

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
MAY 17, 2011**

**CALL TO ORDER**

**Mayor Ferguson** called the 2102<sup>nd</sup> meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Mayor Ferguson, Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff present: City Manager Bill Monahan, City Attorney Tim Ramis, Deputy City Recorder Juli Howard, Police Chief Bob Jordan, Finance Director Casey Camors, and Engineering Director Gary Parkin

**PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**

**A. Final Payment of 20-Year Public Safety Building Bonds**

**Ms. Camors** announced the final payment of the 20-year Public Safety Building bonds, and **Mr. Monahan** invited the public to an open house celebrating this event at the Public Safety Building.

**CONSENT AGENDA**

Item D was pulled for discussion due to public comment on item.

It was moved by Councilor Hedges and seconded by Councilor Miller to approve the consent agenda consisting of Items A, B, C, E and F:

- A. **Resolution 52-2011**: A Resolution of the City Council of the City of Milwaukie, Oregon, Adopting Bylaws for the Milwaukie Citizens Utility Advisory Board;
- B. **Resolution 53-2011**: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Michael Scolar to the Milwaukie Citizens Utility Advisory Board
- C. **Resolution 54-2011**: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving Two Amendments to the Cooperative Intergovernmental Agreement between the Library District of Clackamas County and Member Cities and Authorizing the City Manager to Execute the Same.
- E. **City Council Minutes:**
  - 1. March 15, 2011 Regular Session
  - 2. April 5, 2011 Regular Session
  - 3. April 19, 2011 Regular Session
- F. **OLCC Application for Sunny Corner Market, 5010 SE Monroe Street, change of ownership**

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

**Mr. Monahan** understood there would be comments regarding the award of contract for the decant facility and suggested the City Council make its decision after hearing those comments.

## **AUDIENCE PARTICIPATION**

**Kirin Das Bala**, Milwaukie, discussed issues with her water bill and low income application which she wished to submit without providing her social security number.

**Les Poole**, Clackamas County, discussed light rail issues and remarked on the lack of response related to the Trolley Trail and park land.

**Mike Vitello**, Moore Underground, Inc. spoke about the Decant Facility Bid Award. Although the low bidder, Moore Underground, was not awarded the contract. Moore Underground was pre-qualified, but due to an oversight they were not qualified at the time the bid was submitted. The company was on the City's small contractor roster and had done work for the City in the past.

**Mr. Parkin** explained the City had been told by the Oregon Department of Transportation (ODOT) that Moore was not pre-qualified which according to the City's purchasing policy was grounds for disqualification. The Engineering Department did not wish to set a precedent by waiving the pre-qualification, so staff recommended the second lowest bidder who was pre-qualified. He discussed the bid challenge process. He recommended the contract be awarded to Nutter Corporation.

**Mr. Ramis** added the City's rule was clear that pre-qualification was required.

**Mr. Monahan** stated it was difficult to issue such a letter of pre-qualified after the fact. Any notice had to state correctly the facts of the matter. In this case the pre-qualification did not exist at the time of the bid opening.

It was moved by Mayor Ferguson and seconded by Councilor Chaimov to approve the resolution authorizing the City Manager to sign a contract with Nutter Corporation for the Construction of Decant Facility Phase II. Motion passed with the following vote: Councilors Chaimov, Hedges, Loomis, and Miller and Mayor Ferguson voting "aye." [5:0]

### **RESOLUTION 55-2011:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH NUTTER CORPORATION FOR THE CONSTRUCTION OF PHASE II OF THE DECANT FACILITY PROJECT.**

## **PUBLIC HEARING**

None scheduled

## **OTHER BUSINESS**

### **A. Agent of Record for Worker's Compensation Plan**

It was moved by Councilor Chaimov and seconded by Councilor Loomis to adopt the resolution designating Beecher Carlson as the Agent of Record for the City's Worker's Compensation Plan. Motion passed with the following vote: Councilors Chaimov, Hedges, Loomis, Miller and Mayor Ferguson voting "aye." [5:0]

### **RESOLUTION 56-2011:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DESIGNATING BEECHER CARLSON AS THE AGENT OF RECORD FOR ITS WORKER'S COMPENSATION PLAN.**

### **B. Photo Radar Contract Authorization**

**Mr. Monahan** briefly reviewed the background on the proposed contract between the Milwaukie Police Department and ACS and discussions that had taken place since the May 3, 2011, City Council meeting. He recommended the City Council approve the contract with ACS and while the van was being upgraded to digital that Chief Jordan and the Public Safety Advisory Committee (PSAC) develop a traffic safety strategy.

**Lisa Batey**, Milwaukie Island Station Neighborhood, reaffirmed her support for the photo radar van and said the Island Station Neighborhood supported its continued use. She noted when the electronic speed signs were set to capture data statistically on River Road 66% of the cars were going 36 mph or 11 mph over the speed limit and 33% were going 46 mph. She thought speeding had increased noticeably without the van's being present. When the LED signs were set to show speeds roughly 30% of the drivers were still going 10-11 mph over the speed limit.

**It was moved by Councilor Chaimov and seconded by Councilor Hedges to authorize the City Manager to sign a contract with ACS for photo radar enforcement.**

The group discussed the Chief's commitment to developing a traffic safety strategy with PSAC.

**Motion passed with the following vote: Councilors Chaimov, Hedges, and Miller and Mayor Ferguson voting "aye" and Councilor Loomis voting "no." [4:1]**

### **C. Establish Public Area Requirement Grant Program**

**Mr. Monahan** referred to the staff report and resolution that reflected the City Council's May 3, 2011, discussion of establishing a grant program where the City would provide funding for a limited number of private development efforts in the downtown area. Staff would review the public area requirements (PAR) and return to City Council with recommendations.

**Mayor Ferguson** requested a brief recess so the City Council members could review the staff report and proposed resolution.

**Mr. Monahan** continued the City Attorney prepared the proposed resolution based on the City Council's discussions.

**Councilor Miller** asked if the grant program covered transportation costs.

**Mr. Monahan** replied it only covered PARs and not system development charges (SDC). A property owner interested in the grant program had communicated with staff, and based on the building permit application staff was able to calculate the PAR amount. SDCs were a different section of the municipal code and not covered by this proposed grant program. There is direction to staff to review the PARs and return to the City Council to discuss its findings and provide a recommendation.

**It was moved by Councilor Miller and seconded by Councilor Loomis to approve the resolution establishing a temporary economic development grant for offsetting part of the public area requirements of Milwaukie Municipal Code Section 19.312.5 for the period May 17, 2011 to July 1, 2011. Motion passed with the following vote: Councilors Chaimov, Hedges, Loomis, and Miller and Mayor Ferguson voting "aye." [5:0]**

#### **RESOLUTION 57-2011:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ESTABLISHING A TEMPORARY ECONOMIC DEVELOPMENT GRANT FOR OFFSETTING PART OF THE PUBLIC**

**AREA REQUIREMENTS OF MMC 19.312.5 FOR THE PERIOD OF MAY  
17, 2011, TO JULY 1, 2011.**

**D. Council Reports**

The Mayor and Councilors reported on meetings they had attended on behalf of the City and announced upcoming community events.

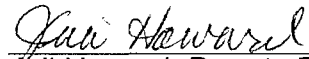
**Mr. Monahan** announced the City Council retreat would take place in a study session on June 4, 2011.

**ADJOURNMENT**

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

**Mayor Ferguson** adjourned the regular session at 8:07 p.m.

Respectfully submitted,



Juli Howard, Deputy Recorder

# REGULAR SESSION

# AGENDA

## MILWAUKIE CITY COUNCIL MAY 17, 2011

MILWAUKIE CITY HALL  
10722 SE Main Street

2102<sup>nd</sup> MEETING

### REGULAR SESSION – 7:00 p.m.

- |   | Page<br>No. |
|---|-------------|
| 1. <b>CALL TO ORDER</b><br>Pledge of Allegiance   |             |
| 2. <b>PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS</b>   |             |
| <b>A. Final Payment of 20-Year Public Safety Building Bonds</b>   |             |
| 3. <b>CONSENT AGENDA</b> <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>   | 1           |
| <b>A. Adopt Citizens Utility Advisory Board Bylaws – Resolution</b>   | 2           |
| <b>B. Appoint Mike Sclar to the Citizens Utility Advisory Board – Resolution</b>  | 5           |
| <b>C. Amendments 1 &amp; 2 to the Cooperative Intergovernmental Agreement between the Library District of Clackamas County and Member Cities – Resolution</b>   | 6           |
| <b>D. Contract Award for Decant Facility – Phase II – Resolution</b>  | 31          |
| <b>E. City Council Meeting Minutes:</b>   | 36          |
| 1. <b>March 15, 2011 Regular Session</b>  |             |
| 2. <b>April 5, 2011 Regular Session</b>   |             |
| 3. <b>April 19, 2011 Regular Session</b>  |             |
| <b>F. OLCC Application for Sunny Corner Market, 5010 SE Monroe Street, change of ownership</b>  | 62          |
| 4. <b>AUDIENCE PARTICIPATION</b> <i>(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.)</i> |             |

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.)*

**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.)* **64**
- A. **Agent of Record for Worker’s Compensation Plan – Resolution** **65**  
Staff: Bill Monahan, City Manager
- B. **Photo Radar Contract Authorization** **67**  
Staff: Milwaukie Police Chief Bob Jordan
- C. **Establish Public Area Requirement Grant Program – Resolution** **114**  
Staff: Bill Monahan, City Manager
- D. **Council Reports**

7. **INFORMATION**

8. **ADJOURNMENT**

**Public Information**

- **Executive Session:** The Milwaukie City Council may meet in executive session immediately following adjournment of the regular session pursuant to ORS 192.660.
- 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.

3.

# CONSENT AGENDA

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING BYLAWS FOR THE MILWAUKIE CITIZENS UTILITY ADVISORY BOARD.**

**WHEREAS**, Section 2.10.050 (A) of the Milwaukie Municipal Code states that Council shall adopt bylaws for each board, commission, and committee's meetings and the performance of its duties; and

**WHEREAS**, the Milwaukie Citizens Utility Advisory Board developed the attached bylaws and reviewed them at its March 2, 2011 regular meeting; and

**WHEREAS**, the Citizens Utility Advisory Board met with Council on May 3, 2011 to discuss these bylaws and its annual work plan;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council hereby adopts the bylaws prepared by the Milwaukie Citizens Utility Advisory Board attached hereto as Exhibit A and recommends that the Board adhere to these bylaws.

Introduced and adopted by the City Council on May 17, 2011.

This resolution is effective immediately.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
Jordan Schrader Ramis PC

Resolution No. \_\_\_\_\_

## **EXHIBIT A**

### Milwaukie Citizens Utility Advisory Board (CUAB)

#### BYLAWS

Approved by the Milwaukie City Council on May 17, 2011

Adopted by the Citizens Utility Advisory Board, 4-0 (April 2, 2008) and reviewed March 2, 2011

#### ARTICLE I: MEMBERS AND VOTING PROCEDURES

1. Membership of the Board shall be as established by the Milwaukie Municipal Code and appointed by City Council.
2. A majority of the Board may recommend to the City Council that a member be removed from the Board by the City Council.
3. Members are expected to attend all meetings. Members may be granted a sabbatical (by majority approval of the remaining members) from membership. That aside, failure to attend one-half or more of regularly scheduled meetings in a six-month period shall be grounds for a recommendation for removal.
4. A quorum shall be a minimum of three members. If a quorum is not attained fifteen minutes following the scheduled time of call to order, the meeting shall be cancelled.
5. All members who are present at Board meetings, including the Chairperson and Vice-Chairperson, are allotted one vote each on all motions.
6. One member must make a motion and another member must second that motion in order for the Board to vote. A motion is passed by majority of the Board members present. Any member, including the Chairperson and Vice-Chairperson, may make and second motions.

#### ARTICLE II: CHAIRPERSON AND VICE-CHAIRPERSON DUTIES/MOTIONS

1. The Board shall elect a Chairperson and a Vice-Chairperson for year long appointments. Elections shall be held yearly in April.
2. In the event that an officer cannot complete the specified term, an emergency election shall be held for the completion of the term.
3. The Chairperson shall preserve the order and decorum of the meeting; direct discussion and comment to relevant issues; establish and enforce time limits for discussion and comment as appropriate; prevent attacks on personalities; and encourage citizen input.

4. The Chairperson, or the Vice-Chairperson if the Chairperson is absent, shall preside over the meetings.

#### ARTICLE III: MEETINGS AND PUBLIC HEARINGS

1. Regular meetings shall be held at 6:00 p.m. on the first Wednesday of each month. The time and date of the meeting may be changed by a majority vote of Board.
2. The public shall be notified of all Board meetings by the City's general notification procedures.
3. The Engineering Director or his/her designee shall be responsible for preparing the Minutes for each meeting and keeping records of the attendance.
4. The Engineering Director or his/her designee shall be responsible for mailing the Agenda and all meeting materials to members and interested members of the public at least seven (7) days before the next scheduled meeting.
5. Special Meetings may be called at the request of the Chairperson or a majority of the Board. The Engineering Director shall set a special meeting on such request unless good cause exists for delaying until the next regularly scheduled meeting. Good cause may include such factors as staff availability, meeting room availability, and budgetary considerations.
6. Executive Sessions may be held consistent with City Council Meeting Provisions, Section 2.04.090 of the City of Milwaukie Code and applicable state law

#### ARTICLE IV: BYLAWS/ CHANGES

1. Bylaws may be amended, repealed or altered by a majority of the entire Board, subject to approval by the City Council.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REAPPOINTING MICHAEL SCOLAR 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 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**, Michael Scolar 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 as follows:**

SECTION 1: That Michael Scolar is reappointed to the Milwaukie Citizens Utility Advisory Board.

SECTION 2: That his term of appointment shall commence immediately upon adoption of this resolution and shall expire on March 31, 2015.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on May 17, 2011.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney



3.C.

**To:** Mayor and City Council  
**Through:** Bill Monahan, City Manager  
**From:** Joe Sandfort, Library Director  
**Date:** April 27, 2011  
**Subject:** Amendments to Clackamas County Library District IGA

---

### **ACTION REQUESTED**

Adopt the proposed resolution authorizing the City Manager to execute Amendment #1 and Amendment #2 to the Cooperative Intergovernmental Agreement between the Library District of Clackamas County and Member Cities.

### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

**October 2009:** The Milwaukie City Council passed Resolution 61-2009, approving the cooperative IGA between the Library District of Clackamas County and member cities.

### **BACKGROUND**

After the Library District of Clackamas County (LDCC) was approved by voters in 2008, member cities within the District (including Milwaukie) and the Library District executed a Master Intergovernmental Agreement (MIGA) for the distribution of revenues collected to help support operations at the Ledding Library of Milwaukie and the other public libraries in Clackamas County. Since that time, the portion of the city of Tualatin in Clackamas County and the entire city of Damascus have annexed into the Library District. Tualatin, because their city library is part of the Washington County Library Network, requested in their annexation application that it not have the full responsibilities of a "Library City" under the IGA, but be able to retain 50% of the revenue generated within its city limits; currently, revenue generated by city properties within non-Library cities is assigned to a service area as part of the unincorporated residents' portion of the formula. The city of Damascus has agreed that it will not be a Library City and will stay within the Happy Valley service area, which is currently being served by a county library. Annexation allows residents of both cities to use the public libraries within the county without having to purchase non-resident library cards. The service boundaries and terms for entrance into the LDCC were negotiated between the annexing cities and the Library District Advisory Committee (LDAC) at which Ledding Library Board Chair Mark Docken represents the city of Milwaukie. The LDAC reached an agreement on the language of the amendments at its

February 10, 2011 meeting. The next step is to actually amend the IGA to implement the terms. This requires the vote and signatures of the Library Cities, one of which is Milwaukie.

There are two amendments because of the differing thresholds required to adopt each. The Tualatin amendment, number one, requires unanimous approval per Section 3.3 of the Master IGA, because Tualatin is seeking an amendment to the distribution formula originally agreed to by the parties. Amendment number one (Tualatin) requires that 50% of the revenue generated by the Library District will be distributed to the city of Tualatin in support of the Tualatin Public Library. Of the remaining revenue 50% will be distributed to Lake Oswego, 40% to Wilsonville and 10% to West Linn. The Damascus amendment, number 2, only requires approval by two thirds of the Library Cities since it is not seeking a change to the distribution formula. District revenue generated by properties located within Damascus shall be considered, for purposes of the distribution formula, to be unincorporated.

### **CONCURRENCE**

1. The Library District Advisory Committee approved these amendments at its February 10, 2011 meeting.
2. At its April 25, 2011 meeting, the Ledding Library Board recommended that the Milwaukie City Council approve these Amendments.
3. Once a sufficient number of cities have executed the proposed amendments, the Board of County Commissioners has promised to execute them on behalf of the Library District and distribute the funds accordingly.

### **FISCAL IMPACT**

The distribution of funds to the county library and to the Wilsonville, Lake Oswego and West Linn Libraries will allow for better collections at these libraries and would prove a benefit for Ledding Library patrons wanting to borrow these items through interlibrary loan.

### **WORK LOAD IMPACTS**

None noted.

### **ALTERNATIVES**

The City Council could chose not to approve the two amendments. Both the city of Damascus and the Clackamas County portion of the city of Tualatin have already annexed into the Library District. The revenue resulting from these annexations, however, cannot be distributed until the amendments are approved. Failure of the Amendments would cause a reopening of negotiations between, the member cities, Clackamas County, Tualatin and Damascus. A delay in revenue distribution could have a negative effect on library services.

### **THE ATTACHMENTS**

1. Master IGA between the Library District of Clackamas County and member cities
2. Amendment #1
3. Amendment #2
4. City of Milwaukie Resolution 61-2009 approving the MIGA

AMENDMENT NO. 1  
TO THE  
COOPERATIVE INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE LIBRARY DISTRICT OF CLACKAMAS COUNTY  
AND  
LIBRARY CITIES

THIS AMENDMENT NO. 1 (this "Amendment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the Library District of Clackamas County (the "District") a county service district formed under ORS Chapter 451, Clackamas County, a political subdivision of the State of Oregon ("County"), each of the Cities of Canby, Estacada, Gladstone, Lake Oswego, Milwaukie, Molalla, Oregon City, Sandy, West Linn, and Wilsonville (each, a "City" and collectively, the "Library Cities"), and the City of Tualatin ("Tualatin").

WHEREAS, the District, the County and the Library Cities entered into that certain intergovernmental agreement regarding the distribution of funds from the District to the County and Library Cities in support of the provision of library services to the residents of the District (the "Agreement"); and

WHEREAS, since the date of final execution of the Agreement that portion of Tualatin that lies within Clackamas County has annexed into the District pursuant to Board Order 2010-73 adopted June 17, 2010; and

WHEREAS, as part of Tualatin's annexation petition, it sought assurances that 50% of the revenue generated within its city limits would be distributed to it for use at the Tualatin Library, which is located within Washington County. This proposal was reviewed and approved by the Library District Advisory Board and the Board of County Commissioners as the governing body of the District; and

WHEREAS, the Parties hereto desire to amend the Agreement to reflect the annexation of Tualatin territory; and

WHEREAS, Section 3.3 of the Agreement provides for the mechanism of amendment of the Agreement to address these changes;

NOW, THEREFORE, the District, the County, the Library Cities and Tualatin each agree to the following:

**Section 1      Amendments**

- 1.1 Tualatin Revenue. Notwithstanding the Formula as set forth in the Agreement:
  - 1.1.1 Fifty percent (50%) of the District revenue generated by real property within Tualatin as of June 17, 2010, including delinquent taxes and any generated interest, shall be distributed to Tualatin for use in support of the Tualatin Library.

- 1.1.2 The remaining revenue generated by the Tualatin properties shall be distributed to the following Library Cities in support of library services:
- 50% to Lake Oswego;
  - 40% to Wilsonville; and
  - 10% to West Linn.
- 1.1.3 Revenues generated by properties that currently are within the District and subsequently annexed into Tualatin shall continue to be treated as unincorporated and within their current service area for purposes of the Formula. Any changes to the Formula shall require amendment as set forth in the Agreement.
- 1.1.4 For the purposes of the Agreement, Tualatin shall not be considered a Library City.
- 1.1.5 For the purposes of the Formula in the Agreement, the population within Tualatin as of June 17, 2010 shall not count towards the total population as utilized in the Formula.

**Section 2      Ratification**

- 2.1 Affirmation. The District and the Library Cities ratify the remainder of the Agreement and affirm that no other changes are made hereby.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

CLACKAMAS COUNTY BOARD OF COMMISSIONERS, AS THE GOVERNING BODY OF THE LIBRARY DISTRICT OF CLACKAMAS COUNTY	CLACKAMAS COUNTY BOARD OF COMMISSIONERS, AS THE GOVERNING BODY OF CLACKAMAS COUNTY
By: _____ Title: <u>Chair</u>	By: _____ Title: <u>Chair</u>
ATTEST: _____	ATTEST: _____

THE CITY OF CANBY	THE CITY OF ESTACADA
By: _____ Title: _____	By: _____ Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF GLADSTONE	THE CITY OF LAKE OSWEGO
By: _____ Title: _____	By: _____ Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF MILWAUKIE	THE CITY OF MOLALLA
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF OREGON CITY	THE CITY OF SANDY
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF TUALATIN	THE CITY OF WEST LINN
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF WILSONVILLE
By: _____
Title: _____
ATTEST: _____

AMENDMENT NO. 2  
TO THE  
COOPERATIVE INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE LIBRARY DISTRICT OF CLACKAMAS COUNTY  
AND  
LIBRARY CITIES

THIS AMENDMENT NO. 2 (this "Amendment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the Library District of Clackamas County (the "District") a county service district formed under ORS Chapter 451, Clackamas County, a political subdivision of the State of Oregon ("County"), each of the Cities of Canby, Estacada, Gladstone, Lake Oswego, Milwaukie, Molalla, Oregon City, Sandy, West Linn, and Wilsonville (each, a "City" and collectively, the "Library Cities"), and the City of Damascus ("Damascus").

WHEREAS, the District and the Library Cities entered into that certain intergovernmental agreement regarding the distribution of funds from the District to the Library Cities in support of the provision of library services to the residents of the District (the "Agreement"); and

WHEREAS, since the date of final execution of the Agreement the City of Damascus has annexed into the District; and

WHEREAS, the Parties hereto desire to amend the Agreement to reflect the annexation of Damascus; and

WHEREAS, Section 3.3 of the Agreement provides for the mechanism of amendment of the Agreement to address these changes;

NOW, THEREFORE, the District, the County, the Library Cities and Damascus each agree to the following:

**Section 1      Amendments**

1.1 Damascus Annexation & Revenue. The parties hereto agree that:

1.1.1 For the purposes of the Agreement, Damascus shall not be considered a Library City; and

1.1.2 District revenue generated by properties located with Damascus shall be considered, for purposes of the distribution Formula, to be unincorporated and the Service Area Map and Formula are modified to allocate the Damascus area within the Clackamas Corner/Happy Valley service area.

1.2 Damascus Impact on Interim Library Service Provision. The parties hereto acknowledge that currently Happy Valley receives library service through a

Clackamas County-operated branch. Currently the County is constructing greater library space in the Sunnyside Village area. It is the intent of the parties that Happy Valley, at some point in the future, operate a library that would provide service to both Damascus and Happy Valley residents and associated unincorporated service area. Until this transition occurs, the Agreement currently provides that the District shall contribute such funds as necessary from Happy Valley and its related service areas to support the operation of the relevant Clackamas County branch library. The characterization of revenue from properties with Damascus as being unincorporated and within the Happy Valley/Clackamas Corner service area shall apply and revenues from both cities shall be directed to Clackamas County and apply to (i) support current Clackamas Corner operations, and (ii) fund other needs as necessary to support the implementation of construction of the Sunnyside Village library and transfer of staff and materials to the new location. At such time that Happy Valley assumes operational responsibility for the Sunnyside Village library, it shall be deemed a Library City for purposes of the Agreement.

## **Section 2      Ratification**

- 2.1 No Further Changes. The District, County and the Library Cities ratify the remainder of the Agreement and affirm that no other changes are made hereby.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

**DISTRICT & COUNTY:**

CLACKAMAS COUNTY BOARD OF COMMISSIONERS, AS THE GOVERNING BODY OF THE	
LIBRARY DISTRICT OF CLACKAMAS COUNTY	
By: _____	
Title: <u>Chair</u>	
ATTEST: _____	

**LIBRARY CITIES:**

THE CITY OF CANBY	THE CITY OF ESTACADA
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF GLADSTONE	THE CITY OF LAKE OSWEGO
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF MILWAUKIE	THE CITY OF MOLALLA
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF OREGON CITY	THE CITY OF SANDY
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF WEST LINN	THE CITY OF WILSONVILLE
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

**ANNEXING CITY:**

THE CITY OF DAMASCUS
By: _____
Title: _____
ATTEST: _____

## Attachment 2

PROPOSED FINAL MASTER IGA v.5

LIBRARY DISTRICT

2 March 2009

COOPERATIVE INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE LIBRARY DISTRICT OF CLACKAMAS COUNTY  
AND  
MEMBER CITIES

THIS COOPERATIVE INTERGOVERNMENTAL AGREEMENT (this "Agreement"), is entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the Library District of Clackamas County (the "District") a county service district formed under ORS Chapter 451, and each of the Cities of Barlow, Canby, Estacada, Gladstone, Happy Valley, Lake Oswego, Milwaukie, Molalla, Oregon City, Rivergrove, Sandy, West Linn, and Wilsonville (each, a "City" and collectively, the "Cities").

WHEREAS, voters approved formation of the District to provide financial support to the library service providers of Clackamas County (the "Library Cities"); and

WHEREAS, the Parties desire to work in a cooperative manner to support and provide library services to their residents; and

WHEREAS, many of the Cities participate in the Clackamas County-supported Library Network of Clackamas County, which is discussed in an intergovernmental agreement by and between the participating Cities and Clackamas County; and

WHEREAS, the Cities desire funding by the District and to provide the levels of service described herein;

NOW, THEREFORE, the District and Cities each covenant and agree to the following:

### **Section 1 Obligations of the District**

- 1.1 District Board. The Board of County Commissioners acting under the provisions of ORS 451 is the governing body of the District and shall be known as the District Board.
- 1.2 District Advisory Committee. The District Board shall organize and appoint a District Advisory Committee consisting of one nominee from each Library City consistent with the policies and procedures of Clackamas County and/or the District for advisory committees. The District Board shall appoint the individual nominated by the Library City governing body to fill the service area's representative seat. The District Advisory Committee shall be responsible for meeting at least annually to consider: (i) the evaluation reports of participating libraries as submitted pursuant to Section 2.3, (ii) any proposed changes to this Agreement pursuant to the amendment process described in Section 3.3, and (iii) any impact of the annexation or withdrawal of territory from the District pursuant to Sections 3.4 and 3.5 hereof.

