

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JANUARY 5, 2010**

CALL TO ORDER

Mayor Ferguson called the 2069th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Mayor Jeremy Ferguson, Council President Greg Chaimov and Councilors Deborah Barnes, Joe Loomis, and Susan Stone

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Community Development and Public Works Director Kenny Asher, Resource and Economic Development Specialist Alex Campbell, Planning Director Katie Mangle, Police Chief Bob Jordan, Engineering Director Gary Parkin, Community Services Director JoAnn Herrigel, and Senior Planner Susan Shanks

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Comments from Christmas Ship President Jess Heitman

Mr. Heitman thanked the City of Milwaukie for its ongoing support of the annual Christmas Ships Parade.

Big Brothers Big Sisters Month Proclamation

Mayor Ferguson read a proclamation naming January 2010 as *Big Brothers Big Sisters Month* in the City of Milwaukie. This was a national non-profit organization involved in one-on-one mentoring pairing a responsible adult with a child that needs a consistent adult presence in his life.

CONSENT AGENDA

It was moved by Councilor Stone and seconded by Councilor Barnes to approve the consent agenda as presented.

- A. City Council Minutes of the November 17, 2009 Regular Session;
- B. City Council Minutes of the December 1, 2009 Regular Session;
- C. City Council Minutes of the December 15, 2009 Regular Session;
- D. Resolution 01-2010: A Resolution of the City Council of the City of Milwaukie, Oregon, Designating the First and Third Tuesdays of Each Month as the Regular City Council Meeting Date, Establishing the Times of the Said Meetings and Repealing Resolution 01-2009;
- E. Resolution 02-2010: A Resolution of the City Council of the City of Milwaukie, Oregon, Designating the Clackamas Review, The Oregonian, and the Daily Journal of Commerce as the Papers of record for the City of Milwaukie;
- F. Resolution 03-2010: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Execute an Intergovernmental Agreement with the Oregon Department of Environmental Quality for the Purpose of Retrofitting City-Owned Diesel Vehicles with Emission Control Reduction Equipment; and

G. OLCC Application for Walgreen's, 10903 SE Oak Street, a new outlet

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

AUDIENCE PARTICIPATION

Charles Edward Aaron, Milwaukie business and property owner, was at the City Council meeting a few weeks ago where he was chastised royally by Councilor Chaimov, and he was here again. He hoped to give a little more flack than he got. He mentioned the words harassment, antagonize, provoke, and discredit. He provided the City Council with a primer on the meanings of those words. Yesterday he wrote an email to the City Council which he read so people had a better understanding of what was going on. The person in charge of permits had refused to issue a plumbing permit for a project at 2017 SE Jefferson Street until the planning permit was satisfied. Now he had the building permit in hand. Ms. Mangle had just told him that there was no planning permit associated with it, but he was very confused about how to apply for a planning permit. He continued with reading the email. The tenants of the building do not want a trashcan and bench. At the last City Council meeting he contested the validity of the need for a permit and the permit value. Canby Asparagus Farm did not install public area requirement fixtures for almost 90-days after the restaurant opened. Mr. Aaron felt he was being targeted as Mr. Parecki's buddy. In his December 15 presentation to City Council he expressed his belief there was a concerted effort by staff to discredit, antagonize, provoke, and harass him. If the City wanted to attract businesses to the downtown why was it impeding the process? He had tenants ready to occupy office space while some bureaucrat made a power play because he did not like him. Now he was going to incur damages because of the City's pettiness. Was this the message the City wanted to send to those bringing in businesses? From inconsistent requirements to push polls. The people running the City were making bad decisions. He called members of the City Council and sent them emails about this latest provocation and asked for a call back. Until this morning he had received no response. What kind of town was the City Council running? He had attached the draft minutes of the December 15 meeting along with the statement he read to the email. The minutes did not mention that he accused City staff of trying to discredit, antagonize, provoke, and harass Mr. Parecki and him.

Mayor Ferguson stated Mr. Aaron's time was up and that the City would provide a response by Thursday.

Mr. Aaron said Mr. Swanson was to have provided a response but had not done so.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

A. Right-of-Way Annexation in NE Sewer Extension Project Area – Ordinance

Ms. Shanks presented the staff report in which the City Council was requested to adopt an ordinance approving an expedited annexation petition to annex specified portions of rights-of-way in the NE Sewer Extension Project Area (File A-09-03).

This annexation was one small step in the project of extending sewer service to the area to facilitate the process. She indicated the area on a map. The City Council initiated the annexation September 2009, and this would finalize the action. Since there were no property owners involved, staff opted for an expedited annexation process.

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This would allow property owners to annex in order to connect to the sewer. The City would not require annexation unless a property connected to the system. Staff may come back at a later date to discuss those properties already receiving City sewer.

Ms. Shanks reviewed notification procedures that included property owners and residents, service providers and districts, neighborhood associations, planning organizations, and planning commissioners. A number of comments were received. Clackamas River Water initially objected and after discussions rescinded its objection, so the annexation process resumed. Clackamas County Street Light District #5 and City staff agreed an intergovernmental agreement would be needed in the future as the area transitioned into the City. Staff received 9 calls and 2 emails from residents and property owners mostly seeking information. No necessary parties objected in writing.

This annexation of right-of-way would mean there would be policing and code enforcement on the right-of-way including clear vision and access management. Since private property was not being annexed it would still be subject the Clackamas County zoning and development codes, and service provision would be unchanged with this action.

Ms. Shanks reviewed the decision City Council's options and noted the amended legal description that was an exhibit to the ordinance. The proposal met all requirements and would enable property owners to voluntarily annex to the City of Milwaukie.

Councilor Loomis had been concerned from the beginning about the City's ability to do island annexations.

Ms. Shanks replied the ordinance language affirmed the City's commitment to not use this to annex people involuntarily. She noted some properties were currently being served by Milwaukie but had not annexed.

Ms. Herrigel provided an overview of the outreach program. In January 2010 all properties in the area were added to *The Pilot* newsletter mailing list and sent a flier regarding construction impacts and who to contact with questions and concerns. In February there would be a mailing related to street maintenance, traffic and parking, code enforcement, and permitting in right-of-way. In March at least one open house was planned in the neighborhood. General City packets would be mailed that addressed sewer connection program information including the first 2-year offer, the annexation process and implications, and development standards. Major goals of the public outreach effort were to establish points of contact in the City and the eastside neighborhood. Staff hoped to increase face-to-face contact through open houses and speakers.

Councilor Barnes observed comments indicated the tone of the responses were different now that property owners had more information. It seemed the anxiety level was reduced.

Ms. Shanks added City staff was starting to get pre-application conference requests from people with vacant lots or who wished to expand their homes.

Councilor Stone asked the anticipated costs of taking over jurisdiction of the right-of-way.

Mr. Parkin responded this annexation added about 3% more street surface to maintain. When the project was done many of the streets will be brand new, so maintenance would not be an issue for some time. The annexation included 88 street lights which would eventually be taken over as property annexation occurred. At \$10 per light per month about \$10,000 would be added to street lighting budget. Generally the operating costs would increase 3% over time.

Councilor Stone understood the current residents were paying for maintenance.

Mr. Parkin replied there would be no offset until revenue starting coming in from that area as properties annexed. There may be some calls to repair potholes and things of that nature.

Mayor Ferguson commented he would not anticipate too many calls since the streets would be new.

Councilor Stone asked how law enforcement and code enforcement would operate if they could only do so in the right-of-way. What if some criminal activity was taking place in the right-of-way and the person fled into a house?

Chief Jordan replied people generated calls for police service and not right-of-way. If this evolved into annexation then the calls would be increased. Right-of-way annexation would generate traffic enforcement which was minimal on neighborhood streets. Now if the County called for backup, Milwaukie police drift into an area until another County officer arrived. The right-of-way annexation would have little effect on Milwaukie police.

It was moved by Councilor Chaimov and seconded by Councilor Barnes for the first and second readings by title only and adoption of the ordinance annexing portions of rights-of-way in the NE Sewer Extension Project Area into the City limits of the City of Milwaukie and withdrawing said rights-of-way from Clackamas County Service District for Enhanced Law Enforcement with the inclusion of the amended exhibit B.1 (File #A-09-03). Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting 'aye.' [5:0]

Mr. Swanson read the ordinance for the first and second times by title only.

Ms. DuVal polled the City Council: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting "aye." [5:0]

ORDINANCE NO. 2010:

AN ORDINANCE OF THE CITY OF MILWAUKIE ANNEXING PORTIONS OF RIGHTS-OF-WAY IN THE NE SEWER EXTENSION PROJECT AREA (WHICH IS BOUNDED ON THE NORTH BY SE WESTFORK AVENUE, ON THE EAST BY SE LINWOOD AVE, ON THE SOUTH BY SE KING ROAD, ON THE WEST BY SE 55TH AVENUE AND AS MORE SPECIFICALLY DESCRIBED AND DEPICTED IN THE ATTACHED EXHIBITS AS AMENDED) INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING SAID RIGHTS-OF-WAY FROM CLACKAMAS COUNTY SERVICE DISTRICT FOR ENHANCED LAW ENFORCEMENT. (FILE #A-09-03)

B. Amendment to Intergovernmental Agreement with the Oregon Department of Transportation (ODOT) Regarding Federal Stimulus Project (Jackson Street Improvements – Resolution

Mr. Campbell provided the staff report in which the City Council was requested to authorize the City Manger to sign amendments to the agreements with the Oregon Department of Transportation (ODOT) concerning federal stimulus funding for the Jackson Street Improvement Project and Linwood Avenue Resurfacing Project. This project would rebuild Jackson Street between Main Street and 21st Avenue. He reviewed the funding of the project with a total budget of \$1.49 million with \$938,000 in ARRA/Stimulus funds, \$497,000 TriMet/FHWA, \$40,000 from the City of Milwaukie, and a request for \$100,000 to cover any potential gap created by any project overruns. He

reviewed the elements of the project that included full street reconstruction, undergrounding utilities, new bus shelters, stormwater pre-treatment, and streetscape improvements specified in the public area requirements element of the Downtown and Riverfront Plan. He showed a slide of existing conditions that included a number of trees that would be removed in February before migratory birds began nesting. The trees would be replaced by the project. The next steps were signing the grant agreement, a budget amendment to address the \$100,000, bidding and contract award, and construction starting May 15 to June 1. The project specifications addressed planned summer events. He reviewed the project timelines and briefly commented on the construction guidelines.

Councilor Stone noted the project had started out at \$725,000 and was now up to almost \$1.5 million.

Mr. Campbell replied the \$750,000 had not included the TriMet funds of \$500,000. TriMet had thought about a smaller project that only replaced the shelters. Costs escalated by about 1/3 and included a bid risk contingency which would likely not be used as projects were currently coming in lower than engineer estimates. Some hard costs had changed over time, and there were unanticipated federal regulatory steps.

Councilor Stone was concerned about spending taxpayer money. Did the City have that kind of money to throw around on a project like this or should it spend money on street surface maintenance. Most of the City did not have underground utilities. She was not happy about removing the existing trees and was no longer sold on the project.

Mr. Campbell reported the City had two existing agreements with ODOT: one for stimulus funds for Jackson Street and one for a paving project. He recommended that the City request that ODOT transfer funds from the Linwood Avenue paving project to the Jackson Street improvement project. Staff had considered scaling back the Jackson Street project, but the same cost inflation factors were also driving up the Linwood Project. It will cost \$300,000 - \$400,000 to resurface Linwood Avenue with City money but \$550,000 to \$600,000 if federal funds were used. Those additional funds would have come out of the street surface maintenance program. Resurfacing was more time sensitive than a reconstruction. The scope of the Jackson Street project would not change.

Councilor Stone asked if there was way to save the trees on Jackson Street.

Mr. Campbell replied given that the utilities would be undergrounded odds were that the trees would be damaged. The cost of sensitive construction would be substantial. Design assumes some slightly different types and locations for the trees.

Mr. Asher added this project was holding true to the public area requirements which called for benches, lights, and trees on this street. He noted the current trees were right on the curb and would interfere with the layover spot. The decision was to build a new street with new street trees.

Councilor Stone still did not like it. Trees should be protected since they have been there for a long time. She suggested policies should be enacted to reflect what the public wanted in terms of public area requirements.

Councilor Barnes understood the replacement trees would be put in a more appropriate location and could grow without breaking up the sidewalk.

Mr. Asher would provide information on the caliper and type of trees which would be similar to what was selected for North Main Village.

Mr. Campbell agreed the trees were valuable but would be replaced at some time, and this was the logical time to do it.

Mayor Ferguson had a number of calls related specifically to the trees. He requested additional information on the tree removal before making a decision. He asked since there was a budget impact if the Budget Committee members had been informed. Was there historical value to the trees and what were their ages and life expectancies? How valuable to the canopy were these trees? Could the trees be replaced with trees with similar growth characteristics? Was there any option to scale back the project and not spend the additional \$100,000?

Mr. Campbell explained the Linwood project could not be done within the timelines of the stimulus requirements. The transfer of appropriations had not gone through a Budget Committee review. He understood the budget questions to be the impact of reducing the scope of the project by using asphalt instead of concrete which he did not believe was a good option given maintenance issues. The additional funding would probably not be used; it was only to cover the ODOT bid risk requirement. It would be difficult to identify what could be eliminated from the project to reduce costs, and procedurally there could be some problems with the timelines.

Mr. Swanson asked if this was the kind of project that gave rise to public area requirements.

Mr. Asher replied the public area requirements document was part of Downtown Plan that outlined what the community wanted its downtown streets to look like. Typically those requirements come into play during private development; however, in this case a downtown street was being redone. This was clearly in the realm of public area requirements, and the project was doing its best to hold true. There was a policy on what the streetscape ought to look like. Perhaps the scope could be reduced by going from concrete to asphalt, but he did not think the project could be redesigned at this point to accommodate existing street trees. If that was the City Council's priority, then just the shelters could be done on the existing street with the existing trees without the stimulus funding for the entire project.

Councilor Stone asked if the stimulus funding could be reallocated to the Linwood project.

Mr. Campbell replied the time was past to make the stimulus funding hurdles for the Linwood Avenue project. Staff felt it was easier and more economical to de-federalize the Linwood resurfacing.

Councilor Loomis asked for information on the existing tree types and sizes and if there were any alternatives.

Councilor Stone asked if the trees could be given away.

It was moved by Councilor Barnes to adopt the resolution authorizing the amendment of agreements with ODOT for economic stimulus projects.

Councilor Chaimov noted Mr. Parecki wished to speak on this matter.

Ed Parecki, Milwaukie business owner, looked at this project which baffled him in terms of specifications. The City Council reluctantly approved \$40,000 for this project, and he was concerned the agreement said the City would be liable for any amount over the estimate. This was an open ended contract and the City was bound. We were not building a pyramid so why was construction engineering \$196,000; this was not rocket science. He believed electrical needed to be 3-feet underground. In 1982 TriMet agreed to make this bus transit mall temporary. By construction this project as proposed it would be a permanent structure. If light rail does come this project should be closer to Adams Street and was this project necessary. This project was already over budget by \$300,000, and it was only shovel ready. If you agree to this resolution the City would leave itself open to any additional costs. Was the City ready to absorb

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those costs, and who would get hurt in the budget if there were extra costs. Has the City Council asked the citizens if this was really necessary?

Councilor Chaimov agreed with Councilor Loomis in his hopes the replacement tress would improve the canopy.

Councilor Chaimov seconded the motion to adopt the resolution.

Mayor Ferguson would vote "no" because he was not convinced the additional investment in the project could be protected. He recommended finding a way to scale back the scope to stay within the original \$40,000. To approve the resolution the City was already signing a check for \$100,000 that did not need to be spent.

Mr. Campbell said the City would be liable for any cost overruns and added that was how the federal government operated. The project was now at a 3.5% contingency. The advantage of going through the federal process was that the project was heavily vetted, so there was a high degree of confidence in cost estimates.

Mr. Asher added if the City Council wanted to reduce the scope after the bidding was done and go with a different street surface and hope there were funds to improve it in the future. He felt the project had been well estimated and well designed, and a construction management team would oversee the project. It was true there could always be cost overruns on any project, but he felt it was unlikely.

Councilor Loomis would have liked more say in where the money was spent such as Riverfront Park. He commented if the stimulus finds were not spent on this project, they would be spent elsewhere, although he was hesitant about possible cost overruns.

Mr. Swanson recommended delaying the decision. The specific purpose of ARRA funds was to create jobs, and this project was consistent with federal guidelines. He suggested a 2-week delay to get more information and try to resolve the tree issue.

Mayor Ferguson asked for more information about the cost difference between concrete and asphalt and related maintenance costs.

Mr. Swanson observed all construction projects involved a certain amount of risk. His sense was that there were risks but that the estimates were accurate. He understood there was consensus to postpone the decision to address the concerns about the trees and local costs.

Councilor Barnes rescinded her motion.

Mr. Asher reminded the City Council that removal of the transit center was the highest priority in the Transportation System Plan Transit chapter. He appreciated the conflicting ideals and policies related to trees and money; however, this was not a pet project. He understood people wanted to see the existing transit center gone, and this project would make that happen.

Mayor Ferguson disagreed in that although this was not called a transit center it would be a converging center for busses on Jackson.

Mr. Asher explained people wanted to keep the service with improved shelters and smaller footprint.

Councilor Stone said the plan had always been to move the transit center out of the downtown to Southgate. Mr. Parecki brought up a good point about light rail and where it would end up with a bus mall nearby.

Mr. Asher replied there would be high capacity bus shelters near the light rail station. This project will continue to serve transit users, but it will not be the only one in the downtown. That Southgate be a park-and-ride was a desire of some people but not part

of the plan, and TriMet agreed for a brief period. Southgate was also a stimulus project that made Milwaukie a better place, and the ribbon was cut on that today. This project may not be the ideal solution to get buses out of the downtown, but it would make the downtown a nicer place as people expressed in the TSP.

C. Grant Agreement for American Rivers/NOAA Contribution to Planning Phase for Kellogg-for-Coho Initiative – Resolution

Mr. Campbell provided the staff report in which the City Council was requested to adopt the resolution authorizing the city manager to sign a grant agreement to accept funds from American Rivers to contribute to costs of the planning phase for the Kellogg-for-Coho Initiative. He discussed recent outreach efforts that included abutting property owners to explain timeframes and what could be expected. Their questions related to issues such as mosquitoes, security, and native plantings. The action before City Council would allow the City to accept \$45,000 from American Rivers that would focus on the fish habitat aspects of the project. At the public outreach meetings there were about 10 – 15 people total. Although people were not polled at the end of the meeting Mr. Campbell felt people understood the project and that if the dam was removed the lakebed would not be restored immediately and that steps would be taken to not degrade property owners' backyards. Generally, he felt the meeting was positive.

Councilor Stone asked why staff had not polled the attendees.

Mr. Campbell replied the meeting was conversational in tone where concerns were heard and information shared. It was assumed the attendees did not have veto power at this point, and if the project moved forward they would be able to address City Council directly.

It was moved by Councilor Barnes and seconded by Councilor Chaimov to adopt the resolution authorizing the city manager to sign a grant agreement to accept funds from American Rivers to contribute to costs of the planning phase for the Kellogg-for-Coho Initiative. Motion passed with the following vote: Councilors Barnes, Chaimov, and Loomis and Mayor Ferguson voting "aye" Councilor Stone voting "no." [4:1]

RESOLUTION NO. 04-2010:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING EXECUTION OF A GRANT AGREEMENT WITH AMERICAN RIVERS TO SUPPORT A PLANNING PHASE FOR THE KELLOGG-FOR-COHO INITIATIVE.

D. Council Reports

Councilor Loomis recapped the Winter Solstice Event and thanked Citywide Tree Service for delivering wood for the bonfire twice.

Mayor Ferguson thanked a number of people who helped both before and during the event including the Milwaukie Police Cadets, Clackamas Fire District #1, the Lewelling Neighborhood District Association, Starbucks, Councilor Loomis for organizing the bonfire, and Beth Ragel for coordinating the event.

Mayor Ferguson announced the City Council would consider a wastewater surcharge on January 19, 2010 meeting.

Mr. Swanson announced an executive session on January 8, 2010 to consider the evaluation of the chief executive officer followed by a goal setting work session.

ADJOURNMENT

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

Mayor Ferguson adjourned the regular session at 8:47 p.m.



Pat DuVal, Recorder

REGULAR SESSION

AGENDA

MILWAUKIE CITY COUNCIL JANUARY 5, 2010

MILWAUKIE CITY HALL

10722 SE Main Street

2069th MEETING

REGULAR SESSION – 7:00 p.m.

- | | Page # |
|--|--------|
| 1. CALL TO ORDER
Pledge of Allegiance | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | |
| A. Christmas Ship President Jess Heitman | |
| B. Big Brothers Big Sisters Month Proclamation | 2 |
| 3. CONSENT AGENDA <i>(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)</i> | |
| A. City Council Minutes for the November 17, 2009 Regular Session | 4 |
| B. City Council Minutes for the December 1, 2009 Regular Session | 9 |
| C. City Council Minutes for the December 15, 2009 Regular Session | 12 |
| D. Establish Milwaukie City Council 2010 Meeting Dates – Resolution | 17 |
| E. Establish City of Milwaukie Papers of Record – Resolution | 19 |
| F. Intergovernmental Agreement between Oregon State Department of Environmental Quality and the City of Milwaukie to Retrofit City-Owned Diesel Vehicles with Emission Control Devices – Resolution | 20 |
| G. OLCC Application Walgreen's, 10903 SE Oak Street, New Outlet | 37 |
| 4. AUDIENCE PARTICIPATION <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.)*

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|----|---|-----|
| A. | Right-of-Way Annexation in NE Sewer Extension Project Area – Ordinance
Staff: Susan Shanks, Senior Planner | 41 |
| B. | Amendment to Intergovernmental Agreement with the Oregon Department of Transportation (ODOT) Regarding Federal Stimulus Project (Jackson Street Improvements) – Resolution
Staff: Alex Campbell, Resource and Economic Development Specialist | 88 |
| C. | Grant Agreement for American Rivers/NOAA Contribution to Planning Phase for Kellogg-for-Coho Initiative – Resolution
Staff: Alex Campbell, Resource and Economic Development Specialist | 100 |

7. **INFORMATION**

8. **ADJOURNMENT**

Public Information

- Executive Session: The Milwaukie City Council may meet in executive 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.
- The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities (ADA). If you need special accommodations, please call 503.786.7502 or email ocr@ci.milwaukie.or.us at least 48 hours prior to the meeting.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

2.

