractor will be responsible for containing and removing spilled or leaking fuels, oils and non-hazardous materials in cooperation with, and under direction of, the Clackamas Fire District #1 and/or the Milwaukie Police Department. Contractor will assure that each tow vehicle is equipped with absorbent pads, dikes, diesel transfer pumps, absorbent sweeps and a tank patch kit.
6. Contractor will be responsible for post-accident clean up under the direction of the Milwaukie Police and/or Clackamas Fire District #1.
7. Tow requirements shall, at a minimum, be:

| <u>EQUIPMENT</u> | <u>CLASS "A" (under 12,000 gvwt)</u> | <u>CLASS "B" (12,000-27,000 gvwt)</u> | <u>CLASS "C" (27,000+ gvwt)</u> |
|---|--|--|--|
| 1 lb. CO2 or Dry Chemical fire extinguisher | " | " | " |
| Emergency Warning Lights with night visibility of at least 500 feet | " | " | " |
| One extension light or 5 cell flashlight or equivalent | " | " | " |
| One wrecking bar | " | " | |
| Six emergency fuses (thirty-minute) or two electric flashing red emergency portable lights with night visibility of at least 300 feet | " | " | " |
| Adequate unlocking tools | " | " | (not required) |
| Adequate hot start cables of not less than ten feet | " | " | (not required) |
| At least one set of dollies per truck (except roll beds) | " | (not required) | (not required) |
| Portable auxiliary brake lights, turn signals and tail lights for use on towed vehicles | " | " | " |
| Two-way radio/cellular telephone communication system | " | " | " |
| Reversible power winch | 8 ton with 100' steel cable | 10 ton with 150' steel cable | 30 ton with 150' steel cable |
| Tow Availability (response time) | Day – 20 minutes Night – 30 Minutes | Day – 20 minutes Night – 30 Minutes | Day – 30 minutes Night – 45 minutes |

3.4 Other Services

If regulatory bodies establish new regulations, Contractor shall provide any required new services. If the Contractor develops other services, the City is to be furnished with any information that the City may use to consider these services.

Section 4 – Proposal and Proposer Requirements

4.1 Submittal of Proposals

Each Proposers must provide three total copies of their proposal, including Attachments A, B, and C. All proposals must arrive at the issuing office on or before the listed time and date due. An officer who has been authorized to make such a commitment must sign the proposals. Proposals shall be sealed in an envelope, plainly identifying requested services and proposer's name and address. The document shall be addressed and delivered to the issuing office identified in Subsection 2.3.

4.2 Proposer Requirements

The following minimum criteria will apply:

- A. All respondents shall have no fewer than five years experience in providing all the types of services required within the Scope of Work in Subsection 3.3.
- B. All respondents shall be experienced in towing programs similar to those of the City of Milwaukie's.
- C. All respondents shall be licensed to conduct business in the State of Oregon and pay the City of Milwaukie Business Tax (City Business Tax may be paid after award of contract but must be in effect no later than June 24, 2013) and maintain offices in the Portland-Metro area.
- D. All respondents shall agree to execute the Personal Services Contract (Attachment "C"), if selected.

4.3 Proposal Format

Proposals shall be type written with body text consisting of a font at least 12-point. Proposals shall be double-sided and stapled once in the upper left-hand corner. The City requests that submittal materials contain post-consumer recycle content and are readily recyclable. The City discourages the use of materials that cannot be readily recycled, such as PVC binder, spiral bindings, and plastic or glossy covers or dividers. One page is considered to be one side of a single 8 ½" x 11" sheet.

4.4 Proposal Requirements

All proposals submitted in response to this Request for Proposal must include the following:

1. **Attachment "A"** is a Qualifications Questionnaire. Each Respondent must complete this questionnaire. The response must fully address each question, giving complete information regarding current and relevant references. Respondents may submit additional materials relating to their ability to perform the assignment.

2. **Attachment "B"** is the Proposal Form. Each Respondent must complete this form. Respondents may submit additional information or materials if Respondent considers such additional information or materials is important to the selection process.
3. **Attachment "C"** is the Personal Services Contract. Each Respondent must evaluate this contract form and by executing the Proposal Form included as Attachment "C" thereby agree with the terms and conditions contained therein unless written objections are included as an addenda to the Proposal Form. The City will review the form and content of any such objection in the proposal evaluation process.
4. Resumes and technical experience of key personnel expected to do the work (identify the proposed contract manager).
5. Supplemental material—materials and data not specifically requested for consideration may be included as supplemental information.
6. All Proposers shall submit all Addenda of this RFP as part of the proposal. Receipt of each Addendum, if any, shall be acknowledged by the Proposer by signing in the appropriate designated location. Each Proposer shall ascertain, prior to submitting a proposal, that the proposer has received all Addenda issued by the City.

4.5 No Proposal

If a Proposer cannot meet a service requirement, then the term "No Proposal" should be entered on the proposal form for that specific requirement. In the case of a "No Proposal" response, the Proposer must offer an equivalent alternative service.

4.6 Protest Procedures for Proposal Requirements

Any and all complaints regarding this solicitation must be presented in writing seven calendar days prior to the proposal due date, and shall be addressed as follows:

Sergeant Scott Guy
Milwaukie Police Department
3200 SE Harrison Street
Milwaukie, Oregon 97222

Protests shall include the reasons for protest and any proposed changes to specifications. No protest against award because of the content of specification shall be considered after the deadline established for submitting such protest.

Section 5 – Proposal Selection and Evaluation

5.1 General Information

Each proposal will be judged on its completeness and quality of its content. The City reserves the right to reject any and all proposals and is not liable for any cost the Proposer incurs while preparing or presenting the proposal. All proposals will become part of the public file, without obligation to the City. Upon the completion of the evaluations, the City intends to negotiate a contract with the Proposer whose proposal is deemed to be most advantageous to the City.

5.2 Selection Review Committee

The Selection Review Committee may be comprised of up to five members. The role of the Selection Review Committee is to evaluate the proposals submitted and make a recommendation of award.

Scoring will be completed covering all areas listed in Section 5.3 in the Evaluation Criteria. If additional information is deemed necessary as part of the evaluations, such information will be solicited in order to allow the committee to complete the evaluation process.

5.3 Scoring and Evaluation Criteria

The Selection Review Committee will evaluate the proposals. The role of the Selection Review Committee is to evaluate the proposals submitted and make a recommendation of award. The criteria listed below will be used to determine the finalists and apparent successful Proposer. Selection criteria will include the following (not ranked in order):

- Statement by the Proposer that it meets or exceeds each of the qualifications (see Exhibit "A");
- Ability of Proposer to deliver required and requested services identified in both this RFP and the Proposer's proposal documents;
- Financial strength and stability of the Proposer;
- References from other governments or entities, provided by the Proposer;
- All costs and fees for service and the method by which the Proposer calculates the fees and costs;
- The Proposer's approach to the City, including response to this RFP, compliance with the requirements within this RFP, and innovative suggestions.

5.4 Ranking of Proposals

Proposals may be ranked by the Selection Review Committee based on evaluation of responses with the first-ranked Proposal being that Proposer which is deemed to be the most appropriate and fully able to perform the services, and the second ranked Proposal being the Proposer next most appropriate, all in the sole judgment of the Selection Review Committee.

Proposal scores will be totaled and ranked. Any Proposal in response to this RFP shall be considered de facto permission to the City to disclose the results, when completed, to selected reviewers at the sole discretion of the City.

5.5 Contract Negotiation

The City will negotiate the contract amount once the Selection Review Committee has chosen the first-ranked Proposer. If the City cannot come to terms with the first ranked Proposer, the City will enter into negotiations with the second-ranked Proposer. This process will continue until the City reaches an agreement which the City deems appropriate for the services.

Section 6 – Contract Requirements

6.1 Contract Award

The award of a contract is accomplished by executing a written agreement that incorporates the entire RFP, Proposer's Proposal, clarifications, addenda, and additions. All such materials constitute the contract documents. The Proposer agrees to accept the contract terms of the attached Personal Services Agreement unless substantive changes are made without the approval of the Proposer. The issuing office and contract manager of Section 2.3 is the sole point of contact for the issuance of the contract. The contract shall be substantially in the form of the sample "Personal Services Agreement" in Attachment C.

Attachment A

QUALIFICATIONS QUESTIONNAIRE

FIRM NAME: OLSON BROS. TOWING

ADDRESS: 14115 SE McLoughlin Blvd

TELEPHONE: 503-659-5141 FAX: 503-786-1436

E-MAIL ADDRESS: Brad@Olsonbroserv.com

Name and Title of person answering this questionnaire:

| | |
|-------------------|------------|
| <u>Brad Olson</u> | <u>CEO</u> |
| Print Name | Title |

| | |
|--|----------------|
| <u></u> | <u>5-20-13</u> |
| Signature | Date |

All questions must have a response. If you want to supplement your answers with more detail in answering a question, attachments are accepted. Please clearly identify what question an attachment is supplementing. Any question not answered or left blank can be grounds for not considering the proposal further. This form must be completed and returned. All pages with the exception of page one must be initialed.

1. How many years has your firm been in the towing services business?
 In business less than 5 years
 In business 5 to 10 years.
 In business 10 to 15 years
 In business 15 to 20 years
 Other: 56 Years
2. Indicate your firm's approximate annual towing volume.
 Under \$50,000
 \$50,000 to \$100,000
 \$100,000 to 250,000
 Over \$250,000

3. Does your firm carry Professional Liability Insurance? Yes X No ____
If yes, please indicate company and amount.

Company: Hays Companies of Oregon

Amount: \$3,000,000.00

4. Would the City's account be serviced from your office at the above address?
Yes X No ____

5. If not, from what address or office?

6. List three references to which you are providing towing services. At least one must be comparable or similar to the services proposed under this RFP. Show name and telephone number of person to contact for reference.

A. Clackamas County Sheriff's office

Lt. Barb Waggoner (503) 655-8218

B. Gladstone Police Department

Sgt. Lawrence (503) 557-2792

C. Oregon State Police

Audrey Shipman (503) 934-0270

Initials: RS

7. Does your company have a customer service policy? Yes X No

If the answer is yes, describe the policy:

Customer service is our # 1 goal, we hold all employees to a high standard to provide top notch customer service. All drivers have the ability to help customers with unforeseen problems in stressful situations.

8. Does your company have a drug use policy? Yes X No

If the answer is yes, describe the policy:

The use, purchase, sale, transfer, possession, being under the influence, or the presence in one's system of a detectable amount of illegal drug by any employee is prohibited. A blood test, urinalysis or other drug / alcohol screening may be required.

9. Would you agree to unannounced (normal business hours) inspections of towing service facilities and equipment throughout the length of the contract? Yes X No

10. List the minimum requirements for your tow truck drivers:

All drivers must complete a light duty towing and recovery certification class. Olson Brothers requires that new hires have an initiation period where they ride with an experienced driver. Length of initiation varies based on aptitude and experience.

11. List any recurring training requirements for your tow truck drivers:

Recertification in light duty towing and recovery, every 3-5 years

Initials: BO

12. Give a brief history of your company:

Olson Bros. was opened in the spring of 1957. It was a gas station and tow company.

The owners were Norris and Gordon Olson. Please see attachment (A Little History of Olson Brothers)

13. List to the nearest mile the distance from the Milwaukie Public Safety Building (3200 SE Harrison Street, Milwaukie, Oregon) to your storage facility: Two miles

14. Does your company stay current and follow all Oregon Revised Statutes and Oregon Administrative Rules that are applicable to your industry? Yes X No

15. Do your employees meet State of Oregon motor vehicle licensing requirements and do you monitor continued compliance? Yes X No

If yes, how do you monitor and how often?

Olson Brother's insurance agent calls DMV for driving records annually.

16. Does your company have a dress code? Describe:


Olson Brothers employee's have uniforms provided for them. They consist of dark blue or black pants and Olson Brothers safety jacket and shirts

Initials: EO

17. In the space below please list any information that has not been covered and that you feel is important to be known about your company.

The following information is included as attachments in the proposal:

- Olson Brothers Towing resume
- Olson Brothers "A Little History Of Olson Brothers"
- Some additional information ie; Experience, community presence and image
- Olson Brothers Towing Fleet as of May 15, 2013
- List of Olson Brothers tow truck drivers
- Photo copies of tow truck drivers license
- Photo copies of tow truck drivers certification record
- Recommendation of services from Capt. James Colt of Milwaukie Police Department
- Thank you letter from Chief of Police Larry R. Kanzler of Milwaukie Police Department
- Letter of Recommendation from Aggie Eckert of the Milwaukie Police Department
- Thank you letter from Richard Samuels, General manager of Oregon Pacific Railroad Co.
- Thank you letter from M. Fluharty, customer of Olson Brothers
- Thank you e-mail from Heather Waldo, customer of Olson Brothers
- Letter of appreciation from Gloria M. Gymore, customer of Olson Brothers
- Yelp reviews from Cathy T. and Eve N, customers of Olson Brothers
- Letter of appreciation from Caroline Bell, customer of Olson Brothers
- Thank you letter from J&M Auto Body
- Mapquest directions and map
- Insurance certificate

Initials: 

Attachment B

Proposal Form

Sergeant Scott Guy
Milwaukie Police Department
3200 SE Harrison Street
Milwaukie, Oregon 97222

Dear Sergeant Guy:

We have read the Request for Proposal and fully understand its intent. We certify that we have adequate personnel, equipment, and facilities to fulfill the requirements. We understand that our ability to meet the criteria and provide the required services shall be judged solely by designated staff of the City of Milwaukie. We have reviewed the Personal Services Contract, included as Attachment C with the Request for Proposals, and agree to execute such upon award of the contract by City.

It is further understood that all information included in, attached to, or required by this Request for Proposal shall be public record upon its delivery to the City.

We propose to provide Towing Services in accordance with the specifications contained in the proposal submitted in response to the RFP issued by the City of Milwaukie for a three-year period with contract extensions of two additional years at the option of the City.

The rate price schedule proposed by: *

Submitted By:

Olsen Bros Towing
(Firm)

by: Don Isakowin owner
(Signature/Title) DON ISAKOWIN

by: Michael Schick manager
(Signature/Title)

503-659 5141
(Telephone)

5-20-13
(Date)

* See next page for worksheet Towing Services Proposed Rates

Attachment B

Towing Services Proposed Rates

| SERVICES | CLASS A | CLASS B | CLASS C | OTHER | CITY OWNED |
|---------------------------------------|----------|----------|---------|-------|------------|
| Towing Minimum | \$90.00 | \$120.00 | | | \$40.00 |
| Flat Rate | \$90.00 | \$120.00 | | | \$40.00 |
| Mileage One-Way ** | \$4.00 | \$5.00 | | | \$3.00 |
| Dolly | \$35.00 | N/A | | | \$20.00 |
| Standby Time per Operator | \$70.00 | \$70.00 | | | \$20.00 |
| Outside Storage per 24-hour period | \$25.00 | \$35.00 | | | |
| Inside Storage per 24-hour period | \$40.00 | \$50.00 | | | |
| Dispatch Fee | \$0 | \$0 | | | |
| Labor at Scene | \$70.00 | \$70.00 | | | |
| Roll Over per Hour | \$70.00 | \$90.00 | | | |
| Special Recovery/Winching Per hour | \$70.00 | \$90.00 | | | |
| Remove Drive Line | \$35.00 | \$45.00 | | | |
| Gate Fee (after hours / call back) | \$30.00 | \$30.00 | | | |
| Hook Up fee | \$90.00 | \$120.00 | | | |
| Flares each 30 minutes | \$8.00 | \$8.00 | | | |
| Motorcycles Towed * | \$125.00 | | | | |
| Motorcycles Stored | \$25.00 | | | | |
| Other Service or Rates Proposed: | | | | | |
| Lock-Out | \$30.00 | | | | |
| Fuel Delivery | \$30.00 | | | | |
| Tire Change | \$30.00 | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

*Includes Flatbed Fee

**Mileage only charged if tow leaves Milwaukie City Limits, excluding Olson Brothers Lot.

By: *Dan Bausum* Title: *owner*



**PERSONAL SERVICES AGREEMENT
WITH THE CITY OF MILWAUKIE, OR
FOR TOWING SERVICES**

THIS AGREEMENT made and entered into this (Day) day of (Month), (Year) by and between the City of Milwaukie, a municipal corporation of the State of Oregon, hereinafter called City, and (Contractor's Name), hereinafter called Contractor.