- 1.3. District Budget Committee. State law also requires that the District constitute a Budget Committee consisting of the members of the District Board and an equal number of citizens, who may be nominated pursuant to existing County budget committee procedures. The role and responsibilities of the Budget Committee shall be as set forth in the applicable statutes.
- 1.4. District Revenue. The District has a permanent tax rate of \$0.3974 per \$1,000 of assessed value, collected from all parcels of real property in the District.
- 1.5. Distribution of Revenue. Revenues generated by the District permanent rate, including delinquent taxes, are allocated, appropriated and expended pursuant to the budget adopted by the District Board. The District Board agrees to allocate, appropriate, and distribute the funds of the District pursuant to the formula as defined on Attachment A (the "Formula") for the service areas as shown on the maps included as Attachment B ("Service Area Maps"). The Formula may be reevaluated as necessary by the Parties to this Agreement. Any change to the Formula shall occur as an amendment to this Agreement.
- 1.6. Transition Payments. The parties hereto acknowledge and agree that the District shall distribute funds to Clackamas County for the operation of the Clackamas Corner and Oak Lodge Libraries pursuant to the alternative Service Area Maps described on Attachment B until such time as the City of Happy Valley and the City of Gladstone construct facilities sufficient to serve such area. During the term of such distributions, the Parties anticipate that the County libraries will be operated in a manner consistent with the Service Standards. Upon completion of such facilities, distributions shall be made based on the indicated Service Area Maps. To the extent the annual distribution of funds to Clackamas County is greater than the annual need to operate such libraries, the District shall retain such funds in trust for the Cities of Gladstone and/or Happy Valley, respectively, for distribution at such time as such City is constructing new library facilities.
- 1.7. Library Authority. Clackamas County operates public libraries pursuant to a board order creating public libraries for all Clackamas County residents dated July 9, 1938, as amended and updated pursuant to Board Order 85-1221 dated October 31, 1985. The District has received a delegation of such authority from Clackamas County to operate as a public library for the benefit of incorporated and unincorporated residents of Clackamas County pursuant to an Intergovernmental Agreement. To the extent necessary to insure the legal and effective functioning of the public libraries of Clackamas County but in no way intended to limit or otherwise restrict the powers or abilities of the City service providers to operate public libraries, the District hereby delegates such authority to operate public libraries for the benefit of incorporated and unincorporated residents of Clackamas County to each City service provider a party hereto or as may join this Agreement from time to time.

## Section 2      **Obligations of the Cities**

- 2.1 Use of Funds. The Library Cities will use District revenue to provide public library service, and shall expend the entire library revenue paid under this Agreement in accordance with the purpose for which it was provided by implementing a plan to achieve the Service Standards. For the purposes of this Agreement, "Service Standards" shall mean (i) the standards described on Attachment C, (ii) the provision of services to all District residents on the same terms, and (iii) the proper expenditure of funds as described in this Section 2.1. District funds may not be used to support general overhead or administrative costs of Cities except to the extent such overhead or administrative costs are directly related to the provision of library services and/or the operation of a public library. It is the intention of the parties to work cooperatively in helping each city make progress in meeting the Service Standards.
- 2.2 Library Management. Library Cities retain administrative control over the library and library services in its service population. Each such City is responsible for developing library services based on the needs of its service population and the available revenue. The Library Cities will cooperate with the District Advisory Committee to assist in the review of library services to District residents.
- 2.3 Cooperation and Reporting. Each Library City will cooperate to the maximum extent practicable with other participating Cities to form standardized rules, procedures, and programs that affect the District and the provision of library services in Clackamas County as a whole. Each Library City will provide the District with (i) copies of its annual report to the State of Oregon regarding the provision of library services, (ii) a report on its efforts to meet OLA Threshold Standards as defined on Attachment C, and (iii) any supplemental reports that the District through both the District Advisory Committee and the District Board may require.

## Section 3      **Term and Amendment**

- 3.1 Term. This Agreement shall commence on July 1, 2009 and continue until terminated as set forth herein.
- 3.2 Termination. This Agreement shall terminate upon the dissolution of the District.
- 3.3 Amendment. Except as specifically provided in Section 4.14, this Agreement may be amended at any time upon the agreement of the District and two-thirds of the Library Cities; *provided, however*, that any amendment that would amend that portion of the Formula providing for the return of one hundred percent (100%) of revenue collected within a City service provider's boundaries to such City service provider shall require the unanimous consent of all Cities serving on the District Advisory Committee.

- 3.4 Changes in District Territory. The parties hereto recognize that during the term of this Agreement changes in the District territory may occur, such as (i) territory outside the District may annex into the District, (ii) territory currently in the District may withdraw by annexation into a non-participating City, or (iii) unincorporated territory currently in the District may annex into a participating City. The District shall inform the District Advisory Committee of any such changes, and the District Advisory Committee shall review the Service Area Maps and the Formula and recommend any amendments to this Agreement necessary to adjust for such changes.
- 3.5 Incorporation of a City within District Boundaries. Should an unincorporated area within the District choose to incorporate during the life of the District, the District Advisory Committee shall make a recommendation to the District Board of whether the newly-incorporated city qualifies as a service provider as such term is generally used in this Agreement, and if so to what extent the Formula should be adjusted to allow for a distribution to such new service provider. If the newly-incorporated city does not qualify as a service provider, the District Advisory Committee shall make a recommendation to the District Board regarding the impact, if any, of the new city on the provision of library services. Any proposed changes shall be addressed as an amendment to this Agreement.

#### **Section 4      General Provisions**

- 4.1 Indemnification. Each party shall release, defend, indemnify and/or hold harmless the other, its officers, commissioners, councilors, elected officials, employees, and agents, from and against all damages, claims, injuries, costs, or judgments that may in any manner arise as a result of the party's performance under this contract, subject to Oregon Tort claims limitations.
- 4.2 Governing Law. This Agreement shall be construed and governed in all respects in accordance with laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- 4.3 Savings. Should any portion of this Agreement or amendment there to be adjudged by a Court of appropriate final jurisdiction to be in violation of any local, state or federal law, then such portion or portions shall become null and void, and the balance of the Agreement shall remain in effect. All Parties shall immediately renegotiate any part of this Agreement found to be in such violation by the Court and to bring it into compliance with said laws.
- 4.4 Reasonable Attorney's Fees. In the event any action is brought to enforce, modify or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys fees and costs incurred in connection with such action or on appeal or review; said amount to be set by the court before which the matter is heard.

- 4.5 Notices. Formal notices, demands and communications between the Parties shall be deemed given three (3) business days after being sent by registered or certified mail, postage prepaid, return receipt requested to the principal offices of the party hereto, or upon confirmation of receipt via facsimile, electronic transmission, or hand delivery. Such written notices, demands and communication may be sent in the same manner to such other addresses and to such other persons and entities as either party may from time to time designate by mail as provided in this section.
- 4.6 No Personal Liability. No member, official, agent, or employee of the County, the District, or any City shall be personally liable to the other or any successor-in-interest thereto in the event of any default or breach by such entity.
- 4.7 No Agency. Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- 4.8 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the party granting such waiver.
- 4.9 Further Action. The parties hereto shall, without additional consideration, acknowledge, execute, and deliver from time to time such further instruments as a requesting party may reasonably require to accomplish the purposes of this Agreement.
- 4.10 Non-Waiver of Rights. The failure of a party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach of any provision of this Agreement shall not constitute a waiver of any provision of this Agreement or limit the party's right thereafter to enforce any provision or exercise any right.
- 4.11 Time is of the Essence. A material consideration of the parties entering into this Agreement is that the parties will perform all obligations under this Agreement in a timely manner. Time is of the essence as to each and every provision of this Agreement.
- 4.12 Restricted Assignment. No party hereto may assign its rights, responsibilities or obligations hereunder to another party, by operation of law or otherwise, without (i) seeking and receiving an amendment of this Agreement, (ii) having said party join this Agreement on the terms, conditions and covenants herewith, and (iii) with a demonstration that such new party has the capability and

durability to meet or exceed the levels of library service currently being provided by the party seeking to assign. The District Advisory Committee shall evaluate any request for assignment and make a recommendation to the District Board regarding the granting or denial of the same based on the above criteria, including the District Advisory Committee's determination of criteria (iii) above.

4.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

4.14 Enforcement of Terms. The Parties hereto recognize that the District is relying on the good faith and commitments of the Library Cities to utilize the funding provided by the District in the promised manner. The Parties expect that to the extent there is any noncompliance or breach of this Agreement, the Parties will discuss such noncompliance or breach in the District Advisory Committee and encourage an effort towards compliance. If discussions and encouragement do not remedy the continued failure of a party to meet the Service Standards or other term of this Agreement, then the District Advisory Committee shall meet to consider an amendment to this Agreement to create incentives for compliance, including but not limited to withholding of District funds, reallocation of unincorporated residents to neighboring service areas, or other such actions as may be deemed appropriate. The Parties hereto agree that in an event of a material breach of this Agreement by one of the Parties, an amendment proposed to specifically address such breach shall require a two-thirds vote of the Library Cities, including but not limited to any amendment which would reduce the breaching City's 100% return on assessments within such City's boundaries, either via a Formula amendment or otherwise.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

CLACKAMAS COUNTY BOARD OF COMMISSIONERS, AS THE GOVERNING BODY OF THE LIBRARY DISTRICT OF CLACKAMAS COUNTY
By: _____
Title: Chair _____
ATTEST: _____

THE CITY OF BARLOW	THE CITY OF CANBY
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF ESTACADA	THE CITY OF GLADSTONE
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF HAPPY VALLEY	THE CITY OF LAKE OSWEGO
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF MILWAUKIE	THE CITY OF MOLALLA
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF OREGON CITY	THE CITY OF RIVERGROVE
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF SANDY	THE CITY OF WEST LINN
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF WILSONVILLE	
By: _____	
Title: _____	
ATTEST: _____	

## Attachment A

1. For the purposes of this Agreement, the "Formula" shall be calculated consistent with the following concepts:

a. The District rate is \$0.3974 per \$1000 of assessed value.

b. Each year the District will receive the amount collected for the year plus delinquent taxes recovered from the previous year. The District will distribute funds when received using the formula described below and shown in the example.

2. The Formula has two components:

a. City Assessed Value Component: The annual distribution to a Library City for properties within its boundaries shall equal the assessed value of such Library City's properties, as established annually by the Clackamas County Assessor, divided by the total assessed value of all properties in the District. This determines the Assessed Value Percentage Rate for each Library City. Each Library City will receive funds equal to the Assessed Value fund amount multiplied by its individual Assessed Value Percentage Rate.

b. Unincorporated Population Served Component: After calculation of each Library City's Assessed Value fund amount, the District shall calculate the remaining funds to be distributed (the "Remainder Amount") and distribute those funds based on the Unincorporated Population Served Percentage Rate based on the Service Area Maps attached to this Agreement as Attachment B. The term "Unincorporated Population" will also include residents of those cities that do not provide library services.

The Unincorporated Population Served Percentage Rate is determined by the number of unincorporated residents served by each City as allocated on the Service Area Maps divided by the total number of unincorporated residents within the District. Each Library City will receive funds equal to the Remainder Amount multiplied by its individual Unincorporated Service Area Percentage Rate.

3. Prior year recovered delinquencies and interest earned: Recovered delinquent taxes combined with any interest earned will be distributed to Library Cities based on the distribution percentage allocations calculated in the previous tax year.

Below are examples of the distribution of funds based on 2008 assessed values and population figures. The spreadsheet assumes the new Gladstone/Oak Lodge and Happy Valley libraries have not yet been constructed.

### Library District Distribution Formula

<i>Assessed Value 2008</i>		
Total County Assessed Value (AV)	\$32,936,836,893	100%
Less: Non-Participating City AV	\$(1,239,770,249)	-4%
Equals: Total Library District AV	<u>\$31,697,066,644</u>	96%

Participating Cities:	Assessed Value	
Canby	\$999,941,295	6%
Estacada	\$179,662,976	1%
Gladstone	\$635,886,719	4%
Happy Valley	\$1,508,430,197	9%
Lake Oswego	\$4,756,391,295	28%
Milwaukie	\$1,467,817,328	9%
Molalla	\$409,821,923	2%
Oregon City	\$2,002,572,357	12%
Sandy	\$551,473,814	3%
West Linn	\$2,655,549,376	16%
Wilsonville	\$1,652,437,025	10%
Total Participating Cities AV	<u>\$16,819,984,305</u>	100%
Total Library District AV	\$31,697,066,644	100%
Less: Participating Cities AV	\$(16,819,984,305)	-53%
Equals: Unincorporated AV in District	<u>\$14,877,082,339</u>	47%

<i>Unincorporated Population Served 2008</i>		
Canby	10,221	6%
Estacada	16,802	9%
Gladstone	8,506	5%
Happy Valley (Town Center)	32,373	18%
Lake Oswego	3,305	2%
Milwaukie	10,756	6%
Molalla	15,001	8%
Oregon City	28,015	15%
Sandy	22,236	12%
West Linn	5,691	3%
Wilsonville	3,421	2%
Oak Lodge	28,036	15%
	<u>184,363</u>	100%

<i>Example Distribution Calculation</i> <i>Assuming \$12 million in tax receipts</i>		
<b>Total District Tax Receipts</b>		
Total Tax Collected	\$12,000,000	100%
City Assessed Value	\$6,367,776	53%
Unincorporated Population Served	\$5,632,224	47%

<b>City Distribution of Receipts</b>				
	<i>Assessed Value</i>	<i>Pop Served</i>	<i>Total</i>	
			\$	%
Canby	\$378,562	\$312,248	\$690,810	6%
Estacada	\$68,018	\$513,295	\$581,313	5%
Gladstone	\$240,736	\$259,855	\$500,592	4%
Happy Valley (Town Center)	\$571,067	\$988,984	\$1,560,051	13%
Lake Oswego	\$1,800,693	\$100,967	\$1,901,660	16%
Milwaukie	\$555,692	\$328,592	\$884,284	7%
Molalla	\$155,152	\$458,275	\$613,427	5%
Oregon City	\$758,142	\$855,848	\$1,613,990	13%
Sandy	\$208,779	\$679,302	\$888,081	7%
West Linn	\$1,005,348	\$173,858	\$1,179,206	10%
Wilsonville	\$625,586	\$104,510	\$730,096	6%
Oak Lodge	\$-	\$856,490	\$856,490	7%
	\$6,367,776	\$5,632,224	\$12,000,000	100%

## **Attachment B**

Service population maps are included as Attachment B.

1. The maps divide Clackamas County into library service areas. These areas are based on distance, roads, rivers, travel patterns, etc. and are intended to define where people are most likely to receive library service, and to give a Library City the ability to meet the library threshold standards in Attachment C. Each Library City's service area has been constructed by assigning Census tracts into library service areas. Based on census data compiled every 10 years, the population in each census tract will be verified and then the total unincorporated population within each service area will be used to calculate the Formula.
2. For the continuation of library service to the citizens in the Oak Lodge and Clackamas Corner areas, the service area boundaries and population served totals will not change until the new Happy Valley Library is open and the new Gladstone/Oak Lodge Library is open. As each new facility is opened to the public, the service population will be adjusted to the new agreed-upon boundaries found in this Attachment. The population service area changes and resulting increase in payments for unincorporated population served will take place in the fiscal year following the library opening.

**[See attached maps]**

**Attachment C**  
Service Standards

The Parties agree that all library service providers shall strive to meet OLA Threshold Standards, with a particular emphasis on:

**STAFFING:** Provide qualified staff employed by the library as outlined in the table below:

<b>Population Served</b>	<b>Threshold Staffing Level</b>
0 - 2,499	0.5 FTE, with high school diploma
2,500 - 4,999	0.35 FTE/1,000 served. Director has B.A.
5,000 - 9,999	0.35 FTE/1,000 served. Director has B.A.
10,000 - 24,999	0.35 FTE/1,000 served. Director has MLS.
25,000 - 49,999	0.35 FTE/1,000 served. Director has MLS. 1/5 of staff has MLS.
50,000 - 499,999	0.33 FTE/1,000 served. Director has MLS. 1/5 of staff has MLS.

**MATERIALS:** Provide the number of volumes in the library's total collection as spelled out in the table below:

<b>Population served</b>	<b>Threshold Materials</b>
<b>0 - 49,999</b>	Material collection of 5,000 items or two items per capita, whichever is greater.
<b>50,000+</b>	Material collection of two items per capita.

**ACCESS:** Provide and post open hours which fit the community's need, including evening and weekend hours, and provide the minimum standards listed in the table below:

<b>Population served</b>	<b>Threshold</b>
<b>0 - 4,999</b>	20 hours
<b>5,000 - 9,999</b>	30 hours
<b>10,000 - 24,999</b>	40 hours
<b>25,000 +</b>	50 hours

NOTE: Total staffing levels and material volumes may be constrained by current facility size limitations. The Parties understand and agree that a strategic plan that recognizes such size limitations and adjusts staff and material goals accordingly is an acceptable implementation of this standard.

**RESOLUTION NO. 61-2009**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON APPROVING THE COOPERATIVE INTERGOVERNMENTAL AGREEMENT BETWEEN THE LIBRARY DISTRICT OF CLACKAMAS COUNTY AND MEMBER CITIES AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAME**

**WHEREAS**, on March 4, 2008 the City Council of the City of Milwaukie, Oregon adopted Resolution 19-2008 confirming the City's desire to include all territory within that portion of the City within Clackamas County included within the proposed Clackamas County Library District; and

**WHEREAS**, on November 4, 2008 the electors of Clackamas County approved creation of the Clackamas County Library District with a permanent rate of \$.3974 per \$1,000 of assessed value, and

**WHEREAS**, the purpose of the District is to provide local funding of library services through a transfer of funds to local libraries; and

**WHEREAS**, the said transfer of funds from the Clackamas County Library District replaces previous funding provided by Clackamas County; and

**WHEREAS**, the City of Milwaukie elects to enter into the proposed agreement for purposes of securing a dedicated source of funding for the Ledding Library.

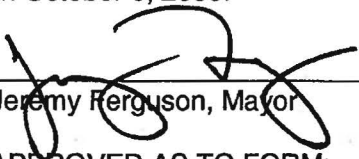
**NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, THAT:**

Section 1. The City hereby approves the Cooperative Intergovernmental Agreement Between the Library District of Clackamas County and Member Cities.

Section 2. The City Manager is authorized to execute the said Intergovernmental Agreement.


Section 3. This resolution is effective immediately upon adoption.

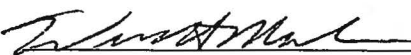
Introduced and adopted by the City Council on October 6, 2009.

  
\_\_\_\_\_  
Jeremy Ferguson, Mayor

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

ATTEST:

  
\_\_\_\_\_  
Pat DuVal, City Recorder

  
\_\_\_\_\_  
City Attorney

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON APPROVING TWO AMENDMENTS TO THE COOPERATIVE INTERGOVERNMENTAL AGREEMENT BETWEEN THE LIBRARY DISTRICT OF CLACKAMAS COUNTY AND MEMBER CITIES AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAME**

**WHEREAS**, on November 4, 2008 the electors of Clackamas County approved creation of the Clackamas County Library District with a permanent rate of \$.3974 per \$1,000 of assessed value, and

**WHEREAS**, on October 6, 2009, the City Council of the City of Milwaukie, Oregon adopted Resolution 61-2009 approving the Cooperative Intergovernmental Agreement between the Library District of Clackamas County and Member Cities, and

**WHEREAS**, the purpose of the District is to provide local funding of library services through a transfer of funds to local libraries; and

**WHEREAS**, since the date of final execution of the Agreement that portion of Tualatin that lies within Clackamas County has annexed into the District and as part of Tualatin's annexation petition, it sought assurances that 50% of the revenue generated within its city limits would be distributed to it for use at the Tualatin Library, which is located within Washington County, and

**WHEREAS** Damascus shall not be considered a Library City and District revenue generated by properties located within Damascus shall be considered, for purposes of the distribution formula, to be unincorporated and the service area map and formula are modified to allocate the Damascus area within the Clackamas Corner/Happy Valley service area; and

**WHEREAS**, the Parties hereto desire to amend the Agreement to reflect the annexation of Tualatin territory and allocate the Damascus area within the Clackamas Corner/Happy Valley service area; and

**WHEREAS**, Section 3.3 of the Agreement provides for the mechanism of amendment of the Agreement to address these changes:

**NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, THAT:**

Section 1. The City hereby approves the two Amendments to the Cooperative Intergovernmental Agreement between the Library District of Clackamas County and Member Cities.

Section 2. The City Manager is authorized to execute the said Amendments

Section 3. This resolution is effective immediately upon adoption.

Introduced and adopted by the City Council on May 17, 2011.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney



3.D.

**To:** Mayor and City Council

**Through:** Bill Monahan, City Manager  
Kenneth Asher, Community Development and Public Works Director  
Gary Parkin, Engineering Director

**From:** Brad Albert, Civil Engineer

**Date:** April 26, 2011 for May 17, 2011 Regular Session

**Subject:** Decant Facility Phase II

---

### **ACTION REQUESTED**

Authorize the City Manager to sign a contract for the construction of Decant Facility Phase II, with Nutter Corporation, in the amount of \$123,035.22.

### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

**April 2010:** City Council authorizes the City Manager to sign a contract with Northstar Associates LLC for the construction of Decant Facility Phase I.

**June 2009:** City Council adopts the 2010-2014 Capital Improvement Plan and the 2009/2010 Budget, including the Decant Facility

### **BACKGROUND**

The City is in need of a Decant Facility to de-water excavated material, stormwater catch basin and drywell material, and street sweeping material collected by the City's Operations Departments. The project will limit runoff and enable more material to be removed from stormwater facilities, which will prevent pollutants traveling through the stormwater system and draining to drywells, creeks, and streams.

Use of the Decant Facility is a Best Management Practice (BMP) per the City's National Pollution Discharge Elimination System (NPDES) permit obtained from the Oregon Department of Environmental Quality (DEQ). BMP's are utilized by the City to ensure that potential pollutants do not enter the stormwater system. DEQ may require in the future that excavated material and street sweeping material be de-watered before the material is hauled to designated landfills.

The City currently disposes wet material at special landfills that are able to de-water the material. Because cost per load is based on weight of material, the City incurs an increased cost per load of wet material delivered. The City will reduce dumping fees by approximately 33% by drying material before transporting and disposing.

The City's need for a decant facility dates back to at least 2005, when a gabion wall was built at the north end of the JCB campus. The Decant Facility construction schedule was divided into two phases because of budget constraints. Phase I consisted of constructing a steel roof structure to cover the existing storage bunkers at the north end of the City's Johnson Creek Boulevard campus, and the construction of a water quality swale in the employee parking area. The water quality swale was required to mitigate the impact of the steel roof structure (see attachment 1 for photo). Phase I was completed in October 2010.

Phase II consists of reconstructing the concrete floor in the existing concrete bunkers, installing catch basins in each bunker for water runoff collection, installing an oil/water separator to trap potential contaminants before entering the wastewater system, and connecting to the onsite wastewater main. The concrete floors will gently slope to the catch basins. Wet material collected by the Operations Department will be dumped onto the concrete floors. The material will drain into the catch basins, allowing the material to dry before transporting to the landfill.

The Phase II project has gone through a competitive bidding process in accordance with Chapter 30 of the City's Public Contracting Rules. The City received five (5) bids by the May 3, 2011 2:00 PM bid opening. The following table is a summary of all bid amounts as well as the engineer's estimate.

	<b>Contractor</b>	<b>Bid</b>	<b>Pre-qualified</b>
1	Moore Underground Inc.	\$120,783.00	N
2	Nutter Corporation	\$123,035.22	Y
3	GSE, Inc.	\$128,448.40	N
4	Columbia Paving	\$136,078.97	Y
5	D.M. Excavating	\$142,295.00	Y
***	<i>Engineers Estimate</i>	<i>\$140-\$160,000</i>	

At the bid opening, Moore Underground Inc. was the apparent low bidder. City staff reviewed each bid proposal to ensure each bidder was pre-qualified in accordance with the City's contracting rules at the time of bid opening. Moore Underground Inc. was not pre-qualified at the time of the bid opening and their bid was rejected. The second lowest bidder, Nutter Corporation, was pre-qualified at the time of bid opening and their bid was accepted.

Phase II is scheduled to start construction on June 1, 2011 with an anticipated completion date of July 31, 2011.

### **CONCURRENCE**

Engineering staff coordinated with Operations and Planning on both the conceptual and design phases of the project. The Decant Facility received a conditional use approval from the Planning Department. Engineering staff coordinated with Finance to ensure funds were available to construct the project.

Under an existing agreement, The Decant Facility will utilize an existing wastewater connection to City of Portland's wastewater system. The City of Portland requires a Standard Operating Procedure (SOP) for the connection. The City of Portland has also stipulated in the agreement that the Decant Facility may be inspected by Portland for compliance. The agreement does not require any additional fees be paid to the City of Portland by the City of Milwaukie.

### **FISCAL IMPACT**

The Decant Facility Phase II project is included in the 2010/2011 Street, Stormwater, Wastewater, and Water Fund budgets in the combined amount of \$160,000.

### **WORK LOAD IMPACTS**

The Decant Facility Phase II construction project can be accommodated within existing Engineering workloads. Engineering staff will provide project management and inspection services for the duration of the project. The Operations Department should not be impacted by the construction. The contractor will coordinate with the Operations Department to ensure access to the temporary staging and material storage area adjacent to the JCB campus.

### **ALTERNATIVES**

- 1) Do not award project (defer indefinitely). The project would be removed from the CIP list.
- 2) Reject all proposals and direct staff to re-advertise for new proposals for any reason.
- 3) Reject all proposals and direct staff to amend the Request for Proposals and re-advertise for submission of new proposals.

### **ATTACHMENTS**

1. Picture of Decant Facility (Phase 1)
2. Resolution

ATTACHMENT 1



Decant Facility Phase I (Roof structure), October 2010

ATTACHMENT 2

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH NUTTER CORPORATION FOR THE CONSTRUCTION OF PHASE II OF THE DECANT FACILITY PROJECT.**

**WHEREAS,** a decant facility is needed to de-water excavated material, storm catch basin and drywell material, and street sweeping material collected by the City's Operations Department; and

**WHEREAS,** a new concrete floor and drain system is needed to complete the decant facility on the north side of the City of Milwaukie's Johnson Creek Boulevard Campus; and

**WHEREAS,** the project was included in the 2010-2014 Capital Improvement Plan; and

**WHEREAS,** the project was approved for funding in the 2010/2011 budget; and

**WHEREAS,** Nutter Corporation is the lowest responsive and responsible bidder;

**NOW, THEREFORE, BE IT RESOLVED** that the City of Milwaukie authorizes the City Manager to sign a contract for the Decant Facility Phase II project with Nutter Corporation, in the amount of \$123,035.22.