PROCLAMATIONS,
COMMENDATIONS,
SPECIAL REPORTS,
AND AWARDS

PROCLAMATION

WHEREAS, the City of Milwaukie draws its strength from the diversity of cultures, traditions, and experiences of its employees; and Big Brothers Big Sisters is open and inclusive with their children, families and volunteers; and

WHEREAS, the City of Milwaukie is fortunate to be the employer of valued and remarkable employees who recognize the need for positive interaction between our communities' youths and adults; and Big Brothers Big Sisters is creating one-to-one relationships between caring adults and youth; and

WHEREAS, the worth of such interaction has been documented as an effective strategy to reduce crime and the fear of crime, reduce the high school drop out rate, reduce the use of alcohol and illegal drugs by youth, and reduce the overrepresentation of youth and especially minority youth in the criminal justice system; and

WHEREAS, Big Brothers Big Sisters Columbia Northwest represents a local organization that can facilitate increased involvement between the large potential cohort of adult volunteers employed by the City of Milwaukie; and

WHEREAS, Big Brothers Big Sisters Columbia Northwest has extended an opportunity to the Milwaukie Police and all City employees for volunteer activities that their workforce may participate in to enhance their lives and the lives of youth in their communities; and

WHEREAS, January 2010 Big Brothers Big Sisters Columbia Northwest will acknowledge these efforts publicly; and

NOW, THEREFORE, I, Jeremy Ferguson, Mayor of the City of Milwaukie, Oregon, do hereby proclaim the month of January 2010 as:

Big Brothers Big Sisters Month

in the City of Milwaukie and encourage all residents to observe this month.

ATTEST:

Jeremy Ferguson, Mayor
Mayor

Pat Duval, City Recorder

3.

CONSENT AGENDA

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
NOVEMBER 17, 2009**

CALL TO ORDER

Mayor Ferguson called the 2066th meeting of the Milwaukie City Council to order at 7:06 p.m. in the City Hall Council Chambers.

Present: Mayor Jeremy Ferguson, Council President Greg Chaimov, and Councilors Deborah Barnes and Susan Stone

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Community Development and Public Works Director Kenny Asher

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Milwaukie High School Student of the Month

The Mayor and City Council joined **Principal Mark Pinder** in recognizing **Noah Green** as Milwaukie High School Student of the Month.

CONSENT AGENDA

It was moved by **Councilor Stone** and seconded by **Councilor Barnes** to approve the consent agenda as presented.

- A. City Council Minutes of the September 15, 2009 Regular Session;
- B. Resolution 72-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Sign Amendment 01 to the Logus Road Walkway/Bikeway Project Agreement;
- C. Resolution 73-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing Execution of an Intergovernmental Agreement with TriMet for Collaboration on the Jackson Street Improvement Project;
- D. Resolution 74-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Kay Bower to the Milwaukie Ledding Library Board; and
- E. Resolution 75-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Nominating Beth Kelland as the City of Milwaukie Representative to the Clackamas County Service District #1 RiverHealth Advisory Board.

Motion passed with the following vote: Councilors Chaimov, Stone, and Barnes and Mayor Ferguson voting "aye." [4:0]

Mayor Ferguson announced Councilor Loomis was excused due to an illness.

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Sections 19.321.7 and 19.321.3

Mr. Swanson reviewed the history of the proposed amendment.

It was moved by Councilor Chaimov and seconded by Councilor Stone to continue the public hearing to the December 15, 2009 regular City Council meeting. Motion passed unanimously with the following vote: Councilors Chaimov, Stone, and Barnes and Mayor Ferguson voting “aye.” [4:0]

OTHER BUSINESS

A. Waste Water Treatment Capacity Advisory Committee By-Laws – Resolution

Mr. Swanson reported this was first proposed as the Partnership Advisory Group but morphed into a less powerful advisory group. The City Council was considering the bylaws at this meeting. At its previous meeting the Council expressed the opinion that joining in regional committee was advisable but wanted to ensure it was considering the final version.

City Attorney Monahan reported Councilor Barnes took the City Council’s direction from its last review of the bylaws to the meeting and was successful in getting those in attendance to adopt either the exact or similar language. That included how the bylaws would be modified and whether the issues of funding would be related to the districts or system wide. Language was put into final form by Norm Eder and County Counsel. He understood no member of the Committee had expressed any concerns. The Board of County Commissioners (BCC) would take final action around December 1. City Attorney Monahan recommended approval to confirm the City Council’s interest in participating on the committee and that the City accepted these bylaws.

Councilor Stone asked for clarification of the voting allocation for the public and that a majority was 5 votes.

City Attorney Monahan replied there was a total of 8 votes. The 3 Tri-City District members, the Cities of Gladstone, Oregon City, and West Linn, had a total of 4 votes. The Cities of Milwaukie, Happy Valley, Damascus, and unincorporated had 1 vote each, There was an opportunity for a tie vote, and it would take 5 votes to carry the day if everyone was present.

Councilor Barnes felt there was language in this document that would benefit the City of Milwaukie.

Councilor Chaimov saw little benefit to the citizens of Milwaukie to enter into an agreement to advise a governing body that showed little interest in treating the people of Milwaukie fairly, refused to provide information that the people of Milwaukie requested to fulfill the obligations imposed upon them by law, and had filed lawsuits and continued to prosecute the lawsuits against the people of Milwaukie which in his professional judgment lacked any basis in law or fact. The benefit he saw to the people of Milwaukie from this agreement was that the City would be joining with jurisdictions and perhaps together could convince the governing body to treat cities fairly, provide needed information, work cooperatively, and not file frivolous lawsuits.

Councilor Barnes agreed with Councilor Chaimov. Signing this did not relinquish the fact that the citizens of Milwaukie were being treated unfairly. The City was spending a lot of money defending its position. She would vote for the agreement with the caveat that the County put down its sword and build a partnership based on trust.

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Councilor Stone agreed with comments from both Councilors Chaimov and Barnes. The BCC was one of the partners, so she had to ask how Milwaukie could expect fair and equal treatment. She had reservations about entering into an agreement with a partner that had not demonstrated it could be trusted to have taxpaying citizens in mind. She felt the BCC was pushing cities in order to run its agenda. She was not comfortable entering into an agreement under these circumstances.

Councilor Barnes noted these were bylaws. Most councils had no details about what was going on in these meetings. Milwaukie was good about sharing information, but city managers were not going back to their elected officials with updates or notes. It was important to open up lines of communication, and she recommended this be a matter for the next Clackamas Cities meeting.

Mr. Swanson suggested this was a partnership of the cities and the unincorporated area in Clackamas County Service District 1. It was not a partnership between those entities and the BCC. There was no requirement that the County approve the recommendations from those entities. It will be interesting to see if the partnership can come together and be strong if the Commissioners do not agree.

Mayor Ferguson saw this as an opportunity to foster relationships and communication. He felt the monthly Clackamas Cities dinner meetings would be a good forum. Charmaine Coleman, Kenny Asher, and he would represent Milwaukie on the Kellogg Treatment Plant Study. He noted Beth Kelland was nominated to the Clackamas County Service District #1 RiverHealth Advisory Board. He saw this as a going-forward document and would support the Partnership.

Councilor Stone understood these were bylaws and not an official agreement. She referred to section 4.2 and expressed concern about the appointment of new members and paying an equitable share of the costs of improvements, expansion or changes of existing and/or new or additional waste water treatment facilities. She found it odd these were in the bylaws. These were financial promises.

City Attorney Monahan responded the criteria addressed the need for new members not already in the District to come with assets. Those potential members at this time were identified as the City of Lake Oswego currently served by the City of Portland and Oak Lodge Sanitary District. There had been a lot of debate on these criteria. This was one of the reasons it was important for Milwaukie to be an original member as opposed to not joining and defaulting to these criteria at a later date.

Councilor Barnes added the last meeting was recorded when the WES director stated entities could help each other if there was one project that was a benefit to all.

It was moved by Mayor Ferguson and seconded by Councilor Barnes to adopt the resolution confirming the City Council's endorsement of the need and concept of a regional waste water solution and approving the Waste Water Treatment Capacity Advisory Committee By-Laws. Motion passed with the following vote: Councilors Chaimov, Stone, and Barnes and Mayor Ferguson voting "aye." [4:0]

RESOLUTION NO. 76-2009:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, CONFIRMING ITS ENDORSEMENT OF THE NEED AND CONCEPT OF A REGIONAL WASTE WATER SOLUTION IN CLACKAMAS COUNTY AND APPROVING THE WASTE WATER TREATMENT CAPACITY ADVISORY COMMITTEE BY-LAWS.

Councilor Barnes was grateful this City Council could work through the process and address concerns with reservations.

B. Proposed Sunnybrook Extension

Mayor Ferguson stated the Milwaukie City Council needed to present its recommendation to Metro on the Sunnybrook Extension. It was his understanding that this Council unanimously did not agree with the proposal stated in the Regional Transportation Plan (RTP), but he wanted consensus from the group on what direction it proposed Metro should take.

Mr. Asher said the project showed up in the RTP as proposed by Clackamas County. The City, through him and with the consent of Council, sent comments on the entire RTP and on this particular project which the City did not support because of livability and environmental reasons. Milwaukie was joined by a slate of other concerned parties. Metro responded it did not support the comment because this project was part of the long-standing Regional Center Plan, finished redevelopment opportunities, and alleviated congestion in the area. Councilor Collette, Joint Policy Advisory Committee on Transportation (JPACT) Chair, was working on an RTP amendment that addressed environmental and livability concerns. JPACT will hear the amendment on December 10 and have a chance to accept or reject it. The project was still in RTP in some form, and if Milwaukie was interested in raising the volume on its position he recommended the Council do so through some kind of formal resolution.

Councilor Barnes emailed Councilor Collette's amendment to all Council members.

Mr. Asher added it was a compromise solution that was supposed to have the least amount of damage in the natural area. Metro staff said it mostly had to do with congestion mitigation which did not square with the design proposal or amendment that made this the smallest and most environmentally sensitive street. Mr. Asher sensed some policy conflict.

Councilor Barnes moved that the **City of Milwaukie request removal of the Sunnybrook Extension Project from the original transportation system plan. The Extension would cause an adverse impact on the environment, and the project design would not demonstrably mitigate traffic issues in the Clackamas Regional Center while adding traffic congestion to the City of Milwaukie.**

Mayor Ferguson wanted to figure out how to balance use of developable property and provide access to the educational facility with the other concerns. He asked if requesting removal of the project would limit access improvements to the campus.

Mr. Asher said the Engineering Director was of an opinion that a driveway to that site from 82nd Avenue was a good idea. He understood that the problem was with a through street that would invite more traffic at the Lake Road intersection. The RTP could be amended before it was adopted. He did not think all other options were foreclosed by virtue of this project's being removed. This, however, was not the City's project, and he was not sure the County would take action to replace the project with one Milwaukie felt was more appropriate. It was a position statement which could be elaborated to address supporting access to the campus or clarifying the issue of through traffic.

Councilor Chaimov said the kind of statement he was comfortable with was: the City requested removal of the road project unless it could be designed to prevent adverse traffic and environmental effect on the City of Milwaukie. He did not see a problem with the County's getting its road in a way that did not foul up traffic and water. He did not want to foreclose the ability to come up with a solution that fit the City's needs.

Mr. Swanson asked if the problem was that the County was seeking access but had designed a project that went beyond that. Could it be limited to a project that simply provided access?

Mr. Asher said the issues were that environmental impacts to the 3 Creeks area and addition of more trips into an already congested part of Milwaukie's street system. The County might be able to do that but not before the RTP was adopted.

Councilor Barnes would rather have the project removed and find a compromise in the future. Did the extension relieve congestion in the Clackamas area or was it a small thoroughfare that provided access to the campus.

Mr. Asher sent a letter to the BCC saying Milwaukie did not support what was being done and asked to work toward concurrence to achieve economic and academic goals. He was not sure the timing made a lot of sense, but it was not a project the City of Milwaukie could support.

Mayor Ferguson hoped to work collaboratively with Metro and the County because doing a project there would actually clean up an environmental problem in the ODOT area and increase accessibility.

Mr. Asher suggested Councilor Collette might argue her amendment would do what Mayor Ferguson was seeking which was to right-size and right-design the project. Sending a letter to the Transportation Policy Alternatives Committee (TPAC) to get more information on what the County was willing to do.

Councilor Barnes's original motion died for lack of a second.

It was moved by Councilor Barnes and seconded by Councilor Stone that the City of Milwaukie requests removal of the Sunnybrook Extension Project from the original Regional Transportation Plan. This Extension will cause added congestion to the City of Milwaukie, have an adverse impact on the environment and the project design will not demonstrably mitigate traffic issues in the Clackamas Regional Center. We are in favor of an alternative access plan and hope that all jurisdictions can work concurrently on finding a reasonable solution. Motion passed with the following vote: Councilors Chaimov, Stone, and Barnes and Mayor Ferguson voting "aye." [4:0]

C. Council Reports

Councilor Chaimov attended the Milwaukie Poetry Series Reading by Don Colburn, the Island Station Neighborhood District Association on potential street improvements, the higher speed rail meeting with ODOT, and a portion of the City's monthly light rail meeting.

Mayor Ferguson participated in the Milwaukie Daze planning meeting and encouraged people to attend the Milwaukie Umbrella Parade and City Hall Tree Lighting and the upcoming Winter Solstice and Christmas Ship Parade.

Mayor Ferguson announced Council would meet in executive session upon adjournment pursuant to 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 Barnes and seconded by Councilor Stone to adjourn the meeting. Motion passed with the following vote: Councilors Chaimov, Stone, and Barnes and Mayor Ferguson voting "aye." [4:0]

Mayor Ferguson adjourned the regular session at 8:06 p.m.

Pat DuVal, Recorder

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**CITY OF MILWAUKIE
CITY COUNCIL MEETING
DECEMBER 1, 2009**

CALL TO ORDER

Mayor Ferguson called the 2067th meeting of the Milwaukie City Council to order at p.m. in the City Hall Council Chambers.

Present: Mayor Jeremy Ferguson, Council President Greg Chaimov, and Councilors Deborah Barnes, Joe Loomis, and Susan Stone

Staff present: City Attorney Bill Monahan, Engineering Director Gary Parkin, Community Services Director JoAnn Herrigel, and Resource and Economic Development Specialist Alex Campbell

PLEDGE OF ALLEGIANCE**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS****2009 Christmas Ships Proclamation**

Councilor Barnes read a proclamation naming December 9, 2009 through December 20, 2009 as *Christmas Ships Parade Weeks* in the City of Milwaukie.

CONSENT AGENDA

It was moved by Councilor Stone and seconded by Councilor Barnes to approve the consent agenda as presented.

A. **Resolution 77-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Amending the Intergovernmental Agreement (IGA) with the Metropolitan Area Communication Commission (MACC) to Extend the Term; and**

B. **OLCC Application for King Curry Thai Cuisine, 4208 SE King Road, New Outlet**

Motion passed with the following vote:

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

A. **Contract Award for the Construction of the Waste Water Sewer Collection System in the Northeast Sewer Extension Project Area – Resolution**

Mr. Parkin discussed the background of the Northeast Sewer Extension (NESE) project. When speaking with residents staff heard consistently that people were concerned about the expense. He outlined some of the cost savings that had come about as the project rolled out including favorable interest rates on the Clean Water State Revolving Fund Loan, stimulus funds, and the bidding climate. The project

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estimate was \$3.8 million, and the bids came in at approximately \$2.6 million. This allowed the City to supply sewer to those desiring it at a much lower cost than anticipated. The collection system would serve 261 properties and consist of 3 miles of sewer main, 4,800 feet of service laterals, 85 manholes, and a pump station.

Councilor Stone was curious about the company doing the work and asked if K and R Plumbing Construction had done work for the City in the past.

Mr. Parkin replied it had not, but he had checked references. He noted 3 of the 7 bids received were relatively close. Staff will scrutinize the work and felt comfortable the contractor was capable of doing the work.

Councilor Stone was pleased the connection fee would be lower than originally thought and less than \$4,000.

Mayor Ferguson asked if staff thought property owners would connect sooner than anticipated because of the better rate.

Mr. Campbell replied the lower cost as a result of stimulus funds and the bid environment would certainly allow more people to take advantage of the opportunity. Staff will propose for Council approval a 10-year payment plan at 0% interest if the connection was made in the first 2 years of the program.

Councilor Barnes wanted to make sure there was a good public relations outreach so people could connect as soon as possible.

Mayor Ferguson agreed with that comment because there were already a lot of hard feelings in that area. It would be important to let residents know the City was passing the savings along to them.

It was moved by Councilor Barnes and seconded by Councilor Stone to adopt the resolution approving the contract award for the construction of the North East Sewer Extension Project and authorizing the City Manager to sign a contract with K & R Plumbing Construction in the amount of \$2,653,257.05. Motion passed with the following vote: Councilors Stone, Loomis, Barnes, and Chaimov and Mayor Ferguson voting "aye." [5:0]

RESOLUTION NO. 78-2009:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE CONTRACT AWARD FOR THE CONSTRUCTION OF THE NORTHEAST SEWER EXTENSION PROJECT (SERVING DUAL INTEREST AREA "A")

B. Council Reports

Councilor Chaimov announced the Celebration of Life for Shirley Brown on December 5 and acknowledged her work on the Library Board and Friends of the Library.

Councilor Stone attended the Light Rail Steering Committee meeting where there was a decision reached on the bridge height. She briefly reviewed the project schedule.

Councilor Barnes attended the State of the City address with Councilor Chaimov and will attend the North Clackamas School Board meeting to accept a grant from the North Clackamas Education Foundation.

Mayor Ferguson gave the State of the City address to the Milwaukie Rotary. He announced the Umbrella Parade and City Hall Tree Lighting on December 5 and the monthly light rail meeting where traffic studies would be discussed.

ADJOURNMENT

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adjourn the meeting. Motion passed with the following vote: Councilors Stone, Loomis, Barnes, and Chaimov and Mayor Ferguson voting “aye.” [4:0]

Mayor Ferguson adjourned the regular session at 7:21 p.m.

Pat DuVal, Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
DECEMBER 15, 2009**

CALL TO ORDER

Council President Chaimov called the 2068th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Council President Greg Chaimov and Councilors Joe Loomis and Susan Stone

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Resource and Economic Development Specialist Alex Campbell

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Milwaukie High School Student of the Month

Mark Pinder, Milwaukie High School Principal, introduced Students of the Month **Justine Bandelow** and **Kelsey Bandelow**.

Announce Winner of the Downtown Milwaukie “Passport to Prizes”

Council President Chaimov announced the winner of the Downtown Milwaukie “Passport to Prizes” **Hayden Fish**.

CONSENT AGENDA

Councilor Stone asked that item F, Grant Agreement for American Rivers/NOAA Contribution to Planning Phase for Kellogg-for-Coho, be removed from the consent agenda for discussion.

It was moved by Councilor Stone and seconded by Councilor Loomis to approve consent agenda items A – E as presented.

- A. City Council Minutes of the October 6, 2009 Regular Session;
- B. City Council Minutes of the October 20, 2009 Regular Session;
- C. City Council Minutes of the November 3, 2009 Regular Session;
- D. Resolution 79-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Purchase of City Vehicles That Were Approved for Replacement in the Fiscal Year 2009/2010, as Per the City Vehicle Replacement Criteria; and
- E. Resolution 80-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Sign a Contract with Brown and Caldwell Consultants in the Amount Not to Exceed \$35,000.

Motion passed with the following vote: Councilors Loomis and Stone and Council President Chaimov voting “aye.” [3:0]

AUDIENCE PARTICIPATION

Charles Edward Aaron, owner of the properties located in Milwaukie at Main and Monroe and 2025 – 2029 SE Jefferson Street, stated for over 2 years he and his former

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partner Ed Parecki had confrontations with the City Council and members of the City administration. At first he thought it was a matter of ignorance but came to realize it was more a concerted effort on the part of staff to discredit, antagonize, provoke, and harass Mr. Parecki and by extension him starting with the Main/Monroe building. He discussed the constitutionality of public area requirements (PAR) and amendments to those regulations. During the initial City Council meeting, then-Mayor Bernard, who was now being sued by Mr. Parecki for liable, halted the proceedings and gave testimony against and voted against Mr. Parecki. It was a quasi-judicial proceeding and should have been conducted as a court of law. City Attorney Monahan should have brought that to the Council's attention, and the failure to do so indicated compliance in the harassment effort. After the ordinance was amended, Mr. Parecki asked for relief from the unconstitutional fees levied against him, and he was told they would have to grovel at the feet of the same staff members who were responsible for antagonizing, provoking, and harassing them so that a recommendation could be made to Council. How could a change of use be determined without a tenant? On Main Street only retail was allowed on the first floor. This Council was considering rescinding that section of the code, but still fees were being levied. The Planning Department was telling prospective tenants they were not the kind of business wanted downtown. Now Mr. Aaron had a prospective tenant for the other building who was incorrectly told he needed permits totaling over \$3,000 based on a project value of \$25,000. He reviewed exceptions to required permits that included finish work that was nonstructural. There was electrical and plumbing work that required permits, but finish work did not. Now the Planning Department was claiming a change of use. He discussed upgrades to the building over time and the recreated façade. The use of the building was again office space, but the tenant was being charged \$2,555 for transportation expenses plus \$600 in planning permit fees. There was also an assessment for public area improvements. When Mr. Aaron asked what the transportation fee was for and its basis, he was not given a satisfactory answer. Considering Walgreen's at Oak Street and Hwy. 224 was assessed a fee of \$10,800 for an entire shopping center, it hardly seemed reasonable that 4 guys in a 1,020 square office should have to pay \$2,555. Did former Mayor Bernard have to pay that fee when a wholesale business moved into his space on Main Street even though it was not retail? Was Classic Cars assessed a fee although car dealership were not allowed downtown? Did it help that they rented space from former Mayor Bernard? As PARs go neither of the first floor tenants wanted a bench or trash can. The chiropractor said a bench looking into his building would violate HIPAA compliance rules. The photographer did not want it because she had to call the police to break up a fight between homeless people who were receiving services at St. John's Episcopal Church. She was afraid the bench would attract the wrong kind of people.

He waited 4 weeks to talk to the City Manager about the situation. Mr. Swanson left on vacation and had his deputy call him after he left to say he was not available. He received a letter from Mr. Monahan to a question he had not asked. He spoke with City Attorney Monahan and expressed his frustration very directly, and he was told Mr. Swanson would contact him on December 9. Mr. Aaron did not hear from Mr. Swanson until December 14. In his defense he was busy, and apparently no one could make a decision in his absence. Mr. Swanson said he would have to do some research and would contact him the next day. This was the guy who ran the City and did not delegate

authority and essentially told people he may or may not get to it. Did it seem reasonable that Mr. Swanson was not in control of his own time? Was it any wonder that decisions made in this town did not make any sense? The town was desperately trying to keep businesses while putting up huge barriers with transportation fees and PAR. Mr. Campbell may talk about the Main Street project which Mr. Aaron felt was worthy. New restaurants or the meager retail establishments would certainly prefer a paying customer to installing a bench. Apparently Mr. Swanson and the Planning Department, none of whom lived in Milwaukie, do not think so. He thought City Council was responsible for the mess this City had become. After thinking he thought a few bad apples in City government and some politicians applied vindictive behavior to people who were trying to change Milwaukie for the better. He discussed interpretation of laws. He asked the City Council for relief from the fees imposed on him and his tenants and to question the tenure of those chosen to lead the City. He urged the Council members to take back the City for those who elected them.