RECITALS

WHEREAS City has need for the services described in this contract, including Exhibit A.

WHEREAS 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:

1. SERVICES TO BE PROVIDED

Contractor shall provide services as specified in the Scope of Work, a copy of which is attached hereto, labeled Exhibit A and hereby incorporated by reference. Contractor shall initiate services immediately upon receipt of City's notice to proceed, together with an executed copy of this Agreement.

2. EFFECTIVE DATE AND DURATION

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, by June 30, 2016. The City reserves the right to extend the term of this contract one time for an additional two years.

3. COMPENSATION

City agrees to pay Contractor not to exceed (Amount in written form) (\$Amount in numerical form) for performance of those services described in the Scope of Work, which payment shall be based upon the following applicable terms:

- A. Payment by City to Contractor for performance of services under this Agreement includes all expenses incurred by Contractor, with the exception of expenses, if any identified in this Agreement as separately reimbursable.
- B. Payment will be made in installments based on Contractor's invoice, subject to the approval of the City Manager, or designee, and not more frequently than monthly. Payment shall be made only for work actually completed as of the date of invoice.
- C. Payment by City shall release City from any further obligation for payment to Contractor, for services performed or expenses incurred as of the date of the

invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

- D. Where applicable, Contractor must make payment promptly as due to persons supplying Contractor labor or materials for the execution of the work provided by this order. Contractor must pay all contributions or amounts due from Contractor to the Industrial Accident Fund incurred in the performance of this order. Contractor shall not permit any lien or claim to be filed or prosecuted against City or any subdivision of City on account of any labor or material to be furnished. Contractor further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- E. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person as such claim becomes due, City's Finance Director may pay such claim and charge the amount of the payment against funds due or to become due the Contractor. The payment of the claim in this manner shall not relieve Contractor or their surety from obligation with respect to any unpaid claims.
- F. If labor is performed under this order, then no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, or emergency or where the public policy absolutely requires it, and in such cases, except cases of contracts for personal services as defined in ORS 279A.055, the labor shall be paid at least time and a half for all overtime in excess of eight (8) hours a day and for all work performed on Saturday and on any legal holidays as specified in ORS 279B.020. In cases of contracts for personal services as defined in ORS 279A.055, any labor shall be paid at least time and a half for all hours worked in excess of forty (40) hours in any one week, except for those individuals excluded under ORS 653.010 to 653.260 or under 29 USC SS 201-209.
- G. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Contractor or all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- H. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. 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, plans, 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.

5. **ASSIGNMENT/DELEGATION**

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, Contractor shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.

6. **STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR**

Contractor certifies that:

- A. 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 670.700 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.
- B. The undersigned Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

If this payment is to be charged against Federal funds, Contractor certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.

Contractor and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

- C. Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.

D. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. **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.

Contractor agrees to indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except to the extent that the liability arises out of the sole negligence of the City and its employees. Such indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

8. **INSURANCE**

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all activities of the contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier. Such insurance shall be primary and non-contributory.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverage:

A. **Commercial General Liability Insurance**

Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

| <u>Coverage</u> | <u>Limit</u> |
|---|---------------------|
| General Aggregate | 3,000,000 |
| Products-Completed Operations Aggregate | 3,000,000 |
| Personal & Advertising Injury | 3,000,000 |
| Each Occurrence | 2,000,000 |
| Fire Damage (Any one fire) | 500,000 |
| Medical Expense (Any one person) | 5,000 |

- B. Commercial Automobile Insurance
Contractor shall also obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.
- C. Professional Liability Insurance Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per occurrence shall not be less than \$2,000,000. Annual aggregate limit shall not be less than \$2,000,000.
- D. Workers' Compensation Insurance
The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract who are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide workers' compensation coverage for their workers that complies with ORS 656.126. Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident shall be included.
- E. Additional Insured Provision
The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City, its officers, directors, employees and volunteers as additional insureds with respect to this contract.
- F. Notice of Cancellation
There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days notice of cancellation to the City.
- G. Insurance Carrier Rating
Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- H. Certificates of Insurance
As evidence of the insurance coverage required by the contract, the Contractor shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. The

certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

Certificates of Insurance should read "Insurance certificate pertaining to contract for Towing Services. The City of Milwaukie, its officers, directors and employees shall be added as additional insureds with respects to this contract. A notation stating that "Insured coverage is primary" shall appear in the description portion of certificate.

I. Independent Contractor Status

The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.

J. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

K. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in the general liability policy.

Contractor's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

City of Milwaukie
Attn: Finance
10722 SE Main Street
Milwaukie, Oregon 97222

Business Phone: 503-786-7555
Business Fax: 503-653-2444
Email Address: finance@milwaukieoregon.gov

Such policies or certificates must be delivered prior to commencement of the work.

The procuring of such required insurance shall not be construed to limit contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

9. **METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS**

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

other information:

| City | Contractor |
|--|--|
| City of Milwaukie | Company: (insert name of firm) |
| Attn: Accounts Payable | Attn: (insert contract manager's name) |
| 10722 SE Main Street | Address: (insert contract manager's address) |
| Milwaukie, Oregon 97222 | |
| Phone: 503-786-7523 | Phone: (insert #) |
| Fax: 503-786-7528 | Fax: (insert #) |
| Email Address: finance@milwaukieoregon.gov | Email Address: (insert address) |

And when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to who notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

10. MERGER

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

11. TERMINATION WITHOUT CAUSE

At any time and without cause, City shall have the right, in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the contract pursuant to this paragraph, it shall pay Contractor for services rendered to the date of termination.

12. TERMINATION WITH CAUSE

A. City may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds
- 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- 3) If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

- 4) If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

- B. City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:
- 1) If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
 - 2) If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (B), Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

13. ACCESS TO RECORDS

City shall have access to such books, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

14. FORCE MAJEURE

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so

disenabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

15. **NON-WAIVER**

The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

16. **NON-DISCRIMINATION**

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

17. **ERRORS**

Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

18. **EXTRA (CHANGES) WORK**

Only Police Sergeant, Scott Guy, may authorize extra (and/or change) work. Failure of Contractor to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.

19. **WARRANTIES**

All work shall be guaranteed by Contractor for a period of one year after the date of final acceptance of the work by the owner. Contractor warrants that all practices and procedures, workmanship and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve Contractor from liability under warranties contained in or implied by this Agreement.

20. **ATTORNEY'S FEES**

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

21. GOVERNING LAW

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

22. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapters 279A and 279B, the provisions of which are hereby made a part of this agreement

23. CONFLICT BETWEEN TERMS

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

24. AUDIT

Contractor shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the contract period. Contractor agrees to permit City, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

25. SEVERABILITY

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

26. COMPLETE AGREEMENT

This Agreement and attached exhibits 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 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 MILWAUKIE

CONTRACTOR

Signature

Brad Olson

Signature

Printed Name & Title

Brad Olson

Printed Name & Title

Date

5-20-13

Date

OLSON Bros. TOWING *Since 1957 We Thank You.*

Objective To provide a prompt and safe towing and recovery service with clean and modern trucks.

Towing Ability Olson bros. has four tow vehicles which include:

- Two 21 foot rollback tow trucks
- One light duty recovery and tow truck
- One medium recovery and tow truck

We can safely tow vehicles with a GVW (Gross Vehicle Weight) of up to 10,000 lbs. Also we can tow motor homes up to 25 feet long.

Education All of our tow truck operators are in the process of getting certified with the following endorsements:

- Light and medium tow
- Vehicle recovery
- Rollback

Qualifications Olson bros. has been in the towing business since 1957. We are the sole tow company for Milwaukie police department. We are also on the tow rotation for Clackamas County Sheriff's Office, Oregon State Police, Gladstone police department, and the Oregon Department Of Transportation. Olson's is the preferred tow company for Cross Country Motor Club for the Milwaukie, Oak Grove, Oregon City, and Clackamas area's. Olson's also has a contract with all major motor clubs including AAA, Road America, Allstate, National Automobile Club, Asurion, American Traveler, GE Financial, State Farm, Auto Help Line, and Coach Net.

Olson Bros. appreciates the past business and looks forward to the future endeavors.

A Little History of Olson Brothers

Olson Brothers was opened in downtown Milwaukie in the spring of 1957. Two brothers named Norris and Gordon Olson started out their business as a Shell gas station. Over the last 56 years Olson Brothers has grown considerably and they even have their own website, olsonbroserv.com. Olson Brothers is now an independently owned Tire Factory, towing company, automotive repair facility, and gas service station. They are also still owned and operated by the same family. The current owners are Brand Olson and his business partner Dan Baldwin. Brad is the son of Norris, who started working at Olson Brothers in the 1976 working in the tire shop. Dan started in 1974 as a gas island attendant. They purchased the business in 1996 and have turned it into a great service to the community. All of the technicians at Olson Brothers are ASE certified and have been with the company for 20, 22, and 26 years strong.

Brian Duhrkoop, Head Coach
Milwaukie High School
Milwaukie, OR 97222



MILWAUKIE MUSTANGS

May 10, 2007

Olson Brothers Tires
Attn: Brad Olson
10700 SE McLoughlin Blvd.
Milwaukie, OR 97267

Dear Brad:

Thank you so much for sponsoring Milwaukie High School Baseball with your generous donation of 24 cases of water.

As you know, after-school sports and activities keep the energy of our community's young men focused in a way that benefits the entire community. Many high school athletes are unable to afford the current costs of sports due to changes in the North Clackamas School District's sports budget. Many talented young men simply do not participate and that is a shame for them, and the community.

Coaches, parents and community volunteers do as much as they possibly can to help with the day to day operations of Milwaukie High School Baseball, but without the generous support of people like you, the baseball program at Milwaukie would be in serious trouble. You have helped meet essential needs such as uniforms, equipment, baseballs and field maintenance supplies. For another baseball season, our high school baseball players will be able to experience the excitement of a solid hit or catching a fly ball for the final out of a game.

The 2007 baseball season is coming to an end. A portion of the donation was used for baseball supplies, and travel to Roseburg and Medford for a tournament over spring break. Next year we are planning on taking the team to California for baseball tournaments over spring break.

Thank you again for your continued support.

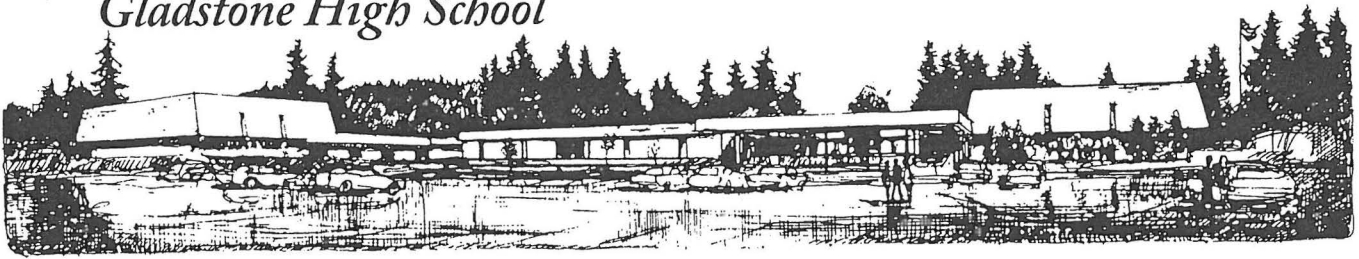
Sincerely,

A handwritten signature in black ink that reads "Brian Duhrkoop". The signature is written in a cursive, somewhat stylized script.

Brian Duhrkoop (Koop)
Head Coach

*Thanks for keeping us
hydrated ☺*

Gladstone High School



18800 Portland Avenue · Gladstone, Oregon 97027-1698 · 503-655-2544 · Fax: 503-655-0320 · www.gladstone.k12.or.us/ghs

Stu Evans
Principal

Patricia Alexander
Vice Principal

June 8, 2007

Dear Gladiator Baseball Sponsor,

I just wanted to drop a quick note to thank you for your donation to the Gladstone High School Baseball Program. Our poster/schedule was a huge hit! The coaches, players, and the parents of the Gladiator Baseball Program thank you for being a part of our team. We hope you continue to support our program in the seasons to come.

Sincerely,

Casey Webster
Head Baseball Coach

Olson Brothers Towing Fleet (May 13, 2013)

Vehicle #1

2005 UD (Nissan) 2300LP Roll-back carrier and wheel-lift. This vehicle can haul up to 10,000 lbs. on its 21 ft steel Vulcan split-deck bed for safe low vehicle loading. And can also tow a second vehicle behind.

Vehicle #2

2002 UD (Nissan) 2300LP Roll-back carrier and wheel-lift. This vehicle can haul up to 10,000 lbs. on its 21 ft steel Vulcan split-deck bed for safe low vehicle loading. And can also tow a second vehicle behind.

Vehicle #3

2000 UD (Nissan) 2000 Recovery tow truck equipped with: Vulcan boom model 894 rated at 20,000 lbs. retracted and 8,000 lbs. extended. Vulcan wheel-lift rated up to 10,000 lbs. Twin Ramsey winches model 400.

Vehicle #4

1994 UD (Nissan) 1400 Recovery tow truck equipped with: Vulcan boom model 832 rated at 16,000 lbs. retracted and 8,000 lbs. extended. Vulcan wheel-lift rated up to 7,500 lbs. Twin Ramsey winches model H246R.

All tow trucks are equipped to meet or exceed standards set by Oregon State Police. All trucks are also equipped with clean-up/spill control products and Nextel two-way radios.

Mike Schell

Mike is the towing manager and our senior tow driver here at Olson Brothers. He has been with the company for 15 years and was certified for towing in June of 2006 through Wreckmaster Inc. Mike also does the processing of our possessory liens on impounded vehicles without any legal infractions.

Tracy Streeter

Tracy is another one of our tow drivers. He has been with Olson Bros. for 7 years, towing for 5 of those. Tracy was certified through North American Towing Academy in 2004.

Taylor Becker

Taylor is our assistant tow manager and tow driver. He has been with Olson Bros. for 2 years. Taylor is also awaiting his towing certification from Wreckmaster Inc.

Frank Pongratz

Frank is a valued member of our towing team. Frank has been with Olson Bros. for one year. He has over 25 years of experience with a variety of towing situations. Frank is currently awaiting certification from Wreckmaster Inc.

Mike Black

Mike Black is a new addition to our towing team; he has been with Olson Bros. for 4 months. Mike is currently in the process of getting certified through Wreckmaster Inc.

Brandon LaBrosse

Brandon is another new addition to our towing team here at Olson Bros. He has been with the company for 8 months. He is still awaiting certification from Wreckmaster Inc.

WreckMaster Inc.
P.O. Box 473
Lewiston, NY 14092

March 7, 2007

Olsen Bros.
Mike Schell
1435 Windsor Cr.
Gladstone, OR 97027

To Whom It May Concern:

The purpose of this letter is to show the qualifications of Mike Schell. Mike completed our level 2*3* via our home study certification training on 06/06/06. Mike's WreckMaster ID# is 060386. Mike is a level 2*3* certified WreckMaster.