Introduced and adopted by the City Council on May 17, 2011.

This resolution is effective on May 17, 2011.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
MARCH 15, 2011**

**3.E.1.**

**CALL TO ORDER**

**Mayor Ferguson** called the 2098<sup>th</sup> meeting of the Milwaukie City Council to order at 7:02 p.m. in the City Hall Council Chambers.

Present: Mayor Ferguson, Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff present: City Manager Bill Monahan, City Attorney Tim Ramis, City Recorder Pat DuVal, Community Development and Public Works Director Kenny Asher, Planning Director Katie Mangle, Engineer Jason Rice, Assistant Planner Li Alligood, Associate Planner Brett Kolver, Resource and Economic Development Specialist Alex Campbell

**PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**

**CONSENT AGENDA**

It was moved by Councilor Chaimov and seconded by Councilor Miller to approve the consent agenda consisting of:

- A. **Resolution 26-2011:** A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Chantelle Gamba to the Design and Landmarks Committee;
- B. **Resolution 27-2011:** A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Greg Hemer to the Design and Landmarks Committee;
- C. **Resolution 28-2011:** A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Jim Perrault to the Design and Landmarks Committee;
- D. **Resolution 29-2011:** A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of a Contract for the Construction of 42<sup>nd</sup> Avenue (King Road to Franklin Street) Water System Improvements;
- E. **Resolution 30-2011:** A Resolution of the City Council of the City of Milwaukie, Oregon, Endorsing the City's Application for Transportation Growth Management Funding to Develop a Tacoma Station Area Plan;
- F. **Resolution 31-2011:** A Resolution of the City Council of the City of Milwaukie, Oregon, Amending Resolution No. 89-2010 by Establishing a Library Fine Amnesty Week from April 10, 2011 through April 16, 2011 in Recognition of National Library Week;
- G. ~~A Resolution of the City Council of the City of Milwaukie, Oregon, Supporting Legislation Regulating the Use of Single-Use Plastic Bags and Non-Recycled Paper Check-Out Bags at Retail Stores (pulled from the agenda)~~
- H. **City Council Minutes:**
  - 1. January 4, 2011 Work Session;
  - 2. January 18, 2011 Work Session; and
  - 3. January 18, 2011 Regular Session

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

CITY COUNCIL REGULAR SESSION – MARCH 15, 2011

DRAFT MINUTES

Page 1 of 11

## AUDIENCE PARTICIPATION

**Ed Zumwalt**, Milwaukie, announced the upcoming First Friday event on April 1.

**Mark Gamba**, Milwaukie, discussed ban the bag efforts throughout the state and encouraged the City Council to adopt the resolution supporting SB 1009 as well as adopting its own regulations.

**Mayor Ferguson** announced the “ban the bag” matter would be considered at the April 5 regular session.

## PUBLIC HEARING

### **A. Finalization of the NE Sewer Extension Reimbursement District**

**Mayor Ferguson** called the public hearing on the finalization of the reimbursement district for the NE Sewer Extension Project and clarifications of deadlines for connection incentive programs to order at 7:12 p.m.

The purpose of this hearing was to consider public comment related to the finalization of the NE Sewer Extension Reimbursement District.

No potential or actual conflicts of interest were declared. There were no challenges from the audience regarding any Council member’s ability to participate in the decision.

**Mr. Rice** provided the staff report in which the City Council was requested to adopt two resolutions related to the NE Sewer Extension Project (NESE). He indicated the project area on a map and reviewed the important dates that began December 2008 when the Milwaukie City Council approved the DEQ Clean Water State Revolving Fund (CWSRF) Loan Agreement. Among the many high points in the process, the project construction was declared substantially complete March 2011. He provided a construction overview that included 15,631 lineal feet of sewer main, 261 new laterals, 66 new manholes, and one new lift station at 55<sup>th</sup> Avenue and Johnson Creek Boulevard. There were 3 bio-retention swales, 2 miles of streets overlays with at least 2-inches of new asphalt, and 350 trees with 70 trees scheduled for planting in 2012 at Klein Point at the Johnson Creek confluence. He summarized the extensive public outreach effort and annexations and connections to date. The final project cost was \$3.4 million with \$541,000 going to change orders #1 and #2 on projects directly related to NESE. He provided a definition of reimbursement districts and discussed the allocation methodology. There was a public notification piece that outlined costs to property owners and provided details of the project if the proposed resolution were adopted.

**Mr. Campbell** discussed what this meant to a property owner, the discount programs, and funds from the revitalization area. The cost would change over time, and he reviewed the incentive and assisted annexation timelines. Mr. Campbell summarized the actions requested from the City Council at this meeting.

**Councilor Hedges** understood there was no cutoff date for annexation and that the incentive was purely financial.

**Mr. Campbell** responded there was one built-in incentive which was the general discount that stepped down after 2, 5 and 10 years. Those who annexed within the first two years got the discount whether they connected or not.

**Councilor Hedges** discussed a scenario in which there might be a small block of property owners with failing septic tanks who were not subject to Milwaukie code enforcement. Their foul tanks could be a hazard to the neighbors and endanger the drinking water supply.

CITY COUNCIL REGULAR SESSION – MARCH 15, 2011

DRAFT MINUTES

Page 2 of 11

**Mr. Campbell** replied those property owners would still be subject to DEQ regulations and County code that required connection if sewer system failed.

**Mr. Rice** added the City would coordinate with the County if there were a concern about a property's being a nuisance.

**Mr. Campbell** noted in the past there had been mixed enforcement, but cooperation had increased in recent years.

**Councilor Miller** asked if the reimbursement fee would ever be fully recovered.

**Mr. Campbell** replied it would depend on how many times the City Council wished to extend the district. There were two scenarios under which the full fee would not be recovered: a future City Council decided not to extend the district or some radical change was in place to deal with sewage onsite.

Correspondence: None was received on the matter since the packet was prepared for Council.

Public Testimony: None.

**Mayor Ferguson** reviewed the conduct of the hearing and asked if anyone wished to testify. No one wished to speak.

Mayor Ferguson closed the public testimony portion of the hearing at 7:41 p.m.

**Councilor Loomis** appreciated the outreach efforts and delivering a project that was on time and under budget.

**Mayor Ferguson** agreed and was impressed with the process.

**It was moved by Councilor Hedges and seconded by Councilor Loomis to adopt the resolution finalizing the reimbursement district for the NE Sewer Extension Project by modifying Milwaukie Resolution 78-2010. Motion passed with the following vote: Councilors Hedges, Loomis, Miller, and Chaimov and Mayor Ferguson voting "aye." [5:0]**

**RESOLUTION NO. 32-2011;**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, FINALIZING THE REIMBURSEMENT DISTRICT FOR THE NORTHEAST SEWER EXTENSION PROJECT BY MODIFYING MILWAUKIE RESOLUTION 78-2010.**

**It was moved by Councilor Chaimov and seconded by Councilor Miller to adopt the resolution clarifying deadlines and applicability of discounts and incentives for the NE Sewer Extension Project. Motion passed with the following vote: Councilors Hedges, Loomis, Miller, and Chaimov and Mayor Ferguson voting "aye." [5:0]**

**RESOLUTION NO. 33-2011:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, CLARIFYING DEADLINES AND APPLICABILITY OF DISCOUNTS AND INCENTIVES FOR THE NORTHEAST SEWER EXTENSION PROJECT.**

**B. Continue Milwaukie Municipal Code Amendments 19.321.7 and 19.321.3 – Ordinance**

**Mr. Monahan** provided background on the proposed amendments.

CITY COUNCIL REGULAR SESSION – MARCH 15, 2011

DRAFT MINUTES

Page 3 of 11

It was moved by Councilor Chaimov and seconded by Councilor Miller to continue the hearing to June 21, 2011. Motion passed with the following vote: Councilors Hedges, Loomis, Miller, and Chaimov and Mayor Ferguson voting “aye.” [5:0]

## **OTHER BUSINESS**

### **A. Land Use and Development Review Tune-Up Project: Code Amendment**

**Mr. Monahan** reviewed the previous City Council actions including the first reading of the ordinance at the March 1, 2011 regular session.

It was moved by Councilor Chaimov and seconded by Councilor Loomis for the second reading by title only and adoption of the ordinance amending Comprehensive Plan Chapters 1 and 2, and the Milwaukie Municipal Code Title 2 Administration and Personnel; Title 3 Revenue and Finance: Title 12 Streets, Sidewalks, and Public Places; Title 13 Public Services; Title 14 Sign Ordinance; Title 17 Land Division Ordinance; Title 18 Flood Hazard Regulations; and Title 19 Zoning Ordinance to Revise and Improve the Process for Review and Approval of Land Use Applications and Development Permits (Files ZA-10-02 and CPA-10-03).

**Councilor Chaimov** noted earlier dissention and believed he and Councilor Hedges had come to a common ground with a change to come back via Mr. Monahan at a later date.

**Councilor Miller** asked when the City Council would we see the revision.

**Mr. Monahan** replied it would be scheduled at the next level of code revision.

**Councilor Miller** supported the amendment as long as the section would allow greater public input to decisions to be made. He did not wish to have citizens or the public shut out of the process.

**Mr. Monahan** committed to bringing forth to the City Council some alternatives but in separate action. He understood the City Council’s direction.

**Councilor Hedges’** main concern would be to put some at a serious financial disadvantage by having to submit a new application. He was happy to support the ordinance if changes are done expeditiously and no one was put out financially in the mean time.

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

**Mr. Monahan** read the ordinance for the second time by title only.

**Ms. DuVal polled the Council: Councilors Hedges, Loomis, Miller, and Chaimov and Mayor Ferguson voting ‘aye.’ [5:0]**

#### **ORDINANCE NO. 2025:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING COMPREHENSIVE PLAN CHAPTERS 1 AND 2, AND THE MILWAUKIE MUNICIPAL CODE TITLE 2 ADMINISTRATION AND PERSONNEL; TITLE 3 REVENUE AND FINANCE: TITLE 12 STREETS, SIDEWALKS, AND PUBLIC PLACES; TITLE 13 PUBLIC SERVICES; TITLE 14 SIGN ORDINANCE; TITLE 17 LAND DIVISION ORDINANCE; TITLE 18 FLOOD HAZARD REGULATIONS; AND TITLE 19 ZONING ORDINANCE TO REVISE AND IMPROVE THE PROCESS FOR REVIEW AND APPROVAL OF**

**LAND USE APPLICATIONS AND DEVELOPMENT PERMITS (FILES ZA-10-02 AND CPA-10-03).**

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

**B. Expedited Annexation of 5715 SE Maple Street and 5951 SE Maple Street, File #A-11-01 – Ordinance**

Ms. Alligood provided the staff report in which the City Council was requested to approve application #A-11-01, an expedited annexation petition, and adopt the ordinance and associated findings in support of the approval. The property owner proposed an expedited annexation to the City in order to connect to the City's sewer service. No zone change was being requested. The property was zoned residential R-10 in the County and would retain the R-10 designation when annexed to the City. The annexation met all applicable state, regional, and local criteria. The City notified all interested persons and necessary parties including a 400-foot notice area. There were no objections from any necessary parties. Upon approval of the annexation, the property would be withdrawn from the Clackamas County Service District for Enhanced Law Enforcement and Clackamas County Service District #5 for Street Lights.

**It was moved by Councilor Chaimov and seconded by Councilor Loomis for the first and second readings by title only and adoption of the ordinance annexing two tracts of land identified as 5715 SE Maple Street and 5951 SE Maple Street into the City limits of the City of Milwaukie and withdrawing the tracts from the territory of the Clackamas County Service District for Enhanced Law Enforcement and Clackamas County Service District No. 5 for Street Lights (File #A-11-01). Motion passed with the following vote: Councilors Hedges, Loomis, Miller, and Chaimov and Mayor Ferguson voting "aye." [5:0]**

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

Ms. DuVal polled the Council: Councilors Hedges, Loomis, Miller, and Chaimov and Mayor Ferguson voting "aye."

**ORDINANCE NO 2026:**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, ANNEXING TWO TRACTS OF LAND IDENTIFIED AS 5715 SE MAPLE STREET AND 5951 SE MAPLE STREET INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING THE TRACTS FROM THE TERRITORY OF THE CLACKAMAS COUNTY SERVICE DISTRICT FOR ENHANCED LAW ENFORCEMENT AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 FOR STREET LIGHTS (FILE #A-11-01).**

**C. Expedited Annexation of 9527 SE Wichita Avenue, File #A-11-02 – Ordinance**

Mr. Kelter provided the staff report in which the City Council was requested to approve annexation application #A-11-02, an expedited annexation petition, and adopt the ordinance and findings in support of the approval. As in the previous action, this was an expedited annexation to the City in order to connect the property to the City's sewer service. There was no zone change requested, so the property would retain its R-10 designation upon annexation into the City. The annexation met all relevant state, regional, and City criteria. The City notified all interested persons and necessary parties, and no objections were received. Upon approval of the annexation, the property would be withdrawn from the Clackamas County Service District for Enhanced Law Enforcement and Clackamas County Service District #5 for Street Lights.

It was moved by Councilor Miller and seconded by Councilor Hedges for the first and second readings by title only and adoption of the ordinance annexing a tract of land identified as 9527 SE Wichita Avenue into the City limits of the City of Milwaukie and withdrawing the tract from the territory of Clackamas County Service District for Enhanced Law Enforcement and Clackamas County Service District No. 5 for Street Lights (File #A-11-02). Motion passed with the following vote: Councilors Hedges, Loomis, Miller, and Chaimov and Mayor Ferguson voting “aye.” [5:0]

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

Ms. DuVal polled the Council: Councilors Hedges, Loomis, Miller, and Chaimov and Mayor Ferguson voting “aye.”

**ORDINANCE NO. 2027:**

**AN ORDINANCE OF THE CITY OF MILWAUKIE ANNEXING A TRACT OF LAND IDENTIFIED AS 9527 SE WICHITA AVENUE INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING THE TRACT FROM THE TERRITORY OF CLACKAMAS COUNTY SERVICE DISTRICT FOR ENHANCED LAW ENFORCEMENT AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 FOR STREET LIGHTS (FILE #A-11-02).**

**D. Grant Agreement and Program Design for Design for Downtown Milwaukie Storefront/Façade Improvement Program – Resolution**

Mr. Campbell and Meagan Steele, Metro Transit-Oriented Development Program, provided the staff report in which the City Council was requested to adopt a resolution authorizing the City Manager to execute an agreement with Metro to accept funds to share the cost of a pilot Downtown Milwaukie Façade Improvement Program. Façade or storefront improvement programs were a well-tried method to improve the appearance and curb appeal of buildings in business districts in order to encourage economic vitality.

Metro supported this pilot program which Mr. Campbell had presented to the City Council in February. At that time the body indicated it would like to have the Design and Landmarks Committee (DLC) included in the process and that staff develop an outreach program for downtown business owners. There was also interest in how this program might address public area requirements (PAR). The proposed program gave the DLC a prominent role, and staff had worked with members of the Greater Milwaukie Business Alliance and conducted an online survey. As a result of the input, there would be no minimum grant size, and the program would focus on retail establishments. In following up with Metro, in keeping with the spirit of a façade improvement program, PARs would not be included. In speaking with other practitioners of similar programs, Mr. Campbell understood they were undersubscribed if there were too many regulations. He reviewed the proposed grant agreement which indicated Metro’s interest in focusing on downtown improvements to stimulate the market. He summarized the language changes that had been reviewed by counsel.

Once the City Council authorized the program, Metro concurrence on the design of the program would be sought to ensure all parties’ understandings matched. Applications would be approved on a first-come, first-served basis that would include a verbal description of the project with photos and sketches, color/material samples, and a budget estimate. He discussed the design review process. The DLC would consider applications at its monthly meeting for compliance with grant guidelines and general conformance with the Downtown Design Guidelines. The Committee would approve or deny the application. To be eligible the applicant had to be in the downtown zone. The

**CITY COUNCIL REGULAR SESSION – MARCH 15, 2011**

**DRAFT MINUTES**

Page 6 of 11

maximum grant amount would be \$10,000 with no minimum. Grants would be paid on a reimbursement basis with the program reimbursing no more than 50% of the total project. The proposal was for the DLC to be the decision making group.

**Greg Hemer**, DLC member, looked forward to the opportunity to help the City and downtown business owners. It was an exciting process, and he felt it was important just to get people thinking about the opportunities.

**Mr. Campbell** added that the Committee hoped program participants would also be aware of local vendors who could do the work. The program would be carried out on a first-come first-served basis to keep the DLC from having to pick winners. It also increased the amount of surety for the applicants that money was available.

**Councilor Miller** would like to review the application form.

**Mr. Campbell** would work with legal counsel on the form.

**Councilor Hedges** did not see this program as a proper use of taxpayer money. Not one citizen with whom he had spoken supported expenditures on private businesses.

**It was moved by Councilor Loomis and seconded by Councilor Chaimov to adopt the resolution authorizing the City Manager to sign a grant agreement with Metro to assist the City in establishing a façade improvement program. Motion passed with the following vote: Councilors Loomis, Miller, and Chaimov and Mayor Ferguson voting “aye” and Councilor Hedges voting “no.” [4:1]**

**RESOLUTION NO. 34-2011:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN A GRANT AGREEMENT WITH METRO TO ASSIST THE CITY IN ESTABLISHING A FAÇADE IMPROVEMENT PROGRAM.**

**E. Amend Length of Terms for Budget Committee and Public Safety Advisory Committee Members**

**Mr. Monahan** provided the staff report in which the City Council was requested to adopt ordinances changing the term expiration date of member terms from the last day of March to the last day of June. The intent was avoid Budget Committee disruptions at the end of March by extending the member terms until the fiscal budget process had been completed. In addition, two years ago the Public Safety Advisory Committee (PSAC) had amended its bylaws to more closely match the Neighborhood District Association (NDA) election of its officers and PSAC member, so it too was recommended for amendment.

**It was moved by Councilor Hedges and seconded by Councilor Loomis for the first and second readings by title only and adoption of the ordinance amending Milwaukie Municipal Code Chapter 2.24.020 B. specifying the expiration date of terms of membership for persons appointed to the Public Safety Advisory Committee. Motion passed with the following vote: Councilors Hedges, Loomis, Miller, and Chaimov and Mayor Ferguson voting “aye.” [5:0]**

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

**Ms. DuVal polled the Council: Councilors Hedges, Loomis, Miller, and Chaimov and Mayor Ferguson voting “aye.” [5:0]**

**ORDINANCE NO. 2028:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 2.24.020 B. SPECIFYING THE EXPIRATION DATE OF TERMS OF MEMBERSHIP FOR PERSONS APPOINTED TO THE PUBLIC SAFETY ADVISORY COMMITTEE**

It was moved by Councilor Hedges and seconded by Councilor Chaimov for the first and second readings by title only and adoption of the ordinance amending Milwaukie Municipal Code Chapter 2.14.020 specifying the expiration date of terms of membership for persons appointed to the Budget Committee. Motion passed with the following vote: Councilors Hedges, Loomis, Miller, and Chaimov and Mayor Ferguson voting “aye.” [5:0]

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

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

**ORDINANCE NO. 2029:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 2.14.020 SPECIFYING THE EXPIRATION DATE OF TERMS OF MEMBERSHIP FOR PERSONS APPOINTED TO THE BUDGET COMMITTEE.**

**F. Establish Library Expansion Task Force**

Mr. Monahan provided the staff report in which the City Council was requested to adopt a resolution creating the Library Expansion Task Force. At the February 1 joint work session between the City Council and the Ledding Library Board there was a discussion of the space needs as well as the evaluation options. In fiscal year 2012, the City of Milwaukie would receive \$1 million of capital funds from the Clackamas County Library District. The Library Board discussed the expansion project and recommended a number of goals that included creation of the Library Expansion Task Force. The Board determined a Task Force should be in place by May 1 and be composed of two citizens at large, two NDA representatives, two Ledding Library Board members, a City Council member, a local business person, a Library Foundation Member, a Planning Commissioner, and a Budget Committee member. A number of tasks were identified: develop a scope of work to evaluate options to either expand the Library on site or pursue additional library facilities, evaluate the impact of assuming a larger service area, cost the options and present preliminary estimates to the City Council, and follow Council direction and obtain necessary consultant services to develop detailed plans.

Councilor Hedges suggested that the two citizens at large and the two NDA representatives come from both the east (hinterland) and west (Lake Road, Historic Milwaukie, and Island Station neighborhoods) sides of the City. He further observed the dreaded word “consultant” in the staff report and suggested the detailed plans be done without consultant help.

Mr. Monahan said \$1 million had been allocated for capital use, so the cost of the consultant would come from that money if approved by counsel. Alternatively, one of the bequests may be unrestricted to allow use of those funds, but staff had not reached that level of detail at this point. He had previously had experience in a similar project, and there were consultants who were experts in evaluating the existing resources as well as key elements of future library services.

**Councilor Miller** agreed with Councilor Hedges. He would like to see this done without consultants, but if not he would like to use existing staff to the fullest.

**Councilor Loomis** agreed with Councilor Hedges' comments about NDA and at-large representation. He did not wish to tie in the consultant issue to this decision until other questions were answered.

**Mr. Monahan** felt it was critical to have a consultant onboard early on so as not to hamper the work and meet the timeframe. He felt the consultant was necessary for guidance. The scope and dollar amount for the consultant would come back before the City Council even if it were within Mr. Monahan's signature authority.

**It was moved by Councilor Chaimov and seconded by Mayor Ferguson to adopt the resolution creating the Library Expansion Task Force. Motion passed with the following vote: Councilors Hedges, Loomis, Miller, and Chaimov and Mayor Ferguson voting "aye." [5:0]**

**RESOLUTION NO. 35-2011:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, CREATING THE LIBRARY EXPANSION TASK FORCE.**

**Councilor Chaimov** would serve as the City Council representative.

**G. Regional Committee Assignment**

**It was moved by Councilor Chaimov and seconded by Councilor Loomis to appoint Councilor Dave Hedges as the City's alternate representative to the Clackamas County Coordinating Committee (C4). Motion passed with the following vote: Councilors Hedges, Loomis, Miller, and Chaimov and Mayor Ferguson voting "aye." [5:0].**

**H. City Council Goals Discussion**

**Mr. Monahan** reviewed the goal setting process and public outreach efforts. He provided a list of the 18 draft City Council goals. The agreed upon process was for the City Council to discuss those goals further at this meeting based on public input. The goals were tentatively scheduled for Council adoption at the April 5 regular session.

**Councilor Hedges** suggested removing comments on the Kellogg Treatment Plant and the wastewater agreement since they were part of the normal process rather than goals. He felt the list needed to be more manageable. He further recommended moving the baseball item under economic development matters.

**Councilor Chaimov** suggested changing the language to read developing an intra-City transportation system to coordinate with light rail to encompass streetcars and other modes of transportation.

**Mayor Ferguson** clarified that he and Mr. Monahan had found an opportunity where the City might receive the streetcars and infrastructure at little or no cost from TriMet. However, he was open to the proposed language.

**Councilor Hedges** did not want to overlook opportunities to link residents to light rail via bus or streetcar.

**Councilor Chaimov** suggested additional goals. He heard a consistent theme from residents that the City move from a reactive to an active code enforcement program. It would be helpful to have staff feedback on workload impacts and tradeoffs to the goals being proposed. He further recommended a goal addressing emergency preparedness

directed toward what the City did and a second goal of assisting residents in becoming sufficiently prepared themselves. Finally, a goal to develop the station building with the light rail line which was a firm request from the Historic Milwaukie Neighborhood. With respect to the existing goals, change to “a greater role in regional bodies” to clarify what the Council was trying to accomplish. He understood there was already a Wichita Park Master Plan and heard a strong desire for a Kronberg Park Master Plan and that the Park be completed when light rail opened. While he understood Councilor Hedges’ point about the Kellogg Treatment Plant as tasks that would be done, some active members of the community would be vocally unhappy if it were not on the list of Council goals.

**Councilor Miller** agreed with Councilor Chaimov. He believed a goal should be added relating to how the City would take care of its parks, open spaces, and public areas including median strips. The Parks District Advisory Board was discussing maintenance issues at its meetings.

**Councilor Loomis** heard from the neighborhood leadership that they were on board, and the only question had to do with the streetcar. Many of the goals were moving forward particularly those related to communication. He was good with the list and okay with moving the ballfield into economic development.

**Councilor Hedges** recommended that destination events could go under the economic development goal. Councilor Loomis and Mayor Ferguson agreed.

**Mr. Monahan** would develop language for City Council review and provide alternates in anticipation of an April 5 adoption. Staff would provide information on workload impacts.

**Councilor Loomis** would particularly like to know the consequences related to Councilor Chaimov’s code enforcement goal.

## **I. HB 2075**

**Mr. Monahan** reported the League of Oregon Cities (LOC) requested that the City Council review HB 2075 and give input to its state representative. This bill related to a 9-1-1 tax on prepaid cell phones from which a caller was able to reach a 9-1-1 dispatcher.

**Councilor Chaimov** would abstain on this matter because of his engagement to help stop the effort.

**Councilor Hedges** thought prepaid cell phone users should be charged for the service the same as others.

**Councilor Miller** would abstain as he had not had sufficient time to review the information to make a judgment.

**It was moved by Mayor Ferguson to direct Mr. Monahan to prepare a letter supporting HB 2075 to Rep. Carolyn Tomei, and he would follow up with phone call of support.**

**Councilor Loomis** thought LOC should be given the message that cities needed information sooner so issues could be fully considered prior to Council’s giving direction.

**Councilor Hedges seconded the motion. Motion failed with the following vote: Mayor Ferguson and Councilor Hedges voting “aye”, Councilors Loomis and Miller voting “no”, and Councilor Chaimov “abstaining.” [2:2:1]**

The group discussed how the LOC might streamline its processes when asking for local comments.

## **J. Council Reports**

**Mayor Ferguson** and Councilors reported on meetings they had attended on behalf of the City and announced upcoming events.

**Mayor Ferguson** announced the City Council would meet in executive session immediately following adjournment of the regular session pursuant to ORS 192.660(2)(d) to conduct deliberations with persons designated by the governing body to carry on labor negotiations and ORS 192.660(2)(h) to consult with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

## **ADJOURNMENT**

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

**Mayor Ferguson** adjourned the regular session at 9:33 p.m.

Respectfully submitted,

---

Pat DuVal, Recorder

CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
APRIL 5, 2011

3.E.2.

**CALL TO ORDER**

**Mayor Ferguson** called the 2099<sup>th</sup> meeting of the Milwaukie City Council to order at 7:05 p.m. in the City Hall Council Chambers.