Councilor Stone asked the fee amounts being requested.

Mr. Aaron asked for relief from the PAR and other things on the Main/Monroe building and the fees being imposed on the Jefferson Street project namely initially the \$3,100 and future fees imposed on any future tenants. There were also PAR fees being imposed on Main/Monroe in addition to the \$10,000 on a building with no tenants.

Councilor Stone noted that was a lot of money and asked staff if there were any resolution to the complaint.

Mr. Swanson outlined how one might appeal the PAR assessment through a variance of standards that would be heard by the Planning Commission. If adverse, that decision could be appealed.

City Attorney Monahan was not sure if that process would apply to the transportation fee.

Mr. Aaron said those fees were based on \$25,000 but were not applicable to finish items. If the fee were based on non-structural items that did not require a permit, then why was he being charged a fee?

Councilor Stone asked City Attorney Monahan to address the unconstitutionality of the City's law.

City Attorney Monahan believed the comments related to the PAR which were amended after the Main/Monroe project, but he was not sure of the sequence on the Jefferson property.

Mr. Aaron stated it happened after the appeal to the City Council on the grounds that the laws were unconstitutional which started a conversation between planning and perhaps legal. It was determined the law was unconstitutional as applied even though he was still required to pay those fees.

City Attorney Monahan said the question was the application of the public area requirements and the statement that there had to be a rough proportionality analysis which was done for the Main/Monroe property. If the PAR had been applied strictly as written a much higher amount would have been assessed.

Mr. Aaron said the law was triggered by a dollar amount and not a proportionality analysis which was done after the fact. Triggering by the dollar amount of the project was unconstitutional, and that was why the law was changed. You can make up things, or you can read the meeting minutes.

Councilor Chaimov stated the City appreciated the efforts Mr. Aaron and Mr. Parecki were going through to invest in the downtown and improve it, but he did not appreciate Mr. Aaron's badmouthing. There were no bad apples. The buck stopped with the City Council. Staff was doing the Council's bidding in carrying out the adopted laws. If Mr. Aaron believed those laws were improper and not conducive to business, Council President Chaimov suggested he let the Council know in what particulars so it could carefully consider changes. Staff was fair and thoughtful, and to the extent Mr. Aaron felt the code was being applied in a way other than he felt it should be applied, it was the Council's fault for having a code for not having a code sufficiently conducive to business. He hoped Mr. Aaron would make some suggestions on how to make it easier for people like him and Mr. Parecki to succeed.

Mr. Aaron appreciated the comments but disagreed. He understood his defense of staff, but there was a wave of differing opinion. Whether Council President Chaimov appreciated his telling the truth or not was beside the point.

Council President Chaimov understood Mr. Parecki wished to speak on agenda item 6.A, Amendment to Intergovernmental Agreement with the Oregon Department of Transportation (ODOT) Regarding Federal Stimulus Project (Jackson Street Improvements), which he announced was moved to the January 5, 2010 meeting agenda.

PUBLIC HEARING

Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Sections 19.321.7 and 19.321.3

Mr. Swanson reviewed the history of the proposed amendments.

It was moved by Councilor Chaimov and seconded by Councilor Stone to continue the public hearing to the January 19, 2010 regular City Council meeting. Motion passed unanimously with the following vote: Councilors Loomis and Stone and Council President Chaimov voting "aye." [3:0]

OTHER BUSINESS

A. Amendment to Intergovernmental Agreement with the Oregon Department of Transportation (ODOT) Regarding Federal Stimulus Project (Jackson Street Improvements) – Resolution

Council President Chaimov announced this item and consent agenda item F, Grant Agreement for American Rivers/NOAA Contribution to Planning Phase for Kellogg-for-Coho, would be deferred to the January 5, 2010 regular session.

B. Council Reports

Councilor Loomis announced the Winter Solstice Event on December 19 at Milwaukie Riverfront Park.

Council President Chaimov encouraged people to donate to the Ledding Library Toy Drive. He announced that Mayor Ferguson wanted the City Council to check their calendars for a planning session on January 8 or 15, 2010.

ADJOURNMENT

It was moved by Councilor Stone and seconded by Councilor Loomis to adjourn the meeting. Motion passed unanimously with the following vote: Councilors Loomis and Stone and Council President Chaimov voting “aye.” [3:0]

Council President Chaimov adjourned the regular session at 7:33 p.m.

Pat DuVal, Recorder

RESOLUTION NO. 01-2010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DESIGNATING THE FIRST AND THIRD TUESDAYS OF EACH MONTH AS THE REGULAR CITY COUNCIL MEETING DATE, ESTABLISHING THE TIMES OF THE SAID MEETINGS, AND REPEALING RESOLUTION 01-2009.

WHEREAS, Section 20 of the Milwaukie City Charter requires the City Council to hold a regular meeting at least twice each month in the City at a time and at a place which it designates; and

WHEREAS, the Municipal Code Chapter 2.04.070 states that the City Council must provide notice of its regularly scheduled meeting times and locations; and

WHEREAS, the City Council adopted Resolution 01-2009, which set the work session and the regular meeting on the first and the third Tuesday of each month;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Milwaukie, Oregon:

Section 1: The regular City Council meeting will be held on the first and third Tuesday of each month at 7:00 P.M. in the Council Chambers at City Hall, 10722 SE Main Street or designated alternate location as required by the Public Meetings Laws of the State of Oregon.

Section 2. The City Council work session will be held on the first and third Tuesday of each month at 5:30 P.M. in the Conference Room at City Hall, 10722 SE Main Street or designated alternate location as required by the Public Meetings Laws of the State of Oregon.

Section 3. The City Council may recess and reconvene the work session after adjournment of the regular session if discussion of work session topics has not concluded; or the City Council may announce continuation of the unfinished item or items to a future work session.

Section 4. The City Council may schedule additional work sessions if deemed necessary by the members, and further the City Council may cancel any work sessions if there are insufficient agenda topics to warrant convening a meeting.

Section 5: The City Recorder is directed to provide notice to the public of all City Council meetings as required by law.

Section 6: Resolution No. 01-2009 adopted January 6, 2009 is repealed.

Section 7: This resolution is effective January 5, 2010.

Introduced and adopted by the City Council on January 5, 2010.

Jeremy Ferguson, Mayor

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

ATTEST:

By: _____
City Attorney

Pat DuVal, City Recorder

RESOLUTION NO. 02-2010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DESIGNATING THE *CLACKAMAS REVIEW*, *THE OREGONIAN* AND *THE DAILY JOURNAL OF COMMERCE* AS THE PAPERS OF RECORD FOR THE CITY OF MILWAUKIE.

WHEREAS, ORS 192.620, Public Meetings Law Policy, requires an “Informed public aware of the deliberations and decisions of the governing bodies”; and

WHEREAS, ORS 193.010 defines a newspaper of general circulation, and ORS 193-020 defines a newspaper in which public notices may be published; and

WHEREAS, the *Clackamas Review*, *The Oregonian*, and *The Daily Journal of Commerce* meet the needs of the City and the requirements of State statutes,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Milwaukie, Oregon, designates the *Clackamas Review*, *The Oregonian*, and *The Daily Journal of Commerce* as the papers of record for the City of Milwaukie.

Introduced and adopted by the City Council on January 5, 2010.

This resolution is effective on January 5, 2010.

Jeremy Ferguson, Mayor

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

City Attorney



To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenneth Asher, Director of Community Development and Public Works

From: Paul Shirey, Public Works Operations Director

Subject: Intergovernmental Grant Agreement (IGA) between Oregon State Department of Environmental Quality (DEQ) and the City of Milwaukie (City) to Fund Installation of Emissions Reduction Equipment on City-Owned Diesel Vehicles

Date: December 16, 2009 for January 5, 2010 City Council Regular Session

Action Requested

Authorize the City Manager to execute an IGA with DEQ in the amount of \$56,008 for the purpose of retrofitting seven City-owned diesel powered vehicles with emission control devices that will reduce harmful emissions and pollutants, including greenhouse gases and improve public health.

History of Prior Actions and Discussions

None

Background

The City identified an interest to DEQ in the clean diesel retrofit program nearly two years ago in an effort to meet what was, at that time, simply a goal to reduce the City's contribution to greenhouse gas emissions. Just last year the City adopted a Sustainability Plan that cites reduction of the City's net contribution to greenhouse gases as a driving force behind many of its sustainability goals. The grant-funded program to convert older model diesel engines' exhaust controls to reduce air pollution is now available to the City. Funding for the program, earlier awarded to larger jurisdictions, has been supplemented by the 2009 federal ARRA grants to DEQ.

The rationale for this program is based on the disproportionate amount of nitrogen oxides (NOx) and particulate matter, and other toxic air pollutants, that diesel engines emit compared to gasoline engines. The particulate matter emitted in diesel exhaust is so small that it is highly breathable to the deepest part of the lungs.

The particulate matter is linked to serious public health impacts that range from aggravating asthma to heart and lung problems, cancer and premature mortality.

Diesel exhaust contributes to global warming and adds to visibility impairment and regional haze. DEQ ranks diesel particulates among the air toxics of most concern in Portland and statewide, due to their prevalence and impact to public health.

Milwaukie's adopted Sustainability Plan commits to reducing the City's carbon footprint that directly contributes to climate change. This grant will help the City reduce the level of greenhouse gas emissions it generates and in turn, reduce the city's carbon footprint. Other related goals include improving the overall fuel efficiency of the fleet, converting much of the fleet to green energy sources, enhancing energy efficiency in city buildings, reducing waste generation and purchasing environmentally sustainable products.

Retrofitting exhaust controls is a cost effective strategy to improve public health and improve the health of the planet at a macro scale and help the city meet its Sustainability goals at the operating level.

The grant of just over \$56,000 will be used by the City to retrofit ten diesel powered engines in its fleet with the latest technology to trap particulate emissions and reduce the level of NOx. The City and DEQ agreed on the vehicles eligible for the retrofit technology as shown on Exhibit E attached. DEQ will select a qualified vendor with the facilities and expertise to install the emissions control exhaust equipment. The City will schedule the equipment for installation of the devices, pay the vendor and seek reimbursement from the grant.

The vehicle selected to be retrofitted with these funds includes the following

- 1991 Caterpillar Loader
- 1995 Elgin Premier Sweeper and Auxiliary engine
- 2003 Ford F-450 service truck
- 2006 Steering truck sweeper and auxiliary engine
- 1996 GMC five-yard dump truck
- 2000 GMC dump truck and hot box.
- Sterling Vactor truck and auxiliary engine.

Payments will be based on reimbursement of actual costs authorized by the IGA. Payment is contingent on compliance with terms and conditions of the IGA. DEQ will

reimburse the City not more than 90% of the actual cost of each retrofit vehicle. Final payment of 10% of the grant is subject to City providing the Final Report and required certification documents.

The City must submit quarterly reports on the progress of the work to DEQ and a Final Report no later than September 30, 2010. Progress and schedule reporting is required for each quarterly report. The final report will include a summary of the Project including details regarding all the vehicles receiving the exhaust controls.

The work must be completed by June 30, 2010 and invoices for reimbursement of expenses submitted no later than July 30, 2010. The IGA expires on September 30, 2010.

Among numerous standard provisions of an ARRA grant, the City is required to retain all retrofit maintenance records, total annual vehicle miles or hours used, and annual vehicle miles traveled or hours used in Oregon for three years after the expiration of the IGA.

For three years following the expiration of the IGA, the City is obligated to use the retrofitted vehicle at least half the time in Oregon. Nine out of ten of the vehicles are not scheduled to be replaced sooner than four years from now. The City further agrees to maintain the retrofit according to manufacturer's specifications and make the equipment available to DEQ for inspection.

Concurrence

Ernie Roeger, Fleet Manager assisted in determining the list of vehicles eligible for retrofitting and will coordinate the conversion scheduling and payment processing. Ronelle Sears, Operations Supervisor and Mike Clark, Operations Supervisor support the program.

Fiscal Impact

Funding for the IGA is provided through a State Clean Diesel Grant issued to DEQ under the American Recovery and Reinvestment Act of 2009 (ARRA), the Energy Policy Act of 2005 and Public Law 109-58 by the U.S. Environmental Protection Agency (EPA).

The City will pay the vendor up front for each conversion and then submit to DEQ for a reimbursement up to 90% of the cost of purchase and installation of the emissions devices. The City will be reimbursed for the final 10% of the cost or about \$11,200 at the end of the project.

The Fleet operating fund is sufficient to cover this type of reimbursement grant without adding additional funds to the budget.

Work Load Impacts

The work necessary to schedule the conversion can be readily coordinated by the Fleet manager along with handling the vendor's invoices for the parts and labor.

Fleet staff will spend additional time and effort to prepare reimbursement requests for DEQ along with quarterly reports up to three times during the course of the IGA. All of this work is manageable with existing resources.

Alternatives

Do not approve the IGA in which case the funding will be allocated elsewhere.

Attachments

1. Grant Agreement, including Exhibits A-E
2. Resolution

ATTACHMENT 1
STATE OF OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
American Recovery and Reinvestment Act of 2009 State Clean Diesel Grant



EPA Grant Number: 2D-96087701 (G61001-09) CFDA 66.040 PCA # 66113 DEQ Agreement # 065-10

This Agreement is between the State of Oregon, acting by and through its Department of Environmental Quality (DEQ) and
City of Milwaukie (Recipient).

Recipient Data	DEQ Data
Grant Administrator: Paul Shirey City of Milwaukie 6101 SE Johnson Creek Blvd. Portland, OR 97206 (503) 786-7614 shireyp@ci.milwaukie.or.us DUNS#: 002005155 Recipient's Taxpayer ID# : 93-6002212	Grant Administrator: Kevin Downing Department of Environmental Quality 811 SW 6 th Ave. Portland, OR 97204 (503) 229-6549 Downing.Kevin@deq.state.or.us

1. **Effective Date and Duration** This Agreement is effective on the date at which every party has signed this Agreement. Unless earlier terminated or extended, this Agreement expires **9/30/2010**.
2. **Project** The Project is described in Attached Exhibit A. Recipient agrees to perform the Project in accordance with the terms and conditions of this Agreement.
3. **Agreement Documents** This Agreement consists of this document and the attached Exhibits A (Project Requirements), B (Payment Request and Certification), C (MBE/WBE Utilization DEQ 5700-52A), D (Lobbying and Litigation Certificate DEQ5700-53) and E (Engine, Vehicle and Retrofit Equipment List) which are listed in descending order of precedence.
4. **Grant Funds** DEQ funding for this Agreement is provided through a State Clean Diesel Grant issued to DEQ under the American Recovery and Reinvestment Act of 2009 (ARRA), the Energy Policy Act of 2005 and Public Law 109-58 by the U.S. Environmental Protection Agency (EPA). The maximum, not-to-exceed, grant amount that the DEQ will pay to Recipient is **\$56,008**. This is a cost reimbursement Grant and disbursements will be made only in accordance with the schedule and requirements contained in Exhibit A.
5. **Subcontracts** Recipient will not enter into any contracts or sub-grants for any of the work scheduled under this Agreement without obtaining prior written consent from the DEQ's Grant Administrator. Any such subcontract, if approved, is subject to such conditions and provisions as DEQ may deem necessary. In addition to any other provisions DEQ may require, Recipient shall comply with all applicable provisions of ARRA, including without limitation the reporting requirements of ARRA Section 1512(c)(4) and the registration requirements of ARRA Section 1512(h).
6. **Amendments** The terms of this Agreement will not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **The Recipient must submit a written request including a justification for any amendment to the DEQ Grant Administrator in writing at least forty five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully effective before Recipient performs work subject to the amendment. **This Agreement will not be amended after the expiration date.**
7. **Termination** This Agreement may be terminated by mutual consent of both parties or by DEQ upon written notice to the Recipient. This notice may be transmitted in person, by mail, facsimile, or by Email. If this Agreement is terminated under this Section 7, DEQ will pay Recipient for unpaid approved invoices and for authorized and approved expenses incurred under this Agreement through the date of the termination of the Agreement but not yet billed.
8. **Funds Available and Authorized** The DEQ certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within the DEQ current biennial appropriation or limitation. The Recipient understands and agrees that DEQ payment of amounts under this Agreement is contingent on DEQ receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow DEQ, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
9. **Performance Reporting**
 - (a) **The Recipient must submit quarterly Project Status Reports no later than 10 days after the end of each federal fiscal quarter during the term of this Agreement as described in Exhibit A– Project Requirements # 5 - Reporting.** (Federal fiscal quarters end December 31, March 31, June 30 and September 30). The reports must be submitted to the DEQ Grant Administrator and may be provided electronically.
 - (b) **The Recipient must submit a Final Report at the completion of the Project and no later than the expiration date of this Agreement as described in Exhibit A – Project Requirements # 5 - Reporting.**

10. **ARRA Logo** This Project is funded under the American Recovery and Reinvestment Act of 2009 and the Recipient must display the ARRA logo in a manner that informs the public that the Project is an ARRA investment. The ARRA logo may be obtained from the DEQ Grant Administrator.
11. **OMB Guidance** This award is subject to all applicable provisions of implementing guidance for the American Recovery and Reinvestment Act of 2009 issued by the United States Office of Management and Budget (OMB), including the Updated Implementing Guidance for the American Recovery and Reinvestment Act (M-09-15) issued on April 3, 2009 (available on www.recovery.gov) and any subsequent guidance documents issued by OMB.
12. **General Administrative Requirements**
- (a) The Recipient, pursuant to this Agreement assumes sole liability for Recipient's breach of the conditions of the Grant, and shall, upon Recipient's breach of grant conditions that requires the State of Oregon to return funds to the grantor, hold harmless and indemnify the state for an amount equal to the funds which the State of Oregon is required to pay to grantor.
 - (b) Any Grant funds disbursed to Recipient under this Grant Agreement that are expended in violation or contravention of any provisions of this Agreement must be returned to the DEQ. The Recipient will return all funds found by DEQ to have been expended in violation of this Agreement no later than 15 days after DEQ's written demand.
 - (c) The Recipient will maintain current registration in the Central Contractor Registration (<http://www.ccr.gov>) at all times during the term of this Agreement. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number is one of the requirements for registration in the Central Contractor Registration.
 - (d) All equipment and materials purchased with funds made available by this Agreement must be used only for purposes of the same general nature outlined in this Agreement. The Recipient will immediately notify DEQ of any equipment purchased with funds made available under this Agreement that is removed from service. Disposal of such equipment must be in accordance with 40 CFR 31.32.
 - (e) The Recipient, if a State agency or agency of a political subdivision of the State, agrees to comply with the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations under RCRA Section 6002 apply to acquisitions of certain products where the purchase price of such products exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the EPA. These guidelines are listed in 40 CFR 247.
 - (f) The cost principles of 2 CFR Part 220 (Educational Institutions), 2 CFR Part 225 (State, Local or Indian Tribal Government), or to 2 CFR Part 230 (Non-Profit Organizations), are applicable, as appropriate to this award.
 - (g) **The Recipient must submit a final request for payment no later than thirty (30) days after the end date of this Agreement.**
 - (h) The Recipient agrees to ensure that all conference, meeting, convention, or training space funded in whole or in part by this Agreement comply with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PI 101-391 as amended).
 - (i) The Recipient agrees to comply with the audit requirements prescribed in the Single Audit Act Amendments and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations". Recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133 agree to separately identify the expenditures provided through ARRA grants on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This shall be accomplished by identifying ARRA expenditures separately on the SEFA and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.
 - (j) The Recipient agrees to comply with the requirements of 40 CFR Part 30 or 40 CFR Part 31, and 40 CFR Part 33 as applicable.
 - (k) The Recipient will include the following term and condition in each procurement contract funded by this Agreement: *"The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under DEQ Grant Agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies."*
 - (l) Recipient agrees that no portion of the federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. **The Recipient agrees to provide certification to DEQ on FORM DEQ5700-53 at Project completion. FORM DEQ5700-53 is attached as Exhibit D.** Recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States.
 - (m) Pursuant to Section 18 of the Lobbying Disclosure Act, the Recipient affirms that it is not a nonprofit organization described in Section 501(c) (4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c) (4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
 - (n) The Recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. If Grant Agreement exceeds \$100,000, Recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying* and to submit certification

and disclosure forms accordingly. Any Recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure. All contracts awarded by the Recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix of 40 CFR Part 30.

13. **Buy American** Pursuant to ARRA Section 1605, in a manner consistent with United States obligations under international agreements, all iron, steel and manufactured goods used in a project for the construction, alteration, maintenance, or repair of a public building must be produced in the United States, unless that requirement has been waived by the applicable federal department or agency. The Recipient will comply with this provision and shall maintain records of such purchases for inspections by DEQ and federal agencies.
14. **Wage Rate Requirements** Section 1606 of ARRA requires that all laborers and mechanics employed by Contractors or sub-contractors funded directly by or assisted in whole or in part with funding under this Grant shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 31 of title 40, United States Code. The Recipient will comply with this provision, as well as with Oregon labor standards and wage rates found in ORS 279C.800 to 279C.870 and regulations promulgated thereunder. The Recipient must include a term and condition requiring compliance with federal and state wage rate requirements in all procurement contracts and sub-grants and require that procurement contractors and sub-grantees include such a term and condition in subcontract or other lower tiered transactions. The term and condition must require that contractors and subcontractors obtain wage determinations from DOL and comply with DOL guidance and regulations implementing wage rate requirements applicable to ARRA funds.
15. **Management Fees** Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this Grant Agreement. Management fees or similar charges may not be used to improve or expand the Project funded under this Agreement, except to the extent authorized as a direct cost of carrying out the scope of work.
16. **Consultant Payments** The Recipient will limit payments of federal funds for salaries (excluding overhead) paid to individual consultants retained by Recipients or Recipient's contractors to the maximum daily rate a Level IV of the U.S. Government's Executive Schedule. (As of January 1, 2009 the limit is \$587.20 per day and \$73.40 per hour.) This limit applies to consultation services of individuals with specialized skills who are paid at a daily or hourly rate. This limitation does not apply to contracts with firms for services which are awarded using the procurement requirements in 40 CFR unless the terms of the contract provide the Recipient with responsibility for the selection, direction and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation.
17. **Suspension and Debarment** Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions". Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions", includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient may access the Excluded Parties List System at <http://www.epls.gov>.
18. **Trafficking Victim Protection Act of 2000** Prohibition statement for Recipients who are **private entities**: You as the Recipient, your employees, sub-recipients and sub-recipients' employees may not engage in severe forms of trafficking in persons during the period that this Agreement is in effect; procure a commercial sex act during the period of time that this Agreement is in effect; or use forced labor in the performance of the Grant or sub-grants.
19. **Drug Free Workplace** The Recipient must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200-36.230.
20. **Small and Disadvantaged Business Utilization Requirements** The Recipient agrees to comply with the requirements of the EPA Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under Grant Agreements:
 - (a) The Recipient accepts the applicable FY2007 Minority Business Enterprise (MBE)/ Women's' Business Enterprise (WBE) "fair share" goals/objectives negotiated with EPA by the DEQ as follows:

Supplies:	.43% MBE	1.28% WBE
Services:	2.58% MBE	4.45% WBE
Equipment:	1.08% MBE	2.69% WBE
 - (b) The Recipient agrees to make the good faith efforts described in 40 CFR 33.301 whenever procuring construction, equipment, services and supplies under this Grant Agreement and to retain records documenting compliance with the six good faith efforts.
 - (c) The Recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.
 - (d) The Recipient agrees to ensure, to the fullest extent possible, that at least the applicable "fair share" objectives of Federal funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women and Historically Black Colleges and Universities.