The first two digits are the year the students were certified. The last four digits are the ascending numbers in which that student joined the WreckMaster program. The operator's certification is valid for 3 years from the date of their last class. The operator level follows the WreckMaster ID. Mike is part of the largest group of certified operators in the towing and recovery industry.

If you have any questions or concerns regarding the above students' certification, I invite you to contact me at the WreckMaster Corporate Head Office at 800.267.2266 or via email at saundra@wreckmaster.com

Regards,



Sandra Kershaw
Marketing Center
WreckMaster Inc.

PO BOX 473

LEWISTON NY

14092-0473

1.800.267.2266

FAX 905.643.6129



Memorandum

To: Olson Brother's Towing
From: Captain James Colt
Date: July 3, 2007
Subject: Recommendation of Service

I have worked for the City of Milwaukie for approximately twenty-six years and during that time Olson Brother's Towing has had a professional working relationship with the Police Department. They have become the sole providers for police ordered tows for an extended period (over ten years) by continuing to offer exceptional service.

I am recommending that Olson Brother's continues as the provider of police ordered tows because they have demonstrated over and over again responsive customer service, fair fees, excellent history of response time, professional service, dedicated and professionally trained employees, convenient location, and a shared history with the City of Milwaukie and it's Police Department.

I do not lightly recommend this service and only do so because I have yet to observe a tow company that can exceed Olson Brother's reputation and demonstrated response to this community.

On the other hand there are a multitude of tow companies that can only be described as predatory and self-serving, having their self-interest as the only motivating factor. By continuing with Olson Brother's, it simply avoids the associated problems with such companies and continues the excellent service that is currently being provided.

A handwritten signature in cursive script that reads "James M. Colt".

Captain James M. Colt

503-786-7417

Milwaukie Police Department

3200 SE Harrison Street

Milwaukie, Oregon 97222

CC:



September 19, 2006

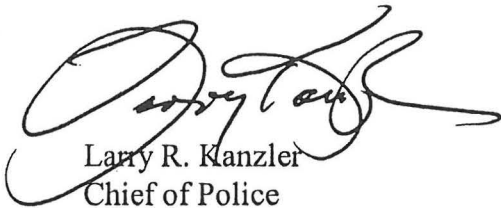
Mr. Brad Olson
Olson Brothers Towing
14115 S.E. McLoughlin Boulevard
Milwaukie, Oregon 97267

Dear Brad:

I received a memo from Sgt. Hipes regarding the actions of one of your drivers, Tom King, during an auto vs train accident that occurred on September 5th. On his own volition Mr. King blocked the traffic on 37th Avenue, just south of the railroad tracks, which prevented traffic from coming into the crash scene. He also set up flares and stayed positioned until they needed the vehicle towed from the scene several hours later. Having the tow truck there helped with traffic and crowd control, which we needed assistance with because we did not have an extra officer available at the time.

I wanted you to know how grateful we are for Mr. King's assistance and willingness to lend a helping hand when we really needed it! We appreciate the superior services that Olson Brothers Towing continues to provide.

Sincerely,



Larry R. Kanzler
Chief of Police

LRK/jrm

cc: Tom King, Olson Brothers
Mayor James Bernard & City Council
Mike Swanson, City Manager



June 27, 2007

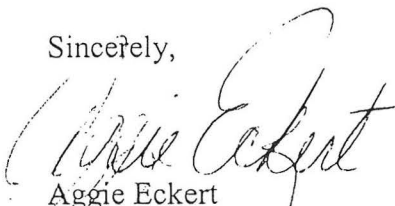
Aggie Eckert
Milwaukie Police Department
Police Records Specialist
3200 SE Harrison St.
Milwaukie, OR 97222

To Whom It May Concern:

I have had contact with Olson Bros. Towing since January 2000 in regards to vehicles that have been impounded by our department. During that time the employees have shown excellent cooperation in regards to requests that I have made to them for information. They are always helpful in retrieving information for me in a timely and professional manner. All of the employees I have had contact with are a pleasure to work with, and I look forward to working with them in the future.

If you should need any further information please contact me at 503-786-7400.

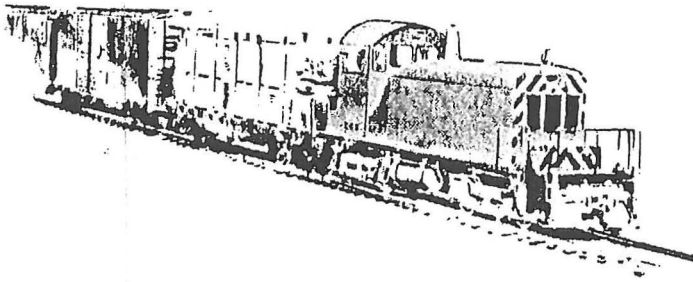
Sincerely,



Aggie Eckert
Milwaukie Police Department

PUBLIC SAFETY BUILDING
3200 SE HARRISON
MILWAUKIE, OREGON 97222
PHONE: (503) 786-7400 • FAX: (503) 786-7426

RS 74



OREGON PACIFIC RAILROAD COMPANY

OPERATIONS: 9001 S.E. McBRID AVENUE
MILWAUKIE, OREGON 97222

MAIL: P. O. BOX 22548
PORTLAND, OREGON 97269

OFFICE: 503-659-5452

FAX: 503-659-6546

January 15, 2007

Mr. Brad Olson
OLSON BROS. AUTOMOTIVE SERVICES
141115 S. E. McLoughlin Blvd.
Milwaukie, Oregon 97267

Dear Brad:

On the evening of January 10th I responded to a call from the Milwaukie Police Department regarding a vehicle that had driven down and was stuck on our track which parallels Ochoco Street adjacent to the Goodwill store. Already present at the scene were Milwaukie officer Monte Sterling and an OLSON BROS. recovery vehicle operated by your operator who identified himself as "Will".

Since this portion of track contains delicate wiring and devices which activate the crossing signals for S. E. 17th Avenue, I was, perhaps, overly protective of our facilities and questioned his ability to remove the vehicle without damaging our facilities. I can relate many "horror stories" about how tow truck drivers and their lack of knowledge of rail operations have caused unnecessary damage to these circuits.

I was truly impressed with Will's competence and willingness to go "the extra mile" to ensure no additional damage would occur to our facilities and the skill with which he operated your equipment.

THANK YOU for running a first class operation and employing quality people which, in my opinion, ranks many levels above the average tow-truck operation.

Yours truly,

OREGON PACIFIC RAILROAD COMPANY
Richard A. Samuels, General Manager

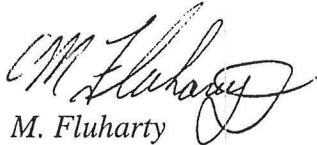
OREGON'S **P**ROGRESSIVE **S**HORTLINE **R**AILROAD
RS 75

Olson Brothers
14115 SE McLoughlin
Oak Grove, Oregon 97267

My old (1990) car was stolen last week, retrieved a few days later and impounded at your lot by the Milwaukee Police Department. It is an old car but I have kept it well maintained and it is my only transportation and, therefore, very disruptive when it disappears.

I just wanted to express my gratitude to the way we were treated when I picked my car up last week. I am sorry I did not get anybody's name, but you were all equally helpful and caring. You made certain my car was drivable. You checked under the hood and tended to anything you felt needed attention. The driver's seat was soaking wet so you covered it in plastic for me so I could drive it home.

Gosh – how nice to see people like that in today's world. Thank you so much. I hope you know who you are. You really made me feel better.




M. Fluharty

12-11-04

Brad

From: "Heather Waldo" <elvisnerd@yahoo.com>
To: <office@olsonbroserv.com>
Sent: Tuesday, May 01, 2007 10:43 AM
Subject: Thank you!

Hi there, I just had my car towed to Auto Electric and wanted to let you know that your employee "Mike" is awesome. He's very friendly and was on time and I really appreciated him. Thanks so much for everything. 

-Heather Waldo

Ahhh...imagining that irresistible "new car" smell?
Check out [new cars at Yahoo! Autos](#).



www.enterprise.com

The gentleman that picked
up our car is an excellent
employee - "Mike" worked
very fast & had a great
personality. a good employee
in your company, as well as
Vince at front desk.

Robert M. Symon
7-0-06

Mike Schell

From: Yelp [no-reply@yelp.com]
Sent: Monday, May 20, 2013 3:54 PM
To: mike@olsonbroserv.com
Subject: mike wants to tell you about a business on Yelp



mike wanted to share a review of Olson Bros. Tire Factory



0
18
Eve N.
Portland, OR

★★★★★ 1/25/2012

I always get stressed out when I have car troubles, but at least now, I have a reliable, trustworthy place to take my car. A friend recommended Olson Bros when my car broke down one time. What first impressed me was how friendly and nice everyone was. They were good about calling me as soon as my car issue was diagnosed and had a quote ready for me. I found the quote to be very reasonable and okayed the work. They repaired my car promptly and when I came to pick it up I was pleasantly surprised that my bill was actually less than the the quote.

I've used them several times since and the service is always excellent and the staff is always friendly and accomodating. Olson Bros is the only place I've taken my car since.

[Read this review on Yelp](#)



Olson Bros. Tire Factory

★★★★★ 7 Reviews
Categories: Tires, Auto Parts & Supplies
14115 SE Mcloughlin Blvd
Milwaukie, OR 97267
(503) 659-5141

Mike Schell

From: Yelp [no-reply@yelp.com]
Sent: Monday, May 20, 2013 3:45 PM
To: mike@olsonbroserv.com
Subject: mike wants to tell you about a business on Yelp



mike wanted to share a review of Olson Bros. Tire Factory

0 Cathy T.
2 Milwaukie, OR

★★★★★ 4/7/2013

This is a wonderful local business. I use them exclusively for all my vehicle needs from fuel, tires, service and towing. I have nothing but good things to say about this business and recommend them highly.

[Read this review on Yelp](#)



Olson Bros. Tire Factory

★★★★★ 7 Reviews
Categories: Tires, Auto Parts & Supplies
14115 SE Mcloughlin Blvd
Milwaukie, OR 97267
(503) 659-5141

Copyright © 2013 Yelp Inc., 706 Mission Street, San Francisco, CA 94103, U.S.A.

January 11, 2013

Attn: Mike – Tow Driver

Dear Olson Brothers,

I want to thank you so much for your help . Recently, I was stuck on Hwy 212 and being a single Mom with 2 kids it was very scary. The turn- around time for help was so quick. Mike was the one who helped us and was so kind & caring. His personality really made us feel at ease and I so appreciate his help.

Again, I can't thank you enough for your great customer service. I will be forever grateful.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn Bell".

Carolyn Bell




16420 S.E. McLoughlin Blvd. • Milwaukie, OR 97267 • (503) 653-5500
19360 S.E. McLoughlin Blvd. • Gladstone, OR 97027 • (503) 656-1927
128 S. McLoughlin Blvd. • Oregon City, OR 97045 • (503) 655-1109
24377 S. HWY 99E • Canby, OR 97013 • (503) 266-9098
2227 S.E. 7th • Portland, OR 97214 • (503) 236-9802
www.jmbodyshops.com

"One of the Nation's Best Equipped Shops"

Specializing in: Heavy Collision Quality Repairs

To whom it may concern:

We, at J&M Body Shops, have a great working relationship with Olson Brothers Towing. They provide excellent customer service to our customers and we strongly recommend them. Their pricing is always fair, consistent and reasonable. They are a very dedicated and professional company.

X 

Date X May/20/2013

James Justice
Owner
J&M Body Shops
(503)653-5500

Car-o-tronics Robotic Frame Measuring • Hunter Computer Alignment • Car-o-Liner Bench System • Nova Verta Refinishing Systems
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Trip to:

3200 SE Harrison St

Milwaukie, OR 97222-6537

2.94 miles / 6 minutes

Notes

A 14115 SE McLoughlin Blvd, Portland, OR 97267-1406

- 1. Start out going **north** on **SE McLoughlin Blvd / OR-99E** toward **SE Courtney Ave.** [Map](#)

1.8 Mi
1.8 Mi Total
- 2. Turn **left** onto **SE 17th Ave.** [Map](#)
*SE 17th Ave is just past SE Jackson St
If you reach SE Scott St you've gone a little too far*

0.3 Mi
2.1 Mi Total
- 3. Take the 1st **right** onto **OR-224.** [Map](#)
OR-224 is just past Banbury Apartments

0.7 Mi
2.8 Mi Total
- 4. Turn **left** onto **SE Harrison St.** [Map](#)
*Mike's Drive-In is on the left
If you reach SE Monroe St you've gone a little too far*

0.2 Mi
2.9 Mi Total
- 5. **3200 SE HARRISON ST** is on the **right.** [Map](#)
*Your destination is just past SE 32nd Ave
If you reach SE 34th Ave you've gone a little too far*

B 3200 SE Harrison St, Milwaukie, OR 97222-6537

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON APPROVING THE AWARD OF THE CONTRACT FOR TOWING SERVICES TO OLSON BROTHERS SERVICES, INC.

WHEREAS, the Milwaukie Police Department depends on private sector companies to provide towing services; and

WHEREAS, a request for Proposals (RFP) was issued on May 9, 2013, for the following tow services; and

WHEREAS, after a review the proposal was found to meet or exceed the RFP requirements;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie authorizes the City Manager to enter into a personal services contract with Olson Brothers Services, Inc. dba Olson Brothers Towing effective on the date of execution and shall expire unless terminated or otherwise extended on July 16th, 2016.

Introduced and adopted by the City Council on August 6, 2013.

This resolution is effective on August 6, 2013.

Jeremy Ferguson, Mayor

Approved as to form

ATTEST:

Pat Duval, City Recorder

City Attorney



PERSONAL SERVICES AGREEMENT WITH THE CITY OF MILWAUKIE, OR FOR TOWING SERVICES

THIS AGREEMENT made and entered into this 6th day of August, 2013 by and between the City of Milwaukie, a municipal corporation of the State of Oregon, hereinafter called City, and Olson Brothers Towing, hereinafter called Contractor.

RECITALS

WHEREAS City has need for the services described in this contract, including Exhibit A.

WHEREAS 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:

1. **SERVICES TO BE PROVIDED**

Contractor shall provide services as specified in the Scope of Work, a copy of which is attached hereto, labeled Exhibit A, and hereby incorporated by reference. Contractor shall initiate services immediately upon receipt of City's notice to proceed, together with an executed copy of this Agreement.

2. **EFFECTIVE DATE AND DURATION**

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, by August 31, 2016. The City reserves the right to extend the term of this contract one time for an additional two years.

3. **COMPENSATION**

City agrees to pay Contractor not to exceed amounts specified in the Scope of Work (Exhibit A) for performance of those services described in the Scope of Work, which payment shall be based upon the following applicable terms:

- A. Payment by City to Contractor for performance of services under this Agreement includes all expenses incurred by Contractor, with the exception of expenses, if any identified in this Agreement as separately reimbursable.
- B. Payment will be made in installments based on Contractor's invoice, subject to the approval of the City Manager, or designee, and not more frequently than monthly. Payment shall be made only for work actually completed as of the date of invoice.
- C. Payment by City shall release City from any further obligation for payment to Contractor, for services performed or expenses incurred as of the date of the

invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

- D. Where applicable, Contractor must make payment promptly as due to persons supplying Contractor labor or materials for the execution of the work provided by this order. Contractor must pay all contributions or amounts due from Contractor to the Industrial Accident Fund incurred in the performance of this order. Contractor shall not permit any lien or claim to be filed or prosecuted against City or any subdivision of City on account of any labor or material to be furnished. Contractor further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- E. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person as such claim becomes due, City's Finance Director may pay such claim and charge the amount of the payment against funds due or to become due the Contractor. The payment of the claim in this manner shall not relieve Contractor or their surety from obligation with respect to any unpaid claims.
- F. If labor is performed under this order, then no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, or emergency or where the public policy absolutely requires it, and in such cases, except cases of contracts for personal services as defined in ORS 279A.055, the labor shall be paid at least time and a half for all overtime in excess of eight (8) hours a day and for all work performed on Saturday and on any legal holidays as specified in ORS 279B.020. In cases of contracts for personal services as defined in ORS 279A.055, any labor shall be paid at least time and a half for all hours worked in excess of forty (40) hours in any one week, except for those individuals excluded under ORS 653.010 to 653.260 or under 29 USC SS 201-209.
- G. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Contractor or all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- H. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. **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, plans, 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.