Present: Mayor Ferguson, Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff present: City Manager Bill Monahan, City Attorney Tim Ramis, City Recorder Pat DuVal, Community Development and Public Works Director Kenny Asher, and Engineering Director Gary Parkin

**PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**

**A. Volunteer Week Proclamation**

**Mayor Ferguson** read a proclamation naming April 10 – 16, 2011 as *Volunteer Week* in the City of Milwaukie and urged his fellow citizens to volunteer in their community.

**B. National Poetry Month Proclamation**

**Councilor Chaimov** read a proclamation naming April 2011 as *National Poetry Month* in the City of Milwaukie and urged people to celebrate the City's cultural riches.

**C. Earthquake and Tsunami Awareness Month**

**Mayor Ferguson** read a proclamation naming April 2011 as *Earthquake and Tsunami Awareness Month* in the City of Milwaukie.

**CONSENT AGENDA**

**Mayor Ferguson** announced item H, the resolution appointing Terry Dolan to the Planning Commission was removed.

**It was moved by Councilor Chaimov and seconded by Councilor Hedges to approve the consent agenda with the removal of item H and the addition of a resolution appointing Melissa Perkins to the Ledding Library Board:**

- A. Resolution 36-2011: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Jeff Davis to the Arts Committee;**
- B. Resolution 37-2011: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Val Hubbard to the Arts Committee;**
- C. Resolution 38-2011: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Nancy Matich to the Arts Committee;**
- D. Resolution 39-2011: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Mark Docken to the Ledding Library Board;**
- E. Resolution 40-2011: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Colleen Schacht to the Ledding Library Board;**

- F. **Resolution 41-2011**: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Bob Cooper to the Park and Recreation Board;
- G. **Resolution 42-2011**: A Resolution of the City Council of the City of Milwaukie, Oregon, appointing Ray Harris the Park and Recreation Board;
- H. Removed from the agenda
- I. **Resolution 43-2011**: A Resolution of the City Council of the City of Milwaukie, Oregon, appointing Betty Fulmore to the Public Safety Advisory Committee as the Ardenwald Neighborhood District Association Representative;
- J. City Council Minutes:
  1. February 1, 2011 Regular Session
  2. February 15, 2011 Regular Session; and
- K. **Resolution 44-2011**: A Resolution of the City Council of the City of Milwaukie, Oregon, appointing Melissa Perkins to the Ledding Library Board.

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

## AUDIENCE PARTICIPATION

**Les Poole**, Clackamas County, discussed community concerns and legal issues related to light rail. The extension across Kellogg Lake has the neighborhood outraged. A street level crossing would be simple, and although the Oregon Department of Transportation (ODOT) had some concerns, his hope was that TriMet and Milwaukie talk about the option in order to avoid legal actions. He urged people to look at the simulations. As Mr. Poole had anticipated long ago, the money to cross Kellogg Lake and put 600 cars at a Park Avenue structure was not there. He felt the flyover design would be legally challenged, and he did not really wish to do that. The design had not really been out in front of the public, and people will be outraged. It was time to ask Rep. Tomei where she was when this public relations nightmare was being foisted on the neighborhood. He was only concerned about the neighborhood and the environment.

## PUBLIC HEARING

None scheduled

## OTHER BUSINESS

### A. **Milwaukie Light Rail Bridge Presentation**

**Dave Unsworth**, Portland-Milwaukie Light Rail Deputy Director, provided a short project update and noted the in-water work for the light rail bridge would begin in July. The project length was 7.3-miles and included bike and pedestrian elements with two scaled back park-and-rides. It was anticipated this project would create approximately 14,000 jobs. Highlights included the July – September 2010 project recalibration period, Final Environmental Impact Statement (FEIS) publication on October 22, the TriMet Board decision on November 28, and the December 8 bridge action. The design-build bridge contract was signed on December 16, the UP purchase and sale agreement was signed on December 31, and the final design was approved on March 29. Bridge construction was anticipated to begin on or about July 1. He reviewed the \$1.4 billion project budget and design contracts and commented on the status of permits. Next steps were to seek community input on the design, finalize the 60% design in June, apply for the full-funding grant agreement in May and June, complete 90% design in November, and complete constructions drawings by February 2012. He showed slides of the future

CITY COUNCIL REGULAR SESSION – APRIL 5, 2011

DRAFT MINUTES

Page 2 of 10

bridge and integration with the OHSU Schnitzer Campus and the South Waterfront Station. Service was anticipated to begin September 2015. Mr. Unsworth described the coffer dam process, scour protection, and environmental enhancements. He described the Kellogg Lake span, removal of derelict piles, and natural resource enhancement to the Milwaukie Presbyterian Church area.

**Councilor Hedges** moved to Milwaukie because of light rail and had always lived in an area with good public transportation. When he first saw the Kellogg Lake Bridge he was appalled. If there were an “ugliest bridge in America” contest this design would certainly win. At one point there was the inference that it would match the trestle bridge, and he urged that the project take another look at the Kellogg Lake Bridge design.

**Mr. Unsworth** hoped to continue the discussion to determine what elements the community wished to refine.

**Councilor Chaimov** observed Councilor Hedges was expressing the views of many people living in that area.

**Ed Zumwalt**, Milwaukie. He felt it was time for the City Council to dig out the laundry list of what it wanted from this project and mediate on the citizens’ behalf. With this alignment, the Historic Milwaukie Neighborhood would be toast with crime, safety, parking and traffic. He was concerned about parking in the neighborhood with the smaller park-and-ride facilities. Noise, light, and security impacts needed to be addressed immediately. School safety remains an issue because of light rail’s proximity to several schools.

**Dion Shepard**, Milwaukie. She discussed the bridge over Kellogg Lake and Kronberg Park and visibility. She and others were concerned about the impact of the design and difficulty in visualizing it. She had questions about the noise and lights and commented how liberal some of the federal rules were. She did value the efforts related to the quiet zones. She was voicing these concerns on behalf of the Historic Milwaukie and Island Station Neighborhoods to underscore the need to mitigate issues related to livability.

**Councilor Hedges** announced he would be interviewed on KPAM in the morning to discuss light rail.

**B. Consider Support of Legislative Ban on Single Use Plastic and Non-Recycled Content Paper Checkout Bags -- Resolution**

**Councilor Hedges** supported the ban on single-use plastic bags but did not support the Senate Bill as it was poorly written and not enforceable. He read some of the proposed language and discussed what he considered weaknesses. He had two other problems in that the bill imposed a charge for a paper bag, and he did not support a law that regulated lifestyles. He was concerned the storekeeper would be disadvantaged by being required to charge \$.05 and not more. Further, the bill allowed the use of plastic bags under certain circumstances, such as prescriptions, and potentially disadvantaging someone buying medications. His other major problem with the bill was that it put limitations on entities such as the City of Milwaukie to do more than allowed by State laws. He would support the City Council resolution supporting the ban provided it contained language that did not impose a charge for paper bags or tied local jurisdictions’ hands. He felt it was a bad precedent imposed by one group to keep another group from doing something. Overall it was a good bill, however, it was written by a committee. While he supported a ban on plastic bags, he did not support a bad law. He would vote neither for nor against the proposed resolution.

**Councilor Chaimov** would like to hear from the residents and had prepared a resolution that he thought would ameliorate Councilor Hedges’ concerns.

**Councilor Miller** had concerns similar to those of Councilor Hedges. There seemed to be too many loopholes, and he did not feel everyone was treated fairly. He noted he got 14 bags with his *Oregonian*. If the State came up with consistent legislation, then he would support it.

**Councilor Loomis** said one issue was how this item was put on the agenda. He looked forward to hearing from people in the audience and hoped there would be information on the grocery association's position. What were the difficulties in recycling? He was concerned about potential impacts on local businesses. Was it more environmentally safe to manufacture paper or plastic? He was a proponent of education and awareness and suggested stores give away free bags on Earth Day or hand out free recyclable bags.

**Mayor Ferguson** saw the plastic bag similar to the lead-based paint story or petroleum products that have been proven over time to be detrimental to the environment. He explained plastic bags were difficult to recycle because they were so light weight. He understood a majority of the Councilors supported some kind of ban that was even more stringent than the proposed legislation.

**Vincent Alvarez**, Milwaukie. He agreed with the City Council that the legislation had its problems and thought the best thing to do at this time was to adopt a resolution supporting the Statewide ban while letting it be known the legislation needed to be punched up a bit.

**David Burdick**, Clackamas County. He read a poem in support of the ban and discussed the polluter pays principle. Rather than looking at it as a tax it was a charge to the right people for the costs of processing the plastic bags. In response to a question from Councilor Loomis one would have to use his/her canvas bag 200 times to break even and have less impact on the environment because of the resources used to manufacture the canvas bag.

**Greg Bowman**, Milwaukie. He asked the Milwaukie City Council to support this Senate Bill. A similar resolution had been approved throughout the state including Metro, Beaverton, Lake Oswego, and many cities on the coast. He was curious if Milwaukie had found something no one else had considered.

**Matt Menely**, Milwaukie. He agreed with Councilor Hedges there were some holes in the legislation. From his perspective the Senate Bill was a starting point. It sent a message that the State should step up to the plate or Milwaukie would adopt its own legislation. Once that was sent, then people could begin to address the *Oregonian* bags and Styrofoam containers.

**Mark Gamba**, Milwaukie. In the Pacific Ocean there was an area about the size of Texas covered with plastic bags. He felt this Senate Bill was a good start although he recognized there were holes in it. He would welcome a stronger bill in Milwaukie if the City Council were willing to enforce it. He agreed with Councilor Miller that single-use bags at the checkout counter were not the only problem. He would like to see a lot more bags banned not only because of the problem in the oceans but also because they were a petroleum product.

**Councilor Chaimov** said his was an effort to address the three major concerns pointed out by Councilor Hedges: the concentration only on checkout bags and not all bags, to avoid requiring retailers to charge customers for alternative bags, and to prohibit cities from adopting their own local laws they felt appropriate to protect their own residents.

**Councilor Chaimov read the proposed changes to the resolution into the record and moved to adopt the resolution supporting legislation regulating the use**

single-use plastic bags. Council Hedges seconded the motion and changes. Motion passed with the following vote: Councilors Miller, Chaimov, and Hedges and Mayor Ferguson voting “aye” and Councilor Loomis abstaining. [4:0:1]

**RESOLUTION NO. 45-2011:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, SUPPORTING LEGISLATION REGULATING THE USE OF SINGLE-USE PLASTIC BAGS.**

**Mayor Ferguson** would like to see something in the future regarding the use of Styrofoam containers.

**Mayor Ferguson** recessed the meeting at 8:40 p.m. which he reconvened at 8:50 p.m.

**C. Consider Suspension of Public Area Requirements**

**Mr. Monahan** discussed the background on the proposed resolution that would suspend the application of public area requirements (PAR) from the date of enactment through October 31, 2012. During that period of time there would be a temporary suspension of the application of those requirements to those property owners who made improvements to their buildings with the requirement that the City put in those improvements at the end of that period of time. Further the City Council would review those public area requirements to determine future applicability.

**Councilor Chaimov** moved to postpone consideration of the resolution to the first meeting in July 2011. He thought all would agree that the PARs needed to be revisited and required more than what the City wanted to require of businesses in downtown Milwaukie. At the same time, the City did not have the money to put in the requirements currently required by the code. His intention was to work through the budget for the coming fiscal year to try to set aside funds to use on a case-by-case basis to assist businesses to achieve the requirements. Meanwhile the City Council would undertake an evaluation of the requirements and costs as part of the adopted fiscal policies. He hoped by doing this that the City Council would make decisions best for the City and come up with the money to do them.

**Councilor Loomis** would need more information before voting. Historically he felt the PARs were a hindrance to redevelopment but was concerned about approving an 18-month moratorium without knowing the financial impacts to City. He was open to a transparent discussion of the issue, and it seemed as if this matter at this point in time had to do with a particular property owner and his potential tenant. He would like a mechanism for each business to come to the City and be considered on a case-by-case basis.

**Councilor Chaimov** felt he and Councilor Loomis had the same goal.

**Councilor Hedges** supported what Councilor Miller was trying to achieve. He did not feel private money should be used to renovate public property. But that was the system we had although it needed to be changed. He was loathe to inflict a blank upon the citizens of Milwaukie. He supported Councilor Miller’s resolution with reservations and supported looking at the merits and demerits of each individual application. He was concerned some of the PARs were cosmetic and not safety related. He could see both sides of the argument, and both sides were correct. He would like the City to have some control to know how much money was likely to be committed before the commitment was made.

**Ed Zumwalt**, Milwaukie. Sometimes he wondered who ran this institution for the last 8 – 10 years. He understood the City Council directed the City Manager, and he directed his underlings. It seemed like staff wanted to push urban renewal which he was sure would end up on the ballot. Without a spark or jump start, we will be sitting here in Appalachia. This town was not open for business, and people did not want to spend an extra \$20,000 - \$30,000 on top of their other expenses on public area requirements. Small businesses deserved a break.

**Councilor Chaimov** did not see this issue as having anything to do with staff. The people of the community adopted a code that most, including staff, did not think now worked well. The City Council was trying to do as Mr. Zumwalt said which was to jump start the downtown in a way that did not open a gaping hole such as TriMet's renovating a building without any public requirements. To the extent it did not seem all Council members were supportive of Councilor Miller's proposal, they only differed in the method of getting where all wanted to be.

**Mr. Zumwalt** responded that it seemed strange to the average citizens. After hearing Mayors and City Managers say for 17 years that they wanted to heal the City, we were sitting in Appalachia. He urged giving businesses a break.

**Kim Keehner**, Enchante, Main Street. She felt the City Council needed to take a look at the big picture. The main stumbling block was Main Street retail zoning which was a great idea; however, property owners had been sitting on empty buildings trying to meet the City's requirements. These same property owners were looking for decent, viable tenants that would benefit community. The properties were empty and the owners were still paying property taxes yet the City wanted those same people to pay for PARs. The City will get its money back through increased property values and taxes both in the business and residential areas. She suggested looking at the amount of money the City would have to put into the PARs and consider how much revenue it would get back.

**Ed Aaron**, Main/Monroe Street Building owner. After he renovated the Jefferson Street building his tax bill increased 100%. He put hundreds of thousands of dollars into that building, and it did not cost the City anything. During that time he was charged both PAR and system development charge (SDC) fees. He discussed how traffic impacts were calculated. He differed with Mr. Asher's belief that the PARs were not a principal retardant to downtown redevelopment and commented on the \$12,000 in costs related to converting an office space to retail on 21<sup>st</sup> Avenue. The Main/Monroe Building has been empty for 4 years while he tried to attract a tenant. He was concerned the Planning Department was discouraging potential tenants from doing business with him. The Planning Department wants \$30,000 in PARs, but no tenant wanted to put down \$30,000 for what was once office space. The City Council had decided that the first floor had to be retail according to the Downtown Plan. It was legislated that it had to be retail; now he had to find a tenant to pay \$30,000 to be there.

**Councilor Hedges** did not disagree with Mr. Aaron's comments. No one, including the City, had the \$32,000 as Councilor Miller's resolution stated. That amount would have to come out of the budget from some other department. He would support Mr. Aaron's point of view if the City could suspend the PAR with no one picking up the bill.

**Mr. Aaron** listed the public area requirements for the property that included rebuilding the bulb out, redoing the sidewalks, installing two period streetlights in an area where there were no underground utilities, installing garbage cans, and planting street trees. Those alone were significant. The landowner or tenant had to make those improvements.

**Councilor Hedges** understood these were cosmetic and not necessary for safety; however, these were the current laws.

**Mr. Aaron** added the law was changed several years ago because it was a taking and unconstitutional. Now he was on the hook for PARs again.

**Ed Parecki**, Milwaukie business owner. He referred to the Downtown Plan and read a short list of elements adopted in August 2000. Since the Plan was adopted, there was spot zoning for North Main Village, a new TriMet center on Jackson, a new South Downtown Plan, and now light rail none of which were in the plan. The PARs were in the Plan and seemed to be the only thing the City did not wish to ignore. He did not understand the logic. He recommended throwing the Plan away because it was useless. Ignore the PARs for the next 2 year and let people install the elements they wished.

**Pam Tatom**, Main Street business owner. She understood how those who had been here for many years felt frustrated. This made no sense. She supported Councilor Miller's efforts to think outside box to help small businesses. She urged trying out the 18-month suspension of PARs.

**David Aschenbrenner**, Milwaukie. He suggested using the recently adopted fiscal policies to help solve this problem. He agreed these improvements were a burden to small businesses, but they would also be a burden if the City were to take them on. Councilor Miller's resolution was an unfunded mandate as there was nothing in the budget tied to it. He was concerned about the upcoming TriMet pubic improvements. He agreed with Councilors Chaimov and Hedges that the City should look more closely to come up with a funding mechanism and should be applied on a case-by-case basis. He agreed the plan needed more work. He suggested the City might look at what, including urban renewal, other communities were doing to redevelop their downtowns.

**Lisa Batey**, Milwaukie resident. Ms. Batey had submitted her written comments earlier to City Council. She would love to see every storefront full, and she saw no evidence Milwaukie's Main Street had more vacancies than anywhere else. She noted the downtown improved from what it had been 9 years ago and felt it was generally looking up. Mr. Parecki had been complaining about PARs since he began working on his McLoughlin Boulevard property 5 years ago but has never brought any suggestions or solutions forward on how to balance this concern. There may be other models that might work better for Milwaukie. She urged the City Council to consider Councilor Chaimov's motion for a continuance while looking for a limited budgetary solution for case-by-case help and revising the public area requirements altogether.

**Mayor Ferguson** stated both Mr. Aaron and Mr. Parecki had talked with him about other funding mechanisms and may revisit the issue with Mr. Monahan.

**Arlene Stanley**, Main Street business owner. She supported the moratorium suggestion for landowner or tenant improvements and urged that it not be put off for another year. She noted she had a bike rack if anyone needed one as apparently she had not really needed it after all. She did not agree that personal private investment should be used to make public improvements while paying all the other fees and taxes. She believed most of the improvements were cosmetic and that safety issues were enforced by the municipal code. She recommended putting a hold on the program for 18-months then the City would not have to make the improvements. If that brought people in, then the public improvements would be made so buildings would look as good as possible and attract people.

**Mayor Ferguson** noted the resolution as written would require the City to complete the public area requirements.

**CITY COUNCIL REGULAR SESSION – APRIL 5, 2011**

**DRAFT MINUTES**

**Page 7 of 10**

**Dion Shepard**, Milwaukie resident. She understood the frustration because residents were frustrated as well. This had been going on for 5-6 years so perhaps a compromise was in order and not drag this out any longer. The PARs needed to be sorted out sooner than later.

**Councilor Hedges** had the impression that if the PARs were suspended for the next two years that the City had to fund any work to be done. He asked Mr. Ramis if that was correct or could the program be suspended with no party responsible for funding the improvements.

**Mr. Ramis** responded it would depend on the City Council's action. If the City Council adopted a resolution saying the property owners were not responsible, there was still the zoning code that said the improvements had to be made before an occupancy permit was issued. That would lead to the conclusion that if the property owner did not make the improvements, then the City had to. The alternative would be to eliminate the requirements from the zoning code, and Mr. Ramis outlined the required notification process and Planning Commission and City Council hearings. That would mean neither the City nor the property owner would have to make the improvements. The City Council may initiate that process.

**Councilor Hedges** understood the City Council would have to go through a legal process.

**Councilor Miller** proposed the resolution because he believed the City needed to change the way it did business in downtown Milwaukie. The PARs were impediments to business upgrades, and this was a small step to get the ball rolling toward a more vibrant City. He believed the regulations defeated the very things the City Council wished to accomplish. Other cities had reduced fees by 90% or eliminated them altogether. There have only been six projects since 2008, and the City has collected only a little more than \$1,500. The largest was Milwaukie High School at \$83,000 but those were fees in lieu of. The City always seemed to run into roadblocks in both commercial and residential areas. It was time to change that dynamic. The suspension was only for 18-months, and it was a good time to reassess all of the PARs. This was not the way Milwaukie should be doing business.

**Mayor Ferguson** felt the system was broken. He wished the City could address Mr. Aaron's specific issue right now and then consider Councilor Hedges' suggestion.

**Councilor Chaimov** explained that was what he was hoping to achieve by working through the budget process and finding the \$30,000. If it were found, it could be set aside, and the City Council could take up the resolution.

**Councilor Miller** said in 30-days potential tenants would be gone. Something needed to be done right now to change the dynamics of the downtown. He would be happy to work with Councilor Chaimov on a resolution but was concerned Council would still be debating the issue in the middle of July. The tenants would be gone by then. Something needed to be done now; then City Council could fix the total problem. The resolution was written so that the City did not have to put up a dime until 2013. The PARs could be waived when people came in for their building permits. After the review most of the requirements may no longer be valid. Five of the six PARs since 2008 have been waived.

**Mr. Monahan** said the resolution was structured such that there was a suspension rather than a waiver of the requirements and stated the City would undertake an evaluation over the next year about PAR applicability in the future in its present form. It intended that the provisions were meant between now and November 2012 then

applicable requirements would be the improvements the City would have to make before June 2013.

**Councilor Chaimov** understood but did not feel it was appropriate to go in that direction. He was simply not willing to enter into what seemed like a blank check for our taxpayers when there was no guarantee the PARs would be reduced. He was happy if the money were found to pay for improvements on a case-by-case basis.

**Councilor Hedges** feared TriMet might put in all their applications and Milwaukie would have to put out a lot of money because they caught us.

**Mr. Monahan** thought there was protection in Section 1 that read, “the obligation of property owners to develop public right-of-way under the public area requirements of Section 19.312.5 of the Milwaukie Municipal Code are suspended for all occupancy permits issued for property within the Milwaukie Downtown between April 6, 2011 and October 31, 2012.” He did not think TriMet planned to do that.

**Mayor Ferguson** understood TriMet would probably not be here before October 2012.

**Councilor Hedges** asked if the resolution could be repealed quickly.

**Mr. Ramis** replied a resolution could be repealed by a simple majority vote but could not be accomplished retroactively.

**Councilor Loomis** did not feel he was in Appalachia as Mr. Zumwalt said. Mr. Aaron’s building needed to get filled, and he felt \$32,000 was doable. He was not comfortable suspending everything but supported helping Mr. Aaron get a tenant through an open dialogue.

**Mr. Monahan** said staff would look at the budget and prepare a resolution for the May City Council meeting that might provide for a grant program of some kind.

**Councilor Loomis** supported that.

**Mr. Aaron** asked what made the City Council think businesses could find that amount if the City of Milwaukie could not given its annual budget. He suggested the City Council put a cap on the program. He was asking the City Council to get rid of requirements that were not really requirements.

**Councilor Hedges** represented more than just downtown Milwaukie and was concerned about the citizens ability to pay.

**Councilor Loomis** was comfortable with committing to find \$25,000 if there were a conversation and he had all the information. He wanted to see that building filled.

**Mr. Monahan** asked if City Council were looking for a program that addressed the needs of one property owner or the needs of the projected development in the downtown. Did City Council wish to continue the current level of development or try to stimulate the downtown during the next 18-months? If the City Council were looking for a fixed amount then staff would look for a way to fund it in the coming budget and outline a process based on Council direction.

**Councilor Loomis** would like to study this one situation and resolve it while looking at the whole picture and work to fix it. Do PARs mean that much to the City Council and all the residents? Who pays for it? He wanted the process to be transparent.

**Councilor Hedges** agreed with Councilor Loomis that the City would get the money back in property taxes while the PAR program was sorted out. He understood there were no other pending applications.

**Councilor Chaimov** withdrew his motion.

CITY COUNCIL REGULAR SESSION – APRIL 5, 2011

DRAFT MINUTES

Page 9 of 10

**Mr. Monahan** understood he was directed to look at where he might find \$25,000 and getting Mr. Aaron through the gate of getting an occupancy permit.

**Mr. Ramis** advised the PARs were adopted by ordinance which could not be amended by resolution. The City Council could adopt a resolution suspending the fees for a period of time. The cost would not go away without a code amendment.

**It was moved by Councilor Chaimov and seconded Mayor Ferguson by to extend the meeting beyond 10 p.m. Motion passed with the following vote: Councilors Miller, Chaimov, Hedges, and Loomis and Mayor Ferguson voting 'aye.'** [5:0]

**Councilor Loomis** was designated by the City Council as its representative to meet with staff and Mr. Aaron and to report back at the April 19 City Council meeting.

**Councilor Miller** urged resolving this issue as soon as possible so other business owners did not find themselves in a similar situation.

#### **D. Council Goals**

**Mr. Monahan** provided background on the twenty proposed goals and the process.

**It was moved by Councilor Chaimov and seconded by Mayor Ferguson to adopt the City Council goals. Motion passed with the following vote: Councilors Miller, Chaimov, Hedges, and Loomis and Mayor Ferguson voting 'aye.'** [5:0]

**Mayor Ferguson** discussed Planning Commission appointments and asked that there be a discussion of appointments in general.

#### **E. Council reports**

The Mayor and Councilors reported on meetings they had attended on behalf of the City. Mayor Ferguson announced upcoming community events.

#### **ADJOURNMENT**

**Mayor Ferguson** announced the City Council would meet in executive session pursuant to ORS 192.660(2) ORS 192.660(2)(h) to consult with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed immediately following adjournment of the regular session.

**Mayor Ferguson** adjourned the meeting at 10:23 p.m. without a motion.

Respectfully submitted,

---

Pat DuVal  
Recorder

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
APRIL 19, 2011**

**3.E.3.**

**CALL TO ORDER**

**Mayor Ferguson** called the 2100<sup>th</sup> meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Mayor Ferguson, Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff present: City Manager Bill Monahan, City Attorney Tim Ramis, City Recorder Pat DuVal, Community Services Director JoAnn Herrigel, Community Development and Public Works Director Kenny Asher, and Engineering Director Gary Parkin

**PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**

**A. Arbor Day Proclamation**

**Mayor Ferguson** read a proclamation naming April 29, 2011, as *Arbor Day* in the City of Milwaukie and urged all residents to observe this day by planting trees appropriate for this area.

**B. Earth Day Proclamation**

**Mayor Ferguson** read a proclamation naming April 22, 2011 as *Earth Day* in the City of Milwaukie and urged all citizens to be mindful of local, state, and national laws which protect the environment and to join in efforts to preserve the beauty and wonder of the lands, skies, and water of the Earth in all its diversity.

**C. Fleet “Green Shop” Certification Award**

**Ms. Herrigel** introduced **Deborah Teaves** of the Pacific Pollution Prevention Resource Center who presented the “Green Shop” award to the City of Milwaukie Fleet Division. Ms. Teaves provided background on the program and the criteria by which an organization was certified. Gil Tamlyn, Jack Nelson, and Steve Brackenbrough were present to accept the award.