- (e) The Recipient agrees to include in its bid documents the applicable “fair share” objectives and require all of its prime contractors to include in their bid documents for subcontracts the negotiated “fair share” percentages.
 - (f) **The Recipient agrees to submit FORM DEQ5700-52A “MBE/WBE Utilization- Federal Grant on each April 15 and October 15 during the term of this Agreement. FORM DEQ5700-52A is attached as Exhibit C.**
 - (g) If race and/or gender neutral efforts prove inadequate to achieve a “fair share” objective, the Recipient agrees to notify the DEQ in advance of any race and/or gender conscious action it plans to take to more closely achieve the “fair share” objective.
- 21. Small Business in Rural Areas (SBRA)** If a contract is awarded under this Agreement, the Recipient is also required to utilize the affirmative steps listed below.
- (a) Place SBRAs on solicitation lists.
 - (b) Make sure that SBRAs are solicited whenever there are potential sources.
 - (c) Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by SBRAs.
 - (d) Establish delivery schedules, where the requirements of work permit, that would encourage SBRA participation.
 - (e) Use the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate.
 - (f) Require the contractor to comply with the affirmative steps outlined above.
- 22. Captions** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.
- 23. Access to Records** The Recipient will maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, the Recipient will maintain any other records pertinent to this Agreement in such a manner as to clearly document Recipient’s performance. DEQ, the Oregon Secretary of State’s Office and the federal government and their duly authorized representatives will have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Recipient that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Pursuant to Sections 902 and 1515(a) of ARRA the Comptroller General of the United States, his representatives and an Inspector General or any representative of an Inspector General have the authority to:
- (a) Examine any records of the Recipient or any sub-grantees, contractors or vendors that pertain to and involve transactions relating to the grant, sub-grant or contract; and
 - (b) Interview any officer or employee of the Recipient, or any sub-grantee, contractor or vendor regarding such transactions; and
 - (c) Designate a time and place to examine those records and interview those officers and employees.
- 24. Record Retention** Recipient will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. The Recipient will maintain all retrofit maintenance records, total annual vehicle miles or hours used, and annual vehicle miles traveled or hours used in Oregon for three years after expiration of this Agreement per OAR 340—259-0060.
- 25. Compliance with Applicable Law** Recipient will comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work performed under this Agreement. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended; (viii) Equal Pay Act of 1962; (ix) Title IX of Educational Amendments of 1972; (x) Fair Housing Act; (xi) Fair Credit Reporting Act; (xii) Equal Educational Opportunities Act; (xiii) Uniform Relocation Act; (xiv) ARRA, (xv) ORS Chapter 659, as amended; (xvi) all regulations and administrative rules established pursuant to the foregoing laws; and (xvii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and (xviii) ORS 279A, ORS 279B, ORS 279C and 40 CFR Part 30 or 40 CFR Part 31 or 40 CFR Part 33 as applicable to Recipient. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.
- 26. Additional ARRA Requirements**
- (a) **PROHIBITION ON USE OF ARRA FUNDS** Under Section 1604 of ARRA, Recipient agrees that none of the funds made available under this Agreement may be used for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pools or similar projects.
 - (b) **ENFORCEABILITY** Recipient agrees that if Recipient or one of its subcontractors fails to comply with all applicable federal and state requirements governing the use of ARRA funds, the federal agency or the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

- (c) **SEGREGATION OF FUNDS** Recipient shall segregate obligations and expenditures of ARRA funds from other funding. No part of funds made available under ARRA may be commingled with any other funds or used for a purpose other than that of making payments for costs allowable under ARRA.
 - (d) **CONFLICTING PROVISIONS** Recipient agrees that, to the extent ARRA requirements conflict with State requirements, the ARRA requirements control.
 - (e) **WORKSOURCE OREGON** Recipient shall list any job openings at Recipient's firm/business through WorkSource Oregon. Recipient shall also require its contractors, consultants and sub-recipients to list any job openings at the contractor's/consultant's/sub-grantees firm/businesses through WorkSource Oregon. Recipient is not required to list job openings (or require listing by the Recipient's contractors, consultants or sub-recipients), where an employer, contractor, subcontractor, grantee, sub-grantee of an ARRA-funded State contract or grant intends to fill the job opening created by ARRA funding with a present employee, a laid-off former employee, or a job candidate from a previous recruitment.
27. **False Claim** The Recipient will refer to the DEQ Grant Administrator any credible evidence that a principal, employee, agent, sub-grantee contractor, contractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving funds provided under this Grant Agreement.
 28. **Protection of Whistleblowers** Recipient agrees that employees of a non-Federal employer receiving ARRA funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board, any Federal or State agency, a person with supervisory authority over the employee, a court or grand jury, information that the employee reasonably believes is evidence of (1) gross mismanagement of a contract or grant related to grant funds; (2) a gross waste of covered funds; (3) a substantial and specific danger to public health or safety related to implementation or use of grant funds; (4) an abuse of authority related to implementation or use of covered funds; or (5) a violation of law, rule, or regulation related to a grant awarded or issued relating to covered funds.
 29. **Recycled Products** The Recipient agrees to use recycled paper for all reports what are prepared as a part of this Agreement. The Recipient will, to the maximum extent economically feasible in the performance of this Agreement (as defined in ORS 279A.010 (1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)). The Recipient agrees to comply with the requirements of 40 CFR 30.16, as applicable, in giving preference in its procurement programs to the purchase of recycled products.
 30. **Indemnity** The Recipient shall defend, save, hold harmless, and indemnify the State of Oregon and DEQ and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities of Recipient or its officers, employees, contractors, or agents under this Agreement or in the implementation of the Project, including but not limited to, all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities of Recipient or its officers, employees, contractors, or agents.
 31. **Internal Control Certification** The Recipient certifies that its internal controls are suitably designed, established and operating effectively to ensure that:
 - (a) Costs charged to this Grant are allowable costs under this Grant Agreement and in accordance with applicable laws and regulations;
 - (b) Funds provided under this Grant are separately accounted from obligation to expenditure to receipt;
 - (c) Reporting required by this Grant and other applicable laws and regulations is made accurately and timely; and
 - (d) Effective cash management is employed to minimize the time elapsing between the receipt of Grant funds and disbursement, if applicable.
 32. **Merger Clause** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT WILL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, WILL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE RECIPIENT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.
 33. **The persons signing this Agreement represent and warrant that they have the power and authority to enter into this Agreement.**

APPROVED BY THE RECIPIENT:

Mike Swanson, City Manager

Date

APPROVED BY THE DEQ:

Andrew Ginsburg, Air Quality Division Administrator

Date

EXHIBIT A

Oregon Dept. of Environmental Quality American Recovery and Reinvestment Act of 2009 State Clean Diesel Grant	
Recipient: City of Milwaukie	DEQ Agreement No. <u>065-10</u>

BACKGROUND Diesel is the dominant fuel used by many sectors of the American economy. Diesel engines offer fuel economy, power and durability that is highly valued in many commercial and industrial applications.

While the operational advantages of diesel are clear, diesel engines emit a disproportionate amount of nitrogen oxides and particulate matter, and other toxic air pollutants compared to even gasoline engines. Diesel exhaust contains dozens of toxic substances but one of the leading concerns is the particulate matter that is very small in size (< 2.5 microns - a typical human hair is 70 microns). The small size makes it highly breathable to the deepest part of the lungs. Because of their small size and comparatively large surface area other substances are also absorbed onto these ultra-fine particles, increasing overall toxicity.

Increasingly medical studies link diesel particulate matter to serious public health impacts that range from aggravating asthma to heart and lung problems, cancer and premature mortality. Diesel exhaust also has environmental significance as a global warming contributor as well as adding to visibility impairment and regional haze. Oregonians have an increased risk for these and other health effects at present levels of exposure in everyday life - many times above public health benchmarks. Federal regulations and cleaner fuels are addressing diesel exhaust over time, but existing diesel engines will continue to pollute for another 30 years before older, dirtier engines are removed from service. Retrofitting advanced exhaust controls is a cost effective strategy to improve public health.

This Grant provides funding for the retrofitting of equipment and vehicles with emission control devices. Expected outputs will be a reduction in diesel particulate matter, and increased awareness of and support for future clean diesel projects with a greater adoption of exhaust controls, ultimately leading to widespread health and welfare improvements from reduced emissions.

PROJECT REQUIREMENTS

1. The Recipient will conduct a review of its fleet to determine the best candidates for installation of emission reduction equipment considering the age of the vehicle or equipment, the type of engine, the location of the engine, the type of use, and the annual vehicle miles traveled (or annual hours used for off-road).
2. In compliance with all applicable federal, state and local procurement regulations, the Recipient will purchase and install emission reduction equipment on some or all of the vehicles and equipment listed in Exhibit E. Changes to the list of vehicles and equipment listed in Exhibit E may be made with the prior written approval of the DEQ Grant Administrator.

The selected emission reduction equipment must meet the cost effectiveness threshold of \$250,000 per ton of diesel particulate matter reduced. The selected emissions reduction equipment must reduce by the greatest degree of emissions reduction available for the particular application of the retrofitted equipment diesel particulate matter emissions by at least 25 percent compared to baseline emissions for the engine year and specific installation and be:

- (A) Installed by a Qualified Installer as defined in OAR 340-259-0015 (16); **and**
 - (B) Verified by the United States Environmental Protection Agency (EPA) pursuant to its February 2002 Final Draft Testing Protocol "Generic Verification Protocol for Diesel Catalysts, Particulate Filters and Engine Modifications" or its September 2003 "Generic Verification Protocol for Determination of Emissions Reductions Obtained by Use of Alternative or Reformulated Liquid Fuels, Fuel Additives, Fuel Emulsions, and Lubricants for Highway and Nonroad Use Diesel Engines and Light Duty Gasoline Engines"; **or**
 - (C) Verified by the California Air Resources Board (CARB) pursuant to Title 13, California Code of Regulations, Chapter 14, "Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines"; **or**
 - (D) Approved in writing by the DEQ Grant Administrator.
3. For three years after the expiration of this Agreement, the Recipient agrees to use the retrofitted vehicle or equipment over **50%** of the time in Oregon. For three years after the expiration date of this Agreement, and beginning 12 months after the expiration date of the Grant the Recipient must report to DEQ the total annual vehicle miles or hours used, and annual vehicle miles traveled or hours used in Oregon no later than June 30th of each calendar year.
 4. For three years after the expiration of this Agreement, the Recipient must maintain the retrofit according to manufacturer's specifications and make the installed emission reduction equipment available to DEQ for inspection. The Recipient must maintain records on retrofit maintenance, the total annual vehicle miles or total hours of equipment usage and the total annual vehicle miles travelled in Oregon and the total annual number of hours equipment was used in Oregon in accordance with Paragraph 24 of this Agreement.

5. REPORTING

- A. The Recipient must submit quarterly Project Status Reports no later than 10 days after the end of each federal fiscal quarter during the term of this Agreement. **Project Status Report due dates for this Grant Agreement are January 10 2010, April 10 2010, and July 10 2010.** The Project Status Reports will address the progress made towards the Project goals, including a description of the vehicles or equipment fitted with exhaust controls. In general, the Project Status Reports will also include summary information on technical progress and the planned activities for the next federal fiscal quarter.
- B. The Recipient must submit a Final Report to the DEQ Grant Administrator no later than **September 30, 2010.** The Final Report will include a summary of the Project including a list of vehicles and equipment identified by serial number, license number or other unique identifiers that are fitted with exhaust controls, identification of the exhaust technology installed, and the odometer or engine hour meter information as of the installation. The Report must also describe actual results (outputs and outcomes) and costs, the successes and lessons learned for the entire Project as well as a summary of all categories of information required for the quarterly Project Status Reports.

The Recipient will immediately notify the DEQ Grant Administrator of any problems, delays or adverse conditions which might materially impair its ability to deliver on the outputs/outcomes specified in this Agreement. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation. The Recipient agrees that it will notify the DEQ Grant Administrator of any favorable developments which might enable meeting schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

INVOICING

1. Recipient must submit monthly requests for cost reimbursement. The invoices must describe all work performed with particularity, including by whom it was performed, and must itemize and explain all expenses for which reimbursement is claimed.
2. Invoices must be accompanied by a completed and signed Payment Request and Certification form (Exhibit B). Supporting documentation must be provided for all expenses for which reimbursement is claimed, including copies of invoices for the purchase and installation of the equipment. **Eligible expenses include only those expenses directly related to the purchase and installation of diesel exhaust after-treatment devices as described above and included in the certified costs described in OAR 340-259-0020.**
3. **Invoices for reimbursement of expenses occurring in a State fiscal year (July 1- June 30) must be received no later than the following July 30th.**
4. Payments will be based on reimbursement of actual costs authorized by this Agreement. Payment is contingent on compliance with all terms and conditions of this Agreement.
5. Invoices must be sent to **Accounting Office, Department of Environmental Quality, 811 SW Sixth Ave, Portland, OR 97204.** Invoices are subject to the review and approval of the DEQ Grant Administrator. **Invoice payments will be sent to Merlin Becker, Accountant, City of Milwaukie, 10722 SE Main St., Milwaukie, OR 97222.**
6. The DEQ will withhold a minimum of 10% of total Grant funds for the Project until the Recipient has submitted, and the DEQ has accepted, a Final Report detailing the Project status as described in # 5 - Reporting above, a final Payment Request and Certification form (Exhibit B), final MBE/WBE Utilization Report (Exhibit C) and a Lobbying and Litigation Certificate (Exhibit D).

EXHIBIT B
Oregon Dept. of Environmental Quality
American Recovery and Reinvestment Act of 2009 State Clean Diesel Grant

PAYMENT REQUEST AND CERTIFICATION

Recipient Name: City of Milwaukie

DEQ Grant Agreement #: 065-10

Recipient DUNS #: 002005155

Recipient Address: 6101 SE Johnson Creek Blvd., Portland OR 97206

Recipient Grant Administrator Name/ Phone: Paul Shirey, (503) 786-7614

Total Amount of Grant Award: \$ 56,008

Total Payments Received to Date: \$ _____

Amount of this Request: \$ _____

=====

RECIPIENT CERTIFICATION

1. I certify that the equipment purchased and installed with funds provided by this Grant Agreement (***select one***) :
- Was verified by the United States Environmental Protection Agency pursuant to its February 2002 Final Draft Testing Protocol "Generic Verification Protocol for Diesel Catalysts, Particulate Filters and Engine Modifications" or its September 2003 "Generic Verification Protocol for Determination of Emissions Reductions Obtained by Use of Alternative or Reformulated Liquid Fuels, Fuel Additives, Fuel Emulsions, and Lubricants for Highway and Nonroad Use Diesel Engines and Light Duty Gasoline Engines"; ***or***
 - Was verified by the California Air Resources Board pursuant to Title 13, California Code of Regulations, Chapter 14, "Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines"; ***or***
 - Was approved in writing by the DEQ Grant Administrator.
2. I certify that a Qualified Installer as defined in OAR 340-259-0015 (16) installed the Retrofit Technology in a manner that meets all warranty conditions. (***Note: Vendor signature may be provided by separate document attached.***)
- I certify that a Clean Diesel Service Provider installed the Retrofit Equipment. ***OR***
 - I certify that _____ (EMPLOYEE NAME) (Employee), is an employee of
the Recipient and that the Employee has the necessary skills required to install the Retrofit Technology to meet warranty conditions. I certify that the Employee did install the Retrofit Technology in a manner that meets warranty conditions.

Vendor: _____
(PRINTED NAME AND SIGNATURE)

3. I certify that this certification is true and correct and that all expenditures reported have been made in accordance with the terms and provisions contained in the Agreement.

Recipient Signature: _____
(PRINTED NAME AND SIGNATURE)

APPROVED FOR PAYMENT:	DEQ Grant Administrator: _____	
		Date
	DEQ Program Manager: _____	
		Date

EXHIBIT C
(Form DEQ5700-52A)

STATE OF OREGON – DEPARTMENT OF ENVIRONMENTAL QUALITY
MBE/WBE UTILIZATION – FEDERAL GRANTS
SEMI-ANNUAL REPORT

PART 1. REPORTS ARE REQUIRED EVEN IF NO PROCUREMENTS ARE MADE DURING THE REPORTING PERIOD.

1A. FEDERAL FISCAL YEAR 200____ (Federal Fiscal Year Oct. 1 – Sept. 30)	1B. REPORTING PERIOD (Federal Fiscal Year): <input type="checkbox"/> 1 st (Oct-Mar) <input type="checkbox"/> 2 nd (Apr– Sept) <input type="checkbox"/> Check if this is the last report for the Project (Project completed).		
1C. REVISION: Year: ____ Quarter: ____	BRIEFLY DESCRIBE THE REVISIONS YOU ARE MAKING:		
2A. FEDERAL FINANCIAL ASSISTANCE AGENCY US Environmental Protection Agency		3A. REPORTING RECIPIENT (Name and Address) City of Milwaukie 6101 SE Johnson Creek Blvd Portland, OR 97206	
2B. DEQ REPORTING CONTACT Kevin Downing	2C. PHONE (503) 229-6549	3B. REPORTING CONTACT Paul Shirey Operations Director	3C. PHONE (503) 786-7614
4A. FEDERAL GRANT # PCA - 2D-96087701 (G61001-09) 66113	AGREEMENT 065-10	4B. FEDERAL FINANCIAL ASSISTANCE PROGRAM (CFDA) 66.040	
5A. GRANT AMOUNT : <u>\$56,008</u>	5B. <input type="checkbox"/> Check if NO procurement and NO accomplishments were made this reporting period. Procurements are all expenditures through contract, order, purchase, lease or barter of supplies, equipment, construction, or services needed to complete work authorized by the Agreement. Accomplishments, in this context, are procurements made with MBEs and/or WBEs.		

5C. Total Procurement and MBE/WBE Accomplishments This Reporting Period (Only include amount not previously reported.)
 Were sub-awards issued under this Grant Agreement? Y N Were contracts issued under this Grant Agreement? Y N
 Total Procurement Amount \$ _____ (Include total dollar values awarded by Recipients and sub-recipients.)
 Actual MBE/WBE Procurement Accomplished: (Include total dollar values awarded by recipient and sub-recipients.)

	<u>Construction</u>	<u>Equipment</u>	<u>Services</u>	<u>Supplies</u>	<u>Total</u>
\$MBE:	_____	_____	_____	_____	_____
\$WBE:	_____	_____	_____	_____	_____

6. COMMENTS: (If no MBE/WBE procurements were accomplished during the reporting period, please explain what steps you are taking to achieve the MBE/WBE Program requirements specified in the Grant Agreement.)

7. NAME OF AUTHORIZED REPRESENTATIVE	TITLE
8. SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE

MAIL COMPLETED FORM TO: Dept. of Environmental Quality - Accounting Office
811 SW Sixth Avenue
Portland OR 97204

EXHIBIT C (Part 2)
 STATE OF OREGON – DEPARTMENT OF ENVIRONMENTAL QUALITY
 MBE/WBE PROCUREMENTS MADE DURING REPORTING PERIOD

PART 2

Procurement Made (check one)		Business Enterprise (check one)		\$ Value of Procurement	Date of Procurement	Type of Product or Service (Enter Code)	Name/Address of MBE/WBE Contractor or Vendor
Recipient	Other	Minority	Women				

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Product / Service Codes

1	Construction
2	Supplies
3	Services
4	Equipment

EXHIBIT D
STATE OF OREGON – DEPARTMENT OF ENVIRONMENTAL QUALITY
LOBBYING AND LITIGATION CERTIFICATE
(DEQ5700-53)

DEQ Grant Agreement #: 065-10

Federal Grant: 2D-96087701 American Recovery and Reinvestment Act of 2009 State Clean Diesel Grant (G61001-09 66113)

Recipient Name: City of Milwaukie

Recipient Address: 6101 SE Johnson Creek Blvd, Portland, OR 97206

Project Name: Milwaukie Clean Diesel

I hereby certify that none of the funds awarded under the State of Oregon Department of Environmental Quality American Recovery and Reinvestment Act of 2009 State Clean Diesel Grant have been used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

Authorized Signer:

Signature

Date

Printed Name / Title:

At Project completion, complete this form and submit to:

DEQ Accounting Office
811 SW Sixth Avenue
Portland OR 97204

EXHIBIT E
STATE OF OREGON – DEPARTMENT OF ENVIRONMENTAL QUALITY
ENGINE, VEHICLE AND RETROFIT EQUIPMENT LIST

Recipient: City of Milwaukie

DEQ Agreement #: 065-10

Vehicle Mfr. & Type	Miles Driven in Last 12 Months	Hours Used In Last 12 Months	Engine Mfr.	Engine Model Year	Engine HP	Engine Serial #	Retrofit Type	Date of Retrofit Installation	Odometer / Hour Meter Reading at Retrofit Installation
Caterpillar Loader	NA	192	Cat	1991	80	1KF00536			
Premier Auxiliary Engine	NA	287	John Deere	1995	50	T04039T496316			
Elgin Premier Sweeper	1,003	193	Cummins	1995	99	2M9EAAA73SM115232			
Ford F-450 Service Truck	11,220	NA	Ford 6.0	2003	NA	1FDXX46P23EC03349			
Sterling Truck/Sweeper	12,316	659	Cummins	2006	100	49HAADB87DX58025			
Sterling Auxiliary Engine	NA	686	John Deere	2006	200	JU2439D			
GMC 5 yd Dump	2,285	271	Cat	1996	NA	1GDM7H1J8TJ510755			
GMC Dump Truck + Hot Box	3,392	NA	Cat	2000	NA	1GDM7H1C0YJ526876			
Sterling Vactor Truck	13,113	765	Detroit	2002	NA	2FZHAZCG52AJ69972			
Sterling Auxiliary Engine	NA	750	John Deere	2002	200	-----			

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ATTACHMENT 2

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY FOR THE PURPOSE OF RETROFITTING CITY-OWNED DIESEL VEHICLES WITH EMISSION REDUCTION EQUIPMENT

WHEREAS, the Environmental Protection Agency and the state Department of Environmental Quality (DEQ) seek to improve air quality and reduce the harmful effects of diesel vehicle emissions; and

WHEREAS, DEQ has obtained funding through a State Clean Diesel Grant issued to DEQ under the American Recovery and Reinvestment Act of 2009 (ARRA); and

WHEREAS, DEQ has awarded the City of Milwaukie a grant of \$56,008 for the purpose of retrofitting seven city-owned diesel vehicles with emission reduction equipment; and

WHEREAS, the City will be reimbursed by DEQ with the proceeds of the grant for the actual cost of each retrofit subject to meeting certain standards and conditions; and

WHEREAS, the effect of installing such emission reduction equipment is to reduce harmful pollution, improve air quality, and reduce greenhouse gas emissions in accordance with the City’s adopted Sustainability Plan.