5. **ASSIGNMENT/DELEGATION**

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, Contractor shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.

6. **STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR**

Contractor certifies that:

- A. 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 670.700 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.
- B. The undersigned Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

If this payment is to be charged against Federal funds, Contractor certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.

Contractor and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

- C. Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.

D. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. **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.

Contractor agrees to indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except to the extent that the liability arises out of the sole negligence of the City and its employees. Such indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

8. **INSURANCE**

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all activities of the contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier. Such insurance shall be primary and non-contributory.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverage:

A. **Commercial General Liability Insurance**

Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form . This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

| <u>Coverage</u> | <u>Limit</u> |
|---|---------------------|
| General Aggregate | 3,000,000 |
| Products-Completed Operations Aggregate | 3,000,000 |
| Personal & Advertising Injury | 3,000,000 |
| Each Occurrence | 2,000,000 |
| Fire Damage (Any one fire) | 500,000 |
| Medical Expense (Any one person) | 5,000 |

- B. Commercial Automobile Insurance
Contractor shall also obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.
- C. Professional Liability Insurance Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per occurrence shall not be less than \$2,000,000. Annual aggregate limit shall not be less than \$2,000,000.
- D. Workers' Compensation Insurance
The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract who are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide workers' compensation coverage for their workers that complies with ORS 656.126. Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident shall be included.
- E. Additional Insured Provision
The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City, its officers, directors, employees and volunteers as additional insureds with respect to this contract.
- F. Notice of Cancellation
There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days' notice of cancellation to the City.
- G. Insurance Carrier Rating
Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- H. Certificates of Insurance
As evidence of the insurance coverage required by the contract, the Contractor shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. The

certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

Certificates of Insurance should read "Insurance certificate pertaining to contract for Towing Services. The City of Milwaukie, its officers, directors and employees shall be added as additional insureds with respects to this contract. A notation stating that "Insured coverage is primary" shall appear in the description portion of certificate.

I. Independent Contractor Status

The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.

J. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

K. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in the general liability policy.

Contractor's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

City of Milwaukie
Attn: Finance
10722 SE Main Street
Milwaukie, Oregon 97222

Business Phone: 503-786-7555
Business Fax: 503-653-2444
Email Address: finance@milwaukieoregon.gov

Such policies or certificates must be delivered prior to commencement of the work.

The procuring of such required insurance shall not be construed to limit contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

9. **METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS**

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

other information:

| City | Contractor |
|--|--------------------------------------|
| City of Milwaukie | Company: Olson Brothers Towing |
| Attn: Accounts Payable | Attn: Brad Olson |
| 10722 SE Main Street | Address: 14115 SE McLoughlin Blvd. |
| Milwaukie, Oregon 97222 | Milwaukie, OR 97267 |
| Phone: 503-786-7523 | Phone: 503-659-5141 |
| Fax: 503-786-7528 | Fax: 503-786-1436 |
| Email Address: tuckerk@milwaukieoregon.gov | Email Address: brad@olsonbroserv.com |

And when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to who notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

10. MERGER

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

11. TERMINATION WITHOUT CAUSE

At any time and without cause, City shall have the right, in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the contract pursuant to this paragraph, it shall pay Contractor for services rendered to the date of termination.

12. TERMINATION WITH CAUSE

A. City may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds
- 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- 3) If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

- 4) If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

- B. City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:
 - 1) If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
 - 2) If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (B), Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

13. **ACCESS TO RECORDS**

City shall have access to such books, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

14. **FORCE MAJEURE**

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so

disenabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

15. **NON-WAIVER**

The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

16. **NON-DISCRIMINATION**

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

17. **ERRORS**

Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

18. **EXTRA (CHANGES) WORK**

Only the City Manager, William Monahan, may authorize extra (and/or change) work. Failure of Contractor to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.

19. **WARRANTIES**

All work shall be guaranteed by Contractor for a period of one year after the date of final acceptance of the work by the owner. Contractor warrants that all practices and procedures, workmanship and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve Contractor from liability under warranties contained in or implied by this Agreement.

20. **ATTORNEY'S FEES**

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

21. **GOVERNING LAW**

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

22. **COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES**

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapters 279A and 279B, the provisions of which are hereby made a part of this agreement

23. **CONFLICT BETWEEN TERMS**

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

24. **AUDIT**

Contractor shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the contract period. Contractor agrees to permit City, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

25. **SEVERABILITY**

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

26. **COMPLETE AGREEMENT**

This Agreement and attached exhibits 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 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.

Contract # _____

CITY OF MILWAUKIE

CONTRACTOR

Signature

Signature

William Monahan, City Manager
Printed Name & Title

Printed Name & Title

Date

Date

EXHIBIT A
SCOPE OF WORK

Services to be Provided:

Olson Brothers Towing shall be responsible for the delivery of quality and cost effective towing services as ordered by the City of Milwaukie. Fees proposed shall remain fixed for the first three years of the contract and may be adjusted for the additional two years in accordance with the most recent calendar year consumer price index (all urban consumers component) for the Portland Standard Metropolitan Statistical Area (SMSA), or the Contractor's then current standard fees, whichever is lower.

Specific Responsibilities:

1. Provide twenty-four (24) hours per day, seven (7) days per week, three hundred and sixty-five days (365) per year service. This requirement includes gatekeeper service when tow lot is not open. Contractor must guarantee one-hour response by gatekeeper after telephone/radio notification for release of vehicle.
2. Contractor must have complete geographical knowledge of all streets in the immediate vicinity of the City of Milwaukie.
3. Tow lot must be easily locatable and accessible. Lot must be located within five miles of the City limits of the City of Milwaukie. Lot must be well lit at night and appropriately signed. Outside storage lot must be fenced and of sufficient size to accommodate tows ordered by the City. Secure inside storage must be available for at least two vehicles (maximum order anticipated by the City) at any one time.
4. All drivers will be licensed, trained and insured appropriate to the legal requirements to operate the equipment to which they are assigned.
5. Contractor will be responsible for containing and removing spilled or leaking fuels, oils and non-hazardous materials in cooperation with, and under direction of, the Clackamas Fire District #1 and/or the Milwaukie Police Department. Contractor will assure that each tow vehicle is equipped with absorbent pads, dikes, diesel transfer pumps, absorbent sweeps and a tank patch kit.
6. Contractor will be responsible for post-accident clean up under the direction of the Milwaukie Police and/or Clackamas Fire District #1.

7. Tow requirements shall, at a minimum, be:

| EQUIPMENT | <u>CLASS "A" (under 12,000 gvwt)</u> | <u>CLASS "B" (12,000-27,000 gvwt)</u> | <u>CLASS "C" (27,000+ gvwt)</u> |
|---|---|--|--|
| 1 lb. CO2 or Dry Chemical fire extinguisher | " | " | " |
| Emergency Warning Lights with night visibility of at least 500 feet | " | " | " |
| One extension light or 5 cell flashlight or equivalent | " | " | " |
| One wrecking bar | " | " | " |
| Six emergency fuses (thirty-minute) or two electric flashing red emergency portable lights with night visibility of at least 300 feet | " | " | " |
| Adequate unlocking tools | " | " | (not required) |
| Adequate hot start cables of not less than ten feet | " | " | (not required) |
| At least one set of dollies per truck (except roll beds) | " | (not required) | (not required) |
| Portable auxiliary brake lights, turn signals and tail lights for use on towed vehicles | " | " | " |
| Two-way radio/cellular telephone communication system | " | " | " |
| Reversible power winch | 8 ton with 100' steel cable | 10 ton with 150' steel cable | 30 ton with 150' steel cable |
| Tow Availability (response time) | Day – 20 minutes Night – 30 Minutes | Day – 20 minutes Night – 30 Minutes | Day – 30 minutes Night – 45 minutes |

Other Services:

If regulatory bodies establish new regulations, Contractor shall provide any required new services. If the Contractor develops other services, the City is to be furnished with any information that the City may use to consider these services.

Towing Services Proposed Rates

| SERVICES | CLASS A | CLASS B | CLASS C | OTHER | CITY OWNED |
|------------------------------------|----------|----------|---------|-------|------------|
| Towing Minimum | \$90.00 | \$120.00 | | | \$40.00 |
| Flat Rate | \$90.00 | \$120.00 | | | \$40.00 |
| Mileage One-Way ** | \$4.00 | \$5.00 | | | \$3.00 |
| Dolly | \$35.00 | N/A | | | \$20.00 |
| Standby Time per Operator | \$70.00 | \$70.00 | | | \$20.00 |
| Outside Storage per 24-hour period | \$25.00 | \$35.00 | | | |
| Inside Storage per 24-hour period | \$40.00 | \$50.00 | | | |
| Dispatch Fee | \$0 | \$0 | | | |
| Labor at Scene | \$70.00 | \$70.00 | | | |
| Roll Over per Hour | \$70.00 | \$90.00 | | | |
| Special Recovery/Winching Per hour | \$70.00 | \$90.00 | | | |
| Remove Drive Line | \$35.00 | \$45.00 | | | |
| Gate Fee (after hours / call back) | \$30.00 | \$30.00 | | | |
| Hook Up fee | \$90.00 | \$120.00 | | | |
| Flares each 30 minutes | \$8.00 | \$8.00 | | | |
| Motorcycles Towed * | \$125.00 | | | | |
| Motorcycles Stored | \$25.00 | | | | |
| Other Service or Rates Proposed: | | | | | |
| Lock-Out | \$30.00 | | | | |
| Fuel Delivery | \$30.00 | | | | |
| Tire Change | \$30.00 | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

*Includes Flatbed Fee

**Mileage only charged if tow leaves Milwaukie City Limits, excluding Olson Brothers Lot.

By: *Dan Bauwman* Title: *Owner*



To: Mayor Ferguson and Milwaukie City Council

Through: Bill Monahan, City Manager

From: Bob Jordan, Chief of Police

Date: July 8, 2013

Subject: O.L.C.C. Application – AM Kanso – 10966 SE McLoughlin Blvd.

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from AM Kanso – 10966 SE McLouglin Boulevard.

Background:

We have conducted a background investigation and find no reason to deny the request for liquor license.



To: Mayor Ferguson and Milwaukie City Council
Through: Bill Monahan, City Manager
From: Bob Jordan, Chief of Police
Date: July 8, 2013
Subject: O.L.C.C. Application – Big Bee Cafe – 4630 SE International Way

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Big Bee Cafe – 4630 S.E. International Way.

Background:

We have conducted a background investigation and find no reason to deny the request for liquor license.



To: Mayor Ferguson and Milwaukie City Council
Through: Bill Monahan, City Manager *BM*
From: Bob Jordan, Chief of Police *BJ*
Date: July 8, 2013
Subject: O.L.C.C. Application – The Game Room – 1926 SE Scott Street


Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from The Game Room - 1926 SE Scott Street.

Background:

We have conducted a background investigation and find no reason to deny the request for liquor license.



To: Mayor Ferguson and Milwaukie City Council
Through: Bill Monahan, City Manager
From: Steve Bartol, Acting Chief of Police 
Date: June 27, 2013
Subject: O.L.C.C. Application – Vinifera Imports, Ltd. – 4000 SE International Way

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Vinifera Imports, Inc. – 4000 S.E. International Way.

Background:

We have conducted a background investigation and find no reason to deny the request for liquor license.

6.
OTHER BUSINESS



Agenda Item: 6. A. 1.
Meeting Date: 08/06/2013

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Award the contract for the 2013/14 SSMP Paving Project

Prepared By: Brad Albert, Civil Engineer

Dept. Head Approval: Steve Butler, Interim Community Development Director
Jason Rice, Engineering Manager

City Manager Approval: Teri Bankhead for Bill Monahan

Reviewed by City Manager: July 24, 2013

ISSUE BEFORE THE COUNCIL

Award a contract for the 2013/14 SSMP Paving Project (CIP-2012-S06).

STAFF RECOMMENDATION

Authorize the City Manager to sign a contract with S-2 Contractors, Inc. in the amount of \$716,122.25 for the 2013/14 SSMP Paving Project

KEY FACTS & INFORMATION SUMMARY

- The paving project will repave approximately $\frac{3}{4}$ of a mile of streets.
- The project will upgrade 12 ADA sidewalk ramps
- The Main Street Paving will take place at night to minimize impacts to downtown businesses

OTHER ALTERNATIVES CONSIDERED

- Not to award the contract and wait until next year to construct
- Not award the contract indefinitely.

CITY COUNCIL GOALS

Council Goal #6: Allocate resources within the Capital Improvement Plan to improve livability in the neighborhoods.

ATTACHMENT LIST

1. Resolution awarding the contract
2. Map of project vicinity

FISCAL NOTES

The 2013/14 SSMP Paving Project is part of the 2013/2014 Transportation Fund budget.



To: Mayor and City Council

Through: Bill Monahan, City Manager
Steve Butler, Interim Community Development Director
Jason Rice, Engineering Manager

From: Brad Albert, Civil Engineer

Subject: 2013/ 2014 Street Surface Maintenance Program Paving Contract
CIP-2012-S06

Date: August 6, 2013 Regular Session

ACTION REQUESTED

Authorize the City Manager to execute a contract for the reconstruction of Harrison Street (HWY 99E to Campbell Street) and resurfacing Main Street (Washington Street to Scott Street) with S-2 Contractors, Inc. in the amount of \$716,122.25.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

January 2, 2007: The City of Milwaukie's Street Surface Maintenance Program was adopted by Ordinance No. 1966, effective on July 1, 2007. The ordinance, in concert with related ordinances, established a street maintenance fee, an electric utility privilege tax and local gas tax to fund the SSMP. All funds were dedicated to street maintenance and rehabilitation, with the goal of bringing all arterials and collectors in the City to a "good" or better condition within ten years.

BACKGROUND

Since its inception, the Street Surface Maintenance Program has helped to maintain the City's pavement network. Without this program or any other source of funding, the condition of the pavement network would have slipped further away from a manageable condition. Over the next few years with the paving of streets such as Harrison, Monroe,

Main, and Railroad, the condition of the major street network will be raised to a maintainable Pavement Condition Index (PCI) in the 80's, which is one of the primary goals of the program. This contract addresses the next two streets on the priority list as adopted by Council in 2007.

The 2013/14 SSMP Paving Project went through a competitive bidding process in accordance with Chapter 30 of the City's Public Contracting Rules. The City received 5 bids before the July 17, 2012 2:00 PM bid opening. The following table is a summary of all bid amounts as well as the engineer's estimate.

| | Contractor | Bid Amount |
|----|--------------------------|-------------------|
| 1 | S-2 Contractors, Inc | \$716,122.25 |
| 2 | Knife River | \$736,686.40 |
| 3 | Kodiak Pacific | \$745,547.00 |
| 4 | Brix Paving Company | \$789,210.85 |
| 5 | Granite Construction Co. | \$895,895.00 |
| ** | Engineer's Estimate | \$800,000.00 |

Selection of the Contractor was based on the lowest responsive and responsible bid submitted in conformance with the Contract Documents. The lowest responsive, responsible bid was submitted by S-2 Contractors, Inc. a construction firm from Aurora, Oregon.