**D. Jackson Street Bus Shelter Update**

**Young Park**, TriMet Capital Projects Manager, reported the temporary shelters were installed and provided a brief update on installation of the high capacity structures. He discussed the delays in locating a fabricator and reported TriMet had located a credible contractor to build the shelters similar to those in the downtown Portland transit mall. The shelters will be stainless steel with illuminated columns. TriMet anticipated installation this September. He noted the landscaping would be restored and grass would be installed on Harrison Street this week.

## **E. Vehicle Registration Fee Ballot Measure**

**Clackamas County Commissioner Jim Bernard** thanked the City for the ongoing use of the Farmers' Market space which was going into its 13<sup>th</sup> season. He discussed how the non-profit had returned to the community throughout the years.

**Commissioner Bernard** outlined Clackamas County's transportation funding needs and the proposed \$5 vehicle registration fee to help build a new Sellwood Bridge. The proposed fee will be on the May 17, 2011 ballot.

## **CONSENT AGENDA**

It was moved by **Councilor Chaimov** and seconded by **Councilor Hedges** to approve the consent agenda consisting of:

- A. **Resolution 46-2011: A Resolution of the City Council of the City of Milwaukie, Oregon, Adopting Its Council Goals; and**
- B. **City Council Minutes:**
  - 1. **February 1, 2011 Work Session**
  - 2. **March 1, 2011 Regular Session**

**Motion passed with the following vote: Councilors Miller, Chaimov, Hedges, and Loomis and Mayor Ferguson voting 'aye.' [5:0]**

## **AUDIENCE PARTICIPATION**

**Les Poole**, Clackamas County, provided a map of the Kronberg/Poole properties to help clarify legal issues related to the Kellogg Lake light rail crossing. He had grave concerns that the properties had never been combined and protected as one park. He commented on the design for the ugliest bridge in America. He was speaking for hundreds of people who were very upset about what was being planned.

**Yvonne Lazarus**, Clackamas County, thought the region over-anticipated the use of MAX and underestimated impacts on the neighborhoods, businesses, and the environment by local decision makers. The ugliest bridge in America and the concrete park-and-ride at Park Avenue were environmental tragedies. A bus line can always be moved to allow for healthy growth. The amount of money being spent was criminal, and Ms. Lazarus urged the City Council to stop this atrocity.

## **PUBLIC HEARING**

None scheduled

## **OTHER BUSINESS**

- A. **Software as a Service Intergovernmental Agreement with State of Oregon Secretary of State's Office, Archives Division – Resolution**

**Ms. DuVal** briefly reviewed the proposal and introduced Oregon State Archivist Mary Beth Herkert.

**Ms. Herkert** reviewed the software as a service offered by the Secretary of State's Office and the benefits of being a project pilot site.

**It was moved by Councilor Chaimov and seconded by Councilor Loomis to adopt the resolution authorizing the City Manager to execute an intergovernmental agreement with the State of Oregon acting through its Office of the Secretary of**

State. Motion passed with the following vote: Councilors Miller, Chaimov, Hedges, and Loomis and Mayor Ferguson voting ‘aye.’ [5:0]

**RESOLUTION NO. 47-2011:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON ACTING THROUGH ITS OFFICE OF THE SECRETARY OF STATE AND THE CITY OF MILWAUKIE.**

**B. Photo Radar Contract Authorization – Resolution**

This item would be considered at May 3, 2011 regular City Council session.

**C. Construction of International and Monroe Sewer Replacement Project – Resolution**

**Mr. Parkin** provided the staff report in which the City Council was requested to sign a contract for the construction of the International and Monroe Sewer replacement projects with Columbia Earthworks in the amount of \$107,095. These were identified as low spots in the lines and potential problem areas. Work would be done May and June.

**It was moved by Councilor Hedges and seconded by Councilor Miller to adopt the resolution approving the award of contract for the construction of International Way and Monroe Street Sewer Replacement Project. Motion passed with the following vote: Councilors Miller, Chaimov, Hedges, and Loomis and Mayor Ferguson voting ‘aye.’ [5:0]**

**RESOLUTION NO. 48-2011:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE AWARD OF CONTRACT FOR THE CONSTRUCTION OF THE INTERNATIONAL WAY AND MONROE STREET SEWER REPLACEMENT PROJECT.**

**D. Consider Suspension of Public Area Requirements**

**Mr. Monahan** reported at the previous meeting the City Council reviewed a resolution proposed by Councilor Miller and heard public comment on the matter related to Ed Aaron’s Main/Monroe Building. Council directed that Councilor Loomis, Gary Parkin, and he meet with Mr. Aaron to discuss the public area requirements for his property. The meeting was held, and at the end of that discussion Mr. Parkin took documentation back to his office for review and evaluation. Tonight Mr. Monahan reported the discussion went well, and he recommended an additional meeting prior to making a recommendation to the City Council.

**Councilor Loomis** reported the conversation was a good one and that Mr. Aaron provided some information Mr. Monahan had not seen before. There were two figures on the table, so the City representatives felt the new information needed to be reviewed. Mr. Aaron agreed that he had until mid-June before progress would be impacted. He recommended another meeting with Mr. Aaron to come up with a resolution and tenant.

**Mr. Aaron** agreed last week’s meeting was positive and hoped to get an update from Mr. Parkin about the work session briefing.

**Mr. Monahan** recommended further discussion with action on the proposal at the May 3, 2011 City Council regular session.

**Councilor Miller** was concerned that the City Council had spent six weeks discussing this resolution. Although he was pleased to work out this situation, he did not believe it solved the problem for other businesses in downtown Milwaukie. He felt the City needed to take a break from public area requirements and not continue to do what it had been doing because it was not working. He urged looking for a more positive outcome for the citizens and businesses in Milwaukie.

**It was moved by Councilor Miller to adopt the resolution suspending the application of public area requirements of Milwaukie Municipal Code Section 19.312.5 for the period from April 6, 2011 through October 31, 2012**

**Councilor Loomis** appreciated Councilor Miller's passion and people's commitment to making this situation work. He hoped to move forward with the discussion and come to a resolution.

**Councilor Hedges** would support a proposal if the City's exposure were limited to \$50,000, for example.

**Councilor Chaimov** agreed the problem needed to be fixed but thought it needed to go through the budget process if the City were paying for public area requirements.

**Mr. Monahan** advised since there was no second no action had been taken on the resolution.

**Councilor Miller** stressed this was an important issue for downtown businesses. He would accept this particular delay, but at some point the City Council needed to make a decision. The public area requirements were a cost that needed to be considered by property owners and those interested in doing business in downtown Milwaukie.

The group agreed to add public area requirements to the April 26, 2011 study session agenda for a full discussion of public area requirements.

**Mr. Aaron** explained originally if one renovated a property the permit fee would be 10% or the entire cost of the public area requirements. The building had an assessed value, and if the renovation costs were less than 50% of that assessed value, then one was charged 10% of the renovation costs. That did not tie impacts of the renovation to the actual costs incurred. His project was assessed under that law, but it was not applicable to his project. He had made his case to the previous Council but was turned down. Six months later the law was changed such that impacts had to be taken into account. Only when changes of use take place can public area requirements, and system development charges for that matter, be imposed.

#### **E. Library Expansion Task Force Update**

**Mr. Monahan** updated the City Council on recruitment efforts for the Library Expansion Task Force. Due to the limited response he requested that the deadline be extended to April 25 with a resolution making appointments scheduled for the May 3, 2011 City Council regular session agenda.

#### **F. Council Reports**

The Mayor and Councilors reported on meetings they had attended on behalf of the City and announced upcoming events.

Mayor Ferguson announced the Council would meet in executive session pursuant to ORS 192.660(2)(e) to conduct deliberations with persons designated by the governing body to negotiate real property transactions immediately following adjournment of the regular session. The City Council would not return to open session.

## **ADJOURNMENT**

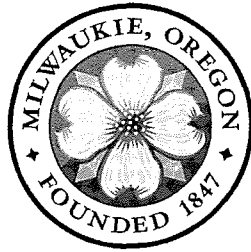
**It was moved by Councilor Chaimov and seconded by Councilor Miller to adjourn the meeting. Motion passed with the following vote: Councilors Miller, Chaimov, Hedges, and Loomis and Mayor Ferguson voting “aye.” [5:0]**

**Mayor Ferguson** adjourned the regular session at 8:38 p.m.

Respectfully submitted,

---

Pat DuVal, Recorder



3.F.



**To:** Mayor Ferguson and Milwaukie City Council  
**Through:** Bill Monahan, City Manager  
**From:** Bob Jordan, Chief of Police  
**Date:** May 2, 2011  
**Subject:** O.L.C.C. Application – Sunny Corner Market – 5010 SE Monroe Street

---

**Action Requested:**

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Sunny Corner Market – 5010 SE Monroe Street.

**Background:**

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

**POLICE DEPARTMENT**  
3200 SE Harrison  
Milwaukie, Oregon 97222  
P) 503 786 7400 / F) 503 786 7426  
[www.cityofmilwaukie.org](http://www.cityofmilwaukie.org)

**RS PAGE 62**



# OREGON LIQUOR CONTROL COMMISSION BUSINESS INFORMATION

Please Print or Type

Applicant Name: VIKKALP L.L.C. Phone: 732-476-8050

Trade Name (dba): SUNNY CORNER MARKET

Business Location Address: 5010 SE MONROW STREET

City: MILWAUKIE ZIP Code: 97222

## DAYS AND HOURS OF OPERATION

### Business Hours:

Sunday 7 am to 10 pm  
 Monday 7 am to 10 pm  
 Tuesday 7 am to 10 pm  
 Wednesday 7 am to 10 pm  
 Thursday 7 am to 10 pm  
 Friday 7 am to 11 P.M.  
 Saturday 7 am to 11 P.M.

### Outdoor Area Hours:

Sunday \_\_\_\_\_ to \_\_\_\_\_  
 Monday \_\_\_\_\_ to \_\_\_\_\_  
 Tuesday \_\_\_\_\_ to \_\_\_\_\_  
 Wednesday \_\_\_\_\_ to \_\_\_\_\_  
 Thursday \_\_\_\_\_ to \_\_\_\_\_  
 Friday \_\_\_\_\_ to \_\_\_\_\_  
 Saturday \_\_\_\_\_ to \_\_\_\_\_

The outdoor area is used for:

- Food service Hours: \_\_\_\_\_ to \_\_\_\_\_  
 Alcohol service Hours: \_\_\_\_\_ to \_\_\_\_\_  
 Enclosed, how \_\_\_\_\_

The exterior area is adequately viewed and/or supervised by Service Permittees.

\_\_\_\_\_  
(Investigator's Initials)

Seasonal Variations:  Yes  No If yes, explain: winter hrs - 8am-9pm

## ENTERTAINMENT

Check all that apply:

- Live Music  Karaoke  
 Recorded Music  Coin-operated Games  
 DJ Music  Video Lottery Machines  
 Dancing  Social Gaming  
 Nude Entertainers  Pool Tables  
 Other: \_\_\_\_\_

## DAYS & HOURS OF LIVE OR DJ MUSIC

Sunday \_\_\_\_\_ to \_\_\_\_\_  
 Monday \_\_\_\_\_ to \_\_\_\_\_  
 Tuesday \_\_\_\_\_ to \_\_\_\_\_  
 Wednesday \_\_\_\_\_ to \_\_\_\_\_  
 Thursday \_\_\_\_\_ to \_\_\_\_\_  
 Friday \_\_\_\_\_ to \_\_\_\_\_  
 Saturday \_\_\_\_\_ to \_\_\_\_\_

## SEATING COUNT

Restaurant: \_\_\_\_\_ Outdoor: \_\_\_\_\_  
 Lounge: \_\_\_\_\_ Other (explain): \_\_\_\_\_  
 Banquet: \_\_\_\_\_ Total Seating: \_\_\_\_\_

### OLCC USE ONLY

Investigator Verified Seating: \_\_\_\_ (Y) \_\_\_\_ (N)

Investigator Initials: \_\_\_\_\_

Date: \_\_\_\_\_

I understand if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: [Signature] Date: 4/23/2011

1-800-452-OLCC (6522)

[www.oregon.gov/olcc](http://www.oregon.gov/olcc)

(rev. 12/07)

6.  
OTHER BUSINESS



To: Mayor and City Council  
Through: Bill Monahan, City Manager  
From: Cynthia Trosino, Human Resources Director  
Subject: Agent of Record for Worker's Compensation Plan  
Date: May 9, 2011

Action Requested

Adopt the resolution approving Beecher Carlson as the Agent of Record for the Worker's Compensation Plan.

History of Prior Actions and Discussions

None in the recent past.

Background

Beecher Carlson is currently the agent of record for the City for risk management and our medical benefit programs. An agent of record performs services related to assisting a City to obtain and manage its insurance programs to obtain effective and efficient coverage.

The City would receive a multi-service discount rate if we were to include our worker's compensation program with Beecher Carlson. There is no record that in the past the city designated an agent of record for its worker's compensation plan.

Fiscal Impact - None

Work Load Impacts - None

Alternatives - None

Attachments – Proposed resolution

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DESIGNATING BEECHER CARLSON AS THE AGENT OF RECORD FOR ITS WORKER'S COMPENSATION PLAN.**

**WHEREAS**, it is typical for a local government to designate an agent of record to act on its behalf in the selection and administration of the various insurance programs utilized by the government, and

**WHEREAS**, the governing body of a city is the appropriate body to designate an agent of record, and

**WHEREAS**, the City has been satisfied with the performance of Beecher Carlson in the performance of said duties in the areas of agent of record for risk management and the City's medical benefit programs, and

**WHEREAS**, there is efficiency in having one agent of record manage risk management, medical benefit programs, as well as the worker's compensation plan, and

**WHEREAS**, there is no previous approval by Council of an agent of record for its worker's compensation plan.

**NOW, THEREFORE, BE IT RESOLVED** that the Council of the City of Milwaukie, Oregon, designates Beecher Carlson as the Agent of Record for the worker's compensation plan for the City of Milwaukie.

Introduced and adopted by the City Council on \_\_\_\_\_ .

This resolution is effective on \_\_\_\_\_ .

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney



6.B.

To: Mayor and City Council  
Through: Bill Monahan, City Manager  
From: Bob Jordan, Chief of Police *[Signature]*  
Re: Contract to renew Photo Radar

### Photo Radar Program Audit

#### Introduction

The City of Milwaukie has been authorized to utilize photo radar by the Oregon State Legislature for speed enforcement since March 2008. The main purpose of photo radar has been to enhance traffic safety through the reduction of motor vehicle accidents in the City of Milwaukie. We are uniquely situated for the successful deployment of this technique because of the presence of two major highways, Highway 224 and McLoughlin Boulevard, which bisect the city and are adjacent to residential neighborhoods. MPD had contracted with a vendor named Affiliated Contract Services (ACS), to facilitate the program. Although we have never lost the statutory authority to operate photo radar, our contract with ACS expired in mid-January 2011

Essentially, the photo radar program consists of an officer assigned to a marked police van. The van is equipped with state-of-the-art radar and photographic equipment. When deployed on the highway, this equipment will measure the speed of traffic, and take simultaneous photographs of the driver and the license plate of the speeding vehicle. Those photographs are used to identify the registered owner of the vehicle. The driver's license photograph of the owner is then compared with the actual photograph taken on the highway. If there is a sufficient match of the two photographs, a citation is issued.

The enabling statute requires that the van be occupied by a police officer and that the measured speed be ten miles or more over the posted speed limit. ACS, our vendor assists in the processing of the data.

On February 1, 2011, I provided a briefing to the City Council about the photo radar program, which included:

- 1) A history of the photo radar program in the City
- 2) Statistical information about the prevention of motor vehicle accidents
- 3) A report on the financial costs and benefits of the program since its inception
- 4) Anecdotal information about support for the program among our neighborhood district associations

**POLICE DEPARTMENT**  
3200 SE Harrison  
Milwaukie, Oregon 97222  
P) 503 786 7400 / F) 503 786 7426  
**RS PAGE 67**  
www.cityofmilwaukie.org

We solicited information from two vendors, ACS and RedFlex. RedFlex has Photo Radar Contracts with other Oregon cities, notably Beaverton and Medford. We are submitting a photo radar renewal contract from ACS, our original vendor. The contract includes several improvements that will enhance the efficiency and effectiveness of the program. Some of the improvements were the result of our discussion with our Municipal Court personnel and the observations of the Judge himself. Notably those improvements are:

- 1) A \$500 per month reduction in the fee that ACS charges for the lease of their equipment and processing fees
- 2) The installation of newer digital photo equipment to replace the older "wet-film" camera previously supplied
- 3) An agreement on the part of ACS to make their training manuals subject to the Court's discovery orders on photo radar cases. (see attachment #3)
- 4) An agreement on the part of ACS to observe the Court's rulings relative to the need to provide a date of issuance on citations that require re-issuance (see attachment #4)
- 5) The term of the contract is for a three year period
- 6) If approved, the photo radar will be fully operational and equipped with a new digital camera system within 60 days of the signing of the contract
- 7) Other minor coordination and administrative matters such as the contract being modified to be a stand-alone contract, and no longer as a "piggy-back" contract to a related City of Portland contract

The contract submitted includes these changes. It has been reviewed by Ron Guerra of the City's law firm.

### **Recommendation**

That the City Council approve a resolution to allow the Mayor to sign the proposed Photo Radar Contract.

## AGREEMENT

THIS AGREEMENT is entered into on May \_\_, 2011 ("Effective Date"), by and between the City of Milwaukie, a municipal corporation organized under the laws of Oregon, hereinafter referred to as the "City," and ACS State & Local Solutions, Inc., hereinafter referred to as "Contractor," 12410 Milestone Center Drive, Germantown, MD 20876.

### WITNESSETH

WHEREAS the City desires a contractor to provide a Photo Speed Enforcement Program ("Services").

WHEREAS the City and Contractor have mutually benefitted from a three year relationship whereby Contractor has provided Services to the City; and

WHEREAS the City desires to have the Contractor perform said Services under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants and promises set forth, the parties hereto agree as follows:

1. **SCOPE OF WORK.** The Contractor agrees to provide all goods and services described in this Agreement and its associated Exhibits (collectively referred to as ("Agreement")). Contractor shall perform the Services described in this Agreement (a) in a timely, diligent and professional manner in accordance with recognized standards of the applicable industry or profession, and (b) in accordance with the time periods set forth in this Agreement and in the schedule and sequencing specified by the City and agreed to by Contractor. Contractor shall furnish efficient business administration and superintendence and shall use its best efforts to insure that such Services being performed under this Agreement are completed in the best way and in the most expeditious and economical manner consistent with the City's best interests.
2. **APPLICABLE DOCUMENTS.** This Agreement is comprised of the following documents:
  - a. The main body of this Agreement
  - b. EXHIBIT 1: Scope of Work
  - c. EXHIBIT 2: Compensation

All of the Exhibits listed above are hereby attached and incorporated by reference into this Agreement for all purposes.

3. **TERM.** This Agreement shall be effective from on the Effective Date and shall expire three years thereafter. The City reserves the right to renew this Agreement for two additional one

(1) year periods. After the expiration or termination of this Agreement, Contractor will continue to receive its fee for paid citation as set forth in Exhibit 2 for violations that occur prior to the expiration or termination of this Agreement.

4. **PAYMENT TERMS.** City shall pay Contractor as set forth in Exhibit 2.
5. **RISK OF LOSS OR DAMAGE.** Risk of loss of or damage to any Contractor equipment in Contractor's care, custody, or control shall be on the Contractor, except that City shall be responsible for any damage caused to Contractor equipment and cameras due to the negligent acts or omissions of the City or its agents, and shall be responsible for any equipment repair and/or replacement costs resulting from any act of the City or its agents, or third parties other than the State. In no event shall Contractor's liability exceed 20% of the value of this Agreement.
6. **INSURANCE AND BONDING:** Contractor shall provide the following types of insurance to be maintained throughout the Agreement period.
  - a. **Commercial General Liability:** with a combined single limit for bodily injury and property damage in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate. The City of Milwaukee shall be included as an additional insured on the commercial general liability.
  - b. **Workers' Compensation:** to meet statutory limits.
  - c. **Excess Liability:** \$1,000,000 per occurrence.
  - d. **Crime Insurance (if applicable):** applicable to employees of Contractor covering employee dishonesty.
  - e. **Professional Liability:** \$1,000,000 per claims made basis.

A standard ACORD form certificate of insurance will be provided upon Agreement execution. Contractor shall not be required to acquire performance, payment, or other kinds of bonds.

7. **INDEMNIFICATION:** Contractor shall defend, indemnify, and hold harmless the City, its employees, agents, and officers, from and against any and all claims, damages, actions, liabilities and expenses, including reasonable attorney's fees, resulting from the tortious or negligent acts or omissions of Contractor, its employees, agents, or subcontractors in performing the services required under this Agreement.
8. **FORCE MAJEURE:** Neither party shall be liable for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control and that occur without its fault or negligence, including without limitation, Acts of God (such as earthquake, fire, flood, hurricane, storm, epidemic, pandemic, quarantine, or other natural disaster or public health emergency); humanly-caused disasters such as riot, civil war, rebellion, revolution, insurrection, war, invasion, hostilities (whether war is declared or not), terrorist activity, sabotage, or arson; failures or absence of electrical, telecommunications, Internet, or other infrastructure; the acts of civil, military, or other governmental authorities, such as judicial decisions, nationalization,

government sanction, blockage, embargo, the declaration of martial law, or any other action or inaction of any government; labor dispute, strike, or lockout; or the errors, omissions, or defaults of third parties.

**9. TERMINATION FOR DEFAULT BY EITHER PARTY.** Unless the parties agree otherwise in writing, in the event that either party violates or fails to perform any material covenant, provision, obligation, term or condition contained in these Agreements, the other party may terminate this agreement provided that (a) the offended party has notified the other party in writing of any alleged breach; and (b) the defaulting party has not, within thirty (30) days of receipt of written notice of default from the non-defaulting party, cured the default.

**10. DISPUTE RESOLUTION.** The parties agree that all disputes arising under or related to this Agreement shall be resolved solely in accordance with this Article.

- a. **Mediation.** Following the service of a Notice of Dispute, the Parties shall use all reasonable endeavors to settle the dispute amicably through negotiations between their respective authorized representatives within a period of thirty (30) calendar days starting from the date of receipt of the Notice of Dispute by the relevant Party. The Parties may by agreement extend this thirty (30) calendar day period and take all such other steps as they mutually agree will assist them in reaching an amicable settlement of the Dispute, including the joint appointment of a person who is an expert in the subject matter of the Dispute.
- b. **Arbitration.** Except in the case of a breach of a Party's intellectual property or confidentiality obligations, all disputes which cannot be resolved through negotiation or mediation between the Parties as set forth above shall be resolved solely and exclusively through confidential and binding arbitration.
  - i. Any such arbitration proceeding shall occur in Portland, Oregon utilizing the Commercial Arbitration Rules of the American Arbitration Association (AAA). The Parties shall attempt to agree on a single arbitrator. In the event that the Parties cannot agree on a single arbitrator within thirty (30) calendar days of the date on which an impasse is reached, the arbitrator shall be chosen by the AAA utilizing its rules, provided that such arbitrator shall be either (i) a retired judge or (ii) an attorney who has practiced in the area of state or local procurement law for at least three years.
  - ii. The arbitrator shall give effect to statutes of limitation in determining any Dispute. Any Dispute concerning whether an issue is arbitrable shall be determined by the arbitrator. The arbitrator shall follow the law selected in this Agreement, and the terms of this Agreement in reaching a decision. The decision of the arbitrator shall be in writing, shall include the findings of fact, conclusions of law, and rationale for the decision, and shall be final and binding and enforceable in any court of competent jurisdiction.
  - iii. The parties shall each pay their own costs and each party shall share the costs of arbitration 50/50.
  - iv. No provision of this Article 10 shall limit the right of a Party to this

Agreement to obtain provisional or ancillary equitable remedies from a court of competent jurisdiction before, during, or after the pendency of any arbitration.

**11. AMENDMENTS.** Any changes to this Agreement must be made by written amendment and signed by authorized representatives of Contractor and City to be valid.

**12. NOTICES.** Any notice or demand to be given under this Agreement shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notice shall be addressed to the following:

**CONTRACTOR:**

ACS State & Local Solutions, Inc.  
12410 Milestone Center Dr.  
Germantown, MD 20876  
Attention: TGS Contracts

**CITY:**

City of Milwaukie  
10722 SE Main Street  
Milwaukie, Oregon, 97222  
Attention: Capt. Steve Bartol

**13. ENTIRE AGREEMENT.** This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the City and the Contractor, and the parties shall not be bound by any prior negotiation, representations or promises, not contained herein.

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Agreement to be executed by their duly authorized representatives on the Effective Date written above.

**ACS STATE & LOCAL SOLUTIONS, INC.**

**CITY OF MILWAUKIE**

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

*Allen Shott*  
\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**EXHIBIT 1**  
**Scope of Work**

- I. TECHNICALSERVICESAND SCHEDULE:** The Contractor shall provide and implement the system as follows:

**A. EQUIPMENT**

1. The Contractor will provide the digital camera system ("Equipment") for use in vans owned by the City. Currently, there is one City-owned van with a film camera system installed. ACS will install the Equipment in such van within 90 days after the Effective Date of this Agreement. During this 90 day period the City may continue to use the film camera system in accordance with the compensation provision in Exhibit 2. The City has the option of supplying additional vehicles for use of the Equipment. If so, Contractor will provide and install the Equipment in those vehicles. In any case Contractor will provide a system with technology equal to or better than that provided to the Portland Police Bureau.
2. City shall not guarantee nor be under any minimum required usage of the photo radar unit.
3. Contractor will provide field service technicians, spare parts and equipment to repair any malfunctions with the equipment within 48 hours, excluding weekends and holidays.
4. The use of a photo radar program is considered a preventative program for safe driving therefore the City does not operate under a violation quota system. There will be no minimum number or quota of violations required to be generated through the use of the photo radar unit and Equipment.
5. Contractor shall supply Equipment that, to the best knowledge of the Contractor, is new, that is not obsolete or nearly obsolete (i.e. expected to become obsolete through the introduction of a new product line within the next six months following Contract execution), used, or remanufactured. Contractor shall provide model numbers for camera systems that it provides.
6. Should new equipment or a technological upgrade become available during the course of the Contract, the Contractor shall offer the City the opportunity to upgrade the Equipment. The installation of any new technology may be at an additional cost. The exact cost will be based on the scope of the technology upgrade and negotiations at the time of the upgrade.
7. The City is only obligated to use Equipment or production models that have been satisfactorily demonstrated to the City, or that have demonstrated a record of successful deployment by other law enforcement agencies.

8. Any additional photo radar system implemented shall be of new manufacture and best quality and installed in accordance with approved recommendations of the manufacturer thereof, and shall conform to the Equipment specifications listed below.