NOW, THEREFORE, BE IT RESOLVED that the City Manager is authorized to execute the State Clean Diesel Grant with Oregon DEQ (DEQ Agreement # 065-10) in an amount not to exceed \$56,008

Introduced and adopted by the City Council on January 5, 2010.

This resolution is effective on _____ .

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



To: Mayor Ferguson and Milwaukie City Council
Through: Mike Swanson, City Manager
From: Bob Jordan, Chief of Police
Date: December 9, 2009
Subject: O.L.C.C. Application – Walgreen’s – 10903 S.E. Oak Street

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Walgreen’s – 10903 S.E. Oak Street.

Background:

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



OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION



PLEASE PRINT OR TYPE

<u>Application is being made for:</u> LICENSE TYPES <input type="checkbox"/> Full On-Premises Sales (\$402.60/yr) <input type="checkbox"/> Commercial Establishment <input type="checkbox"/> Caterer <input type="checkbox"/> Passenger Carrier <input type="checkbox"/> Other Public Location <input type="checkbox"/> Private Club <input type="checkbox"/> Limited On-Premises Sales (\$202.60/yr) <input checked="" type="checkbox"/> Off-Premises Sales (\$100/yr) <input type="checkbox"/> with Fuel Pumps <input type="checkbox"/> Brewery Public House (\$252.60) <input type="checkbox"/> Winery (\$250/yr) <input type="checkbox"/> Other: _____		ACTIONS <input type="checkbox"/> Change Ownership <input checked="" type="checkbox"/> New Outlet <input type="checkbox"/> Greater Privilege <input type="checkbox"/> Additional Privilege <input type="checkbox"/> Other _____	FOR CITY AND COUNTY USE ONLY The city council or county commission: <hr/> (name of city or county) recommends that this license be: Granted <input type="checkbox"/> Denied <input type="checkbox"/> By: _____ (signature) (date) Name: _____ Title: _____
<u>Applying as:</u> <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Individuals		OLCC USE ONLY Application Rec'd by: <u>M. Oldham</u> Date: <u>11/24/09</u> 90-day authority: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <u>not yet</u>	

- Entity or Individuals applying for the license: [See SECTION 1 of the Guide]
 ① Walgreen Co (Master File) ③ _____
 ② _____ ④ _____
- Trade Name (dba): Walgreens # 09544
- Business Location: 10903 SE Oak Street Milwaukie Clackamas OR 97222
(number, street, rural route) (city) (county) (state) (ZIP code)
- Business Mailing Address: P.O. Box 901, Deerfield, IL 60015 ATTN: Eric Lyles
(PO box, number, street, rural route) (city) (state) (ZIP code)
- Business Numbers: 971-233-1002 971-233-1006
(phone) (fax)
- Is the business at this location currently licensed by OLCC? Yes No
- If yes to whom: _____ Type of License: _____
- Former Business Name: N/A
- Will you have a manager? Yes No Name: Derick E. Cogle
(manager must fill out an individual history form)
- What is the local governing body where your business is located? Milwaukie
(name of city or county)
- Contact person for this application: Mitch Oldham 847-527-4423
(name) (phone number(s))
P.O. Box 901, Deerfield, IL 60015 847-368-6691 mitch.oldham@walgreens.com
(address) (fax number) (e-mail address)

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

Applicant(s) Signature(s) and Date:

① Margarita Kellen Date 10/27/09 ③ _____ Date _____
Margarita Kellen, Assistant Secretary

② _____ Date _____ ④ _____ Date _____



OREGON LIQUOR CONTROL COMMISSION
BUSINESS INFORMATION

Please Print or Type

Applicant Name: Walgreen Co. Phone: 847-527-4423

Trade Name (dba): Walgreens # 09544

Business Location Address: 10903 SE Oak Street

City: Milwaukie ZIP Code: 97222

DAYS AND HOURS OF OPERATION

Business Hours:

Sunday 12 am to 12 am
Monday 12 am to 12 am
Tuesday 12 am to 12 am
Wednesday 12 am to 12 am
Thursday 12 am to 12 am
Friday 12 am to 12 am
Saturday 12 am to 12 am

Outdoor Area Hours: N/A

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

The outdoor area is used for: N/A

- 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:

ENTERTAINMENT

Check all that apply: N/A

- 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

N/A
Sunday to
Monday to
Tuesday to
Wednesday to
Thursday to
Friday to
Saturday to

SEATING COUNT

N/A

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: Margarita Kellen Date: 10/27/09

Margarita Kellen Assistant Secretary
1-800-452-OLCC (6522)
www.oregon.gov/olcc

(rev. 12/07)

6.
OTHER BUSINESS



To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenneth Asher, Community Development and Public Works Director
Katie Mangle, Planning Director

From: Susan P. Shanks, Senior Planner

Subject: Right-of-Way Annexation in NE Sewer Extension Project Area

Date: January 5, 2010

Action Requested

Approve an expedited annexation petition¹ to annex specified portions of rights-of-way in the NE Sewer Extension Project Area (Attachment 2) and adopt the attached ordinance and associated findings in support of approval (Attachment 1). Approval of this application would not be used for future annexation of islanded private property. Approval of this application would result in the application of the City's land use and zoning designations to the annexed territory based on the territory's existing zoning designation in the County (Attachment 3). Approval of this annexation would also result in the withdrawal of this territory from the following urban service provider district:

- Clackamas County Service District for Enhanced Law Enforcement

History of Prior Actions and Discussions

December 2009: Council awarded the contract for construction of the NE Sewer Extension (NESE) Project wastewater collection system to K and R Plumbing Construction Co. Inc., in the amount of \$2,653,257.05 (Resolution 78-2009).

¹ Expedited annexations are authorized by Metro Code Section 3.09.045 and Milwaukie Municipal Code Section 19.1504 and apply when all property owners consent to the annexation and are willing to accept the City's automatic zoning and land use designations. Since property owner consent is not needed or required for annexation of right-of-way pursuant to ORS 222.170(4), Council initiated the expedited annexation petition on its own motion on September 15, 2009 pursuant to ORS 222.111(2).

October 2009: Council approved an IGA with Clackamas County Development Agency regarding payment to the City of urban renewal contributions to the project, amounting to a \$3450 discount on project costs for developed properties in the North Clackamas Revitalization Area (Resolution 64-2009). Council approved a request to the County to transfer jurisdiction of the rights-of-way in the NESE Project Area from the County to the City (Resolution 66-2009).

September 2009: Council initiated annexation of the rights-of-way in the NESE Project Area by resolution (Resolution No. 58-2009). Council approved an updated Clean Water State Revolving Fund Loan Agreement for the NESE Project (Resolution 57-2009).

August 2009: Staff briefed Council on the status of the NESE Project and the need to annex the rights-of-way in this area.

June 2009: Council awarded a contract to Right-of-Way Associates Inc. for easement and appraisal services within the NESE Project Area.

February 2009: Staff briefed Council on the status of the NESE Project in Dual Interest Area “A”.

February 2009: Council approved a resolution authorizing the City Manager to enter into a contract with Century West Engineering for the engineering services needed to extend the City’s sewer system into Dual Interest Area “A”.

December 2008: Council approved a loan agreement from the Clean Water State Revolving Fund (CWSRF) to fund the extension of the City’s sewer system into Dual Interest Area “A” (Resolution No. 94-2008).

October 2008: Council approved moving forward with the extension of the City’s sewer system into Dual Interest Area “A” including: entering into an intergovernmental agreement with Clackamas County for use of Century West Engineering services through a contract between Century West Engineering and Clackamas County; making application for a DEQ loan needed to accomplish the sewer extension; and moving forward with the public information needed for the project (Resolution No. 81-2008).

September 2008: Staff briefed Council at a work session on the proposed sewer extension project. Council requested additional information prior to acting.

May 2008: Staff briefed Council at a work session on the proposed sewer extension project, specifically with regard to City, County, State and intergovernmental requirements and policies. Staff presented information on relevant City and County policies, State law regarding annexation, and raised questions regarding service delivery and governance.

March 2008: Staff briefed Council at a work session on the need for sewer service in Dual Interest Area “A”. Staff informed Council that the City was coordinating with Clackamas County and reaching out to owners and residents in this area to determine the level of interest in connecting to the City’s sewer system.

September 2006: Staff briefed Council on State statute and City Comprehensive Plan policy regarding island annexations.

November 2002: Council directed the City Manager to sign a CDBG grant application to subsidize connection costs for low-income residents in Dual Interest Area “A”. This proposal assumed a City project to extend sewer service into this unincorporated area of Clackamas County.

July 1990: Clackamas County Order No 90-726 established an Urban Growth Management Agreement (UGMA) in which the City and County agreed to coordinate the future delivery of services to the unincorporated areas of North Clackamas County. With respect to Dual Interest Area “A”, the agreement states: *“The City shall assume a lead role in providing urbanizing services.”*

Background

Key Points

Clackamas River Water (CRW) formally objected to the City’s right-of-way annexation proposal in October 2009 (Attachment 4). Since CRW is the current water service provider in this area, their main concern related to future water service provision in the NESE Project Area. The City may be interested in serving this area in the future; however, the City has not yet undertaken the analysis or long term planning necessary to formulate a service plan for this area. Pending the completion of the City’s water master planning efforts and future negotiations with CRW, staff affirmed its commitment to the existing intergovernmental agreement (IGA) between CRW and the City wherein newly annexed properties that are served by CRW would continue to be served by CRW and remain in the CRW district. (The relevant portion of this IGA is attached as Attachment 5.) CRW has since rescinded their objection to the City’s right-of-way annexation proposal (Attachment 6).

The territory proposed for annexation is within the following three districts:

- Clackamas River Water
- Clackamas County Service District No. 5 for Street Lights
- Clackamas County Service District for Enhanced Law Enforcement

Staff does not recommend withdrawing the rights-of-way from the CRW district since no change in water service provision is proposed at this time. CRW concurs with staff’s recommendation on this matter. Also, staff does not recommend withdrawing the rights-

of-way from Clackamas County Service District No. 5 for Street Lights. Since no private property annexations are proposed at this time, it is staff's position that annexation of the rights-of-way does not automatically trigger the: (1) removal of private properties from the County's street lighting district, or (2) transference of the street lights in this area from the County to the City. Staff is not interested in taking over the operation of the lights in this area at this time because the City does not have a dedicated funding source for these lights and would not be able to recoup its costs from the affected properties since they are not within the City limits. City and County lighting district staff have agreed that an IGA for the lights in this area is desirable given the unique and incremental nature of the private property annexations that are expected to occur in this area in the future (Attachment 7).

Staff does, however, recommend withdrawing the rights-of-way from Clackamas County Service District for Enhanced Law Enforcement since the proposed annexation would make the rights-of-way in this area part of the corporate boundaries of the City and, therefore, subject to the Milwaukie Municipal Code and the City's policing authority. Upon withdrawal, the rights-of-way in the area would be policed by the Milwaukie Police Department. Private property matters would still be handled by Clackamas County law enforcement officers, but enforcement of traffic regulations and illegal or nuisance activities in the right-of-way would be handled by the City's police and code enforcement officers.

Community Services staff is developing a comprehensive outreach strategy to provide residents in the NESE Project Area with information on the impact that street annexation and jurisdiction will have on service provision in their area. Fliers and other direct communications are being developed with the input of Code Enforcement staff and the Streets and Police Departments that will be distributed by mail in early February to all impacted residents. In addition, staff is planning a series of Open Houses in early 2010, to be held in the NESE Project Area. The goal of these events is to provide people with information about all aspects of the NESE Project, including, but not limited to, sewer construction, street annexation and jurisdiction, and property annexation and hook-up incentives.

The territory proposed for annexation consists entirely of rights-of-way and includes no private property. All of these rights-of-way have been dedicated to the public for right-of-way purposes, with the exception of Hazel Place between Hollywood Ave and Wichita Ave on Tax Map 1S2E30DA. This segment of Hazel Place is a public road under Clackamas County ownership. Pursuant to ORS 222.170(4), the City is not required to obtain consent from property owners in the territory proposed for annexation when the territory is publicly owned (as in the case of right-of-way owned by the County) or exempt from ad valorem taxation (as in the case of right-of-way dedicated to the public).

Annexation of the rights-of-way in the sewer extension project area would make private properties in the project area contiguous to the City's boundary. Since contiguity with the City's boundary is required for annexation, and since annexation is required with sewer connection, annexation of the streets would enable the City to process property owners' annexation applications when sewer connections are voluntarily made in the future.

Annexation of the rights-of-way in the project area would create an unusual City boundary. It would, however, be filled in over time as incremental private property annexations occur in this area in the future.

Annexation of the rights-of-way in the project area would also technically create unincorporated islands.² The Oregon Revised Statutes give cities the authority to annex islanded territories. The Milwaukie Comprehensive Plan also contains a policy that states that islanded territories should be annexed to the City. However, in past discussions between City Council and affected property owners, Council has indicated that it would not involuntarily annex properties within the project area that do not need or desire to connect to the City's new sewer line. This is consistent with City policy to only provide services to properties within the City and to require annexation in lieu of extraterritorial provision of services. *As a result, the right-of-way annexation ordinance affirms that the City would not annex any newly created islanded territories, provided they are within the project area and not currently connected to City sewer.*³

Site and Vicinity

The territory proposed for annexation is contiguous to the existing city limits and is within the City's urban growth management area (UGMA). It consists entirely of existing public rights-of-way in an established neighborhood that is primarily composed of single-family residences. More specifically, the territory proposed for annexation is within the NE Sewer Extension Project area, which is bounded on the north by SE

² Per state statute, islands are territories not in the City but that are completely surrounded by the corporate boundaries of the City. Islands are not created when a street constitutes more than 25% of the perimeter of any given territory.

³ Staff believes the City should seek voluntary annexation—and consider involuntary annexation—of properties that: (1) are currently islanded by the City, or (2) are currently receiving City sewer service and will become islanded once the rights-of-way in the project area are annexed. Since the City will require annexation prior to extending sewer service to project area property owners, staff believes it would be fair and appropriate to seek and/or compel annexation of those properties within or on the edges of the City that are already receiving City sewer service. Such an action would forestall any perceived inequity and be consistent with the City's existing approach to extraterritorial extension of services. Staff will bring this item for discussion to City Council at a future date.

Westfork Avenue, on the east by SE Linwood Avenue, on the south by SE King Road, on the west by the current city boundary, and on the northwest by SE 55th Avenue.

Annexation Petition

The petition meets the requirements for initiation set forth in Oregon Revised Statutes (ORS) ORS 222.111(2), Metro Code Section 3.09.040, and Milwaukie Municipal Code (MMC) Section 19.1502.2.

The petition is being processed as an expedited annexation. Under the expedited process, a City land use and zoning designation is automatically applied to the annexed territory.⁴ Expedited annexations do not require a public hearing, but Council must adopt an ordinance to implement the proposed annexation at a public meeting. All necessary parties, interested persons, residents, and property owners within 400 feet of the territory proposed for annexation have been notified of the January 5, 2010 annexation proceedings as required by City, Metro, and State regulations. See Attachment 8 for a copy of the public meeting notice sent to affected property owners and residents. See Attachment 9 for a summary of the comments received.

Expedited Annexation Approval Criteria

The applicable approval criteria for expedited annexations are contained in Milwaukie Municipal Code 19.1502.3. Staff's responses to the applicable criteria are provided below.

- A. The subject site must be located within the City's urban growth management area (UGMA);
The territory proposed for annexation is within the City's UGMA.
- B. The subject site must be contiguous to the existing city limits;
The territory proposed for annexation is contiguous to the existing city limits.
- C. The requirements of Oregon Revised Statutes for initiation of the annexation process must be met;
The annexation petition meets the Oregon Revised Statutes requirements for initiation.
- D. The proposal must be consistent with Milwaukie Comprehensive Plan Policies;
Chapter 6 of the Comprehensive Plan contains the City's annexation policies. Applicable annexation policies include: 1) delivery of City services to annexing

⁴ Per MMC Table 19.1504.1.E, the City automatically assigns a City land use and zoning designation based on a territory's existing zoning designation in the County.

areas where the City has adequate services, and 2) requiring annexation in order to receive a City service. The proposed right-of-way annexation is in anticipation of the completion of the City's NE Sewer Extension Project and the requirement for properties to annex to the City in order to connect to the City's new sewer line.

- E. The proposal must comply with the criteria of Metro code Sections 3.09.050 (d) and, if applicable, (e).

The annexation proposal is consistent with applicable Metro Code sections for expedited annexations as detailed below.

Prior to approving an expedited annexation, the City must apply the provisions contained in Section 3.09.045 of the Metro Code, which are as follows:

- (1) Find that the change is consistent with expressly applicable provisions in:

- (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;

There are no applicable urban service agreements adopted pursuant to ORS 195 in the area of the proposed annexation. The City, however, has an urban growth management agreement (UGMA) with Clackamas County that states that the City will take the lead in providing urban services in the area of the proposed annexation. Pursuant to this agreement, the City is in the process of extending City sewer service to this area. The proposed right-of-way annexation is in anticipation of the completion of this sewer project and the requirement for properties to annex to the City in order to connect to the City's new sewer line.

- (B) Any applicable annexation plan adopted pursuant to ORS 195.205;

There are no applicable annexation plans adopted pursuant to ORS 195 in the area of the proposed annexation.

- (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;

There are no applicable cooperative planning agreements adopted pursuant to ORS 195 in the area of the proposed annexation.

- (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services;

A public facilities plan was developed by Clackamas County and

subsequently adopted by the City through the City's urban growth management agreement with Clackamas County pursuant to the statewide planning goal on public facilities. The City's extension of City sewer in the area of the proposed annexation is consistent with this public facilities plan.

- (E) Any applicable comprehensive plan.

The proposed right-of-way annexation is consistent with the Milwaukie Comprehensive Plan, which is more fully described on the previous page. The Clackamas County Comprehensive Plan contains no specific language regarding City annexations. It does, however, contain the City-County UGMA, which identifies the area of the proposed annexation as being within the City's urban growth management area. The UGMA requires the City to notify the County of annexations, which the City has done. The UGMA also calls for City assumption of jurisdiction of local streets that are adjacent to annexed territories. The territory proposed for annexation consists entirely of rights-of-way. The City is in the process of assuming jurisdiction of these rights-of-way from the County.

- (2) Consider whether the boundary change would:

- (A) Promote the timely, orderly and economic provision of public facilities and services;

The City is the identified urban service provider in the area of the proposed annexation. This area does not currently contain a public sewer system. The City is currently in the process of extending City sewer service into this area. The proposed annexation is in anticipation of the completion of this sewer project and the requirement for properties to annex to the City in order to connect to the City's new sewer line. As a result, the proposed annexation will indirectly facilitate the timely, orderly, and economic provision of urban services in this area

- (B) Affect the quality and quantity of urban services; and

- (C) Eliminate or avoid unnecessary duplication of facilities and services.

Clackamas River Water (CRW) is the current water service provider in the area of the proposed annexation. Until such time as the existing IGA between the City and CRW is renegotiated, the City does not intend to duplicate CRW's existing water supply system or withdraw private property from the CRW district. CRW will continue to be the water service provider in this area for the foreseeable future. Annexation of the rights-of-

way is not expected to affect the quality and quantity of urban services or duplicate any facilities or services.

Service Providers, Service Districts, and Maintenance Responsibilities

The City is authorized by ORS Section 222.120 (5) to withdraw annexed territory from non-City service providers and districts upon annexation of the territory to the City. Approval of this application would result in the withdrawal of the annexed territory from Clackamas County Service District for Enhanced Law Enforcement, which would minimally alter delivery of law enforcement services in this area. Upon withdrawal, the rights-of-way in the area would be policed by the Milwaukie Police Department. Private property matters would still be handled by Clackamas County law enforcement officers, but enforcement of traffic regulations and illegal or nuisance activities in the right-of-way would be handled by the City's police and code enforcement officers.

The City is not currently responsible for maintaining the rights-of-way in this area. Annexation would not alter this arrangement. However, the City will become responsible for maintaining the rights-of-way in this area when it takes jurisdiction from Clackamas County. Council has already approved the jurisdictional transfer of the rights-of-way in this area by resolution (Resolution 66-2009). Approval by Clackamas County Board of Commissioners is expected in December 2009.

Concurrence

Community Development, Community Services, Engineering, and Planning have been working together on the NE Sewer Extension Project for over a year. Annexation of the rights-of-way in this area is but one component of the sewer extension project. The timing and need for right-of-way annexation was carefully considered and vetted among project team members.

Staff briefed the Planning Commission in April 2009 and the Neighborhood District Association leadership in September 2009 on the status of the NE Sewer Extension Project.

Staff consulted with the City Attorney, Clackamas County Tax Assessor, and State of Oregon Department of Revenue on numerous occasions to ensure that the City was acting within its authority and following the correct legal procedures for initiating and processing the proposed right-of-way annexation. Staff did not receive any indications of nonconcurrence.

Staff consulted with the City Attorney, the Chief of Police, and the City's code enforcement officers with regard to delivery of law and code enforcement services in the newly annexed rights-of-way. The City Attorney advised staff that annexation of the rights-of-way makes them a part of the corporate boundaries of the City and, therefore,

subject to the Milwaukie Municipal Code and the City's policing authority. Milwaukie police and code enforcement officers are prepared to provide these services within the rights-of-way upon annexation. Delivery of services by the Clackamas County Fire District No. 1 would not be affected by the proposed right-of-way annexation.

Fiscal Impact

There are no fiscal impacts associated with the proposed right-of-way annexation. However, there are fiscal impacts associated with taking jurisdiction of the right-of-way. These impacts are discussed in a separate staff report.

Work Load Impacts

Upon annexation of the rights-of-way, the City would be responsible for providing code and law enforcement services to the newly annexed rights-of-way. The City would not be responsible for the provision of such services on private property until they were annexed to the City. Immediate workload impacts associated with the policing of the rights-of-way is expected to be minimal. Future workload impacts are also expected since annexation of the rights-of-way in this area would make all the properties in the project area contiguous to the City boundary and, therefore, eligible for annexation.