Under this contract, S-2 Contractors, Inc. will begin in mid-August by upgrading ADA sidewalk ramps along Main Street. The ADA sidewalk ramp upgrade is separate from the CDBG ADA sidewalk ramp upgrade that will be occurring later this year. This portion of the work will take approximately 2-3 weeks to complete. After the sidewalk ramps are upgraded, the asphalt grind and inlay work will take place. This work is scheduled to be performed at night to minimize the impact to downtown businesses. The duration of the night work will be approximately one week.

After Main Street work is complete, S-2 Contractors, Inc. will mobilize to Harrison Street to begin work. Work is scheduled in this area from mid-September through October. In this phase of the project, the asphalt in Harrison Street will be completely ground out and removed. Once the asphalt is hauled off, the road base will be treated with cement to control compaction; this is the same method used to construct Harrison Street (Campbell Street to 42nd Avenue), Monroe Street (Oak Street to 59th Avenue), King Road, and Roswell Street. Paving will occur within 24 hours after the cement is mixed in. This process will be segmented into three areas to reduce traffic impacts as much as possible. The three segments will be 99E to 24th Avenue, 26th Avenue to HWY 224, and HWY 224 to Campbell Street.

Staff will be in close coordination with both the Clackamas Fire District #1 and Milwaukie Providence Hospital as impacts to emergency routes will occur while work is being conducted on Harrison Street.

CONCURRENCE

Engineering staff coordinated with Operations staff on both the concept and design phases of the project. Council agreed during the last yearly SSMP update that these particular streets were the highest of priority amongst the original SSMP projects. Engineering staff also coordinated with Finance staff and verified the funds were available to spend.

FISCAL IMPACTS

The 2013/14 Paving Project was originally budgeted for \$855,000 and is included in the 2013/14 Fiscal Budget. The lowest responsive and responsible bid is \$716,122.25, which is a savings to the City of approximately \$138,877.75. The proposed contract requires this work to be concluded prior to the end of the 2014 fiscal year.

WORK LOAD IMPACTS

Engineering staff will provide project management throughout the course of the construction, including the following:

- Enforcement of contract provisions
- Interpretation of construction plans and specifications
- Construction inspection
- Daily report writing and construction documentation
- Negotiation of changes to contract provisions when necessary
- Acceptance of furnished materials
- Assurance of conformance with Bureau of Labor and Industries requirements
- Management and coordination between the contractor, public, City departments, and regulatory agencies.
- Measurement of quantities
- Issuance of payments for work completed

ALTERNATIVES

1. Do not award project (defer indefinitely)
 - If council wishes not to award the project and remove it from the CIP list.
2. Re-bid project without amendments.
 - If council approves of the project design but thinks the project should be re-bid for any reason.
3. Direct Staff to modify project and re-bid
 - If council does not approve of the project design and/or thinks that re-bidding could reduce cost.

ATTACHMENTS

1. Resolution awarding the contract
2. Map of project vicinity

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE AWARD OF CONTRACT FOR THE PAVEMENT RECONSTRUCTION OF HARRISON STREET BETWEEN HWY 99E AND CAMPBELL STREET AND PAVEMENT RESURFACING OF MAIN STREET BETWEEN WASHINGTON STREET AND SCOTT STREET (CIP-2012-S06).

WHEREAS, the Street Surface Maintenance Program was adopted January 2, 2007; and

WHEREAS, Harrison Street and Main Street were selected for treatment in year 6 and 7 of the program after analysis of the street system; and

WHEREAS, the Harrison Street and Main Street projects are included in the proposed 2013/2014 Budget for a total of \$855,000; and

WHEREAS, a formal competitive bidding process following Chapter 30 of the City's Public Contracting Rules was conducted, and

WHEREAS, S-2 Contractors is the lowest responsive, responsible bidder;

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie authorizes the City Manager to sign a contract for the reconstruction of Harrison Street (between HWY 99E and Campbell Street) and pavement resurfacing of Main Street (between Washington Street and Scott Street) with S-2 Contractors in the amount of \$716,122.25.

Introduced and adopted by the City Council on August 6, 2013.

This resolution is effective on August 6, 2013.

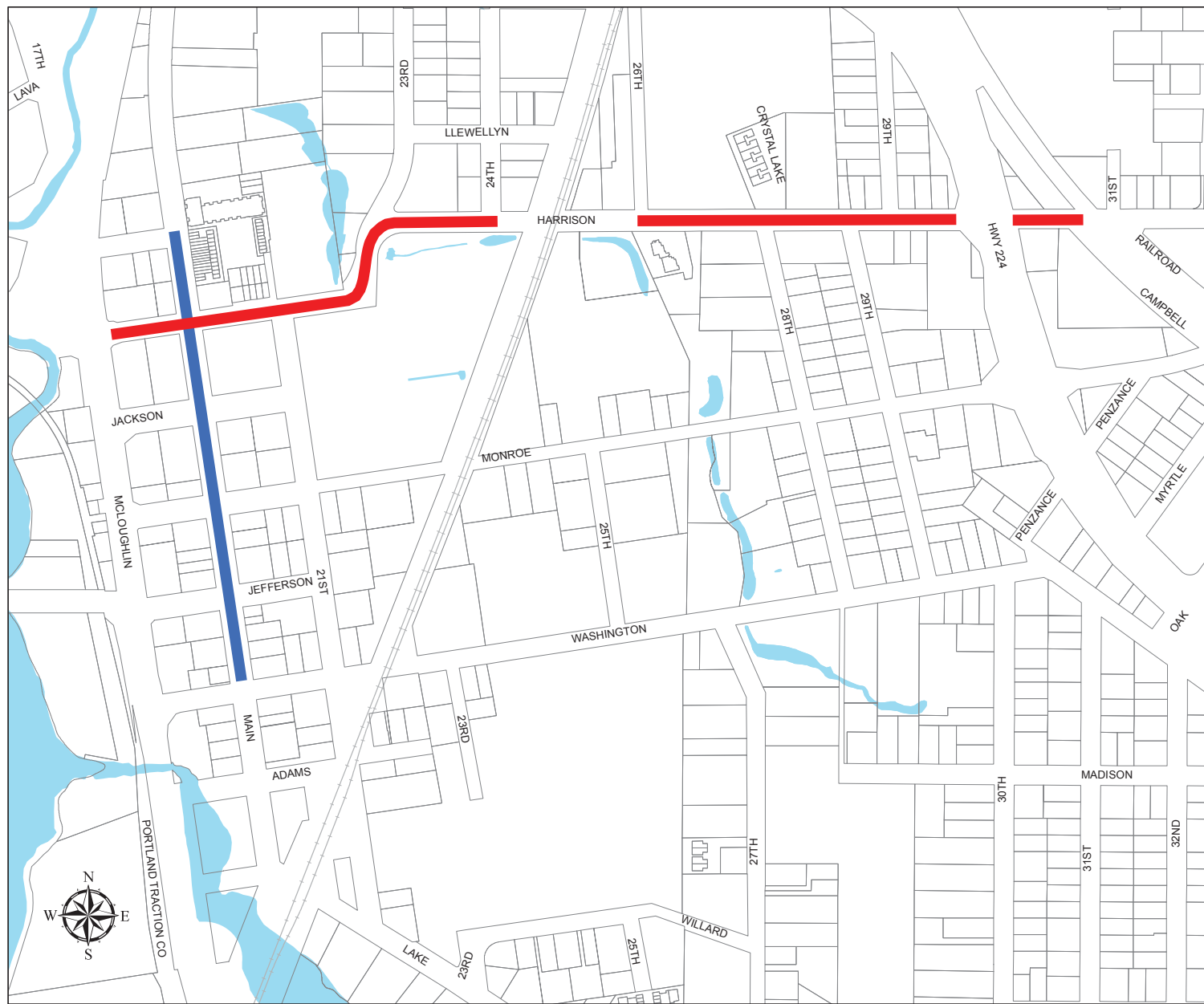
Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney



HARRISON STREET RECONSTRUCTION PHASE 2

MAIN STREET REHABILITATION

Data Sources: City of Milwaukie GIS
Metro Data Resource Center

Last Updated: 7/18/2013

The information depicted on this map is for general reference only. The City of Milwaukie cannot accept any responsibility for errors, omissions or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of errors would be appreciated.

Engineering Department
City of Milwaukie
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206
(503) 786-7600





Agenda Item: 6. A. 2.
Meeting Date: 08/06/2013

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Award the contract for the 2013 SSMP Slurry Seal Project

Prepared By: Brad Albert, Civil Engineer

Dept. Head Approval: Steve Butler, Interim Community Development Director
Jason Rice, Engineering Manager

City Manager Approval: Teri Bankhead for Bill Monahan

Reviewed by City Manager: July 24, 2013

ISSUE BEFORE THE COUNCIL

Award a contract for the 2013 SSMP Slurry Seal Project (CIP-2013-S04)

STAFF RECOMMENDATION

Authorize the City Manager to sign a contract with Asphalt Maintenance Associates, Inc. in the amount of \$119,094.30 for the 2013 SSMP Slurry Seal Project

KEY FACTS & INFORMATION SUMMARY

- The slurry seal project will resurface over 1 ½ miles of streets.
- The project duration will be approximately 30 days
- The project will take place in the Cedarcrest and Brookside neighborhoods

OTHER ALTERNATIVES CONSIDERED

- Not to award the contract and wait until next year to perform the work
- Not award the contract indefinitely.

CITY COUNCIL GOALS

Council Goal #6: Allocate resources within the Capital Improvement Plan to improve livability in the neighborhoods.

ATTACHMENT LIST

1. Resolution awarding the contract
2. Map of project vicinity

FISCAL NOTES

The 2013 SSMP Slurry Seal Project is part of the 2013/2014 Transportation Fund budget.



To: Mayor and City Council

Through: Bill Monahan, City Manager
Steve Butler, Interim Community Development Director
Jason Rice, Engineering Manager

From: Brad Albert, Civil Engineer

Subject: 2013 Street Surface Maintenance Program Slurry Seal Contract

CIP-2013-S04

Date: August 6, 2013 Regular Session

ACTION REQUESTED

Authorize the City Manager to execute a contract for the slurry seal surfacing on various streets throughout the City with Asphalt Maintenance Associates, Inc. in the amount of \$119,094.30.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

January 2, 2007: The City of Milwaukie's Street Surface Maintenance Program was adopted by Ordinance No. 1966, effective on July 1, 2007. The ordinance, in concert with related ordinances, established a street maintenance fee, an electric utility privilege tax and local gas tax to fund the SSMP. All funds were dedicated to street maintenance and rehabilitation, with the goal of bringing all arterials and collectors in the City to a "good" or better condition within ten years.

BACKGROUND

Since its inception, the Street Surface Maintenance Program has helped to maintain the City's pavement network. Without this program or any other source of funding, the condition of the network would have slipped further away from a manageable condition. Over the next few years with the slurry sealing of various streets throughout the City, the condition of the major street network will be raised to a maintainable Pavement Condition Index (PCI) in the 80's, which is one of the primary goals of the program.

This contract addresses streets that were identified as not needing costly full asphalt overlays but rather a more cost-effective slurry seal coat to maintain a PCI rating above 80, the standard adopted by Council in 2007.

The PCI is a measure of the status of street surface, ranging from 0 to 100. A newly constructed street would have a PCI of 100 and a failed street would have a PCI of 25 or less. The “Good” range is from 70 to 100. An ideal (i.e., the most cost-effective) maintenance program is possible with a network average in the low 80’s. The goal of the City’s SSMP is to bring all major streets to a point where the cost-efficiencies of good preventive maintenance are enjoyed.

The 2013 SSMP Slurry Seal Project went through a competitive bidding process in accordance with Chapter 30 of the City’s Public Contracting Rules. The City received 3 bids before the July 23, 2012 2:00 PM bid opening. The following table is a summary of all bid amounts as well as the engineer’s estimate.

| | Contractor | Bid Amount |
|----|-------------------------------------|-------------------|
| 1 | Asphalt Maintenance Associates, Inc | \$119,094.30 |
| 2 | Blackline, Inc. | \$130,562.64 |
| 3 | VSS International | \$157,028.04 |
| ** | Engineer's Estimate | \$115,000.00 |

Selection of the Contractor was based on the lowest responsive and responsible bid submitted in conformance with the Contract Documents. The lowest responsive, responsible bid was submitted by Asphalt Maintenance Associates, Inc., a construction firm from Eugene, Oregon

Under this contract, Asphalt Maintenance Associates, Inc. will begin in mid-August by preparing the streets for slurry seal. Staff anticipates the contractor will start work in the Cedarcrest neighborhood and finish in the Brookside neighborhood. A final schedule from the contractor will determine the time of work in each area.

Staff will be in close coordination with affected residents in the Cedarcrest and Brookside neighborhoods. Also staff will notify the North Clackamas School District about potential disruptions to bus routes once the school year starts.

CONCURRENCE

Engineering staff coordinated with Operations staff on both the concept and design phases of the project. Engineering staff also coordinated with Finance staff and verified the funds were available to spend.

FISCAL IMPACTS

Included within the 2013/14 Fiscal Budget, the slurry seal project was estimated to cost \$115,000. The proposed contract requires this work to be concluded prior to the end of the 2014 fiscal year.

WORK LOAD IMPACTS

Engineering staff will provide project management throughout the course of the construction, including the following:

- Enforcement of contract provisions
- Interpretation of construction plans and specifications
- Construction inspection
- Daily report writing and construction documentation
- Negotiation of changes to contract provisions when necessary
- Acceptance of furnished materials
- Assurance of conformance with Bureau of Labor and Industries requirements
- Management and coordination between the contractor, public, City departments, and regulatory agencies.
- Measurement of quantities
- Issuance of payments for work completed

ALTERNATIVES

1. Do not award project (defer indefinitely)
 - If council wishes not to award the project and remove it from the CIP list.
2. Re-bid project without amendments.
 - If council approves of the project design but thinks the project should be re-bid for any reason.
3. Direct Staff to modify project and re-bid
 - If council does not approve of the project design and/or thinks that re-bidding could reduce cost.

ATTACHMENTS

1. Resolution awarding the contract
2. Map of project vicinity

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR 2013 SSMP SLURRY SEAL PROJECT (CIP-2013-S04) IN THE AMOUNT OF \$119,094.30.

WHEREAS, the Street Surface Maintenance Program was adopted January 2, 2007; and

WHEREAS, Slurry Sealing was identified as a preventative maintenance measure for streets; and

WHEREAS, a formal competitive bidding process following Chapter 30 of the City's Public Contracting Rules was conducted; and

WHEREAS, Asphalt Maintenance Associates, Inc. is the lowest responsive, responsible bidder;

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie authorizes the City Manager to sign a contract for the 2013 SSMP Slurry Seal Project in the amount of \$119,094.30 with Asphalt Maintenance Associates, Inc.

Introduced and adopted by the City Council on August 6, 2013.

This resolution is effective on August 6, 2013.