9. The Equipment shall meet all applicable Federal standards and specifications and be of a type approved for licensing and use in the City of Milwaukie.

10. The Equipment shall be capable of executing its functions so that it performs according to, and fulfills the requirements of, the City.

11. Title to all photo radar cameras, Equipment, and other materials provided to the City by Contractor will remain the property of Contractor. Upon expiration or termination of this Contract, all photo radar cameras, Equipment, and other material provided to the City by Contractor will be returned to Contractor.

**B. SPECIFIC EQUIPMENT REQUIREMENTS:** The Contractor also shall provide the following in regard to the Equipment:

1. The Equipment shall be able to consistently identify a vehicle and driver traveling through a radar beam and take a photograph of the vehicle traveling in excess of a predetermined speed threshold.

2. The Equipment shall be capable of detecting the speed of target vehicle when operated from a stationary vehicle and subsequently displaying that information digitally.

3. A mobile reader board shall be provided that displays the speed of passing vehicle while the photo radar unit is in use. The reader board shall display the speed in digits that are a minimum of 9-1/2, inches in height and capable of being seen. The display on the photo-radar van must be readable from a distance of 150 feet.

4. The Equipment shall be capable of recording the speed of a vehicle with an accuracy of plus or minus one (1) mile per hour and shall display that information in a mile per hour format.

5. The Equipment shall measure the speed of traffic that is approaching or going away from it and gather data for statistical analysis.

6. The Equipment shall be capable of deployment at a wide range of sites, locations and operating conditions, including but not limited to, heavy traffic volumes, multiple lanes of traffic, adverse weather and temperature conditions, and different road surface configurations.

7. The Equipment must be able to operate while vehicles are moving at speeds of 15-150 miles per hour.

8. The camera shall be able to photograph up to three actual lanes of traffic concurrently and be able to produce high resolution images of those vehicles. Photographs shall show the driver of the vehicle if a violation occurs. The photograph shall show at least one license plate.

9. Cameras shall operate at night and shall come equipped with flash attachments. Photographs taken at night shall produce high resolution images and permit the identification of the driver (if a photograph of the front of the vehicle is taken) and at least one license plate.

10. The Equipment shall be capable of operating in an automated mode, with easy set-up, little maintenance and minimal human intervention required after set-up.

11. The Equipment shall be capable of performing internal calibration tests for speed measurement accuracy and functionality. The internal test shall produce a visual and/or auditory signal that permits an operator to determine if the Equipment is functioning properly.

12. The Equipment shall be capable of performing an electronic internal calibration test. If the internal calibration test shows that the Equipment is failing or the calibration has been lost, the Equipment shall display a failure code that is visible to the operator and shut down.

13. The Equipment shall have sufficient shielding and suppression of radio frequency ("RF") current in the 800 Megahertz ("MHz") to 900 MHz band to prevent interference from a typical 30 watt Police radio transmitter operating in the same vehicle as the photo radar unit.

14. Contractor to provide a streamlined log-in procedure as well as an audible tone when a violation is captured.

**C. DOCUMENTS AND MANUALS:** Contractor shall provide the City with five (5) copies of all relevant Equipment specifications, manuals and materials relating to the capabilities and operation of all the Equipment. Within 90 days from date of Contract execution, the Contractor shall obtain from the manufacturer of the Equipment any rights required for the City to make and provide copies of non-proprietary manuals and materials in response to any discovery requests required as a result of the use of the radar equipment. Training manuals for the Equipment will be provided to the City for viewing by citizens at the City police department. City agrees to treat such training manuals with the same care of confidentiality as it does its own confidential material.

**D. WARRANTY AND MAINTENANCE:** The Contractor shall maintain the Contractor furnished photo radar enforcement system and its associated Equipment in good working order for the duration of the Contract.

1. Excluding weekends and City holidays, any malfunctioning camera or other Contractor furnished Equipment shall be returned to good working order within forty-eight (48) hours of notification that the Equipment is not in proper working order. If it cannot be made operational, the camera or other equipment will be replaced at no charge to the City.

2. Reports of Equipment malfunctions will be communicated by the City to the Project Manager, or in his/her absence, the field service technician or the lead traffic service agent. Contractor shall acknowledge receipt of such calls as soon as possible.
3. An electronic log of all camera component problems reported and all repair activity will be maintained by the Contractor for each incident reported. A copy of this repair log will be provided either electronically or paper copy to the City within ten (10) days following the City's request.
4. Contractor warrants that its Equipment is in good working order. Contractor will maintain all Equipment provided to City throughout the duration of the Contract period.
5. In order to assure all system components are working as intended, the Contractor shall provide maintenance on the photo radar and related Equipment, such as but not limited to, the camera, video, radar, and computer, during the term of this project, as required within this agreement.
6. Contractor shall provide service and support in a timely manner so as to minimize the amount of time that Equipment is not functioning and citations are not being issued. Excluding weekends and holidays, all repair and/or replacement parts shall be provided by the Contractor within 48 hours, excluding weekends and holidays. Substitute or replacement parts and/or Equipment shall be provided by the Contractor when repair times or parts supply exceeds this time limit.
7. Contractor shall provide a preventive maintenance program in order to achieve reasonable reliability and availability of the Equipment. Maintenance shall occur at regularly scheduled intervals and at times when the Equipment is not being used. Maintenance shall include the running of diagnostics to ensure the early identification of any component failure.
8. Contractor shall work with the City Police to provide a mechanism and procedure for backing up all data files.
9. Contractor shall provide security precautions against unauthorized use and accidental destruction or modification of data as a result of human intervention or other disasters such as power failure.

**E. BILLING:** Contractor shall coordinate with the City's finance department to set up billing and accounting procedures acceptable to the City. The City agrees to provide the Contractor with the monthly billing reports within 15 days after the end of each month.

**F. DELIVERY:** For the City, Contractor shall deliver all equipment, F.O.B., to the Police Department.

Milwaukie Police Department  
3200 S.E. Harrison ST  
Milwaukie, OR 97222

## **G. PHOTOGRAPH REQUIREMENTS**

1. **Image Technology:** Contractor shall use the most current technology and most up-to-date digital camera apparatus in accordance with section I(A)(6) above.
2. The photographic primary camera control unit shall produce a clear photograph that contains the following data: **(a)** Display of front license plate of vehicle. **(b)** Display of driver's face. **(c)** Scene of location where the alleged violation occurred. **(d)** Motor vehicle during the alleged violation. **(e)** The day, month and year of the alleged violation. **(f)** The time of the alleged violation displayed in hours, minutes and seconds. **(g)** The speed of the vehicle displayed in miles per hour. **(h)** Officer's identification code. **(i)** Location code information.
3. The photographic secondary camera control unit shall automatically take a photograph without manual intervention from the police officer in attendance and shall contain at least the following data: **(a)** Display of rear license plate of vehicle. **(b)** Scene of location where the alleged violation occurred. **(c)** Motor vehicle during the time of the alleged violation. **(d)** Day, month and year of alleged violation. **(e)** Time of the alleged violation displayed in hours, minutes and seconds. **(f)** Speed of the vehicle photographed displayed in miles per hour. **(g)** Officer's identification code. **(h)** Location code information.

**H. IMAGE AND CITATION PROCESSING SERVICES:** Contractor shall provide all staffing required for the development and presentation of the photographic images and supplies.

1. Contractor shall provide the City with digital images of alleged violators, and photographs for court packets and citizens requesting to view their alleged violations. These photographs shall be provided to the City in hard copy and digital format.
2. Contractor will be responsible for processing all images.
3. The Contractor shall provide one Field Service Technician (FST) responsible for retrieval of photo radar images based upon a schedule established by the City. The FST will respond to any report of a photo radar camera problem. All repair activity will be tracked by the FST on an electronic maintenance log.
4. The Contractor shall collect memory cards, PR Officer Visual Observation Log and PR Equipment Set-up Checklists (as applicable) for the Contractor system. Contractor will establish a chain of custody, consistent with Oregon Law, for the alleged violation date and submit images for processing.
5. The Contractor will convert images to a digital format, compare to PR Officer Visual Observation Log (as applicable), determine and enter license plate information, view driver and ensure that the view of the driver is identifiable and is not obstructed or out of focus.
6. Contractor shall maintain access to the current motor vehicles database that is maintained by the Oregon State Department of Motor Vehicles. In addition, Contractor shall have access to current motor vehicle databases in the states of Washington,

California and Idaho. Access to these databases shall be maintained for the life of the Contract.

7. The Contractor will use the DMV information, verify information collected during the viewing process, re-check license plate information and registered owner information, determine whether the gender of the driver matches the gender of the registered owner of the vehicle if the owner is an individual, compare vehicle type and owner type and prepare images for storage.

8. After the verification process, the Contractor will print the citations and transmit them to the police for approval and signature. Upon return of the approved signed citations from the police, the Contractor will include the printed corresponding cover letter with the violation photo and the appropriate printed affidavit of non-liability or certificate of innocence forms and deposit into the mail within guidelines established by Oregon law.

9. If the current Contractor operation's center in Portland closes, the Contractor shall provide a business plan that will identify the same access and services as the present local operation center that is acceptable to the City. The relocated operation's center shall have adequate staff to operate, manage, maintain and keep the same service level as required by the Contract.

10. Contractor will be responsible for pick-up and delivery of data on a daily basis (to and from the respective police departments/bureaus and courts). Contractor will use the license plate number from the photographs to identify the vehicle owner from the department of motor vehicles records. Contractor shall ensure that the gender of the registered owner of the vehicle appears to be the same as the person whose photograph is taken.

11. Contractor shall prepare warning letters or citations and notice letters for all persons who appear to have violated the speed limit.

12. Contractor shall obtain the police officer's signature for each citation and shall mail letters and citations to the identified vehicle owners within six business days following the alleged violation.

13. Where investigation or legal necessity requires that an officer re-issue a citation that has already been authorized, Contractor will provide that a re-issued citation will bear the re-issue date as well as the date of the original citation.

**J. RECORDS AND ARCHIVING:** The Contractor shall maintain and provide supporting records of violations to the City and courts and shall maintain all photographs in a manner that preserves their chain of custody to ensure their admissibility in court.

1. Contractor shall maintain a list of all voided and destroyed images.

2. City directs the Contractor to store all images for which citations have been issued for a period of two years from the date of the citation or 30 days after disposition of the

case, whichever is later. Contractor shall keep all images for which citations are not issued for at least 30 days. When citations are dismissed by a person with official authority or when citations are not issued, the City directs the Contractor to destroy all images after 30 days. City directs Contractor to delete all images for which citations have been issued for a period of two years from the date of the citation or 30 days after disposition of the case.

3. The City will require online storage of images for the time periods referenced in Subsection 2 above and shall provide an authenticated listing of all archival records.
4. Retrieval of archived information shall be available within five business days of a request for retrieval.

#### **K. STATISTICAL ANALYSIS AND REPORTS**

1. Contractor shall provide reports that show and analyze time, date, speed, number of vehicles, and other data required for automated citation generation and traffic analysis. The reports shall be submitted to the City within 30 days of the end of each calendar month and shall include such information as is mutually agreed to by both parties to this agreement including the following mandatory items: (a) Client Monthly Summary Report. (b) Issuance Analysis Report. (c) Officer Summary Report. (d) Officer Activity Report. (e) Deployment Summary Report. (f) Location Activity Report. (g) Current list of all valid location codes with information, including the court location, speed zone, applicable ORS statute and description of the geographic location.
2. Additional Reports. Contractor shall provide additional reports at City's request. Such additional reports will be mutually agreed upon by the parties as they may be subject to additional fees charged by Contractor.
3. Contractor shall provide the City with a monthly Activity Report within ten (10) days following the end of each month. The monthly report shall, at a minimum, include the following information: (a) The total number of citations issued. (b) The total number of photographs taken and percentage of total vehicles whose photograph was taken that a violation notice was sent. (c) The total number and percentage of violations, delineated by speed and location, with time deployed at locations. (d) Hours of use at anyone site.

**L. TRAINING REQUIREMENTS:** The Contractor shall provide a minimum of four 2-day photo radar operator training classes per Contract year for City police personnel who will operate the system, which will include both classroom and hands-on training. The maximum class size will be 12 persons. Such training will occur in City provided facilities, unless otherwise agreed upon by the parties. The Contractor will provide the following additional training:

1. The Contractor shall provide technical instruction on Equipment use and operation. Course content shall include: the theory of the device; the technical knowledge required for court purposes; radar and photography principles; and actual deployment techniques. Contractor shall provide up to four training classes at no cost to the City.

Contractor shall supply all technical training materials and handouts in sufficient quantities to cover the training of identified persons.

2. Contractor shall provide up to two additional training sessions and materials to Milwaukie Municipal Court judges and court staff if requested by the City.

**M. COURT ASSISTANCE:** The Contractor shall provide, as reasonably necessary, a person who is able to be qualified as an expert witness under current court requirements to testify in court in regard to photo radar technology along with any documentation that may be required. Services may include but not be limited to:

1. The Contractor will provide the appropriate paper copy of the issued citation to the court, together with an electronic text file that contains the following information: Officer name, DPSST number, citation number, name of the alleged violator, the alleged violation, fine amount, any enhanced penalty indication, court hearing date and time, court location, courtroom number, and any other necessary information that the court may require and that has been discussed and mutually agreed upon.

2. Within five business days (but before the Court date) of notification from the Court of scheduled cases, the Contractor will prepare and provide documentation to the officer who will testify about the alleged violation. Such documentation will include information about the operation of the camera, a checklist regarding camera operation and repair, two photographs, maintenance logs (if necessary or requested), a contact log showing any contacts with the alleged violator and any other information that may be required. Exceptions shall be considered those cases added by the court system outside of normal channels.

3. Contractor shall provide City and/or courts with a minimum of three photographs for each citation issued (front and two rear photographs) when requested. The photograph shall be a minimum 3 by 5 inches, unless a larger photograph is necessary to view the driver/violation or to prosecute the case.

4. Contractor shall work with City to develop acceptable warning, explanatory, and other letters or correspondence for the court case.

5. The Contractor shall work with City personnel and the court in order to develop and update the forms library as it relates to legal forms and court documentation: (a) Develop an acceptable citation form. (b) Implement and utilize electronic signatures and court filing of citations. (c) Receive and process the certificate of innocence and non-liability forms; a listing of citations to be dismissed shall be provided to the City's police bureau as they are processed. (d) The City shall audit, review and check certificate of innocence forms with photographic images taken of alleged violators to determine whether owners are accurately responding to the citations. (e) The Contractor will provide secure, online access for the public to view images on which citations were based.

6. Contractor and City acknowledge that ORS 153.076, and ORS 135.805 - .873, along with state and federal law of due process, impose a duty on the City to allow a

defendant to inspect discovery favorable to him or her in connection with violation proceedings. City and Contractor understand that pursuant to these laws, judges throughout Oregon have granted defense discovery requests for materials on, among other things, photo radar training, maintenance, and system testing, as well as system operating instructions and time and dates of deployment. Contractor understands the City has discovery obligations and agrees to confer with City during pretrial discovery and provide documents to the City that respond to discovery requests. Contractor shall provide documents in a format that satisfies defense requests for production.

7. The City understands that Contractor has a business interest in protecting its proprietary business information and, thus, the City will not object to Contractor's requests to protect this information during the discovery process. City further acknowledges that Contractor expressly states that its proprietary information that is part of a public record, if any, is submitted to the City in confidence and that the City will agree to Contractor's requests to claim an exemption from public records disclosure on this issue.

#### **N. COMMUNICATIONS/PUBLIC EDUCATION**

1. Contractor shall be available to act as a resource during certain events planned as part of the photo radar communications, and public education strategy. This includes, but is not limited to, Equipment demonstration as part of community presentations, if it is determined to be in the interest of the City and the Contractor.

2. Contractor shall provide City with public information materials. These materials should include, but are not limited to, brochures and other printed information describing what photo radar is, how photo radar works and what benefits the use of photo radar provides.

**O. TELEPHONE HOT LINE:** The Contractor shall provide a telephone hotline that will permit callers to obtain basic information during the normal work week.

1. The Contractor will staff the telephone hotline from 8:00 a.m. to 5:00 p.m. Monday through Friday of each week excluding holidays. During other times, Contractor's hotline will permit callers to obtain information and to leave a voice message. The letters that accompany citations issued will have the toll-free number written on them.

2. The City shall provide Contractor with answers to questions that are frequently asked by the public when it calls the hotline. Contractor shall provide those answers to the public in response to their questions.

**II. WORK PERFORMED BY THE CITY:** Police Department staff shall make available sufficient hours of staff personnel as is required to meet with the Contractor and provide such information as required. The Office of Management and Finance has assigned a project manager who will oversee the work and provide support as needed.

The City shall be responsible for implementing and maintaining usual, customary and appropriate internal accounting procedures and controls, internal controls and other appropriate procedures and controls for the City. These controls will include information technology, proprietary information, and trade secret safeguards if appropriate to City work.

- III. DELIVERY:** All goods, materials and services shall be FOB delivered to the City police department at 3200 S.E. Harrison ST, Milwaukie OR 97222 or as designated by the work conducted within this Contract. All prices offered shall be inclusive of all shipping and delivery costs. The Contractor must be prepared to furnish the items as agreed upon by the parties after receipt of an order.

With assembly, installation, calibration and other services required under this Contract, offered prices shall include all costs associated with delivery, assembly, setup, and proper disposal of packaging material. The offer price shall be exclusive of any sales, purchaser, or consumer tax. Tax exemption certificates will be furnished to Contractor, upon request.

Delivery of the item(s) on the purchase order shall not be completed until all discrepancies have been corrected. Items not meeting Contract specifications shall be returned at Contractor's expense. Contractor shall replace rejected items as agreed upon by the parties after receipt of re-order request. Acceptance occurs when the City authorizes payment of the invoice.

- IV. PRICES AND PRICE CHANGES:** Initial Contract prices shall be as established herein. Unit prices shall remain firm through the first two years of the Contract. At the end of the two-year period following the date of acceptance, price changes may be allowed herein. Contractor agrees to provide pricing for all products for which Contractor is an authorized distributor for the duration of this Contract. Following the end of the two year period referenced above, City and Contractor acknowledge that prices for goods and services furnished by Contractor under this Contract may need to be adjusted during the term of the Contract due to changes in Contractor's prices, rate plans, or product offerings. Such price changes shall be documented in writing between Contractor and City as amendments.

Contractor shall submit any proposed pricing revisions in writing to the City for consideration at least thirty (30) days before the proposed effective date. Price adjustments shall become effective thirty (30) days from the date of last signature on the Contract amendment document or as otherwise stated therein. Except that no increase in price adjustments shall become effective prior to a date one year following the date of acceptance. Price adjustments will only become effective by fully executed amendments, following receipt by the City of the requested price adjustment.



## AGREEMENT

THIS AGREEMENT is entered into on May \_\_, 2011 ("Effective Date"), by and between the City of Milwaukie, a municipal corporation organized under the laws of Oregon, hereinafter referred to as the "City," and ACS State & Local Solutions, Inc., hereinafter referred to as "Contractor," 12410 Milestone Center Drive, Germantown, MD 20876.

### WITNESSETH

WHEREAS the City desires a contractor to provide a Photo Speed Enforcement Program ("Services").

WHEREAS the City and Contractor have mutually benefitted from a three year relationship whereby Contractor has provided Services to the City; and

WHEREAS the City desires to have the Contractor perform said Services under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants and promises set forth, the parties hereto agree as follows:

1. **SCOPE OF WORK.** The Contractor agrees to provide all goods and services described in this Agreement and its associated Exhibits (collectively referred to as ("Agreement")). Contractor shall perform the Services described in this Agreement (a) in a timely, diligent and professional manner in accordance with recognized standards of the applicable industry or profession, and (b) in accordance with the time periods set forth in this Agreement and in the schedule and sequencing specified by the City and agreed to by Contractor. Contractor shall furnish efficient business administration and superintendence and shall use its best efforts to insure that such Services being performed under this Agreement are completed in the best way and in the most expeditious and economical manner consistent with the City's best interests.
2. **APPLICABLE DOCUMENTS.** This Agreement is comprised of the following documents:
  - a. The main body of this Agreement
  - b. EXHIBIT 1: Scope of Work
  - c. EXHIBIT 2: Compensation

All of the Exhibits listed above are hereby attached and incorporated by reference into this Agreement for all purposes.

3. **TERM.** This Agreement shall be effective from on the Effective Date and shall expire three years thereafter. The City reserves the right to renew this Agreement for two additional one

(1) year periods. After the expiration or termination of this Agreement, Contractor will continue to receive its fee for paid citation as set forth in Exhibit 2 for violations that occur prior to the expiration or termination of this Agreement.

4. **PAYMENT TERMS.** City shall pay Contractor as set forth in Exhibit 2.
5. **RISK OF LOSS OR DAMAGE.** Risk of loss of or damage to any Contractor equipment in Contractor's care, custody, or control shall be on the Contractor, except that City shall be responsible for any damage caused to Contractor equipment and cameras due to the negligent acts or omissions of the City or its agents, and shall be responsible for any equipment repair and/or replacement costs resulting from any act of the City or its agents, or third parties other than the State. In no event shall Contractor's liability exceed 20% of the value of this Agreement.
6. **INSURANCE AND BONDING:** Contractor shall provide the following types of insurance to be maintained throughout the Agreement period.
  - a. **Commercial General Liability:** with a combined single limit for bodily injury and property damage in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate. The City of Milwaukee shall be included as an additional insured on the commercial general liability.
  - b. **Workers' Compensation:** to meet statutory limits.
  - c. **Excess Liability:** \$1,000,000 per occurrence.
  - d. **Crime Insurance (if applicable):** applicable to employees of Contractor covering employee dishonesty.
  - e. **Professional Liability:** \$1,000,000 per claims made basis.

A standard ACORD form certificate if insurance will be provided upon Agreement execution. Contractor shall not be required to acquire performance, payment, or other kinds of bonds.

7. **INDEMNIFICATION:** Contractor shall defend, indemnify, and hold harmless the City, its employees, agents, and officers, from and against any and all claims, damages, actions, liabilities and expenses, including reasonable attorney's fees, resulting from the tortious or negligent acts or omissions of Contractor, its employees, agents, or subcontractors in performing the services required under this Agreement.
8. **FORCE MAJEURE:** Neither party shall be liable for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control and that occur without its fault or negligence, including without limitation, Acts of God (such as earthquake, fire, flood, hurricane, storm, epidemic, pandemic, quarantine, or other natural disaster or public health emergency); humanly-caused disasters such as riot, civil war, rebellion, revolution, insurrection, war, invasion, hostilities (whether war is declared or not), terrorist activity, sabotage, or arson; failures or absence of electrical, telecommunications, Internet, or other infrastructure; the acts of civil, military, or other governmental authorities, such as judicial decisions, nationalization,

government sanction, blockage, embargo, the declaration of martial law, or any other action or inaction of any government; labor dispute, strike, or lockout; or the errors, omissions, or defaults of third parties.

**9. TERMINATION FOR DEFAULT BY EITHER PARTY.** Unless the parties agree otherwise in writing, in the event that either party violates or fails to perform any material covenant, provision, obligation, term or condition contained in these Agreements, the other party may terminate this agreement provided that (a) the offended party has notified the other party in writing of any alleged breach; and (b) the defaulting party has not, within thirty (30) days of receipt of written notice of default from the non-defaulting party, cured the default.

**10. DISPUTE RESOLUTION.** The parties agree that all disputes arising under or related to this Agreement shall be resolved solely in accordance with this Article.

- a. Mediation.** Following the service of a Notice of Dispute, the Parties shall use all reasonable endeavors to settle the dispute amicably through negotiations between their respective authorized representatives within a period of thirty (30) calendar days starting from the date of receipt of the Notice of Dispute by the relevant Party. The Parties may by agreement extend this thirty (30) calendar day period and take all such other steps as they mutually agree will assist them in reaching an amicable settlement of the Dispute, including the joint appointment of a person who is an expert in the subject matter of the Dispute.
- b. Arbitration.** Except in the case of a breach of a Party's intellectual property or confidentiality obligations, all disputes which cannot be resolved through negotiation or mediation between the Parties as set forth above shall be resolved solely and exclusively through confidential and binding arbitration.
  - i.** Any such arbitration proceeding shall occur in Portland, Oregon utilizing the Commercial Arbitration Rules of the American Arbitration Association (AAA). The Parties shall attempt to agree on a single arbitrator. In the event that the Parties cannot agree on a single arbitrator within thirty (30) calendar days of the date on which an impasse is reached, the arbitrator shall be chosen by the AAA utilizing its rules, provided that such arbitrator shall be either (i) a retired judge or (ii) an attorney who has practiced in the area of state or local procurement law for at least three years.
  - ii.** The arbitrator shall give effect to statutes of limitation in determining any Dispute. Any Dispute concerning whether an issue is arbitrable shall be determined by the arbitrator. The arbitrator shall follow the law selected in this Agreement, and the terms of this Agreement in reaching a decision. The decision of the arbitrator shall be in writing, shall include the findings of fact, conclusions of law, and rationale for the decision, and shall be final and binding and enforceable in any court of competent jurisdiction.
  - iii.** The parties shall each pay their own costs and each party shall share the costs of arbitration 50/50.
  - iv.** No provision of this Article 10 shall limit the right of a Party to this

Agreement to obtain provisional or ancillary equitable remedies from a court of competent jurisdiction before, during, or after the pendency of any arbitration.

**11. AMENDMENTS.** Any changes to this Agreement must be made by written amendment and signed by authorized representatives of Contractor and City to be valid.

**12. NOTICES.** Any notice or demand to be given under this Agreement shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notice shall be addressed to the following:

**CONTRACTOR:**

ACS State & Local Solutions, Inc.  
12410 Milestone Center Dr.  
Germantown, MD 20876  
Attention: TGS Contracts

**CITY:**

City of Milwaukie  
10722 SE Main Street  
Milwaukie, Oregon, 97222  
Attention: Capt. Steve Bartol

**13. ENTIRE AGREEMENT.** This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the City and the Contractor, and the parties shall not be bound by any prior negotiation, representations or promises, not contained herein.

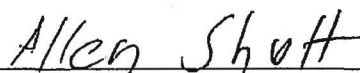
IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Agreement to be executed by their duly authorized representatives on the Effective Date written above.