Alternatives

The application is subject to Milwaukie Comprehensive Plan Chapter 6 City Growth and Governmental Relationships, Oregon Revised Statutes Chapter 222 City Boundary Changes, Metro Code Chapter 3.09 Local Government Boundary Changes, and MMC Chapter 19.1500 Boundary Changes.

The City Council has two decision-making options:

1. Approve the application and adopt the ordinance and findings in support of approval.
2. Deny the application and adopt findings in support of denial.

The only alternative to the proposed right-of-way annexation is incremental right-of-way annexation over time as individual properties annex into the City. Staff does not recommend this alternative as it would prevent properties that are not currently contiguous to the City's boundary from annexing into the City when they either wanted or needed to connect to the new City sewer line.

Annexation of the rights-of-way in the project area would create an unusual City boundary. A more typical City boundary would be created if the City proceeded with incremental annexation of abutting right-of-way at the time of voluntary private property annexation. However, this approach would prevent properties that are not currently contiguous to the City's boundary from annexing into the City when they either wanted

or needed to connect to the new City sewer line. A more uniform City boundary would also be created if the City annexed all rights-of-way and properties in the project area. However, Council has indicated that it does not want to annex properties that do not need or want to connect to the new City sewer line.

Attachments

1. NE Milwaukie Sewer Extension Project Right-of-Way (ROW) Annexation Ordinance
Exhibit A. Findings in Support of Approval
Exhibit B. Legal Description and Tax Maps
2. NE Milwaukie Sewer Extension Project ROW Annexation Map
3. Proposed City Boundary and Zoning Map
4. Letter from CRW objecting to annexation proposal dated October 19, 2009.
5. Excerpt from current IGA between the City and CRW dated June 17, 2008.
6. Letter from CRW rescinding objection to annexation proposal dated December 3, 2009.
7. E-mail from County lighting district dated October 22, 2009.
8. Notice of Public Meeting dated December 16, 2009.
9. Summary of Public Comments

ATTACHMENT 1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MILWAUKIE ANNEXING PORTIONS OF RIGHTS-OF-WAY IN THE N.E. SEWER EXTENSION PROJECT AREA (WHICH IS BOUNDED ON THE NORTH BY SE WESTFORK AVENUE, ON THE EAST BY SE LINWOOD AVENUE, ON THE SOUTH BY SE KING ROAD, ON THE WEST BY THE CURRENT CITY BOUNDARY, AND ON THE NORTHWEST BY SE 55TH AVENUE AND AS MORE SPECIFICALLY DESCRIBED AND DEPICTED IN THE ATTACHED EXHIBITS) INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING SAID RIGHTS-OF-WAY FROM CLACKAMAS COUNTY SERVICE DISTRICT FOR ENHANCED LAW ENFORCEMENT. **(FILE #A-09-03).**

WHEREAS, the territory proposed for annexation is contiguous to the City's boundary and is within the City's urban growth management area; and

WHEREAS, the territory proposed for annexation consists entirely of rights-of-way in the NE Sewer Extension Project Area; and

WHEREAS, the properties in the NE Sewer Extension Project Area are in need of, yet not currently served by, a public sewer system.

WHEREAS, the City is in the process of extending sewer service to the properties in this area pursuant to its 1990 urban growth management agreement with Clackamas County; and

WHEREAS, annexation of the rights-of-way in this area is in anticipation of the completion of the City's sewer extension project. Since City policy does not support extraterritorial extension of City services, annexation is required when individual properties either need or want to connect to City sewer. Annexation is not required for any other reason; and

WHEREAS, annexation of the rights-of-way in this area will make properties in the NE Sewer Extension Project Area contiguous to the City boundary. Since properties need to be contiguous to the City boundary in order to annex and since annexation is required with sewer connection, annexation of the rights-of-way enables property owners to connect to City sewer on their own timeline; and

WHEREAS, annexation of the rights-of-way in this area creates unincorporated islands; and

WHEREAS, the City does not intend to initiate or require annexation of properties within the NE Sewer Extension Project Area that are islanded by City territory but not connected to City sewer; and

WHEREAS, the territory proposed for annexation lies within the territory of Clackamas River Water, Clackamas County Service District No. 5 for Street Lights, and Clackamas County Service District for Enhanced Law Enforcement; and

WHEREAS, the annexation and withdrawals are not contested by any necessary party; and

WHEREAS, the annexation petition was initiated on September 15, 2009 by the Milwaukie City Council on its own motion pursuant to Oregon Revised Statute (ORS) 222.111(2). The petition meets the requirements for initiation set forth in ORS 222.125, Metro Code Section 3.09.040, and Milwaukie Municipal Code (MMC) Subsection 19.1502.2.A.4; and

WHEREAS, the annexation petition meets the requirements of the expedited annexation process, which does not require a public hearing on the matter. The petition was processed and public notice was provided in accordance with ORS Section 222.125, Metro Code Section 3.09.045, and MMC Section 19.1504; and

WHEREAS, Table 19.1504.1.E of the Milwaukie Municipal Code provides for the automatic application of City zoning and Comprehensive Plan land use designations; and

WHEREAS, the City prepared and made available an annexation report that addressed all applicable criteria, and, upon consideration of such report, the City Council favors annexation of the rights-of-way based on findings and conclusions attached hereto as Exhibit A;

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. The Findings and Reasons for Decision attached as Exhibit A are hereby adopted.

Section 2. The rights-of-way described and depicted in Exhibit B are hereby annexed to the City of Milwaukie.

Section 3. The rights-of-way annexed by this ordinance and described in Section 2 are hereby withdrawn from Clackamas County Service District for Enhanced Law Enforcement. They are not withdrawn from Clackamas River Water and Clackamas County Service District No. 5 for Street Lights.

Section 4. The rights-of-way annexed by this ordinance and described in Section 2 are hereby assigned the applicable land use and zoning designations as prescribed by Table 19.1504.1.E of the Milwaukie Municipal Code.

Section 5. The City shall immediately file a copy of this ordinance with Metro and other agencies required by Metro Code Chapter 3.09.030 and ORS 222.005 and

222.177. The annexation and withdrawal shall become effective upon filing of the annexation records with the Secretary of State as provided by ORS 222.180.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Document1 (Last revised 09/18/07)

ATTACHMENT 1
Exhibit A

FINDINGS IN SUPPORT OF APPROVAL

Based on the staff report for expedited annexation of the rights-of-way in the NE Sewer Extension Project Area, the Milwaukie City Council finds:

1. The territory proposed for annexation is contiguous to the City's boundary and within the City's urban growth management area. The territory consists entirely of rights-of-way in an area of unincorporated Clackamas County that is zoned and developed with single family residential homes. The City seeks annexation of this territory because the City is in the process of extending City sewer service to this area. Annexation of the rights-of-way would make the properties in the project area contiguous to the City's boundary. Since contiguity with the City's boundary is required for annexation and since annexation is required with sewer connection, annexing the rights-of-way would enable the City to process property owners' annexation applications when sewer connections are made in the future.
2. The annexation petition was initiated on September 15, 2009 by the Milwaukie City Council on its own motion pursuant to Oregon Revised Statute (ORS) 222.111(2). The petition meets the requirements for initiation set forth in ORS 222.125, Metro Code Section 3.09.040, and Milwaukie Municipal Code (MMC) Subsection 19.1502.2.A.4.
3. The majority of the territory proposed for annexation is land that has been dedicated to the public for right-of-way purposes. Public right-of-way is exempt from ad valorem taxation. The only portion of the territory proposed for annexation that has not been dedicated to the public is Hazel Place between Hollywood Ave and Wichita Ave. Hazel Place is a public road under Clackamas County ownership. Clackamas County is a public entity. Pursuant to ORS 222.170(4), the City is not required to obtain consent from property owners in the territory proposed for annexation when the territory is publicly owned or exempt from ad valorem taxation.
4. The annexation petition meets the requirements of the expedited annexation process, which does not require a public hearing on the matter. The annexation petition was processed and public notice was provided in accordance with ORS Section 222.125, Metro Code Section 3.09.045 Expedited Decisions, and MMC Section 19.1504 Expedited Process.
5. The expedited annexation process provides for automatic application of City land use and zoning designations to the territory based on the territory's existing zoning designation in the County. The territory's existing zoning designations in the County are primarily R7 and R10, with a few properties zoned for commercial and industrial uses. Pursuant to MMC Table 19.1504.1.E, the automatic City zoning and Comprehensive Plan land use designations upon annexation to the City would be primarily R7 and R10 and Low Density Residential, respectively.

6. The applicable approval criteria for expedited annexations are contained in MMC 19.1502.3. They are listed below followed by Council's findings.
 - A. The subject site must be located within the City's urban growth management area (UGMA);
The territory proposed for annexation is within the City's UGMA.
 - B. The subject site must be contiguous to the existing city limits;
The territory proposed for annexation is contiguous to the existing city limits.
 - C. The requirements of Oregon Revised Statutes for initiation of the annexation process must be met;
The annexation petition meets the Oregon Revised Statutes requirements for initiation as described in Findings 2 and 3 above.
 - D. The proposal must be consistent with Milwaukie Comprehensive Plan Policies;
Chapter 6 of the Comprehensive Plan contains the City's annexation policies. Applicable annexation policies include: 1) delivery of City services to annexing areas where the City has adequate services, and 2) requiring annexation in order to receive a City service. The proposed right-of-way annexation is in anticipation of the completion of the City's NE Sewer Extension Project and the requirement for properties to annex to the City in order to connect to the City's new sewer line.
 - E. The proposal must comply with the criteria of Metro code Sections 3.09.050 (d) and, if applicable, (e).
The annexation proposal is consistent with applicable Metro Code sections for expedited annexations as described below.
7. Prior to approving an expedited annexation, the City must apply the provisions contained in Section 3.09.045 of the Metro Code. They are listed below followed by Council's findings.
 - (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
There are no applicable urban service agreements adopted pursuant to ORS 195 in the area of the proposed annexation. The City, however, has an urban growth management agreement (UGMA) with Clackamas County that states that the City will take

the lead in providing urban services in the area of the proposed annexation. Pursuant to this agreement, the City is in the process of extending City sewer service to this area. The proposed right-of-way annexation is in anticipation of the completion of this sewer project and the requirement for properties to annex to the City in order to connect to the City's new sewer line.

- (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
There are no applicable annexation plans adopted pursuant to ORS 195 in the area of the proposed annexation.

- (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
There are no applicable cooperative planning agreements adopted pursuant to ORS 195 in the area of the proposed annexation.

- (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services;
A public facilities plan was developed by Clackamas County and subsequently adopted by the City through the City's urban growth management agreement with Clackamas County pursuant to the statewide planning goal on public facilities. The City's extension of City sewer in the area of the proposed annexation is consistent with this public facilities plan.

- (E) Any applicable comprehensive plan.
The proposed right-of-way annexation is consistent with the Milwaukie Comprehensive Plan, which is more fully described in Finding 6D. The Clackamas County Comprehensive Plan contains no specific language regarding City annexations. It does, however, contain the City-County UGMA, which identifies the area of the proposed annexation as being within the City's urban growth management area. The UGMA requires the City to notify the County of annexations, which the City has done. The UGMA also calls for City assumption of jurisdiction of local streets that are adjacent to annexed territories. The territory proposed for annexation consists entirely of rights-of-way. The City is in the process of assuming jurisdiction of these streets from the County.

- (2) Consider whether the boundary change would:

- (A) Promote the timely, orderly and economic provision of public facilities and services;

The City is the identified urban service provider in the area of the proposed annexation. This area does not currently contain a public sewer system. The City is currently in the process of extending City sewer service into this area. The proposed annexation is in anticipation of the completion of this sewer project and the requirement for properties to annex to the City in order to connect to the City's new sewer line. As a result, the proposed annexation will indirectly facilitate the timely, orderly, and economic provision of urban services in this area.

- (B) Affect the quality and quantity of urban services; and
- (C) Eliminate or avoid unnecessary duplication of facilities and services.

Clackamas River Water (CRW) is the current water service provider in the area of the proposed annexation. Until such time as the existing IGA between the City and CRW is renegotiated, the City does not intend to duplicate CRW's existing water supply system or withdraw private property from the CRW district. CRW will continue to be the water service provider in this area for the foreseeable future. Annexation of the rights-of-way is not expected to affect the quality and quantity of urban services or duplicate any facilities or services.

8. The City is authorized by ORS Section 222.120 (5) to withdraw annexed territory from non-City service providers and districts upon annexation of the territory to the City. This allows for more unified and efficient delivery of urban services to newly annexed properties and is in keeping with the City's Comprehensive Plan policies relating to annexation. Upon annexation, the rights-of-way in this area would become part of the corporate boundaries of the City and, therefore, subject to the Milwaukie Municipal Code and the City's policing authority. Consequently, approval of this application would result in the withdrawal of the annexed territory from Clackamas County Service District for Enhanced Law Enforcement, which would minimally alter delivery of law enforcement services in this area. Private property matters would still be handled by Clackamas County law enforcement officers, but enforcement of traffic regulations and illegal or nuisance activities in the right-of-way would be handled by the City's police and code enforcement officers.
9. The City is not currently responsible for maintaining the rights-of-way in this area. Annexation would not alter this arrangement. However, the City will become responsible for maintaining the right-of-way in this area when it takes over jurisdiction from Clackamas County in the near future.

ATTACHMENT 1
Exhibit B.1

ANNEXATION TO THE CITY OF MILWAUKIE
Rights-of-Way in the NE Sewer Extension Project Area
File #A-09-03

LEGAL DESCRIPTION

SE King Road (1S2E30DC and 1S2E30DD)

A Public Right-of-way in Sections 29 and 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE King Road (County Road No. 132) from the northerly extension of the westerly boundary of Lot 16, Block 7, MINTHORN ADDITION, east 1700 feet to the westerly right-of-way line of SE Linwood Avenue.

Said right-of-way is 60 feet wide, more or less.

SE 55th Avenue

Parcel 1 (1S2E30AB)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

That portion of SE 55th Avenue (County Road No. 1239) from the northerly right-of-way line of SE Johnson Creek Blvd, northerly 400 feet, more or less, to the westerly extension of the centerline of the right-of-way of SE West Fork Street, that is east of the centerline of the right-of-way.

Said half right-of-way varies in width from 12.5 feet to 25 feet, more or less.

Parcel 2 (1S2E30AB and 1S2E30AC)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE 55th Avenue (County Road No. 1283) from the Southwest boundary of property deeded to the City of Portland in Instrument No. 90-21136, Clackamas County Deed Records, (formerly the Portland Traction Company right-of-way) south 722 feet, more or less, to the westerly extension of a line 50 feet south of and parallel with the northerly line of Tract 4, GIBSON'S SUBDIVISION OF TRACTS 10, 11, 12, AND THE WEST 480 FEET OF TRACTS 1 AND 2 OF LOGUS TRACT, in Clackamas County, Oregon.

Said right-of-way is 40 feet wide, more or less.

Parcel 3 (1S2E30AC)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE 55th Avenue (County Road No. 1283) from the westerly extension of a line 65 feet north of and parallel with the southerly line of Tract 4, GIBSON'S SUBDIVISION OF TRACTS 10, 11, 12, AND THE WEST 480 FEET OF TRACTS 1 AND 2 OF LOGUS TRACT, in Clackamas County, Oregon, southerly 213.5 feet to the westerly extension of the northerly line of Lot 1, TAMBARA MEADOWS, a duly recorded subdivision in Clackamas County, Oregon.

Said right-of-way is 40 feet wide, more or less.

SE West Fork Street (1S2E30AA and 1S2E30AB)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

That portion of SE West Fork Street from the easterly right-of-way line of SE 55th Avenue east 1050 feet, more or less, to the westerly right-of-way line of SE 58th Drive, that is south of the centerline of the right-of-way.

Said half right-of-way varies in width from 15 feet to 25 feet, more or less.

SE Stanley Avenue

Parcel 1 (1S2E30AC, 1S2E30AD, 1S2E30DA, and 1S2E30DB)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Stanley Avenue (County Rd No. 1229) from the Southwest boundary of property deeded to the City of Portland in Instrument No. 90-21136, Clackamas County Deed Records, (formerly the Portland Traction Company right-of-way) south 1,604-feet, more or less, to a point 191.25 feet northerly of the easterly extension of the southerly right-of-way line of that portion of SE Willow Street that lies west of SE Stanley Avenue.

Said right-of-way is primarily 40 feet wide, more or less.

Parcel 2 (1S2E30DC and 1S2E30DD)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Stanley Avenue (County Road No. 1229) from the easterly extension of the southerly right-of-way line of SE Logus Road south 862 feet to the northerly right-of-way line of SE King Road.

Said right-of-way is 40 feet wide, more or less.

Parcel 3 (1S2E30DC)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Stanley Avenue from the southerly right-of-way line of SE King Road south 230 feet to the easterly extension of the centerline of Llewellyn Street (Magnolia Avenue) vacated.

Said right-of-way is 60 feet wide, more or less.

SE Hollywood Avenue

Parcel 1 (1S2E30AD and 1S2E30DA)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Hollywood Avenue from the easterly extension of the southerly right-of-way line of SE Laurel Street south 340 feet to the south boundary of HOLLYWOOD PARK ANNEX, a duly recorded subdivision in Clackamas County, Oregon, and its westerly extension.

Said right-of-way is 37.4 feet wide, more or less.

Parcel 2 (1S2E30DA)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Hollywood Avenue from the westerly extension of the southerly boundary of said HOLLYWOOD PARK ANNEX south 480 feet to the easterly extension of the southerly line of Lot 7, Block 5, HOLLYWOOD PARK, a duly recorded subdivision in Clackamas County, Oregon.

Said right-of-way is 12.5 feet wide, more or less.

Parcel 3 (1S2E30DA and 1S2E30DD)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Hollywood Avenue from the easterly extension of the northerly line of Lot 7, Block 6, of said HOLLYWOOD PARK south 617.5 feet to a point 137.5-feet south of the southerly line of said HOLLYWOOD PARK.

Said right-of-way is 12.5 feet wide, more or less.

Parcel 4 (1S2E30DD)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Hollywood Avenue from the easterly extension of the southerly line of the Plat of HOLLYWOOD PARK south 167 feet as conveyed to Clackamas County in Book 408, Page 236, Clackamas County Deed Records, for use as a public street.

Said right-of-way being 12.5 feet wide, more or less.

Parcel 5 (1S2E30DD)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Hollywood Avenue (County Road No. 2452) from the easterly extension of the northerly right-of-way line of SE Hector Street south 650 feet to the northerly right-of-way line of SE King Road.

Said right-of-way is 50 feet wide, more or less.

SE Wichita Avenue (also know as SE 60th Avenue) (1S2E30AD, 1S2E30DA, and 1S2E30DD)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Wichita Avenue (AKA SE 60th Avenue)(County Road No. 668) from the Southwest boundary of property deeded to the City of Portland in Instrument No. 90-21136, Clackamas County Deed Records, (formerly the Portland Traction Company right-of-way) south 3,060 feet to the northerly right-of-way line of SE King Road.

Said right-of-way is primarily 40 feet wide, more or less.

SE Front Street (1S2E30AD)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Front Street, as dedicated in STANLEY subdivision, a duly recorded subdivision in Clackamas County, Oregon, but unconstructed or maintained, being easterly from the easterly right-of-way line of SE Stanley Avenue.

Said right-of-way is 25 feet wide, more or less, and 540 feet in length, more or less.

SE Alderhurst Street (1S2E30AD)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Alderhurst Street from the Southwest boundary of property deeded to the City of Portland in Instrument No. 90-21136, Clackamas County Deed Records, (formerly the Portland Traction Company right-of-way) southerly 230 feet to its southerly terminus, as dedicated in ALDERHURST subdivision.

Said right-of-way is 50 feet wide, more or less.

SE Stanley Street (1S2E30AD)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Stanley Street from the easterly right-of-way line of SE Alderhurst Street easterly 200 feet to its easterly terminus, as dedicated in ALDERHURST subdivision.

Said right-of-way is 30 feet wide, more or less.

Un-named Street between SE Wichita Avenue & SE Linwood Avenue (1S2E30AD)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

The un-named and unimproved street along the Southwest boundary of property deeded to the City of Portland in Instrument No. 90-21136, Clackamas County Deed Records, (formerly the Portland Traction Company right-of-way) from the easterly right-of-way line of SE Wichita Avenue (AKA 60th Avenue) easterly 455 feet, more or less, to the westerly right-of-way line of SE Linwood Avenue.

Said right-of-way is 25 feet wide, more or less.

SE Morris Street (1S2E30AD)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Morris Street from the easterly right-of-way line of SE Stanley Avenue easterly 371 feet to its terminus.

Said right-of-way is 40 feet wide, more or less.

SE Laurel Street (1S2E30AD)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Laurel Street from the easterly right-of-way line of SE Stanley Avenue east 500 feet, more or less, to the easterly terminus at the northerly extension of the easterly right-of-way line of SE Hollywood Avenue.

Said right-of-way is 50 feet wide, more or less.

SE Firwood Street

Parcel 1 (1S2E30AC and 1S2E30DB)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Firwood Street (County Road No. 1283) from the northerly extension of the easterly right-of-way line of SE 56th Avenue east 260 feet, more or less, to the westerly right-of-way line of SE Stanley Avenue.

Said right-of-way is 20 feet wide, more or less.

Parcel 2 (1S2E30AD and 1S2E30DA)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Firwood Street (County Road No. 2329) from the easterly right-of-way line of SE Stanley Avenue east 462.5 feet to the westerly right-of-way line of SE Hollywood Avenue.

Said right-of-way is 40 feet wide, more or less.

Parcel 3 (1S2E30AD and 1S2E30DA)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Firwood Street (County Road No. 2329) from the easterly right-of-way line of SE Hollywood Avenue east 430 feet to the westerly right-of-way line of SE Wichita Avenue (AKA SE 60th Avenue).

Said right-of-way is 40 feet wide, more or less.

SE Cedar Street (1S2E30DA)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Cedar Street (County Road No. 2328) from the easterly right-of-way line of SE Stanley Avenue east 462.5 feet to the westerly right-of-way line of SE Hollywood Avenue.

Said right-of-way is 42.2 feet wide, more or less.

SE Hazel Place

Parcel 1 (1S2E30DA)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Hazel Place (County Road No. 2326) from the easterly right-of-way line of SE Stanley Avenue east 462.5 feet to the westerly right-of-way line of SE Hollywood Avenue.

Said right-of-way is 40 feet wide, more or less.

Parcel 2 (1S2E30DA)

A parcel of land lying in the Hector Campbell D.L.C. No 41, Township 1 South, Range 2 East, W.M., Clackamas County, Oregon and being all of that property described in that Bargain and Sale Deed to Clackamas County, a political subdivision of the State of Oregon, recorded October 18, 1952, in Book 461, Page 744, Film Records of Clackamas County.

Said parcel is 34 feet wide, more or less, and 457 feet long, more or less, and extends from the easterly right-of-way of SE Hollywood Avenue to the westerly right-of-way of SE Wichita Avenue (AKA SE 60th Avenue).