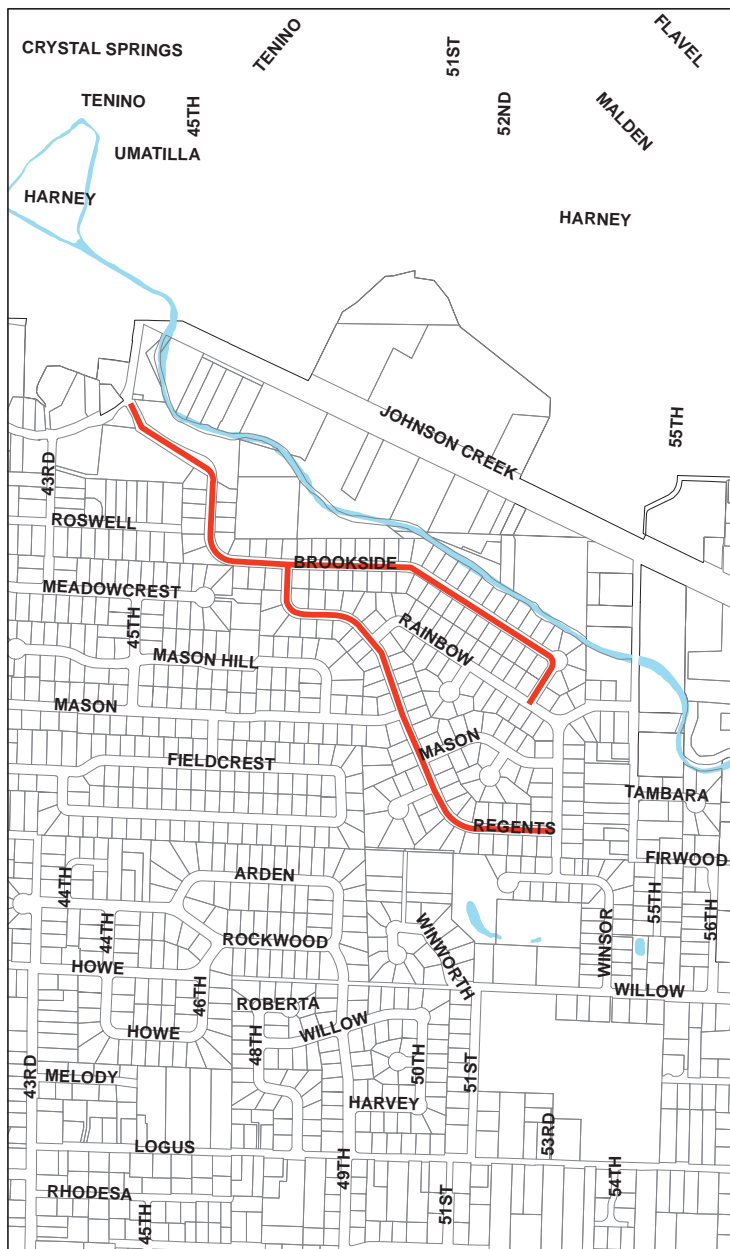
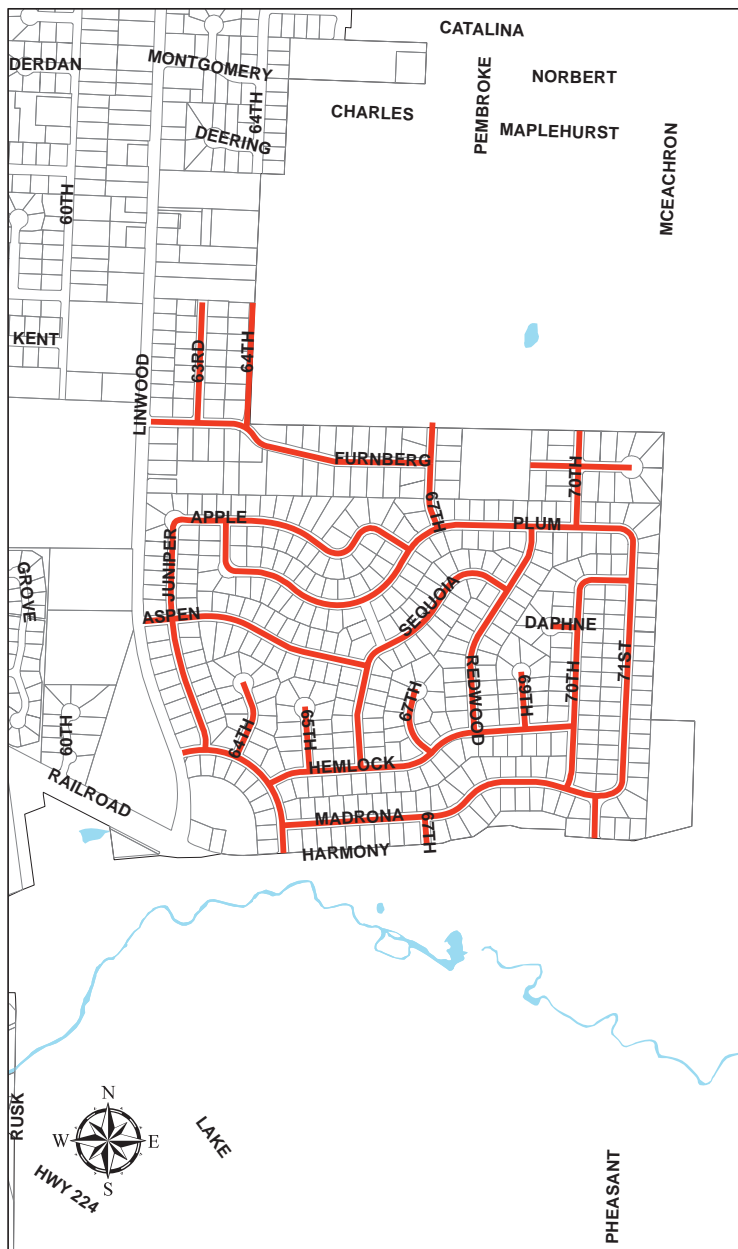
Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



SLURRY SEAL LOCATIONS

Data Sources: City of Milwaukie GIS
 Metro Data Resource Center
 Last Updated: 7/19/2013
 The information depicted on this map is for general reference only. The City of Milwaukie cannot accept any responsibility for errors, omissions or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of errors would be appreciated.

Engineering Department
 City of Milwaukie
 6101 SE Johnson Creek Blvd.
 Milwaukie, OR 97206
 (503) 786-7600

1 inch = 600 feet



Agenda Item: 6. B.
Meeting Date: 8/6/2013

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: 17th Avenue Multi-use Trail Intergovernmental Agreements with the ODOT and Easement Acquisition Resolution

CIP-2013-T05

Prepared By: Jason Rice, Engineering Manager

Dept. Head Approval: Steve Butler, Interim Community Development Director

City Manager Approval: Teri Bankhead for Bill Monahan

Reviewed by City Manager: July 24, 2013

ISSUE BEFORE THE COUNCIL

Two Resolutions are necessary for the advancement of the 17th Avenue Multi-Use Trail Project. The first grants signing authority for two intergovernmental agreements with ODOT, while the second grants the project authority for both easement acquisition and acquisition via condemnation when necessary.

STAFF RECOMMENDATION

Staff and the City Attorney's Office have reviewed the proposed agreements and support signing it in order to proceed with design and construction of the 17th Avenue Multi-use Trail.

KEY FACTS & INFORMATION SUMMARY

The 17th Avenue Multi-use Trail Project is widely accepted as the solution to a regional pedestrian and cyclist access issue. Without a safe connection between the Trolley Trail and the Springwater Trail, travelers are forced to use facilities that were not originally intended to support non-vehicular modes of traffic. With the award of grant funding via Regional Flexible Funding, the City will be required to match these funds with approximately \$310,000 and a large amount of Engineering Staff time. Furthermore, because this project will require construction easements, the power of condemnation is also required at this time.

OTHER ALTERNATIVES CONSIDERED

Metro's Regional Flexible Funds Grant is the only funding alternative available to the City at this time. Without Council's concurrence on these two agreements, Staff would need to identify a different grant program in which to apply.

CITY COUNCIL GOALS

Goal 6: Allocate resources within the Capital Improvement Plan to improve livability in the neighborhoods

ATTACHMENT LIST

1. Resolution authorizing signing authority of Attachments 3 and 4
2. Resolution authorizing Easement Acquisition and Commendation
3. Local Agency Agreement with ODOT for Federal Funding
4. Intergovernmental Agreement with ODOT for Right-of-Way Services

FISCAL NOTES

Metro's Grant will provide up to \$2,969,000 to the 17th Avenue Project, while the City will be required to supply at least \$310,000 (10.27%).



To: Mayor and City Council

Through: Bill Monahan, City Manager
Steve Butler, Interim Community Development Director

From: Jason Rice, Engineering Manager

Subject: 17th Avenue Multi-Use Trail Intergovernmental Agreements with ODOT
and Easement Acquisition Resolution

CIP-2013-T05

Date: August 6, 2013 Regular Session

ACTION REQUESTED

Staff requests council to approve two resolutions necessary for the advancement of the 17th Avenue Multi-Use Trail Project. The first authorizes signatures of two intergovernmental agreements with the Oregon Department of Transportation (ODOT), and the second allows for both easement acquisition and acquisition via condemnation when necessary.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

April 2011: Council prioritized the 17th Avenue Multi-use Path Project as the most likely project to receive Regional Flexible Funds and gave Staff direction to complete an application for its design and construction.

BACKGROUND

17th Avenue currently has only intermittent sidewalks and striped bike lanes only on the east side. Travel by pedestrians and cyclists along this street is currently unsafe and intimidating. Enhancement of bike and pedestrian facilities would increase access from the Milwaukie town center and parts of northern Clackamas County to the City of Portland to the north as well as points to the east along the Springwater Trail.

Transitions at the Milport and Hwy. 224 intersections are particularly difficult for non-auto travelers. The absence of curbs and stormwater drainage along stretches has resulted in deteriorating conditions along the road edge. The mix of deteriorating infrastructure and changing conditions results in a hazardous and confusing environment, particularly for bicyclists and pedestrians. Inserting an off street multi-use path along the west side of 17th Ave will protect bikers and pedestrians from car and truck traffic along this busy roadway. Formalized bike lanes will also more clearly define the safe biking area for faster on-street cyclists.

Planning

During the creation of the City's Transportation System Master Plan (TSP) in 2007, the lack of these facilities for non-vehicular modes of transportation along 17th Avenue was documented as high priority in both the Pedestrian and Cyclist Chapters. Since the City has identified this project, the 17th Avenue Multi-Use Trail has been added to the Regional Transportation Plan (RTP) and the Master Plan/ Capital Improvement Plan for the North Clackamas Parks District. Although it was unlikely that the City by itself could afford such a large scale multimodal project, its presence as a high priority project in so many regional documents made it a perfect candidate for a grant.

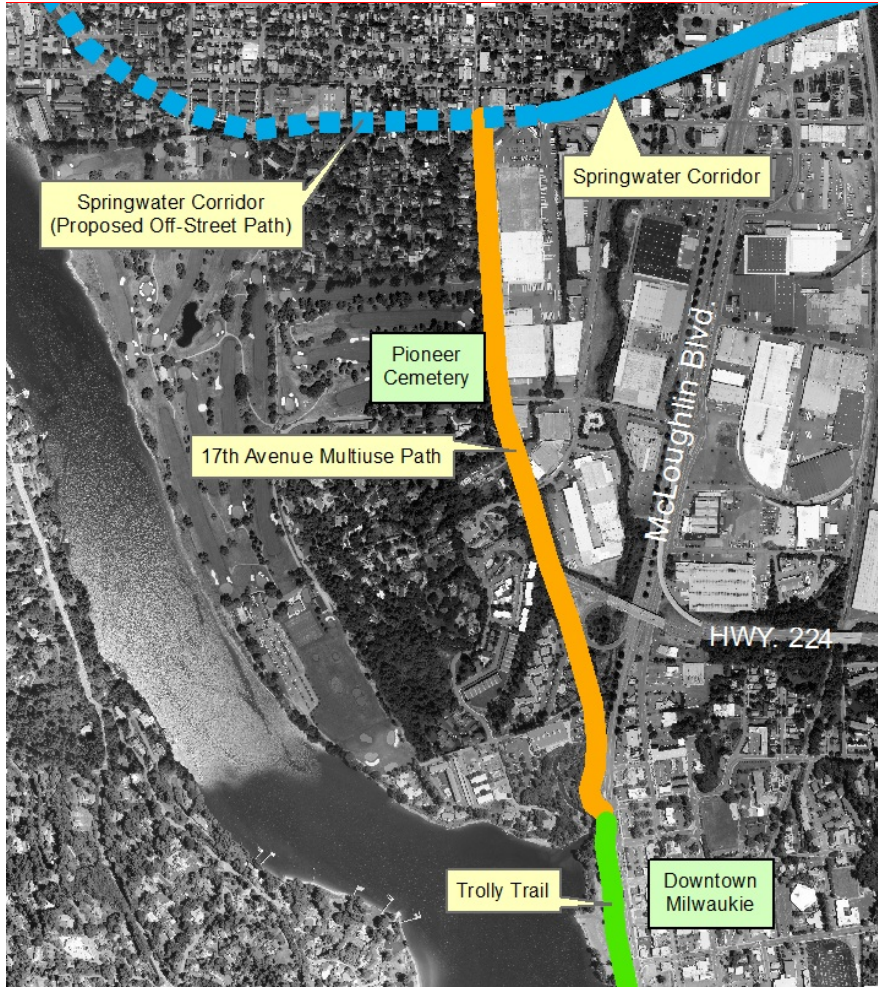
Grant Application

In 2011 when Staff received word that Metro was receiving applications to compete for the 2013-15 Regional Flexible Funding, 17th Avenue quickly came to mind. After receiving direction from Council to move forward, Staff submitted an application for the almost \$3,000,000 necessary to complete the project.

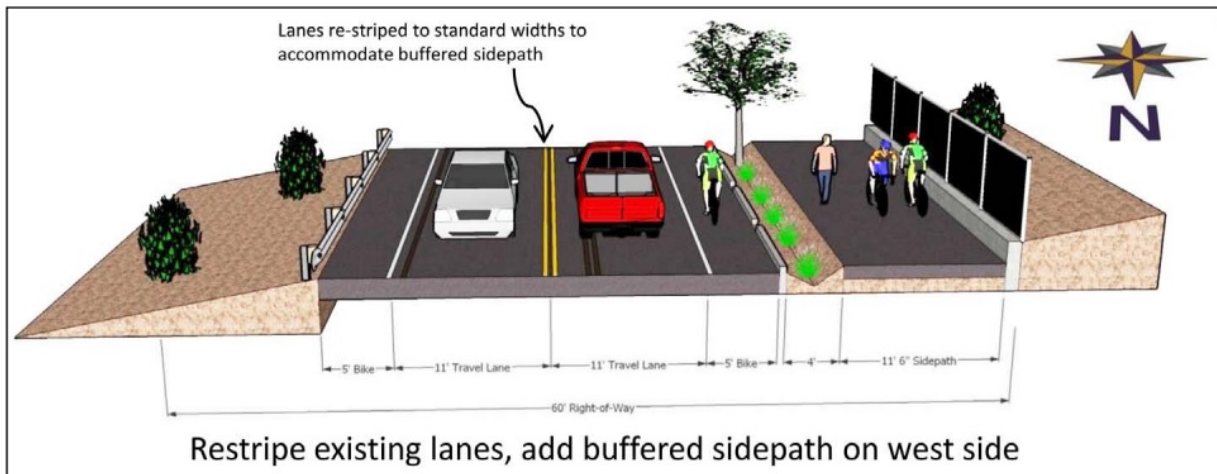
With support from the region through the Clackamas County Technical Advisory Committee (CTAC) and the Clackamas County Coordinating Committee (C4), the Metro Council and the Joint Advisory Committee on Transportation (JPACT) ultimately selected the project for funding within the programs 2013-15 funding period.