**ACS STATE & LOCAL SOLUTIONS, INC.**

**CITY OF MILWAUKIE**

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**EXHIBIT 1**  
**Scope of Work**

- I. TECHNICALSERVICESAND SCHEDULE:** The Contractor shall provide and implement the system as follows:

**A. EQUIPMENT**

1. The Contractor will provide the digital camera system ("Equipment") for use in vans owned by the City. Currently, there is one City-owned van with a film camera system installed. ACS will install the Equipment in such van within 90 days after the Effective Date of this Agreement. During this 90 day period the City may continue to use the film camera system in accordance with the compensation provision in Exhibit 2. The City has the option of supplying additional vehicles for use of the Equipment. If so, Contractor will provide and install the Equipment in those vehicles. In any case Contractor will provide a system with technology equal to or better than that provided to the Portland Police Bureau.
2. City shall not guarantee nor be under any minimum required usage of the photo radar unit.
3. Contractor will provide field service technicians, spare parts and equipment to repair any malfunctions with the equipment within 48 hours, excluding weekends and holidays.
4. The use of a photo radar program is considered a preventative program for safe driving therefore the City does not operate under a violation quota system. There will be no minimum number or quota of violations required to be generated through the use of the photo radar unit and Equipment.
5. Contractor shall supply Equipment that, to the best knowledge of the Contractor, is new, that is not obsolete or nearly obsolete (i.e. expected to become obsolete through the introduction of a new product line within the next six months following Contract execution), used, or remanufactured. Contractor shall provide model numbers for camera systems that it provides.
6. Should new equipment or a technological upgrade become available during the course of the Contract, the Contractor shall offer the City the opportunity to upgrade the Equipment. The installation of any new technology may be at an additional cost. The exact cost will be based on the scope of the technology upgrade and negotiations at the time of the upgrade.
7. The City is only obligated to use Equipment or production models that have been satisfactorily demonstrated to the City, or that have demonstrated a record of successful deployment by other law enforcement agencies.

8. Any additional photo radar system implemented shall be of new manufacture and best quality and installed in accordance with approved recommendations of the manufacturer thereof, and shall conform to the Equipment specifications listed below.

9. The Equipment shall meet all applicable Federal standards and specifications and be of a type approved for licensing and use in the City of Milwaukee.

10. The Equipment shall be capable of executing its functions so that it performs according to, and fulfills the requirements of, the City.

11. Title to all photo radar cameras, Equipment, and other materials provided to the City by Contractor will remain the property of Contractor. Upon expiration or termination of this Contract, all photo radar cameras, Equipment, and other material provided to the City by Contractor will be returned to Contractor.

**B. SPECIFIC EQUIPMENT REQUIREMENTS:** The Contractor also shall provide the following in regard to the Equipment:

1. The Equipment shall be able to consistently identify a vehicle and driver traveling through a radar beam and take a photograph of the vehicle traveling in excess of a predetermined speed threshold.

2. The Equipment shall be capable of detecting the speed of target vehicle when operated from a stationary vehicle and subsequently displaying that information digitally.

3. A mobile reader board shall be provided that displays the speed of passing vehicle while the photo radar unit is in use. The reader board shall display the speed in digits that are a minimum of 9-1/2, inches in height and capable of being seen. The display on the photo-radar van must be readable from a distance of 150 feet.

4. The Equipment shall be capable of recording the speed of a vehicle with an accuracy of plus or minus one (1) mile per hour and shall display that information in a mile per hour format.

5. The Equipment shall measure the speed of traffic that is approaching or going away from it and gather data for statistical analysis.

6. The Equipment shall be capable of deployment at a wide range of sites, locations and operating conditions, including but not limited to, heavy traffic volumes, multiple lanes of traffic, adverse weather and temperature conditions, and different road surface configurations.

7. The Equipment must be able to operate while vehicles are moving at speeds of 15-150 miles per hour.

8. The camera shall be able to photograph up to three actual lanes of traffic concurrently and be able to produce high resolution images of those vehicles. Photographs shall show the driver of the vehicle if a violation occurs. The photograph shall show at least one license plate.

9. Cameras shall operate at night and shall come equipped with flash attachments. Photographs taken at night shall produce high resolution images and permit the identification of the driver (if a photograph of the front of the vehicle is taken) and at least one license plate.

10. The Equipment shall be capable of operating in an automated mode, with easy set-up, little maintenance and minimal human intervention required after set-up.

11. The Equipment shall be capable of performing internal calibration tests for speed measurement accuracy and functionality. The internal test shall produce a visual and/or auditory signal that permits an operator to determine if the Equipment is functioning properly.

12. The Equipment shall be capable of performing an electronic internal calibration test. If the internal calibration test shows that the Equipment is failing or the calibration has been lost, the Equipment shall display a failure code that is visible to the operator and shut down.

13. The Equipment shall have sufficient shielding and suppression of radio frequency ("RF") current in the 800 Megahertz ("MHz") to 900 MHz band to prevent interference from a typical 30 watt Police radio transmitter operating in the same vehicle as the photo radar unit.

14. Contractor to provide a streamlined log-in procedure as well as an audible tone when a violation is captured.

**C. DOCUMENTS AND MANUALS:** Contractor shall provide the City with five (5) copies of all relevant Equipment specifications, manuals and materials relating to the capabilities and operation of all the Equipment. Within 90 days from date of Contract execution, the Contractor shall obtain from the manufacturer of the Equipment any rights required for the City to make and provide copies of non-proprietary manuals and materials in response to any discovery requests required as a result of the use of the radar equipment. Training manuals for the Equipment will be provided to the City for viewing by citizens at the City police department. City agrees to treat such training manuals with the same care of confidentiality as it does its own confidential material.

**D. WARRANTY AND MAINTENANCE:** The Contractor shall maintain the Contractor furnished photo radar enforcement system and its associated Equipment in good working order for the duration of the Contract.

1. Excluding weekends and City holidays, any malfunctioning camera or other Contractor furnished Equipment shall be returned to good working order within forty-eight (48) hours of notification that the Equipment is not in proper working order. If it cannot be made operational, the camera or other equipment will be replaced at no charge to the City.

2. Reports of Equipment malfunctions will be communicated by the City to the Project Manager, or in his/her absence, the field service technician or the lead traffic service agent. Contractor shall acknowledge receipt of such calls as soon as possible.
3. An electronic log of all camera component problems reported and all repair activity will be maintained by the Contractor for each incident reported. A copy of this repair log will be provided either electronically or paper copy to the City within ten (10) days following the City's request.
4. Contractor warrants that its Equipment is in good working order. Contractor will maintain all Equipment provided to City throughout the duration of the Contract period.
5. In order to assure all system components are working as intended, the Contractor shall provide maintenance on the photo radar and related Equipment, such as but not limited to, the camera, video, radar, and computer, during the term of this project, as required within this agreement.
6. Contractor shall provide service and support in a timely manner so as to minimize the amount of time that Equipment is not functioning and citations are not being issued. Excluding weekends and holidays, all repair and/or replacement parts shall be provided by the Contractor within 48 hours, excluding weekends and holidays. Substitute or replacement parts and/or Equipment shall be provided by the Contractor when repair times or parts supply exceeds this time limit.
7. Contractor shall provide a preventive maintenance program in order to achieve reasonable reliability and availability of the Equipment. Maintenance shall occur at regularly scheduled intervals and at times when the Equipment is not being used. Maintenance shall include the running of diagnostics to ensure the early identification of any component failure.
8. Contractor shall work with the City Police to provide a mechanism and procedure for backing up all data files.
9. Contractor shall provide security precautions against unauthorized use and accidental destruction or modification of data as a result of human intervention or other disasters such as power failure.

**E. BILLING:** Contractor shall coordinate with the City's finance department to set up billing and accounting procedures acceptable to the City. The City agrees to provide the Contractor with the monthly billing reports within 15 days after the end of each month.

**F. DELIVERY:** For the City, Contractor shall deliver all equipment, F.O.B., to the Police Department.

Milwaukie Police Department  
3200 S.E. Harrison ST  
Milwaukie, OR 97222

## **G. PHOTOGRAPH REQUIREMENTS**

1. **Image Technology:** Contractor shall use the most current technology and most up-to-date digital camera apparatus in accordance with section I(A)(6) above.
2. The photographic primary camera control unit shall produce a clear photograph that contains the following data: **(a)** Display of front license plate of vehicle. **(b)** Display of driver's face. **(c)** Scene of location where the alleged violation occurred. **(d)** Motor vehicle during the alleged violation. **(e)** The day, month and year of the alleged violation. **(f)** The time of the alleged violation displayed in hours, minutes and seconds. **(g)** The speed of the vehicle displayed in miles per hour. **(h)** Officer's identification code. **(i)** Location code information.
3. The photographic secondary camera control unit shall automatically take a photograph without manual intervention from the police officer in attendance and shall contain at least the following data: **(a)** Display of rear license plate of vehicle. **(b)** Scene of location where the alleged violation occurred. **(c)** Motor vehicle during the time of the alleged violation. **(d)** Day, month and year of alleged violation. **(e)** Time of the alleged violation displayed in hours, minutes and seconds. **(f)** Speed of the vehicle photographed displayed in miles per hour. **(g)** Officer's identification code. **(h)** Location code information.

**H. IMAGE AND CITATION PROCESSING SERVICES:** Contractor shall provide all staffing required for the development and presentation of the photographic images and supplies.

1. Contractor shall provide the City with digital images of alleged violators, and photographs for court packets and citizens requesting to view their alleged violations. These photographs shall be provided to the City in hard copy and digital format.
2. Contractor will be responsible for processing all images.
3. The Contractor shall provide one Field Service Technician (FST) responsible for retrieval of photo radar images based upon a schedule established by the City. The FST will respond to any report of a photo radar camera problem. All repair activity will be tracked by the FST on an electronic maintenance log.
4. The Contractor shall collect memory cards, PR Officer Visual Observation Log and PR Equipment Set-up Checklists (as applicable) for the Contractor system. Contractor will establish a chain of custody, consistent with Oregon Law, for the alleged violation date and submit images for processing.
5. The Contractor will convert images to a digital format, compare to PR Officer Visual Observation Log (as applicable), determine and enter license plate information, view driver and ensure that the view of the driver is identifiable and is not obstructed or out of focus.
6. Contractor shall maintain access to the current motor vehicles database that is maintained by the Oregon State Department of Motor Vehicles. In addition, Contractor shall have access to current motor vehicle databases in the states of Washington,

California and Idaho. Access to these databases shall be maintained for the life of the Contract.

7. The Contractor will use the DMV information, verify information collected during the viewing process, re-check license plate information and registered owner information, determine whether the gender of the driver matches the gender of the registered owner of the vehicle if the owner is an individual, compare vehicle type and owner type and prepare images for storage.

8. After the verification process, the Contractor will print the citations and transmit them to the police for approval and signature. Upon return of the approved signed citations from the police, the Contractor will include the printed corresponding cover letter with the violation photo and the appropriate printed affidavit of non-liability or certificate of innocence forms and deposit into the mail within guidelines established by Oregon law.

9. If the current Contractor operation's center in Portland closes, the Contractor shall provide a business plan that will identify the same access and services as the present local operation center that is acceptable to the City. The relocated operation's center shall have adequate staff to operate, manage, maintain and keep the same service level as required by the Contract.

10. Contractor will be responsible for pick-up and delivery of data on a daily basis (to and from the respective police departments/bureaus and courts). Contractor will use the license plate number from the photographs to identify the vehicle owner from the department of motor vehicles records. Contractor shall ensure that the gender of the registered owner of the vehicle appears to be the same as the person whose photograph is taken.

11. Contractor shall prepare warning letters or citations and notice letters for all persons who appear to have violated the speed limit.

12. Contractor shall obtain the police officer's signature for each citation and shall mail letters and citations to the identified vehicle owners within six business days following the alleged violation.

13. Where investigation or legal necessity requires that an officer re-issue a citation that has already been authorized, Contractor will provide that a re-issued citation will bear the re-issue date as well as the date of the original citation.

**J. RECORDS AND ARCHIVING:** The Contractor shall maintain and provide supporting records of violations to the City and courts and shall maintain all photographs in a manner that preserves their chain of custody to ensure their admissibility in court.

1. Contractor shall maintain a list of all voided and destroyed images.

2. City directs the Contractor to store all images for which citations have been issued for a period of two years from the date of the citation or 30 days after disposition of the

case, whichever is later. Contractor shall keep all images for which citations are not issued for at least 30 days. When citations are dismissed by a person with official authority or when citations are not issued, the City directs the Contractor to destroy all images after 30 days. City directs Contractor to delete all images for which citations have been issued for a period of two years from the date of the citation or 30 days after disposition of the case.

3. The City will require online storage of images for the time periods referenced in Subsection 2 above and shall provide an authenticated listing of all archival records.
4. Retrieval of archived information shall be available within five business days of a request for retrieval.

#### **K. STATISTICAL ANALYSIS AND REPORTS**

1. Contractor shall provide reports that show and analyze time, date, speed, number of vehicles, and other data required for automated citation generation and traffic analysis. The reports shall be submitted to the City within 30 days of the end of each calendar month and shall include such information as is mutually agreed to by both parties to this agreement including the following mandatory items: (a) Client Monthly Summary Report. (b) Issuance Analysis Report. (c) Officer Summary Report. (d) Officer Activity Report. (e) Deployment Summary Report. (f) Location Activity Report. (g) Current list of all valid location codes with information, including the court location, speed zone, applicable ORS statute and description of the geographic location.
2. Additional Reports. Contractor shall provide additional reports at City's request. Such additional reports will be mutually agreed upon by the parties as they may be subject to additional fees charged by Contractor.
3. Contractor shall provide the City with a monthly Activity Report within ten (10) days following the end of each month. The monthly report shall, at a minimum, include the following information: (a) The total number of citations issued. (b) The total number of photographs taken and percentage of total vehicles whose photograph was taken that a violation notice was sent. (c) The total number and percentage of violations, delineated by speed and location, with time deployed at locations. (d) Hours of use at anyone site.

**L. TRAINING REQUIREMENTS:** The Contractor shall provide a minimum of four 2-day photo radar operator training classes per Contract year for City police personnel who will operate the system, which will include both classroom and hands-on training. The maximum class size will be 12 persons. Such training will occur in City provided facilities, unless otherwise agreed upon by the parties. The Contractor will provide the following additional training:

1. The Contractor shall provide technical instruction on Equipment use and operation. Course content shall include: the theory of the device; the technical knowledge required for court purposes; radar and photography principles; and actual deployment techniques. Contractor shall provide up to four training classes at no cost to the City.

Contractor shall supply all technical training materials and handouts in sufficient quantities to cover the training of identified persons.

2. Contractor shall provide up to two additional training sessions and materials to Milwaukie Municipal Court judges and court staff if requested by the City.

**M. COURT ASSISTANCE:** The Contractor shall provide, as reasonably necessary, a person who is able to be qualified as an expert witness under current court requirements to testify in court in regard to photo radar technology along with any documentation that may be required. Services may include but not be limited to:

1. The Contractor will provide the appropriate paper copy of the issued citation to the court, together with an electronic text file that contains the following information: Officer name, DPSST number, citation number, name of the alleged violator, the alleged violation, fine amount, any enhanced penalty indication, court hearing date and time, court location, courtroom number, and any other necessary information that the court may require and that has been discussed and mutually agreed upon.

2. Within five business days (but before the Court date) of notification from the Court of scheduled cases, the Contractor will prepare and provide documentation to the officer who will testify about the alleged violation. Such documentation will include information about the operation of the camera, a checklist regarding camera operation and repair, two photographs, maintenance logs (if necessary or requested), a contact log showing any contacts with the alleged violator and any other information that may be required. Exceptions shall be considered those cases added by the court system outside of normal channels.

3. Contractor shall provide City and/or courts with a minimum of three photographs for each citation issued (front and two rear photographs) when requested. The photograph shall be a minimum 3 by 5 inches, unless a larger photograph is necessary to view the driver/violation or to prosecute the case.

4. Contractor shall work with City to develop acceptable warning, explanatory, and other letters or correspondence for the court case.

5. The Contractor shall work with City personnel and the court in order to develop and update the forms library as it relates to legal forms and court documentation: (a) Develop an acceptable citation form. (b) Implement and utilize electronic signatures and court filing of citations. (c) Receive and process the certificate of innocence and non-liability forms; a listing of citations to be dismissed shall be provided to the City's police bureau as they are processed. (d) The City shall audit, review and check certificate of innocence forms with photographic images taken of alleged violators to determine whether owners are accurately responding to the citations. (e) The Contractor will provide secure, online access for the public to view images on which citations were based.

6. Contractor and City acknowledge that ORS 153.076, and ORS 135.805 - .873, along with state and federal law of due process, impose a duty on the City to allow a

defendant to inspect discovery favorable to him or her in connection with violation proceedings. City and Contractor understand that pursuant to these laws, judges throughout Oregon have granted defense discovery requests for materials on, among other things, photo radar training, maintenance, and system testing, as well as system operating instructions and time and dates of deployment. Contractor understands the City has discovery obligations and agrees to confer with City during pretrial discovery and provide documents to the City that respond to discovery requests. Contractor shall provide documents in a format that satisfies defense requests for production.

7. The City understands that Contractor has a business interest in protecting its proprietary business information and, thus, the City will not object to Contractor's requests to protect this information during the discovery process. City further acknowledges that Contractor expressly states that its proprietary information that is part of a public record, if any, is submitted to the City in confidence and that the City will agree to Contractor's requests to claim an exemption from public records disclosure on this issue.

#### **N. COMMUNICATIONS/PUBLIC EDUCATION**

1. Contractor shall be available to act as a resource during certain events planned as part of the photo radar communications, and public education strategy. This includes, but is not limited to, Equipment demonstration as part of community presentations, if it is determined to be in the interest of the City and the Contractor.

2. Contractor shall provide City with public information materials. These materials should include, but are not limited to, brochures and other printed information describing what photo radar is, how photo radar works and what benefits the use of photo radar provides.

**O. TELEPHONE HOT LINE:** The Contractor shall provide a telephone hotline that will permit callers to obtain basic information during the normal work week.

1. The Contractor will staff the telephone hotline from 8:00 a.m. to 5:00 p.m. Monday through Friday of each week excluding holidays. During other times, Contractor's hotline will permit callers to obtain information and to leave a voice message. The letters that accompany citations issued will have the toll-free number written on them.

2. The City shall provide Contractor with answers to questions that are frequently asked by the public when it calls the hotline. Contractor shall provide those answers to the public in response to their questions.

**II. WORK PERFORMED BY THE CITY:** Police Department staff shall make available sufficient hours of staff personnel as is required to meet with the Contractor and provide such information as required. The Office of Management and Finance has assigned a project manager who will oversee the work and provide support as needed.

The City shall be responsible for implementing and maintaining usual, customary and appropriate internal accounting procedures and controls, internal controls and other appropriate procedures and controls for the City. These controls will include information technology, proprietary information, and trade secret safeguards if appropriate to City work.

- III. DELIVERY:** All goods, materials and services shall be FOB delivered to the City police department at 3200 S.E. Harrison ST, Milwaukie OR 97222 or as designated by the work conducted within this Contract. All prices offered shall be inclusive of all shipping and delivery costs. The Contractor must be prepared to furnish the items as agreed upon by the parties after receipt of an order.

With assembly, installation, calibration and other services required under this Contract, offered prices shall include all costs associated with delivery, assembly, setup, and proper disposal of packaging material. The offer price shall be exclusive of any sales, purchaser, or consumer tax. Tax exemption certificates will be furnished to Contractor, upon request.

Delivery of the item(s) on the purchase order shall not be completed until all discrepancies have been corrected. Items not meeting Contract specifications shall be returned at Contractor's expense. Contractor shall replace rejected items as agreed upon by the parties after receipt of re-order request. Acceptance occurs when the City authorizes payment of the invoice.

- IV. PRICES AND PRICE CHANGES:** Initial Contract prices shall be as established herein. Unit prices shall remain firm through the first two years of the Contract. At the end of the two-year period following the date of acceptance, price changes may be allowed herein. Contractor agrees to provide pricing for all products for which Contractor is an authorized distributor for the duration of this Contract. Following the end of the two year period referenced above, City and Contractor acknowledge that prices for goods and services furnished by Contractor under this Contract may need to be adjusted during the term of the Contract due to changes in Contractor's prices, rate plans, or product offerings. Such price changes shall be documented in writing between Contractor and City as amendments.

Contractor shall submit any proposed pricing revisions in writing to the City for consideration at least thirty (30) days before the proposed effective date. Price adjustments shall become effective thirty (30) days from the date of last signature on the Contract amendment document or as otherwise stated therein. Except that no increase in price adjustments shall become effective prior to a date one year following the date of acceptance. Price adjustments will only become effective by fully executed amendments, following receipt by the City of the requested price adjustment.



## AGREEMENT

THIS AGREEMENT is entered into on May \_\_, 2011 ("Effective Date"), by and between the City of Milwaukie, a municipal corporation organized under the laws of Oregon, hereinafter referred to as the "City," and ACS State & Local Solutions, Inc., hereinafter referred to as "Contractor," 12410 Milestone Center Drive, Germantown, MD 20876.

### WITNESSETH

WHEREAS the City desires a contractor to provide a Photo Speed Enforcement Program ("Services").

WHEREAS the City and Contractor have mutually benefitted from a three year relationship whereby Contractor has provided Services to the City; and

WHEREAS the City desires to have the Contractor perform said Services under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants and promises set forth, the parties hereto agree as follows:

1. **SCOPE OF WORK.** The Contractor agrees to provide all goods and services described in this Agreement and its associated Exhibits (collectively referred to as ("Agreement")). Contractor shall perform the Services described in this Agreement (a) in a timely, diligent and professional manner in accordance with recognized standards of the applicable industry or profession, and (b) in accordance with the time periods set forth in this Agreement and in the schedule and sequencing specified by the City and agreed to by Contractor. Contractor shall furnish efficient business administration and superintendence and shall use its best efforts to insure that such Services being performed under this Agreement are completed in the best way and in the most expeditious and economical manner consistent with the City's best interests.
2. **APPLICABLE DOCUMENTS.** This Agreement is comprised of the following documents:
  - a. The main body of this Agreement
  - b. EXHIBIT 1: Scope of Work
  - c. EXHIBIT 2: Compensation

All of the Exhibits listed above are hereby attached and incorporated by reference into this Agreement for all purposes.

3. **TERM.** This Agreement shall be effective from on the Effective Date and shall expire three years thereafter. The City reserves the right to renew this Agreement for two additional one

(1) year periods. After the expiration or termination of this Agreement, Contractor will continue to receive its fee for paid citation as set forth in Exhibit 2 for violations that occur prior to the expiration or termination of this Agreement.

4. **PAYMENT TERMS.** City shall pay Contractor as set forth in Exhibit 2.
5. **RISK OF LOSS OR DAMAGE.** Risk of loss of or damage to any Contractor equipment in Contractor's care, custody, or control shall be on the Contractor, except that City shall be responsible for any damage caused to Contractor equipment and cameras due to the negligent acts or omissions of the City or its agents, and shall be responsible for any equipment repair and/or replacement costs resulting from any act of the City or its agents, or third parties other than the State. In no event shall Contractor's liability exceed 20% of the value of this Agreement.
6. **INSURANCE AND BONDING:** Contractor shall provide the following types of insurance to be maintained throughout the Agreement period.
  - a. **Commercial General Liability:** with a combined single limit for bodily injury and property damage in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate. The City of Milwaukee shall be included as an additional insured on the commercial general liability.
  - b. **Workers' Compensation:** to meet statutory limits.
  - c. **Excess Liability:** \$1,000,000 per occurrence.
  - d. **Crime Insurance (if applicable):** applicable to employees of Contractor covering employee dishonesty.
  - e. **Professional Liability:** \$1,000,000 per claims made basis.

A standard ACORD form certificate of insurance will be provided upon Agreement execution. Contractor shall not be required to acquire performance, payment, or other kinds of bonds.

7. **INDEMNIFICATION:** Contractor shall defend, indemnify, and hold harmless the City, its employees, agents, and officers, from and against any and all claims, damages, actions, liabilities and expenses, including reasonable attorney's fees, resulting from the tortious or negligent acts or omissions of Contractor, its employees, agents, or subcontractors in performing the services required under this Agreement.
8. **FORCE MAJEURE:** Neither party shall be liable for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control and that occur without its fault or negligence, including without limitation, Acts of God (such as earthquake, fire, flood, hurricane, storm, epidemic, pandemic, quarantine, or other natural disaster or public health emergency); humanly-caused disasters such as riot, civil war, rebellion, revolution, insurrection, war, invasion, hostilities (whether war is declared or not), terrorist activity, sabotage, or arson; failures or absence of electrical, telecommunications, Internet, or other infrastructure; the acts of civil, military, or other governmental authorities, such as judicial decisions, nationalization,

government sanction, blockage, embargo, the declaration of martial law, or any other action or inaction of any government; labor dispute, strike, or lockout; or the errors, omissions, or defaults of third parties.

- 9. TERMINATION FOR DEFAULT BY EITHER PARTY.** Unless the parties agree otherwise in writing, in the event that either party violates or fails to perform any material covenant, provision, obligation, term or condition contained in these Agreements, the other party may terminate this agreement provided that (a) the offended party has notified the other party in writing of any alleged breach; and (b) the defaulting party has not, within thirty (30) days of receipt of written notice of default from the non-defaulting party, cured the default.
- 10. DISPUTE RESOLUTION.** The parties agree that all disputes arising under or related to this Agreement shall be resolved solely in accordance with this Article.
- a. Mediation.** Following the service of a Notice of Dispute, the Parties shall use all reasonable endeavors to settle the dispute amicably through negotiations between their respective authorized representatives within a period of thirty (30) calendar days starting from the date of receipt of the Notice of Dispute by the relevant Party. The Parties may by agreement extend this thirty (30) calendar day period and take all such other steps as they mutually agree will assist them in reaching an amicable settlement of the Dispute, including the joint appointment of a person who is an expert in the subject matter of the Dispute.
  - b. Arbitration.** Except in the case of a breach of a Party's intellectual property or confidentiality obligations, all disputes which cannot be resolved through negotiation or mediation between the Parties as set forth above shall be resolved solely and exclusively through confidential and binding arbitration.
    - i.** Any such arbitration proceeding shall occur in Portland, Oregon utilizing the Commercial Arbitration Rules of the American Arbitration Association (AAA). The Parties shall attempt to agree on a single arbitrator. In the event that the Parties cannot agree on a single arbitrator within thirty (30) calendar days of the date on which an impasse is reached, the arbitrator shall be chosen by the AAA utilizing its rules, provided that such arbitrator shall be either (i) a retired judge or (ii) an attorney who has practiced in the area of state or local procurement law for at least three years.
    - ii.** The arbitrator shall give effect to statutes of limitation in determining any Dispute. Any Dispute concerning whether an issue is arbitrable shall be determined by the arbitrator. The arbitrator shall follow the law selected in this Agreement, and the terms of this Agreement in reaching a decision. The decision of the arbitrator shall be in writing, shall include the findings of fact, conclusions of law, and rationale for the decision, and shall be final and binding and enforceable in any court of competent jurisdiction.
    - iii.** The parties shall each pay their own costs and each party shall share the costs of arbitration 50/50.
    - iv.** No provision of this Article 10 shall limit the right of a Party to this

Agreement to obtain provisional or ancillary equitable remedies from a court of competent jurisdiction before, during, or after the pendency of any arbitration.