SE Hill Street (1S2E30DA)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Hill Street from the westerly right-of-way line of SE Wichita Avenue (AKA SE 60th Avenue) west 220 feet to its terminus.

Said right-of-way is 50 feet wide, more or less.

SE Maple Street (1S2E30DA)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Maple Street (County Road No. 2325) from the northerly extension of the west line of Lot 2, Block 8, of said HOLLYWOOD PARK east 362.5 feet to the westerly right-of-way line of SE Hollywood Avenue.

Said right-of-way is 40 feet wide, more or less.

SE Hector Street (1S2E30DD)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE Hector Street (County Road No. 2465) from the easterly right-of-way line of SE Stanley Avenue east 462.5 feet, more or less, to northerly extension of the westerly right-of-way line of SE Hollywood Avenue.

Said right-of-way is 40 feet wide, more or less.

SE 58th Drive

Parcel 1 (1S2E30AD)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE 58th Drive (formerly Josephine Avenue) from the westerly extension of the southerly line of Lot 5, Block 2, MULLAN HEIGHTS, a duly recorded subdivision in Clackamas County, Oregon northerly 500 feet, more or less, to the northerly line of said MULLAN HEIGHTS.

Said right-of-way is primarily 50 feet wide, more or less.

Parcel 2 (1S2E30AA)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

That portion of SE 58th Drive (formerly Josephine Avenue) from the northerly line of MULLAN HEIGHTS, a duly recorded subdivision in Clackamas County, Oregon, northwesterly 350 feet, more or less, to the easterly extension of the centerline of the right-of-way SE West Fork Street, that is southwesterly of the centerline of the right-of-way.

Said half right-of-way is 30 feet wide, more or less.

SE 58th Avenue (formerly Darlington Avenue) (1S2E30AA and 1S2E30AD)

A Public Right-of-way in Section 30, Township 1 South, Range 2 East, W.M., more particularly described as follows:

SE 58th Avenue (formerly Darlington Avenue) from a point 30 feet north of the easterly extension of the south line of Lot 9 OLSON ACRES, a duly recorded subdivision in Clackamas County, Oregon northwesterly 170 feet, more or less, to easterly extension of the northerly boundary line of said OLSON ACRES; thence northeasterly 300 feet, more or less, to the westerly right-of-way line SE 58th Drive and the southerly right-of-way line of SE West Fork Street..

Said right-of-way is 25 feet to 60 feet wide, more or less.

This map was prepared for assessment purpose only.

NE 1/4 NE 1/4 SEC 30 T.1S R2E W.M.
CLACKAMAS COUNTY

D.L.C.
HECTOR CAMPBELL NO. 41

1 2E 30AA

MULTNOMAH COUNTY

1"=100'

HARNEY DRIVE (NORFOLK AVE)

8500

5700

6200

S.E. 57TH AVE. (HOWARD ST.)

MAP I 2E 30AB

SEE

8700

MAP I 2E 29BB

SEE

WEST FORK ST (HOWARD ST.)

28

12-02

12-23UR

12-118

12-229UR

I-3

R-7

MAP I 2E 30AD

9000

JOHNSON'S CR.
STANLEY AVE
CITY OF PORTLAND BY 90-21156
PORTLAND TRACTION CO. RD. 1215

OLSON ACRES

(DARLINGTON) 58TH

1 2E 30AA

BOOK 3

RS Page 67

ATTACHMENT 1
Exhibit B.2

This map was prepared for assessment purposes only.

NW 1/4 NE 1/4 SEC. 30 T.1S. R.2E. W.M.
CLACKAMAS COUNTY

D.L.C.
GEO. WILLS
HECTOR CAMPBELL NO.41

I 2E 30AB
MILWAUKIE
PORTLAND

8500

TL 48E
5800 5100

5200

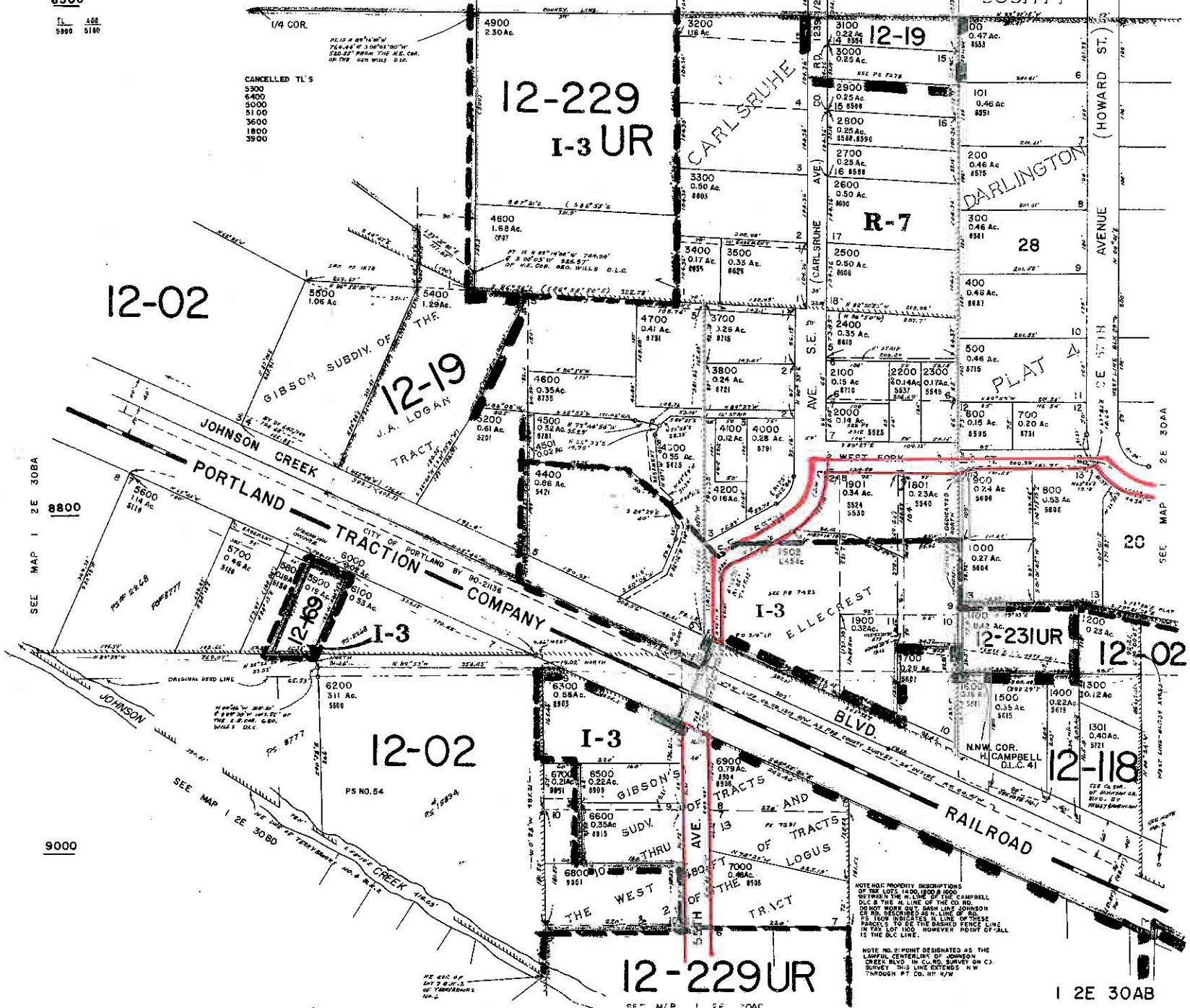
5500

MULTNOMAH

1"=100'

COUNTY

CANCELLED TL'S
5300
6400
5000
5100
3600
1800
3900



RS Page 68

SEE MAP I 2E 30BA

8800

9000

SEE MAP I 2E 30AA

NOTE: NO PROPERTY DESCRIPTIONS OF THE LOTS 1400, 1500 & 1600 BETWEEN THE N. LINE OF THE CAMPBELL D.L.C. & THE N. LINE OF THE CO. NO. 41 D.L.C. SHOULD BE SET AS THE SOUTHERN LINE OF THE CAMPBELL D.L.C. UNLESS THE BASIS OF THESE LOTS TO BE THE BASIS OF THESE LOTS IN TAX LOT 100. HOWEVER POINT OF ALL IS THE D.L.C. LINE.

NOTE: NO POINT DESIGNATED AS THE CENTERLINE OF JOHNSON CREEK BLVD IN CO. NO. SURVEY ON C.D. SURVEY THIS LINE EXTENDS N.W. THROUGH PT. CO. NO. 41/4 W.

SEE MAP I 2E 30AC

I 2E 30AB
MILWAUKIE
PORTLAND

SW 1/4 NE 1/4 SEC. 30 T. 15. R. 2E. W.M.
CLACKAMAS COUNTY

D.L.C.
HECTOR CAMPBELL NO. 41
GEORGE WILLS NO. 42

1 2E 30AC
MILWAUKIE
6900

5200

1"=100'

5500

This map was prepared for
assessment purpose only.

NOTE: NO. 1
DEED 260/389 DESCRIBES THIS LINE AS "TRACING THE CENTER
OF JOHNSON CREEK DOWNSTREAM ON A 10° CURVE TO THE RIGHT
THROUGH THE CENTER ANGLE OF 23° OF A DISTANCE OF 136.33
TO A POINT ON THE W. BOUNDARY OF TRACT 117"

SEE MAP 1 2E 30AB

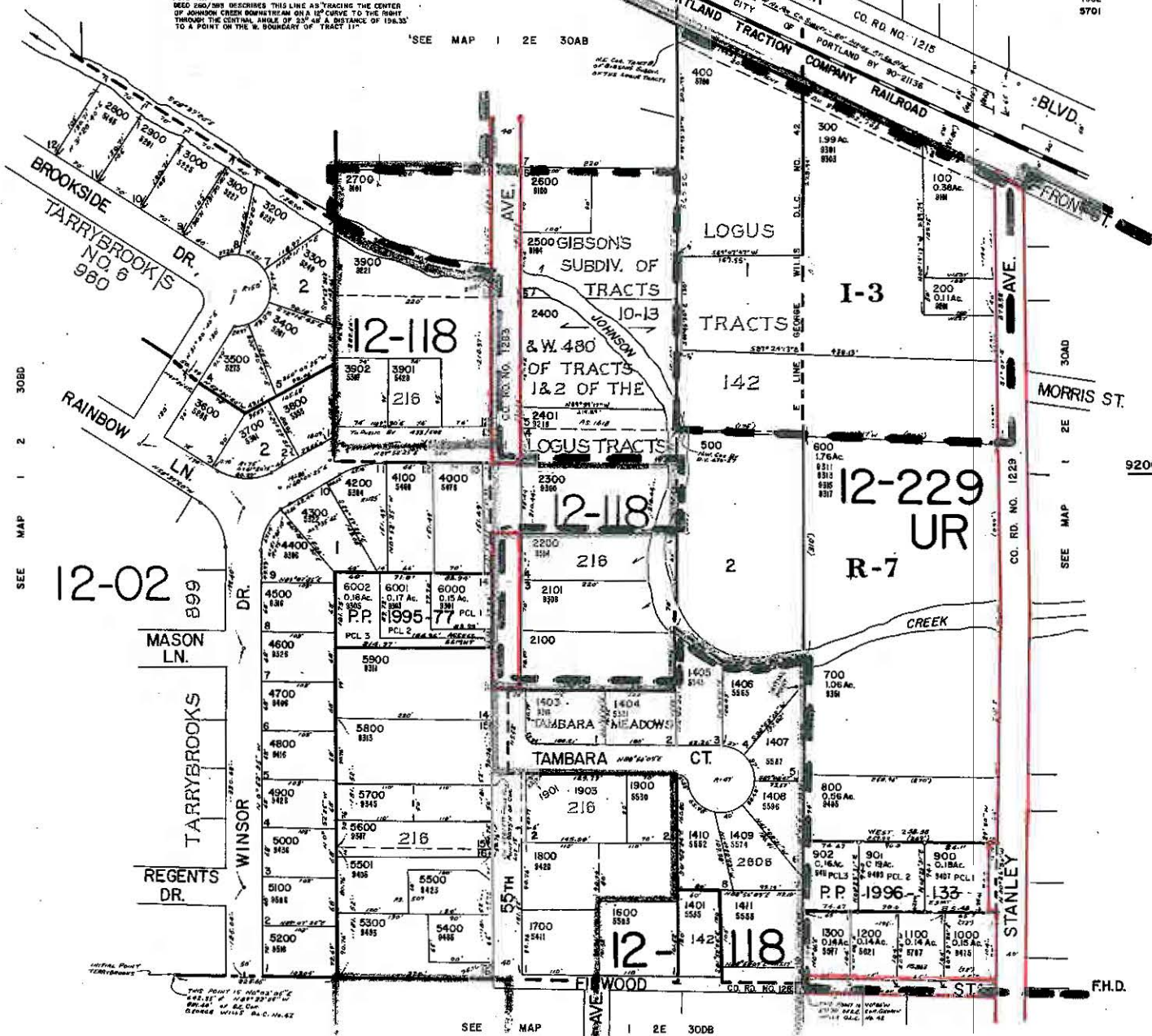
N.W. COR.
HECTOR CAMPBELL
D.L.C. NO. 41

5700

CANCELLED NO.
1400
1402
1500
2000
2001
2090
5601
5602
5701

RS Page 69

SEE MAP 1 2 30BD



SEE MAP 1 2E 30DB

9200

1 2E 30AC
MILWAUKIE
BOOK 3

X 11-86

NE 1/4 SE 1/4 SEC. 30 T.1S. R.2E. W.M.
CLACKAMAS COUNTY

D.L.C.
HECTOR CAMPBELL NO. 41

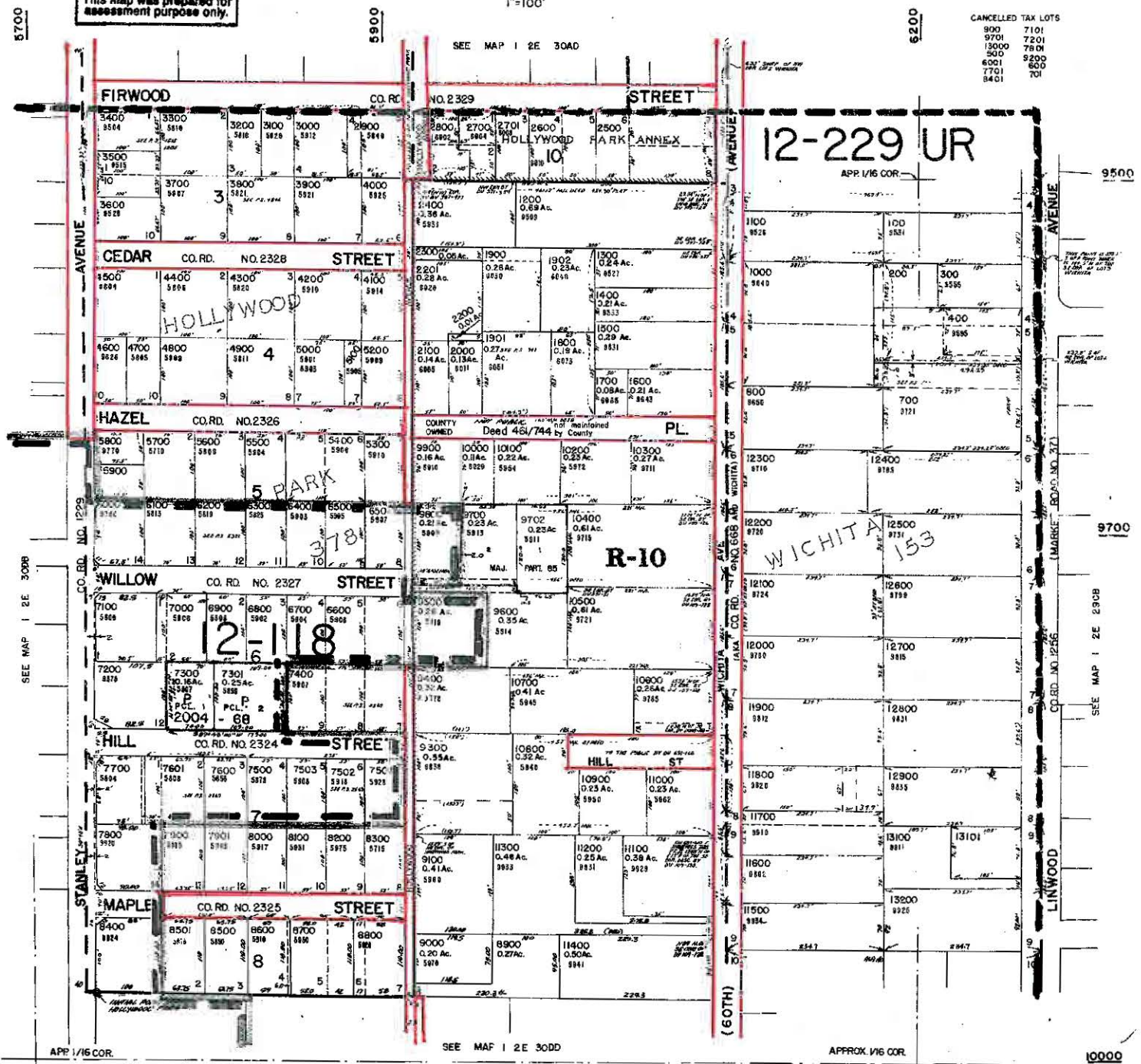
1 2E 30DA

This map was prepared for
assessment purpose only.

1"=100'

CANCELLED TAX LOTS
900 7101
9701 7201
13000 7504
500 5200
6001 6000
7701 701
8401

Cancelled
TL 600
701



RS Page 71

APP. 1/16 COR.

SEE MAP 1 2E 30DD

APPROX. 1/16 COR.

10000

1 2E 30DA
BOOK 3

SW 1/4 S.E. 1/4 SEC. 30 T.1S. R.2E. W.M.
CLACKAMAS COUNTY

D. L. C.
DANIEL HATHAWAY NO. 40
HECTOR CAMPBELL NO. 41

1 2E 30DC
MILWAUKIE

This map was prepared for
assessment purpose only.

1"=100'

5200
1/16 Cor.

5700
1/16 Cor.

SEE MAP 1 2E 300B

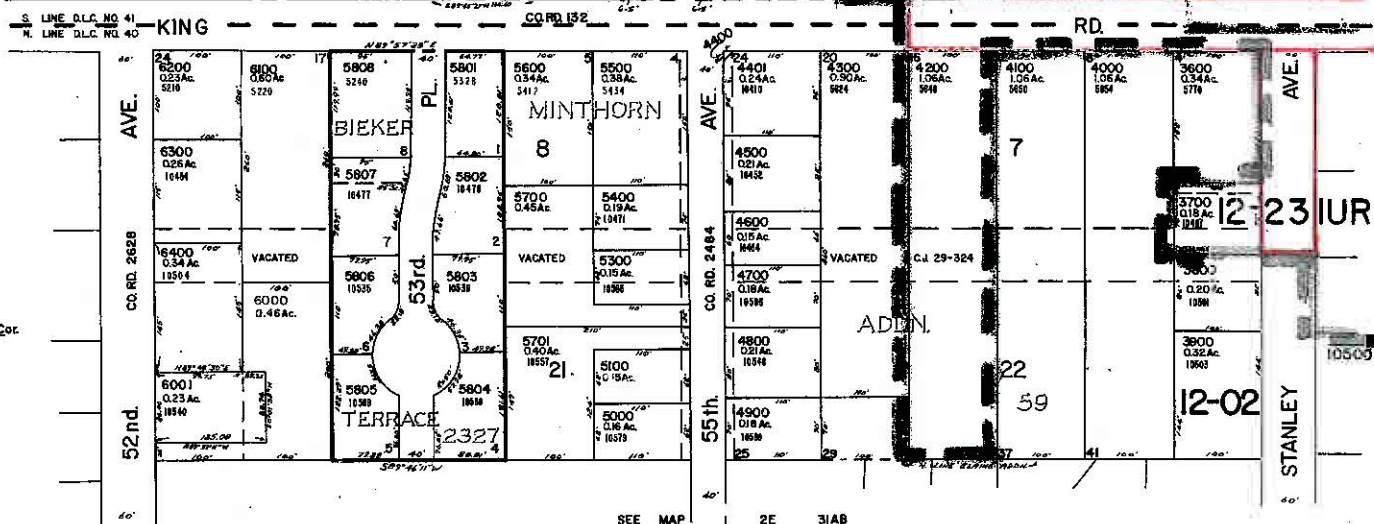
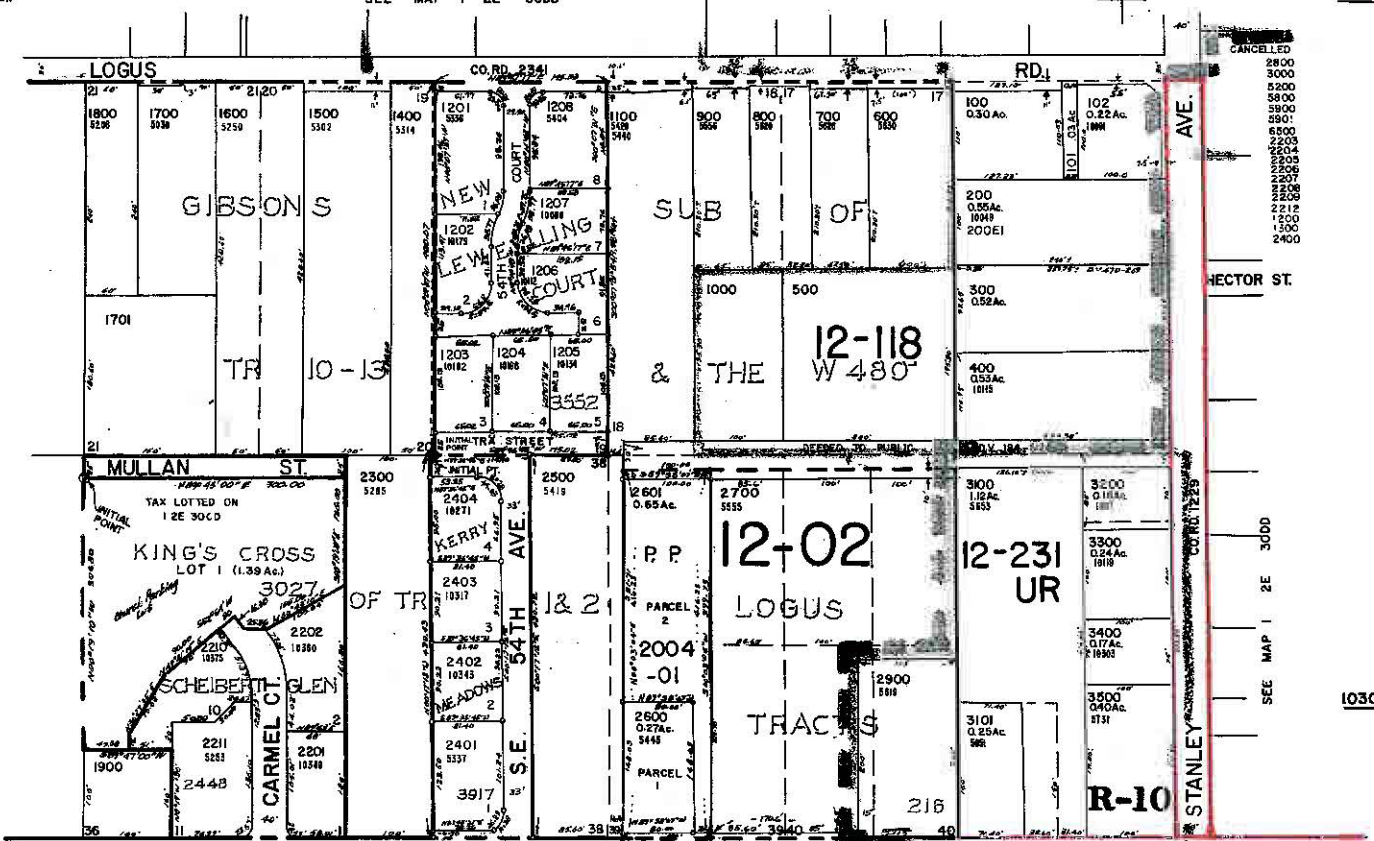
10000