The application states the project goal is to construct a multi-use regional trail on the west side of SE 17th Avenue within existing right-of-way between McLoughlin Boulevard and SE Ochoco Street. Bike and vehicle lanes are planned to be restriped to formalize on-street bike lanes. These improvements will connect two significant regional multi-use trails: the Trolley Trail to the south and the Springwater Corridor to the north.

Project Vicinity Map



Typical Cross Section

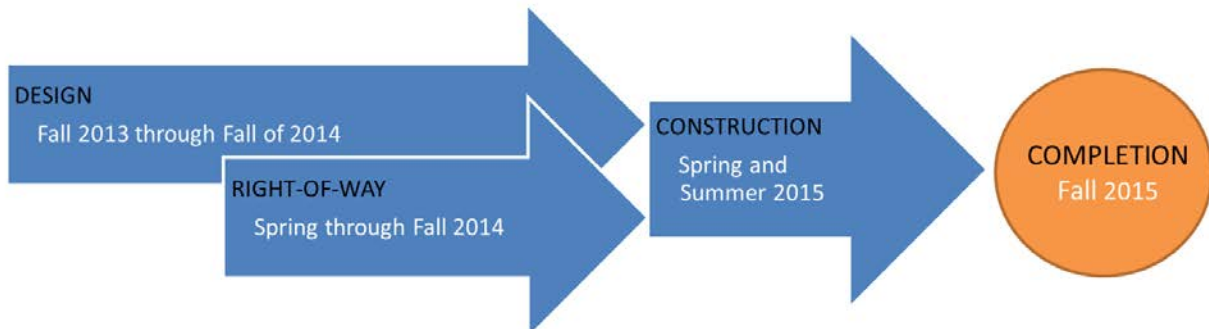


Access for the following destinations and populations will be enhanced:

- North Main: a transit oriented development
- Three apartment complexes on Lava Drive which access bus routes and also walk or bike to facilities in downtown Milwaukie and Sellwood
- Several large employers in downtown Milwaukie, including:
 - ODS (188 employees)
 - Dark Horse Comics (100 employees)
 - City of Milwaukie facilities (City Hall, Ledding Library and Public Safety Building (80 employees)
 - Reliable Credit (42 employees)
 - Advantis Credit Union (37 employees)
- The Portland Waldorf School in downtown Milwaukie
 - 328 students attend the school with about 80 students in high school.
- Sellwood Landing, an elderly housing complex on 17th Avenue, near Tacoma and Willamette View in Oak Grove on River Road (residents using the Trolley Trail and 17th for recreational access to the Springwater Trail or to access services in Milwaukie and Sellwood)

Since receiving word from Metro that the project was slated for funding, Staff has been working with the Oregon Department of Transportation (ODOT) and the City's Legal Counsel to develop the two attached intergovernmental agreements (attachments 3 and 4).

What's next?



Staff members from the Engineering, Planning, and Parks and Sustainability Departments will be reviewing proposals, interviewing consultants and beginning cost negotiations with a select candidate before the end of August.

This schedule lends itself to a survey of the area as early as the end of September. Once surveyed, Staff will have the information necessary to identify the major conflict points and begin to address them with preliminary design. At this point in time, Staff will bring Council its first major update to discuss any potential conflicts within the existing right-of-way.

While Staff does not anticipate the need for acquiring right-of-way, temporary construction easements will likely be needed to complete the project. Because of this fact, per ORS 223.105 and ORS 35.235 and the City's Municipal Code section 3.15.030, a second resolution is attached to this report allowing for the purchase and/or condemnation authority for real property.

CONCURRENCE

Planning, Parks and Sustainability and Engineering have all helped coordinate efforts to date and concur with the direction in which the project is moving.

Engineering and Finance Staff have met and verified the funding sources to be available.

The Public Works Operations Department has committed to representation on the design team once that phase begins.

FISCAL IMPACT

The 17th Avenue Multi-use Trail Project will primarily be funded by a Metro Regional Flexible Fund Grant; however, per the attached Intergovernmental Agreements, the City will be required to provide at least 10.27% of the total amount expended by the grant. Assuming the entire \$2,696,000 grant is expended, the table below shows which funds Staff plans on utilizing to make up the City's \$310,000 match.

17th Avenue Multi-use Trail Project Funding

| <i>Design Contract Funding</i> | | | |
|--------------------------------|-------------------------------|--------------------|-----------------------------|
| Agency | Source | 2013-2014 (Budget) | 2015-2016 (Proposed Budget) |
| Metro | Regional Flexible Funds Grant | \$ 969,000.00 | \$ - |
| Milwaukie | McLoughlin Industrial FILOC | \$ 62,000.00 | \$ - |
| Milwaukie | Transportation SDC | \$ 50,000.00 | \$ - |
| Sub-Total | | \$ 1,081,000.00 | \$ - |

| <i>Construction Contract Funding</i> | | | |
|--------------------------------------|-------------------------------|--------------------|-----------------------------|
| Agency | Source | 2013-2014 (Budget) | 2015-2016 (Proposed Budget) |
| Metro | Regional Flexible Funds Grant | \$ - | \$ 2,000,000.00 |
| Milwaukie | Downtown FILOC | \$ - | \$ 15,000.00 |
| Milwaukie | Historic Milwaukie FILOC | \$ - | \$ 83,000.00 |
| Milwaukie | Stormwater SDC | \$ - | \$ 80,000.00 |
| Milwaukie | Transportation SDC | \$ - | \$ 20,000.00 |
| Sub-Total | | \$ 1,081,484.00 | \$ 2,198,000.00 |

| | |
|--|-----------------|
| Total Metro Grant (Surface Transportation Program) | \$ 2,969,000.00 |
| Total Estimated Match from Milwaukie | \$ 310,000.00 |
| Total Estimated Project Cost | \$ 3,279,000.00 |

*This expenditure has been discussed with the Historic Milwaukie NDA per MMC 19.706.4

In addition to matching 10.27% of all expenditures up to \$2,969,000, signing of the first agreement also places additional responsibility on the City in a few circumstances:

- 1) The first case is if the City were to request work outside the scope of the original intent of the project. Items such as a new sewer line or additional vehicular lanes would be examples of this type of request. Staff does not foresee requesting additional items at this time and any such requests would be at the direction of City Council.
- 2) The second case is in the event the construction bid comes in up to 10% higher than the Engineer's estimate and that bid puts the total project cost over the amount budgeted by ODOT. In order to prevent this scenario from occurring, Staff will build additional contingencies into the Engineer's estimate to make sure the project stays within the City's intended budget.

WORK LOAD IMPACTS

Due to the nature of the funding source and ODOT's level of involvement, successful management of this project will add a substantial workload to the Engineering Department. This increase has been accounted for and will be continually monitored in order to make adjustments with additional Staff time when needed.

ALTERNATIVES

1. Modifications to the agreements may be suggested. In which case, Staff would bring the agreements back to Council after negotiating the changes with ODOT.
2. Not authorize signatures of the agreements, in which the project would be terminated under this funding source and the City would keep its funding match.

ATTACHMENTS

1. Resolution authorizing signing authority of Attachments 3 and 4
2. Resolution authorizing Easement Acquisition and Commendation
3. Local Agency Agreement with ODOT for Federal Funding
4. Intergovernmental Agreement with ODOT for Right-of-Way Services

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, GRANTING SIGNING AUTHORITY OF A LOCAL AGENCY AGREEMENT AND A RIGHT-OF-WAY SERVICES AGREEMENT WITH THE OREGON DEPARTMENT OF TRANSPORTATION (ODOT) FOR THE DESIGN AND CONSTRUCTION OF A MULTIUSE PATH ALONG 17TH AVENUE BETWEEN MCLOUGHLIN BOULEVARD AND OCHOCO STREET (CIP-2013-T05).

WHEREAS, the City has identified the need for improvements to the pedestrian and cyclist infrastructure on 17th Avenue in both its Transportation System Plan and its Capital Improvement Plan; and

WHEREAS, the City has applied for and received a Regional Flexible Funds Grant from Metro in the amount of \$2,969,000; and

WHEREAS, ODOT as the grant administrator for the Regional Flexible Funds will need to perform Contracting and Right-of-Way Services; and

WHEREAS, ORS 190.110, 366.572, and 366.576, allow the City to enter into cooperative agreements with the State for the performance of work on certain types of improvement projects with the allocation of costs, terms and conditions mutually agreeable to the contracting parties; and

WHEREAS, the City of Milwaukie is required to contribute at least a 10.27% grant match in the amount of \$310,000; and

WHEREAS, sufficient funds exist between Funds In-lieu of Construction (FILOC) (\$160,000), Transportation (\$70,000) and Stormwater (\$80,000) System Development Changes to pay for the City match.

NOW, THEREFORE, BE IT RESOLVED that the Mayor of Milwaukie and Milwaukie's Legal Counsel may sign a;

1. a Local Agency Agreement with ODOT for the funding of the 17th Avenue Multiuse Path Project, and
2. a separate Intergovernmental Agreement for Right-of-Way Services.

Introduced and adopted by the City Council on August 6, 2013.

This resolution is effective on August 6, 2013.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Document2 (Last revised 09/18/07)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DECLARING THE PUBLIC NECESSITY FOR THE CONSTRUCTION OF THE 17TH AVENUE MULTIUSE PATH PROJECT (CIP-2013-T05) AND NEED TO ACQUIRE REAL PROPERTY AND EASEMENTS.

WHEREAS, the City has identified the need to improve the pedestrian and cyclist infrastructure on 17th Avenue in its Transportation System Master Plan and its Capital Improvement Plan; and

WHEREAS, in order to complete the project, the City may need to acquire permanent and/or temporary easements from multiple properties within the project boundaries; and

WHEREAS, the City of Milwaukie has authority to acquire property by condemnation under ORS 223.105 and ORS 35.235; and

WHEREAS, the combined value of the easements may total more than \$25,000; and

WHEREAS, the Milwaukie Municipal Code section 3.15.030 requires that a purchase of real property valued at more than \$25,000 requires the express approval of the City Council;

NOW, THEREFORE, BE IT RESOLVED that:

Section 1. The acquisition of easements over properties may be necessary to build the 17th Avenue Multi-use Path, and

Section 2. The 17th Avenue Multiuse Path will be located in a manner which will be most compatible with the greatest public good and the least private injury; and

Section 3. Pursuant to Milwaukie Municipal Code Section 3.15.030, the City Council hereby approves the purchase and/or condemnation of the easements over real property made necessary by the 17th Avenue Multiuse Path Project, and authorizes the City Manager or his delegate to take all action necessary, including execution of all necessary documents, to complete said purchases or condemnation; and

Section 4. Upon the trial of any suit or action instituted under the provisions of Section 4 above, the City's legal counsel, after consultation with City Staff, is authorized to make any stipulation, agreement or admission that in the counsel's judgment may be for the best interests of the Project and the City of Milwaukie.

Introduced and adopted by the City Council on August 6, 2013.

This resolution is effective on August 6, 2013.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Document2 (Last revised 09/18/07)

**LOCAL AGENCY AGREEMENT
SURFACE TRANSPORTATION PROGRAM – URBAN
SE 17th Ave Trail: SE Ochoco – SE McLoughlin (Milwaukie)**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State," and the CITY OF MILWAUKIE, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. OR 99E Pacific Highway East (McLoughlin Boulevard) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. SE 17th Avenue and SE Ochoco Street are a part of the city street system under the jurisdiction and control of city.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to have Agency construct a multi-use regional trail on the west side of SE 17th Avenue within existing sixty (60) feet Right of Way between SE Harrison Street at OR 99E Pacific Highway East (McLoughlin Boulevard) and SE Ochoco Street, hereinafter referred to as "Project." Bike and vehicle lanes will be restriped to formalize on-street bike lanes. These improvements will connect two (2) significant regional multi-use trails: the Trolley Trail to the south and the Springwater Corridor to the north. The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. The Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The total Project cost is estimated at \$3,309,000, which is subject to change. STP urban funds for this Project will be limited to \$2,969,000 The Project will be financed with STP urban funds at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs, including all costs in excess of the available federal funds.

3. The federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA). Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency expense.
4. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
5. The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment or ten (10) calendar years following the date of final execution, whichever is sooner.
6. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of State, be indemnified by the contractor and subcontractor from and against any and all Claims.
7. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
8. This Agreement may be terminated by mutual written consent of both Parties.
9. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:

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- a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
10. Any termination of this Agreement will not prejudice any rights or obligations accrued to the Parties prior to termination.
11. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement will control over the attachments, and Attachment 1 will control over Attachment 2.
12. Agency, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and will, upon Agency's breach of any such conditions that requires State to return funds to the Federal Highway Administration, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount will be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
13. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

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14. State's Project Manager for this Project is Tom Weatherford, Local Agency Liaison, Oregon Department of Transportation, 123 NW Flanders Street, Portland, OR 97209, 503-731-8238, thomas.l.weatherford@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
15. Agency's Project Manager for this Project is Jason Rice, Civil Engineer, City of Milwaukie, 6101 SE Johnson Creek Blvd., Milwaukie, OR 97206, 503-786-7605, RiceJ@ci.milwaukie.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.
16. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together will constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed will constitute an original.
17. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement will bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement will not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key #18018) that was approved by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

SIGNATURE PAGE TO FOLLOW

Agency/State
Agreement No. 29081

CITY OF MILWAUKIE, by and through its
elected officials

By _____
Mayor

Date _____

By _____
City Recorder

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Agency Counsel

Date _____

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/
Chief Engineer

Date _____

By _____
Region 1 Manager *TE Miller for JASON TELL*

Date *11-17-13*

**APPROVED AS TO LEGAL
SUFFICIENCY**

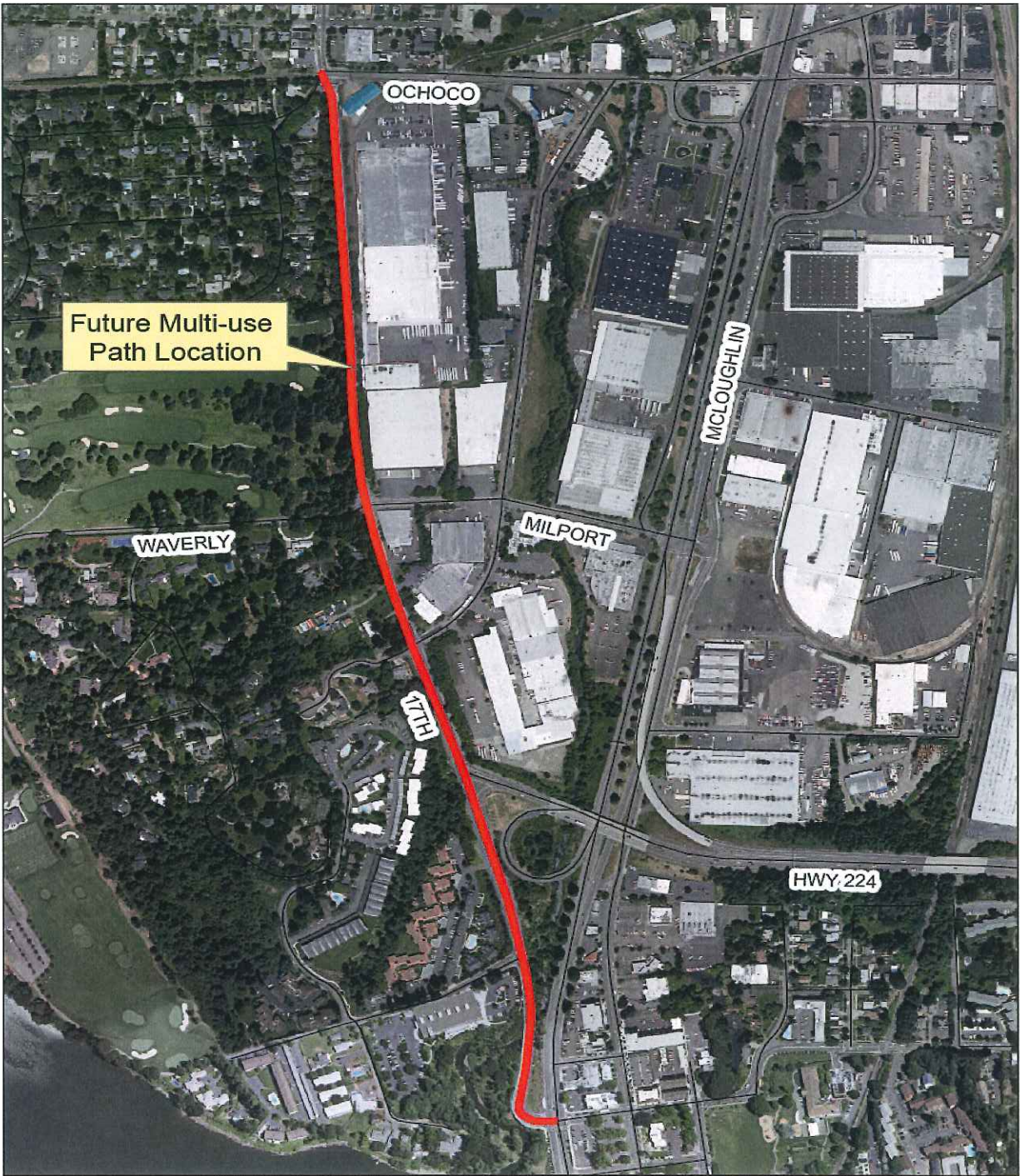
By _____
Assistant Attorney General

Date _____

Agency Contact:
Jason Rice, Civil Engineer
City of Milwaukie
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206
503-786-7605
RiceJ@ci.milwaukie.or.us