**11. AMENDMENTS.** Any changes to this Agreement must be made by written amendment and signed by authorized representatives of Contractor and City to be valid.

**12. NOTICES.** Any notice or demand to be given under this Agreement shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notice shall be addressed to the following:

**CONTRACTOR:**

ACS State & Local Solutions, Inc.  
12410 Milestone Center Dr.  
Germantown, MD 20876  
Attention: TGS Contracts

**CITY:**

City of Milwaukie  
10722 SE Main Street  
Milwaukie, Oregon, 97222  
Attention: Capt. Steve Bartol

**13. ENTIRE AGREEMENT.** This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the City and the Contractor, and the parties shall not be bound by any prior negotiation, representations or promises, not contained herein.

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Agreement to be executed by their duly authorized representatives on the Effective Date written above.

**ACS STATE & LOCAL SOLUTIONS, INC.**

**CITY OF MILWAUKIE**

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

*Allen Shott*  
\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**EXHIBIT 1**  
**Scope of Work**

- I. TECHNICALSERVICESAND SCHEDULE:** The Contractor shall provide and implement the system as follows:

**A. EQUIPMENT**

1. The Contractor will provide the digital camera system ("Equipment") for use in vans owned by the City. Currently, there is one City-owned van with a film camera system installed. ACS will install the Equipment in such van within 90 days after the Effective Date of this Agreement. During this 90 day period the City may continue to use the film camera system in accordance with the compensation provision in Exhibit 2. The City has the option of supplying additional vehicles for use of the Equipment. If so, Contractor will provide and install the Equipment in those vehicles. In any case Contractor will provide a system with technology equal to or better than that provided to the Portland Police Bureau.
2. City shall not guarantee nor be under any minimum required usage of the photo radar unit.
3. Contractor will provide field service technicians, spare parts and equipment to repair any malfunctions with the equipment within 48 hours, excluding weekends and holidays.
4. The use of a photo radar program is considered a preventative program for safe driving therefore the City does not operate under a violation quota system. There will be no minimum number or quota of violations required to be generated through the use of the photo radar unit and Equipment.
5. Contractor shall supply Equipment that, to the best knowledge of the Contractor, is new, that is not obsolete or nearly obsolete (i.e. expected to become obsolete through the introduction of a new product line within the next six months following Contract execution), used, or remanufactured. Contractor shall provide model numbers for camera systems that it provides.
6. Should new equipment or a technological upgrade become available during the course of the Contract, the Contractor shall offer the City the opportunity to upgrade the Equipment. The installation of any new technology may be at an additional cost. The exact cost will be based on the scope of the technology upgrade and negotiations at the time of the upgrade.
7. The City is only obligated to use Equipment or production models that have been satisfactorily demonstrated to the City, or that have demonstrated a record of successful deployment by other law enforcement agencies.

8. Any additional photo radar system implemented shall be of new manufacture and best quality and installed in accordance with approved recommendations of the manufacturer thereof, and shall conform to the Equipment specifications listed below.

9. The Equipment shall meet all applicable Federal standards and specifications and be of a type approved for licensing and use in the City of Milwaukee.

10. The Equipment shall be capable of executing its functions so that it performs according to, and fulfills the requirements of, the City.

11. Title to all photo radar cameras, Equipment, and other materials provided to the City by Contractor will remain the property of Contractor. Upon expiration or termination of this Contract, all photo radar cameras, Equipment, and other material provided to the City by Contractor will be returned to Contractor.

**B. SPECIFIC EQUIPMENT REQUIREMENTS:** The Contractor also shall provide the following in regard to the Equipment:

1. The Equipment shall be able to consistently identify a vehicle and driver traveling through a radar beam and take a photograph of the vehicle traveling in excess of a predetermined speed threshold.

2. The Equipment shall be capable of detecting the speed of target vehicle when operated from a stationary vehicle and subsequently displaying that information digitally.

3. A mobile reader board shall be provided that displays the speed of passing vehicle while the photo radar unit is in use. The reader board shall display the speed in digits that are a minimum of 9-1/2, inches in height and capable of being seen. The display on the photo-radar van must be readable from a distance of 150 feet.

4. The Equipment shall be capable of recording the speed of a vehicle with an accuracy of plus or minus one (1) mile per hour and shall display that information in a mile per hour format.

5. The Equipment shall measure the speed of traffic that is approaching or going away from it and gather data for statistical analysis.

6. The Equipment shall be capable of deployment at a wide range of sites, locations and operating conditions, including but not limited to, heavy traffic volumes, multiple lanes of traffic, adverse weather and temperature conditions, and different road surface configurations.

7. The Equipment must be able to operate while vehicles are moving at speeds of 15-150 miles per hour.

8. The camera shall be able to photograph up to three actual lanes of traffic concurrently and be able to produce high resolution images of those vehicles. Photographs shall show the driver of the vehicle if a violation occurs. The photograph shall show at least one license plate.

9. Cameras shall operate at night and shall come equipped with flash attachments. Photographs taken at night shall produce high resolution images and permit the identification of the driver (if a photograph of the front of the vehicle is taken) and at least one license plate.

10. The Equipment shall be capable of operating in an automated mode, with easy set-up, little maintenance and minimal human intervention required after set-up.

11. The Equipment shall be capable of performing internal calibration tests for speed measurement accuracy and functionality. The internal test shall produce a visual and/or auditory signal that permits an operator to determine if the Equipment is functioning properly.

12. The Equipment shall be capable of performing an electronic internal calibration test. If the internal calibration test shows that the Equipment is failing or the calibration has been lost, the Equipment shall display a failure code that is visible to the operator and shut down.

13. The Equipment shall have sufficient shielding and suppression of radio frequency ("RF") current in the 800 Megahertz ("MHz") to 900 MHz band to prevent interference from a typical 30 watt Police radio transmitter operating in the same vehicle as the photo radar unit.

14. Contractor to provide a streamlined log-in procedure as well as an audible tone when a violation is captured.

**C. DOCUMENTS AND MANUALS:** Contractor shall provide the City with five (5) copies of all relevant Equipment specifications, manuals and materials relating to the capabilities and operation of all the Equipment. Within 90 days from date of Contract execution, the Contractor shall obtain from the manufacturer of the Equipment any rights required for the City to make and provide copies of non-proprietary manuals and materials in response to any discovery requests required as a result of the use of the radar equipment. Training manuals for the Equipment will be provided to the City for viewing by citizens at the City police department. City agrees to treat such training manuals with the same care of confidentiality as it does its own confidential material.

**D. WARRANTY AND MAINTENANCE:** The Contractor shall maintain the Contractor furnished photo radar enforcement system and its associated Equipment in good working order for the duration of the Contract.

1. Excluding weekends and City holidays, any malfunctioning camera or other Contractor furnished Equipment shall be returned to good working order within forty-eight (48) hours of notification that the Equipment is not in proper working order. If it cannot be made operational, the camera or other equipment will be replaced at no charge to the City.

2. Reports of Equipment malfunctions will be communicated by the City to the Project Manager, or in his/her absence, the field service technician or the lead traffic service agent. Contractor shall acknowledge receipt of such calls as soon as possible.
3. An electronic log of all camera component problems reported and all repair activity will be maintained by the Contractor for each incident reported. A copy of this repair log will be provided either electronically or paper copy to the City within ten (10) days following the City's request.
4. Contractor warrants that its Equipment is in good working order. Contractor will maintain all Equipment provided to City throughout the duration of the Contract period.
5. In order to assure all system components are working as intended, the Contractor shall provide maintenance on the photo radar and related Equipment, such as but not limited to, the camera, video, radar, and computer, during the term of this project, as required within this agreement.
6. Contractor shall provide service and support in a timely manner so as to minimize the amount of time that Equipment is not functioning and citations are not being issued. Excluding weekends and holidays, all repair and/or replacement parts shall be provided by the Contractor within 48 hours, excluding weekends and holidays. Substitute or replacement parts and/or Equipment shall be provided by the Contractor when repair times or parts supply exceeds this time limit.
7. Contractor shall provide a preventive maintenance program in order to achieve reasonable reliability and availability of the Equipment. Maintenance shall occur at regularly scheduled intervals and at times when the Equipment is not being used. Maintenance shall include the running of diagnostics to ensure the early identification of any component failure.
8. Contractor shall work with the City Police to provide a mechanism and procedure for backing up all data files.
9. Contractor shall provide security precautions against unauthorized use and accidental destruction or modification of data as a result of human intervention or other disasters such as power failure.

**E. BILLING:** Contractor shall coordinate with the City's finance department to set up billing and accounting procedures acceptable to the City. The City agrees to provide the Contractor with the monthly billing reports within 15 days after the end of each month.

**F. DELIVERY:** For the City, Contractor shall deliver all equipment, F.O.B., to the Police Department.

Milwaukie Police Department  
3200 S.E. Harrison ST  
Milwaukie, OR 97222

## **G. PHOTOGRAPH REQUIREMENTS**

1. **Image Technology:** Contractor shall use the most current technology and most up-to-date digital camera apparatus in accordance with section I(A)(6) above.
2. The photographic primary camera control unit shall produce a clear photograph that contains the following data: (a) Display of front license plate of vehicle. (b) Display of driver's face. (c) Scene of location where the alleged violation occurred. (d) Motor vehicle during the alleged violation. (e) The day, month and year of the alleged violation. (f) The time of the alleged violation displayed in hours, minutes and seconds. (g) The speed of the vehicle displayed in miles per hour. (h) Officer's identification code. (i) Location code information.
3. The photographic secondary camera control unit shall automatically take a photograph without manual intervention from the police officer in attendance and shall contain at least the following data: (a) Display of rear license plate of vehicle. (b) Scene of location where the alleged violation occurred. (c) Motor vehicle during the time of the alleged violation. (d) Day, month and year of alleged violation. (e) Time of the alleged violation displayed in hours, minutes and seconds. (f) Speed of the vehicle photographed displayed in miles per hour. (g) Officer's identification code. (h) Location code information.

**H. IMAGE AND CITATION PROCESSING SERVICES:** Contractor shall provide all staffing required for the development and presentation of the photographic images and supplies.

1. Contractor shall provide the City with digital images of alleged violators, and photographs for court packets and citizens requesting to view their alleged violations. These photographs shall be provided to the City in hard copy and digital format.
2. Contractor will be responsible for processing all images.
3. The Contractor shall provide one Field Service Technician (FST) responsible for retrieval of photo radar images based upon a schedule established by the City. The FST will respond to any report of a photo radar camera problem. All repair activity will be tracked by the FST on an electronic maintenance log.
4. The Contractor shall collect memory cards, PR Officer Visual Observation Log and PR Equipment Set-up Checklists (as applicable) for the Contractor system. Contractor will establish a chain of custody, consistent with Oregon Law, for the alleged violation date and submit images for processing.
5. The Contractor will convert images to a digital format, compare to PR Officer Visual Observation Log (as applicable), determine and enter license plate information, view driver and ensure that the view of the driver is identifiable and is not obstructed or out of focus.
6. Contractor shall maintain access to the current motor vehicles database that is maintained by the Oregon State Department of Motor Vehicles. In addition, Contractor shall have access to current motor vehicle databases in the states of Washington,

California and Idaho. Access to these databases shall be maintained for the life of the Contract.

7. The Contractor will use the DMV information, verify information collected during the viewing process, re-check license plate information and registered owner information, determine whether the gender of the driver matches the gender of the registered owner of the vehicle if the owner is an individual, compare vehicle type and owner type and prepare images for storage.

8. After the verification process, the Contractor will print the citations and transmit them to the police for approval and signature. Upon return of the approved signed citations from the police, the Contractor will include the printed corresponding cover letter with the violation photo and the appropriate printed affidavit of non-liability or certificate of innocence forms and deposit into the mail within guidelines established by Oregon law.

9. If the current Contractor operation's center in Portland closes, the Contractor shall provide a business plan that will identify the same access and services as the present local operation center that is acceptable to the City. The relocated operation's center shall have adequate staff to operate, manage, maintain and keep the same service level as required by the Contract.

10. Contractor will be responsible for pick-up and delivery of data on a daily basis (to and from the respective police departments/bureaus and courts). Contractor will use the license plate number from the photographs to identify the vehicle owner from the department of motor vehicles records. Contractor shall ensure that the gender of the registered owner of the vehicle appears to be the same as the person whose photograph is taken.

11. Contractor shall prepare warning letters or citations and notice letters for all persons who appear to have violated the speed limit.

12. Contractor shall obtain the police officer's signature for each citation and shall mail letters and citations to the identified vehicle owners within six business days following the alleged violation.

13. Where investigation or legal necessity requires that an officer re-issue a citation that has already been authorized, Contractor will provide that a re-issued citation will bear the re-issue date as well as the date of the original citation.

**J. RECORDS AND ARCHIVING:** The Contractor shall maintain and provide supporting records of violations to the City and courts and shall maintain all photographs in a manner that preserves their chain of custody to ensure their admissibility in court.

1. Contractor shall maintain a list of all voided and destroyed images.

2. City directs the Contractor to store all images for which citations have been issued for a period of two years from the date of the citation or 30 days after disposition of the

case, whichever is later. Contractor shall keep all images for which citations are not issued for at least 30 days. When citations are dismissed by a person with official authority or when citations are not issued, the City directs the Contractor to destroy all images after 30 days. City directs Contractor to delete all images for which citations have been issued for a period of two years from the date of the citation or 30 days after disposition of the case.

3. The City will require online storage of images for the time periods referenced in Subsection 2 above and shall provide an authenticated listing of all archival records.
4. Retrieval of archived information shall be available within five business days of a request for retrieval.

#### **K. STATISTICAL ANALYSIS AND REPORTS**

1. Contractor shall provide reports that show and analyze time, date, speed, number of vehicles, and other data required for automated citation generation and traffic analysis. The reports shall be submitted to the City within 30 days of the end of each calendar month and shall include such information as is mutually agreed to by both parties to this agreement including the following mandatory items: (a) Client Monthly Summary Report. (b) Issuance Analysis Report. (c) Officer Summary Report. (d) Officer Activity Report. (e) Deployment Summary Report. (f) Location Activity Report. (g) Current list of all valid location codes with information, including the court location, speed zone, applicable ORS statute and description of the geographic location.
2. Additional Reports. Contractor shall provide additional reports at City's request. Such additional reports will be mutually agreed upon by the parties as they may be subject to additional fees charged by Contractor.
3. Contractor shall provide the City with a monthly Activity Report within ten (10) days following the end of each month. The monthly report shall, at a minimum, include the following information: (a) The total number of citations issued. (b) The total number of photographs taken and percentage of total vehicles whose photograph was taken that a violation notice was sent. (c) The total number and percentage of violations, delineated by speed and location, with time deployed at locations. (d) Hours of use at anyone site.

**L. TRAINING REQUIREMENTS:** The Contractor shall provide a minimum of four 2-day photo radar operator training classes per Contract year for City police personnel who will operate the system, which will include both classroom and hands-on training. The maximum class size will be 12 persons. Such training will occur in City provided facilities, unless otherwise agreed upon by the parties. The Contractor will provide the following additional training:

1. The Contractor shall provide technical instruction on Equipment use and operation. Course content shall include: the theory of the device; the technical knowledge required for court purposes; radar and photography principles; and actual deployment techniques. Contractor shall provide up to four training classes at no cost to the City.

Contractor shall supply all technical training materials and handouts in sufficient quantities to cover the training of identified persons.

2. Contractor shall provide up to two additional training sessions and materials to Milwaukie Municipal Court judges and court staff if requested by the City.

**M. COURT ASSISTANCE:** The Contractor shall provide, as reasonably necessary, a person who is able to be qualified as an expert witness under current court requirements to testify in court in regard to photo radar technology along with any documentation that may be required. Services may include but not be limited to:

1. The Contractor will provide the appropriate paper copy of the issued citation to the court, together with an electronic text file that contains the following information: Officer name, DPSST number, citation number, name of the alleged violator, the alleged violation, fine amount, any enhanced penalty indication, court hearing date and time, court location, courtroom number, and any other necessary information that the court may require and that has been discussed and mutually agreed upon.

2. Within five business days (but before the Court date) of notification from the Court of scheduled cases, the Contractor will prepare and provide documentation to the officer who will testify about the alleged violation. Such documentation will include information about the operation of the camera, a checklist regarding camera operation and repair, two photographs, maintenance logs (if necessary or requested), a contact log showing any contacts with the alleged violator and any other information that may be required. Exceptions shall be considered those cases added by the court system outside of normal channels.

3. Contractor shall provide City and/or courts with a minimum of three photographs for each citation issued (front and two rear photographs) when requested. The photograph shall be a minimum 3 by 5 inches, unless a larger photograph is necessary to view the driver/violation or to prosecute the case.

4. Contractor shall work with City to develop acceptable warning, explanatory, and other letters or correspondence for the court case.

5. The Contractor shall work with City personnel and the court in order to develop and update the forms library as it relates to legal forms and court documentation: (a) Develop an acceptable citation form. (b) Implement and utilize electronic signatures and court filing of citations. (c) Receive and process the certificate of innocence and non-liability forms; a listing of citations to be dismissed shall be provided to the City's police bureau as they are processed. (d) The City shall audit, review and check certificate of innocence forms with photographic images taken of alleged violators to determine whether owners are accurately responding to the citations. (e) The Contractor will provide secure, online access for the public to view images on which citations were based.

6. Contractor and City acknowledge that ORS 153.076, and ORS 135.805 - .873, along with state and federal law of due process, impose a duty on the City to allow a

defendant to inspect discovery favorable to him or her in connection with violation proceedings. City and Contractor understand that pursuant to these laws, judges throughout Oregon have granted defense discovery requests for materials on, among other things, photo radar training, maintenance, and system testing, as well as system operating instructions and time and dates of deployment. Contractor understands the City has discovery obligations and agrees to confer with City during pretrial discovery and provide documents to the City that respond to discovery requests. Contractor shall provide documents in a format that satisfies defense requests for production.

7. The City understands that Contractor has a business interest in protecting its proprietary business information and, thus, the City will not object to Contractor's requests to protect this information during the discovery process. City further acknowledges that Contractor expressly states that its proprietary information that is part of a public record, if any, is submitted to the City in confidence and that the City will agree to Contractor's requests to claim an exemption from public records disclosure on this issue.

#### **N. COMMUNICATIONS/PUBLIC EDUCATION**

1. Contractor shall be available to act as a resource during certain events planned as part of the photo radar communications, and public education strategy. This includes, but is not limited to, Equipment demonstration as part of community presentations, if it is determined to be in the interest of the City and the Contractor.

2. Contractor shall provide City with public information materials. These materials should include, but are not limited to, brochures and other printed information describing what photo radar is, how photo radar works and what benefits the use of photo radar provides.

**O. TELEPHONE HOT LINE:** The Contractor shall provide a telephone hotline that will permit callers to obtain basic information during the normal work week.

1. The Contractor will staff the telephone hotline from 8:00 a.m. to 5:00 p.m. Monday through Friday of each week excluding holidays. During other times, Contractor's hotline will permit callers to obtain information and to leave a voice message. The letters that accompany citations issued will have the toll-free number written on them.

2. The City shall provide Contractor with answers to questions that are frequently asked by the public when it calls the hotline. Contractor shall provide those answers to the public in response to their questions.

**II. WORK PERFORMED BY THE CITY:** Police Department staff shall make available sufficient hours of staff personnel as is required to meet with the Contractor and provide such information as required. The Office of Management and Finance has assigned a project manager who will oversee the work and provide support as needed.

The City shall be responsible for implementing and maintaining usual, customary and appropriate internal accounting procedures and controls, internal controls and other appropriate procedures and controls for the City. These controls will include information technology, proprietary information, and trade secret safeguards if appropriate to City work.

- III. DELIVERY:** All goods, materials and services shall be FOB delivered to the City police department at 3200 S.E. Harrison ST, Milwaukie OR 97222 or as designated by the work conducted within this Contract. All prices offered shall be inclusive of all shipping and delivery costs. The Contractor must be prepared to furnish the items as agreed upon by the parties after receipt of an order.

With assembly, installation, calibration and other services required under this Contract, offered prices shall include all costs associated with delivery, assembly, setup, and proper disposal of packaging material. The offer price shall be exclusive of any sales, purchaser, or consumer tax. Tax exemption certificates will be furnished to Contractor, upon request.

Delivery of the item(s) on the purchase order shall not be completed until all discrepancies have been corrected. Items not meeting Contract specifications shall be returned at Contractor's expense. Contractor shall replace rejected items as agreed upon by the parties after receipt of re-order request. Acceptance occurs when the City authorizes payment of the invoice.

- IV. PRICES AND PRICE CHANGES:** Initial Contract prices shall be as established herein. Unit prices shall remain firm through the first two years of the Contract. At the end of the two-year period following the date of acceptance, price changes may be allowed herein. Contractor agrees to provide pricing for all products for which Contractor is an authorized distributor for the duration of this Contract. Following the end of the two year period referenced above, City and Contractor acknowledge that prices for goods and services furnished by Contractor under this Contract may need to be adjusted during the term of the Contract due to changes in Contractor's prices, rate plans, or product offerings. Such price changes shall be documented in writing between Contractor and City as amendments.

Contractor shall submit any proposed pricing revisions in writing to the City for consideration at least thirty (30) days before the proposed effective date. Price adjustments shall become effective thirty (30) days from the date of last signature on the Contract amendment document or as otherwise stated therein. Except that no increase in price adjustments shall become effective prior to a date one year following the date of acceptance. Price adjustments will only become effective by fully executed amendments, following receipt by the City of the requested price adjustment.





**To: Mayor and City Council**

**From: Bill Monahan, City Manager**

**Subject: Public Area Requirement Grant Program**

**Date: May 10, 2011**

**Action Requested**

Approve the attached resolution establishing a grant program where the City would provide funding for a limited number of private development efforts in the downtown area.

**Background**

At the March 15, 2011 Council Work Session meeting, Councilor Mike Miller introduced a draft resolution aimed at suspending the application of Public Area Requirements (PAR) of MMC 19312.5 for the period from April 6, 2011 through October 31, 2012. Councilor Miller's proposal was based upon his concern that the downtown area has vacant storefront and has lacked growth over the past few years. By suspending the PAR, Councilor Miller anticipated that property owners in the downtown would be better able make improvements to their properties and attract tenants.

Council discussed the PAR during a work session on April 5 and during regular meetings of April 5, 19, and May 3. In addition, staff provided background on the regulation at the Council's April 26 study session. Between those meetings, Council Joe Loomis, as designated by Council, held meetings with staff and Ed Aaron, owner of property at 10833 SE Main. The purpose of the meetings was to determine how the application of the PAR to the first floor renovation of that property would be calculated and to determine the extent of PAR that would be associated with the project.

Councilor Miller's draft resolution was not acted upon by Council.

During the May 3, 2011 meeting, Council heard a report from Councilor Loomis who recommended that the city create a limited duration grant program. Council directed staff to prepare a resolution for Council consideration at the May 17, 2011 meeting that would provide \$20,000 to be available to those property owners that receive certificates of occupancy when new first floor retail tenants sign leases by July 1, 2011 to locate in the downtown area.

Attached is a resolution prepared by the City Attorney's Office to establish a temporary economic development grant for offsetting part of the PAR of MMC 19.312.5 for the period from May 17, 2011 to July 1, 2011.

**Concurrence**

The City Manager has reviewed the resolution and concurs that it conforms to the direction given by Council on May 3.

**Fiscal Impact**

If implemented, up to \$20,000 in grants could be awarded from general funds monies.

**Work Load Impacts**

If the grant program is established, staff will develop a grant application program. Once the criteria and the review process are created, the amount of staff time committed to the grant program will be better known. Given the limited duration of the program and the amount of grant funds available, the impact should be minor.

**Alternatives**

1. Accept the attached resolution establishing the temporary grant program.
2. Direct staff to modify the attached resolution.
3. Deny approval of the attached resolution and direct staff on further action.
4. Take no action.

**Attachments**

1. Adopting resolution

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ESTABLISHING A TEMPORARY ECONOMIC DEVELOPMENT GRANT FOR OFFSETTING PART OF THE PUBLIC AREA REQUIREMENTS OF MILWAUKIE MUNICIPAL CODE SECTION 19.312.5 FOR THE PERIOD OF MAY 17, 2011 TO JULY 1, 2011.**

**WHEREAS**, the City of Milwaukie requires under Section 19.312.5 of the Milwaukie Municipal Code that those who develop or redevelop property in the Milwaukie Downtown make certain public area requirement improvements within the public right-of-way; and

**WHEREAS**, the public area requirements were adopted to ensure the development of a consistent and high-quality public right-of-way that establishes a safe, comfortable, contiguous pedestrian-oriented environment with a unified urban design; and

**WHEREAS**, the redevelopment of the Milwaukie Downtown continues to be a high priority of the City; and

**WHEREAS**, during the last few years economic conditions have caused redevelopment to slow and some buildings in the Milwaukie Downtown are at less than full occupancy; and

**WHEREAS**, the imposition of public area requirements has been identified by some downtown property owners as an impediment to redevelopment efforts and the attraction of new businesses or the expansion of existing businesses; and

**WHEREAS**, to maintain its downtown redevelopment policies under current economic conditions Council is able to identify \$20,000 of grant money under the Economic Development line item of the General Fund—non-departmental budget that can be reserved for downtown livability; and

**WHEREAS**, Council determines the necessity to provide a short-term grant program of up to \$20,000 to pay for Public Area Requirements that stem from issuance of new certificates of occupancy when new first-floor retail tenants sign leases by July 1, 2011 to locate in the downtown area.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Milwaukie, Oregon, that:

**Section 1.** The City of Milwaukie hereby provides a total grant of \$20,000 to be allocated among property owners in the downtown district who are required to pay for the provision of Public Area Requirements under new certificates of occupancy triggered by new first-floor retail tenants signing leases by July 1, 2011 to locate in the downtown district.

**Section 2.** The City of Milwaukie will develop a program to carry out the grant established by Section 1 of this Resolution.

**Section 3.** That the amount of reserved money to be granted may be equal to \$20,000 or the amount of Public Area Requirements triggered by first floor retail tenants signing new leases by July 1, 2011, whichever is less.

**Section 4.** That the grant program established in Section 1 of this Resolution will end automatically on July 1, 2011, after the grant has been disbursed, and may not be renewed without Council approval.

**Section 5.** This resolution is effective immediately.

Introduced and adopted by the City Council on May 17, 2011.

---

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

---

Pat DuVal, City Recorder

---

City Attorney