State Contact:
Tom Weatherford, Local Agency Liaison
Oregon Department of Transportation
123 NW Flanders Street
Portland, OR 97209
503-731-8238
thomas.l.weatherford@odot.state.or.us

EXHIBIT A – Project Location Map



17th Ave. Multi-Use Path

**ATTACHMENT NO. 1 to Agreement No. 29081
SPECIAL PROVISIONS**

1. Agency or its consultant shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, assist State with acquisition of necessary right of way and/or easements, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates.
2. Upon State's award of the construction contract, Agency, or its consultant, shall be responsible to perform all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract.
3. State may make available Region 1's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the consultant and make funds available to the State for payment of those services. All eligible work will be a federally participating cost and included as part of the total cost of the Project.
4. Indemnification language in the Standards Provisions, Paragraphs 46 and 47; and Paragraph 4 in regards to tort claims, shall be replaced with the following language:
 - a. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
 - b. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as

well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

- c. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
 - d. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
5. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.
 6. Agency shall, upon completion of the Project, maintain the bike path and supply power for Project illumination at its own expense.
 7. Maintenance and power responsibilities will survive any termination of this Agreement.
 8. Maintenance responsibilities will survive any termination of this Agreement.

ATTACHMENT NO. 2

FEDERAL STANDARD PROVISIONS

JOINT OBLIGATIONS PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

PRELIMINARY & CONSTRUCTION ENGINEERING

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow [Title 23 Code of Federal Regulations \(CFR\) 172](#), [Title 49 CFR 18](#), ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to

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any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in [Title 49, CFR, Part 26](#), which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in [Title 49, CFR, Part 26](#), have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with [Title 49, CFR, Part 26](#), to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of [Title 49, CFR, Part 26](#), in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of [ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270](#), incorporated herein by reference and made a part hereof; [Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide \(FAPG\).](#)

STATE OBLIGATIONS

PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The program shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.
12. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. State will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.

PROJECT ACTIVITIES

13. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
14. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
15. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.

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16. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
17. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

RIGHT OF WAY

18. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.
19. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
20. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
21. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
22. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
23. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

AGENCY OBLIGATIONS

FINANCE

24. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.
25. Agency's estimated share and advance deposit.
- a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
 - b) Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
 - c) Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
 - d) Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
26. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.

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27. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
28. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
29. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.
30. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
31. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title [23 CFR](#) Parts [1.11](#), [140](#) and [710](#). Final billings shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) 2) last payment for right of way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
32. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition ([Title 49 CFR 18.42](#)).

33. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
- a) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
 - b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
 - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
34. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

RAILROADS

35. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

UTILITIES

36. Agency shall follow State established Statutes, Policies and Procedures when impacts occur to privately or publicly-owned utilities. Only those utility relocations, which are eligible for federal-aid participation under, the FAPG, Title 23 CFR 645A, Subpart A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.

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37. The State utility relocation policy, procedures and forms are available through the appropriate State's Region Utility Specialist or State Utility Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison.

STANDARDS

38. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "[State Highway Design Manual](#)" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "[Oregon Standard Specifications for Highway Construction](#)".

39. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "[Oregon Bicycle and Pedestrian Design Guide](#)", unless otherwise requested by Agency and approved by State.

40. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".

41. All plans and specifications shall be developed in general conformance with the current "[Contract Plans Development Guide](#)" and the current "[Oregon Standard Specifications for Highway Construction](#)" and/or guidelines provided.

42. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

GRADE CHANGE LIABILITY

43. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.

44. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.

45. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by [ORS 373.050\(1\)](#) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

CONTRACTOR CLAIMS

46. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.
47. Notwithstanding the foregoing defense obligations under Paragraph 46, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

MAINTENANCE RESPONSIBILITIES

48. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

WORKERS' COMPENSATION COVERAGE

49. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.

LOBBYING RESTRICTIONS

50. Agency certifies by signing the Agreement that:
- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

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- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 36, 37, and 48 are not applicable to any local agency on state highway projects.

**INTERGOVERNMENTAL AGREEMENT
FOR RIGHT OF WAY SERVICES**
SE 17th Ave: SE Ochoco – SE McLoughlin (Milwaukie)

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and CITY OF MILWAUKIE, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. That certain SE 17th Avenue and SE Ochoco Street are City Streets under the jurisdiction and control of Agency and Agency may enter into an agreement for the acquisition of real property.
4. OR 99E Pacific Highway East (McLoughlin Boulevard), is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
5. This Agreement shall define roles and responsibilities of the Parties regarding the real property to be used as part of right of way for road, street or construction of public improvement. The scope and funding may be further described in Local Agency Agreement number 29081. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project."

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, to accomplish the objectives in Agreement No. 29081, State and Agency agree to perform certain right of way activities shown in Special Provisions - Exhibit A, attached hereto and by this reference made a part hereof. If the State performs right of way services on behalf of the Agency, under no conditions shall Agency's obligations for said services exceed a maximum of \$5,000, including all expenses, unless agreed upon by both Parties.

2. The work shall begin on the date all required signatures are obtained and shall be completed no later than ten (10) calendar years following the date of final execution, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
3. The process to be followed by the Parties in carrying out this Agreement is set out in Exhibit A.
4. It is further agreed both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual".

STATE OBLIGATIONS

1. State shall perform the work described in Special Provisions - Exhibit A.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. If the State performs right of way services on behalf of the Agency, State shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
4. State's right of way contact person for this Project is Wayne Kwong, 123 NW Flanders St., Portland, OR 97209, 503-731-8439, wayne.kwong@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

AGENCY OBLIGATIONS

1. Agency shall perform the work described in Special Provisions - Exhibit A.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.
3. Agency may utilize its own staff or subcontract any of the work scheduled under this Agreement provided Agency receives prior written approval of any staff, consultant or contractor by the State's Region Right of Way office.
4. Agency represents that this Agreement is signed by personnel authorized to do so on behalf of Agency.

5. Agency's right of way contact person for this Project is Jason Rice, PE, 6101 SE Johnson Creek Blvd., Milwaukie, OR 97206, 503-786-7605, ricej@ci.milwaukie.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

PAYMENT FOR SERVICES AND EXPENDITURES:

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$5,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.
2. Agency agrees to reimburse salaries and payroll reserves of State employees working on Project, direct costs, costs of rental equipment used, and per-diem expenditures.

GENERAL PROVISIONS:

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
 - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If either Party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within ten (10) days or such longer period as may be authorized.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
3. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this

Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

4. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
5. All employers that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Both Parties shall ensure that each of its subcontractors complies with these requirements.
6. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
7. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

8. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
9. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
10. If federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.
11. If federal funds are involved in this Agreement, Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
12. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
13. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
14. This Agreement and attached exhibits and Agreement No. 29081 constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this

Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

Signature Page to Follow

CITY OF MILWAUKIE, by and through
its elected officials

By _____
Mayor

Date _____

By _____
Agency Recorder

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Agency Counsel

Date _____

Agency Contact:

Jason Rice, PE
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206
503-786-7605
ricej@ci.milwaukie.or.us

State Contact:

Wayne Kwong, Right of Way Agent
123 NW Flanders St.
Portland, OR 97209
503-731-8439
wayne.kwong@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
State Right of Way Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Right of Way Manager

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By N/A
Assistant Attorney General

Date _____

APPROVED

(If Litigation Work Related to Condemnation is
to be done by State)

By N/A
Chief Trial Counsel

Date _____

SPECIAL PROVISIONS EXHIBIT A
Right of Way Services

THINGS TO BE DONE BY STATE OR AGENCY

1. Pursuant to this Agreement, the work performed on behalf of the Agency can be performed by the Agency, the Agency's consultant, the State or a State Flex Services consultant. The work may be performed by Agency staff or any of these representatives on behalf of Agency individually or collectively provided they are qualified to perform such functions and after receipt of approval from the State's Region 1 Right of Way Manager. Said approval must be obtained, in writing, prior to the performance of said activities.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. Both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual".

Instructions: Insert either: State, Agency, or N/A on each line.

A. Preliminary Phase

1. Agency shall provide preliminary cost estimates.
2. Agency shall make preliminary contacts with property owners.
3. Agency shall gather and provide data for environmental documents.
4. Agency shall develop access and approach road list.
5. Agency shall help provide field location and Project data.

B. Acquisition Phase

1. General:
 - a. When doing the Acquisition work, Agency shall provide State with a status report of the Project quarterly.
 - b. Title to properties acquired shall be in the name of the Agency.
 - c. The Agency shall adopt a resolution of intention and determination of necessity in accord with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation. If the Oregon Department of Justice is to handle condemnation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required; and authorization for such representation shall be

included in the resolution adopted by the Agency. Prior approval by Oregon Department of Justice is required.

2. Legal Descriptions:

- a. Agency shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
- b. Agency shall provide construction plans and cross-section information for the Project.
- c. Agency shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current "State Right of Way & Rail/Utility Coordination Manual", "Contractor Services Guide" and the "Right of Way Engineering Manual". The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
- d. Agency shall specify the degree of title to be acquired (e.g., fee, easement).

3. Real Property and Title Insurance:

- a. Agency shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
- b. Agency shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "State Right of Way Manual" and the "Contractor Services Guide". Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
- c. Agency shall conduct a Level 1 Hazardous Materials Study within project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the project design as possible, but at a minimum prior to property acquisition or approved design.
- d. Agency shall conduct a Level 2 Site Investigation of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Corridor study indicates the potential presence of contamination that could impact the properties.
 - If contamination is found, a recommendation for remediation will be presented to State.
- e. Agency shall be responsible for arrangement of any necessary remediation.

- f. Agency shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.
4. Appraisal:
 - a. Agency shall conduct the valuation process of properties to be acquired.
 - b. Agency shall perform the Appraisal Reviews.
 - c. Agency shall recommend Just Compensation, based upon a review of the valuation by qualified personnel.
 5. Negotiations:
 - a. Agency shall tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Conveyances taken for more or less than the approved Just Compensation will require a statement justifying the settlement. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions. If State performs this function, it will provide the Agency with all pertinent letters, negotiation records and obligations incurred during the acquisition process.
 - b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way shall occur prior to advertising of any construction contract, unless appropriate exceptions have been agreed to by Agency and State.
 - c. Agency agrees to file all Recommendations for Condemnation at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.
 6. Relocation:
 - a. Agency shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the Project.
 - b. Agency shall make all relocation and moving payments for the Project.
 - c. Agency shall perform the relocation appeal process.

C. Closing Phase

1. Agency shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and

making all payments. State shall submit all signed Final Report packets, information required by the Uniform Act, and agreements to the Agency.

2. Agency shall record conveyance documents, only upon acceptance by appropriate agency.

D. Property Management

1. Agency shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.
2. Agency shall dispose of all improvements and excess land.

E. Condemnation

1. Agency may offer mediation if the parties have reached an impasse.
2. Agency shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
3. Agency shall perform all legal and litigation work related to the condemnation process. Agency is responsible for passage of a resolution substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof, specifically identifying the property being acquired.
4. Where State shall perform legal or litigation work related to the condemnation process, Agency acknowledges, agrees and undertakes to assure that no member of Agency's board or council, nor Agency's mayor, when such member or mayor is a practicing attorney, nor Agency's attorney nor any member of the law firm of Agency's attorney, board or council member, or mayor, will represent any party, except Agency, against the State of Oregon, its employees or contractors, in any matter arising from or related to the Project which is the subject of this Agreement.

F. Transfer of Right of Way to State

If applicable, Agency agrees to transfer to the State all right of way acquired on the State highway which was acquired in the Agency's name. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

G. Transfer of Right of Way to Agency

If applicable, State agrees to transfer and Agency agrees to accept all right of way acquired on the Agency's facility which was acquired in the State's name. The specific method of conveyance will be determined by the State and the Agency at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. If requested, State agrees to provide Agency information and file documentation associated with the transfer.

APPLICABLE ONLY IF FEDERAL FUNDS INVOLVED

For purposes of Exhibits B and C, references to Department shall mean State, references to Contractor shall mean Agency, and references to Contract shall mean Agreement.

EXHIBIT B (Local Agency or State Agency)

CONTRACTOR CERTIFICATION

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

DEPARTMENT OFFICIAL CERTIFICATION

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

Exhibit C
Federal Provisions
Oregon Department of Transportation

CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it and its principals:

- | | |
|--|---|
| <ul style="list-style-type: none"> 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency; | <ul style="list-style-type: none"> 2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public |
|--|---|

transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the

Department determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered

transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

During the performance of this Contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal

Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.

2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for

employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the

interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

DBE POLICY STATEMENT

DBE Policy. It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

Required Statement For USDOT Financial Assistance Agreement. If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

DBE Obligations. The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Department deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Contract.

Records and Reports. Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

DBE Definition. Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL 0 %

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of

Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING
DEPARTMENT'S DBE PROGRAM
REQUIREMENT CONTACT OFFICE OF
CIVIL RIGHTS AT (503)986-4354.

RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN EXHIBIT D
Right of Way Services

WHEREAS (insert title of agency) may exercise the power of eminent domain pursuant to (Agency's charter) (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the (insert title of agency)'s governing body to accomplish public purposes for which (insert title of agency) has responsibility;

WHEREAS (insert title of agency) has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project or projects known as (insert Project name) have been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A," attached to this resolution and, by this reference incorporated herein; now, therefore

BE IT HEREBY RESOLVED by (Agency's Council, Commission, or Board)

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. The (insert title of agency)'s staff and the (Agency's Attorney, Counsel, or District's Counsel (or) (The Oregon Department of Transportation and the Attorney General) are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the (Agency's Council, Commission, or Board).
4. (insert title of agency) expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

DATED this _____ day of _____, 20__