RS Page 73

SEE MAP 1 2E 300D

SEE MAP 1 2E 300D

10300

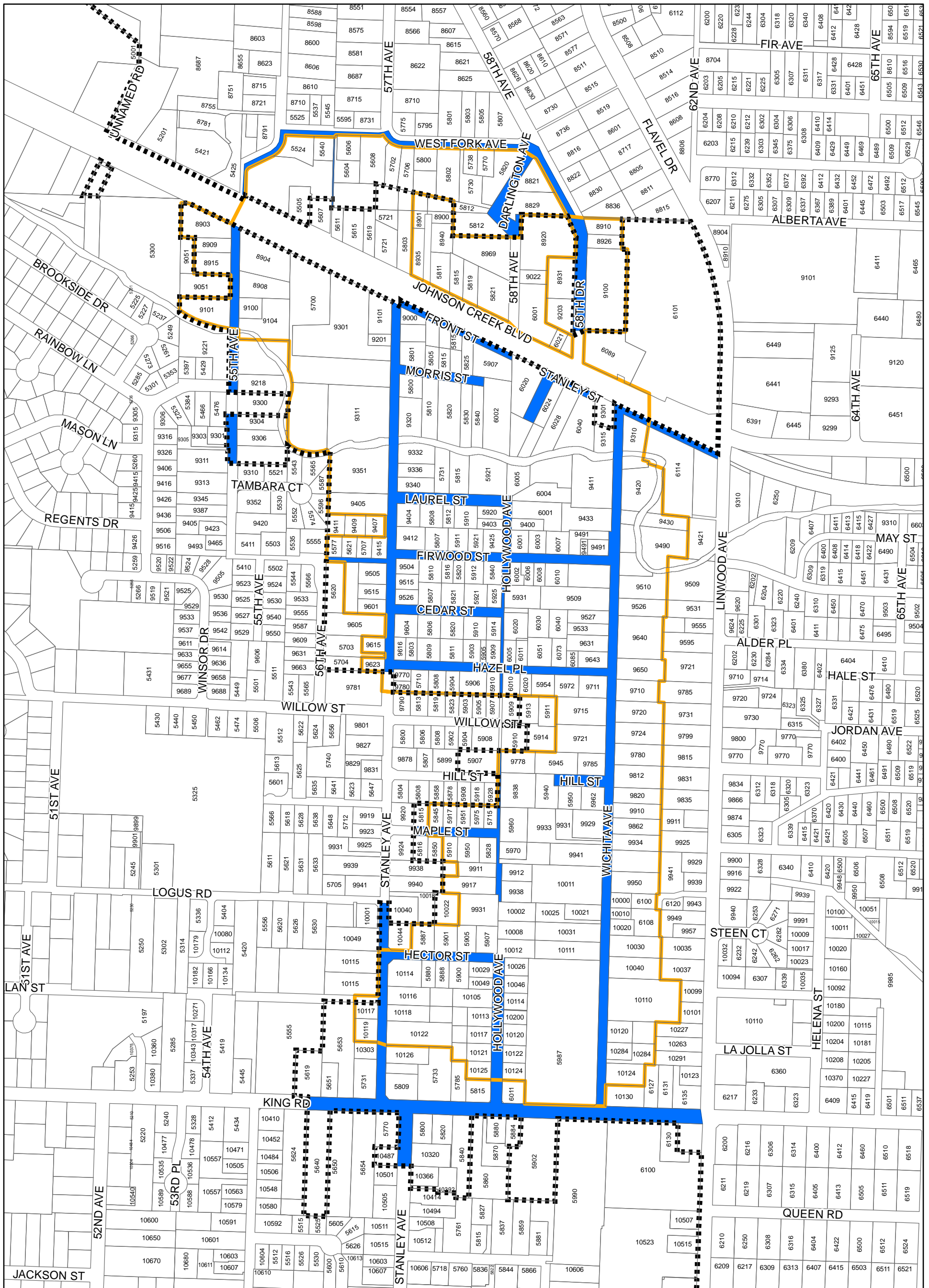


SEE MAP 1 2E 31AB

1 2E 30DC
MILWAUKIE
BOOK 3

1/4 Cor.



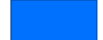
1/4 Cor.

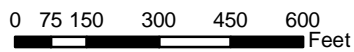


NE Milwaukie Sewer Extension Project Right-of-Way (ROW) Annexation

Data Sources: City of Milwaukie GIS
Metro Data Resource Center

Date: September 2009

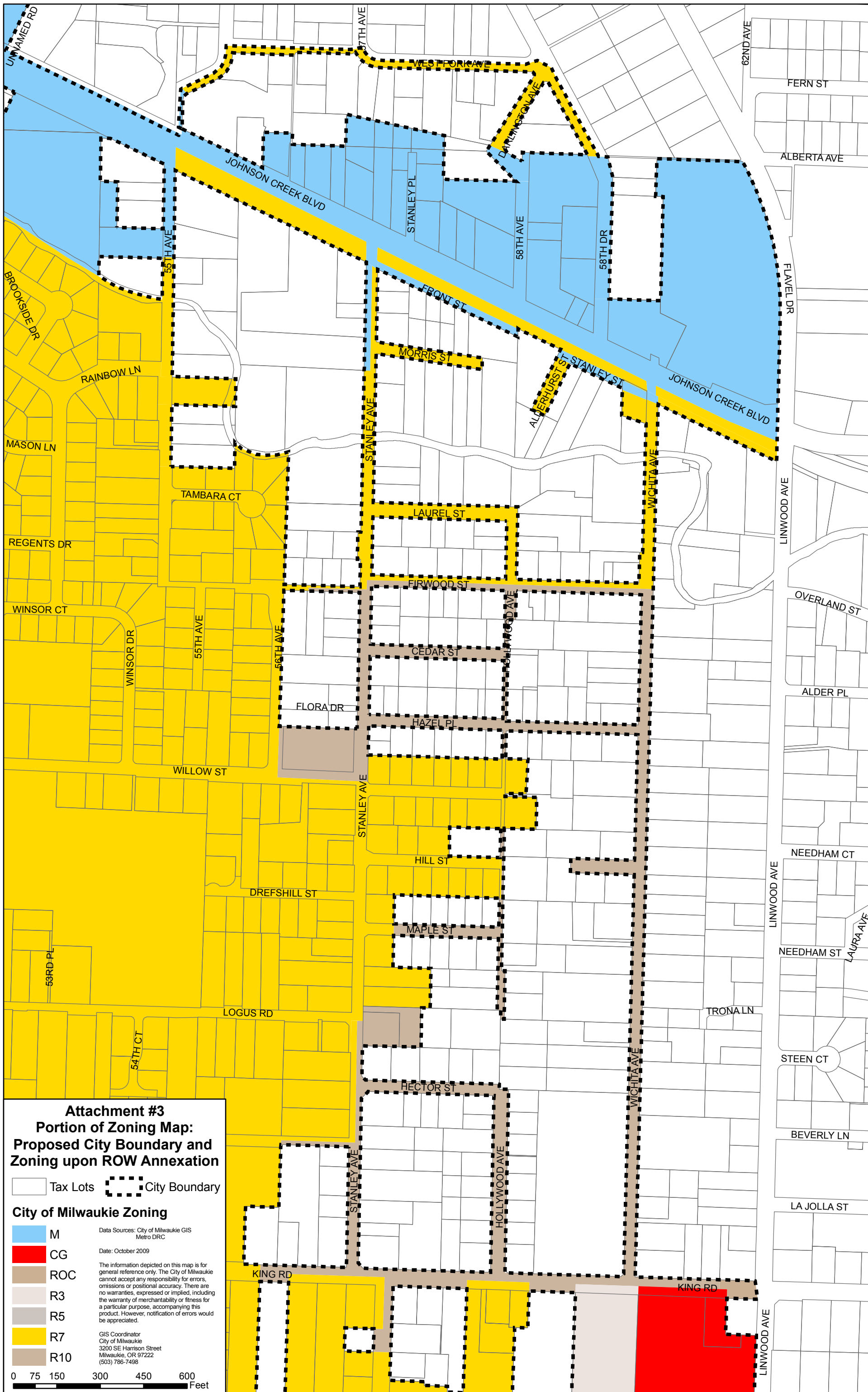
-  City Boundary
-  Sewer Extension Project Boundary
-  Proposed ROW Annexation



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

GIS Coordinator
City of Milwaukie
3200 SE Harrison Street
Milwaukie, OR 97222
(503) 786-7498





Clackamas River Water



P.O. Box 2439
Clackamas, Oregon 97015-2439

(503) 722-9220
Fax (503) 656-7086

Administration: 16770 SE 82nd Drive
Production/Operations: 9100 SE Mangan Drive

October 19, 2009

VIA FACSIMILE AND MAIL

Planning Department
City of Milwaukie
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206

Sent to Fax # 503-774-8236

RE: Proposed Expedited Process for Right of Way Annexation for NE Milwaukie Sewer Extension Project Area

ATT: Ms. Susan Shanks

This is file notice of Clackamas River Water's ("CRW's) objections to the expedited process relating to the above referenced proposed right of way annexation. CRW is a domestic water supply district organized under ORS Chapter 264 and is therefore a necessary party to this proceeding.

The basis for CRW's objection is that, based on information which CRW has been able to obtain within the 20-day notice period, it has been unable to determine whether this annexation complies with any applicable urban service agreement applicable to the provision of domestic water supply for the affected area. Such a finding is required under Metro's Code provision 3.09.045 (d)(1)(A). CRW understands that Milwaukie desires to extend its sewer line into the identified rights of way thereby bringing the right of way into the City's boundaries. It is also unclear as to what impact this may have on the existing domestic water lines located within the right of way and CRW's provision of that domestic water supply under its urban service agreement. Based on the information CRW has been able to obtain, it is unclear as to what affect, if any, the extension of this line and the proposed annexation may have on the supply of domestic water to the subject area.

Second, the Milwaukie City Code (Section 19.1502.1) provides in relevant part that the City Council may propose annexation on its own motion pursuant to ORS 222.111(2) or the "island" annexation statute (ORS 222.750). CRW believes that ORS 222.111(2) is inapplicable to this proposed annexation and that such annexation cannot be accomplished pursuant to ORS 222.750 (the "island annexation" statute). Because of this significant issue, it is inappropriate to conduct this annexation under the expedited process.

RECEIVED

OCT 23 2009

ORS 222.705 allows annexation of "island territories" in the event that the territory sought to be annexed "is (a) surrounded entirely by water, or (b) is surrounded as provided in subsection 2 of this section, but a portion of the corporate boundaries of the city that consists only of a public right of way . . . constitutes more than 25 percent of the perimeter of the territory. In this case, the territory sought to be annexed is simply outside the City's boundaries – it is not surrounded entirely by water or by the corporate boundaries of the city (or any other combination of boundaries and natural features described in ORS 222.750(2)). In short, it appears that this subject annexation is being justified on the basis of an "island" annexation where the subject right of way is surrounded by existing City property. The City's public notices indicate that the City is not interested in annexing any private property adjacent to the right of way. Therefore, it is clear that this annexation creates an island or islands of private property where none currently exist. The intent of the "island" annexation statute was to allow cities to resolve situations where "islands" existed – not to create "islands" so that future annexations could be used to resolve the island.

While CRW would like to support Milwaukie in its efforts to improve (or expand) its sewer system, CRW is lacking sufficient information to be able to support this annexation at this time, particularly on an expedited basis. CRW is willing to meet with Milwaukie staff to discuss the concerns and see if the annexation can be supported through the normal notice and hearing period.

Very truly yours,



Lee E. Moore, Sr.
General Manager

ATTACHMENT 5

G. The parties have determined that it is in the best interests of rate payers for the parties to enter into contracts for the purchase and sale of water for emergency and backup purposes. The parties agree that the execution of a long term Agreement for the sale of water between the City and CRW will provide greater likelihood of a water supply being available to both the City and CRW for an emergency or backup situation.

NOW, THEREFORE, the Milwaukie City Council and the CRW Board of Commissioners (together referred to as “the governing bodies” mutually agree as follows:

1. Supply of Surplus Water and Term of Agreement.

1.1 Subject to the other provisions of this Agreement, CRW will furnish to City a supply of potable, surplus water for an initial twenty (20) year period beginning July 1, 1998, through June 30, 2018, subject to renewal, extension or termination and on the terms and conditions as set forth in this Amended Agreement.

1.2 City agrees to purchase water for emergency or backup purposes during the term of this Agreement. The City recognizes that CRW may not be able to satisfy the City’s demand for emergency or backup water supply due to the lack of availability of water or flow and the supply of such water shall be subject to the terms and conditions of this Amended Agreement.

1.3 Each calendar year the parties shall have an opportunity to discuss the terms of this Agreement and propose modifications to the terms or conditions. Upon receipt of written notice identifying the terms and conditions the party desires to renegotiate and requesting negotiations, the parties shall enter into negotiations relating to such terms and conditions, including adjustment of rate. Any modification to the terms and conditions of this Amended Agreement shall be approved by the governing bodies of the parties hereto and shall be effective commencing on July 1 following conclusion of negotiations, unless the parties mutually agree to another effective date which shall be reflected in any modification or amendment. Nothing stated herein shall be construed to obligate the governing bodies to amend the terms and conditions of this Amended Agreement but shall only be construed as an obligation of the respective parties’ representatives to negotiate in good faith.

2. Annexation or Transfer of Service Area. The provisions of this section are applicable until the parties enter into an urban services agreement for water services pursuant to ORS Chapter 195. Thereafter, the urban services agreement will prevail. If City annexes territory within CRW, the parties agree that CRW will continue to provide water to the newly annexed area, and City may elect to perform meter reading, custom billing and customer service activities, or the parties may negotiate alternative arrangements for the most effective service delivery in the newly annexed area. If City annexes territory not currently serviced directly by CRW or, if City transfers all or a portion of its service area receiving CRW water to a water service provider than CRW, the parties agree to commence negotiations on modifications to this Agreement prior to substantial completion of the annexation or transfer.

3. Connections and Meters. City will provide and maintain meters, valves and controls, including backflow prevention assemblies as necessary, as approved by CRW, in proper order for a water transmission line connection at S.E. Harmony Road near S.E. Fuller

Clackamas River Water



P.O. Box 2439

(503) 722-9220

Administration: 16770 SE 82nd Drive

Clackamas, Oregon 97015-2439

Fax (503) 656-7086

Production/Operations: 9100 SE Mangan Drive

December 3, 2009

Susan P Shanks
Senior Planner
City of Milwaukie
Public Services Facility
6101 SE Johnson Creek Blvd
Milwaukie OR 97206

Dear Ms. Shanks,

Thank you for the correspondence, and I apologize for the delay in responding. I too thought that the meeting on November 19, 2009 was productive and both Staff and I look forward to continued discussions regarding matters of mutual interest for both organizations. As agreed, Clackamas River Water (CRW) concurs with your understanding of the agreements made during the meeting.

1. Consistent with the agreements reached CRW does hereby rescind its objections to the City of Milwaukie's (City) proposed right-of-way annexation.
2. CRW and the City will work toward a "billing solution" that connects CRW's and the City's utility payments whereby the City would be assured of receiving payment for its sewer service, stormwater and street resurfacing fees.
3. The City will honor its interpretation of the existing IGA with CRW whereby newly annexed properties currently receiving CRW water would continue to receive CRW water and stay in the district until such time as different IGA language is negotiated.

One other item that was discussed, and that was not referenced in your email, is the development of an Urban Services Agreement. It is my belief that several of the items listed above could be best referenced in such an agreement to the benefit of both parties.

I look forward to scheduling the next meeting so that we can continue these discussions. Please contact me at your convenience in order to do so.

Sincerely,

Lee E. Moore Sr.
General Manager
Clackamas River Water

RECEIVED

DEC 07 2009

CITY OF MILWAUKIE
PLANNING DEPARTMENT

ATTACHMENT 7
Correspondence from Clackamas County Service District No. 5 for Street Lights

From: Noreen, Kevin [KevinNor@co.clackamas.or.us]
Sent: Thursday, October 22, 2009 10:11 AM
To: Shanks, Susan
Cc: Parkin, Gary; Coryell, Wendi
Subject: RE: Street Lighting Discussions btwn Milwaukie & County

Thanks Susan for the email. I think you did a great job in capturing our conversation and where we currently stand on this issue. I have returned to the office after being out for almost two weeks and will find out where we are on getting you the information re: numbers of lights and cost to operate as soon as I can. At that point, we should touch base and explore the options and future relationships as written below.

Kevin Noreen

Development Review Supervisor, Engineering Division
Clackamas County, Dept. of Transportation and Development
(p) 503-742-4699
(f) 503-742-4659
Development Services Building
150 Beaver Creek Rd.
Oregon City, OR 97045

From: Shanks, Susan [mailto:ShanksS@ci.milwaukie.or.us]
Sent: Thursday, October 15, 2009 4:29 PM
To: Noreen, Kevin
Cc: Parkin, Gary
Subject: Street Lighting Discussions btwn Milwaukie & County

Kevin,

Thank you for talking with me last week. I hope you found our conversation as productive and informative as I did. As promised, see below for a summary of our conversation regarding the City's proposed right-of-way annexation in the NE Milwaukie Sewer Extension Project Area and that project's implications for the County's street lighting district. Please let me know if there's anything you'd like to add or change.

- After discussing the unique nature of the proposed right-of-way annexation and jurisdictional transfer of these streets to the City, we agreed that further discussion and negotiations between the City and the County were needed regarding the near and long term operation of the street lights in this area, especially in light of the private property annexations expected to occur in this area in the future. As discussed, the City's position is that annexation of the right-of-way does not automatically trigger the: (1) removal of private properties from the County's street lighting district since no property annexations are occurring at this time, or (2) transference of the street lights in this area from the County to the City.
- It was agreed that some kind of IGA was needed to address the incremental private property annexations that will occur in this area over time. The City is not interested in taking over the operation of the lights in this area at this time because the City does not have a

dedicated funding source for these lights and would not be able to recoup its costs from the affected properties since they are not within the City limits. The County, on the other hand, is not interested in providing lighting on City streets. We both agreed that it doesn't make sense for the County to continue receiving payments from property owners for street lighting if the City became responsible for the lights, unless, of course, the County passed these fees over to the City.

- A reasonable and simple approach to the fiscal and practical issues raised by the City's plans for this area is preferred. Some options include transferring the street lights to the City and removing all properties from the County's street lighting district: (1) after a specific percentage of private properties in this area annex to the City, or (2) after a certain passage of time, e.g. three years.
- In order to facilitate our mutual understanding and resolution of this matter, you agreed to provide data on the number and type of lights on these streets, which properties are billed, how much they are billed, and how much the County pays PGE for the lights in this area.

As we discussed, someone from the City other than myself will continue these discussions with you as my involvement in this project is specific to annexation. That person will likely be Gary Parkin, the City's Engineering Director. He can be reached at 503-786-7601 or parking@ci.milwaukie.or.us.

Again, thanks for a very productive conversation. I am confident that we can resolve this matter in the near future.

Regards,

Susan P Shanks | Senior Planner
Planning Department | City of Milwaukie
Public Services Facility | 6101 SE Johnson Creek Blvd, Milwaukie OR 97206
Phone | 503-786-7653
Fax | 503-774-8236
E-mail | shankss@ci.milwaukie.or.us



**NOTICE OF PUBLIC MEETING
JANUARY 5, 2010**

TO: Property Owners and Residents
FILE: A-09-03 (Annexation of Rights-of-Way in NE Sewer Extension Project Area)
MTG DATE: Tuesday, January 5, 2010, beginning at 7 p.m.
Milwaukie City Hall, 10722 SE Main Street
NOTICE DATE: December 16, 2009

The annexation proposal described below was originally scheduled to be heard by Milwaukie City Council on October 20, 2009. It was not, however, heard at that time due to an objection by Clackamas River Water (CRW). CRW has since rescinded their objection, and the proposal has been rescheduled to be heard on January 5, 2010. Time for public comment is provided at the beginning of each Council meeting. If you're interested in commenting on this proposal, be sure to fill out a green card and submit it to City Recorder Pat DuVal before the meeting begins.

Please note that there are usually many items on the Council agenda. If you would like to get an approximate time for when this proposal will be presented and discussed, check with City staff (see contact information on the reverse of this letter) or go online to view the Council agenda at: <http://www.ci.milwaukie.or.us/council/currentmeetings.html>.

The City of Milwaukie will be installing new sewer lines in the NE Sewer Extension Project area in the near future. The boundaries of this project area are depicted on the enclosed map. As part of this project, the Milwaukie City Council will consider approving an expedited annexation application (File #A-09-03) that was initiated by the City on September 15, 2009. The annexation application proposes to annex the public rights-of-way (i.e. public streets) that are located in and adjacent to the NE Sewer Extension Project area. The streets proposed for annexation are more specifically identified on the enclosed map. You are receiving this notice because you either live or own property within 400 feet of one of the streets proposed for annexation.

The proposed annexation is for streets only and does not include any private property.

Annexation of the streets shown on the enclosed map will make the properties in the sewer extension project area contiguous to the City's boundary. Properties need to be contiguous to the City's boundary in order to annex. Since annexation is required upon connection to City sewer,

COMMUNITY DEVELOPMENT
BUILDING * ECONOMIC DEVELOPMENT * ENGINEERING * PLANNING
6101 SE Johnson Creek Blvd., Milwaukie, Oregon 97206
P) 503-786-7600 * F) 503-774-8236

annexation of the streets will enable property owners to annex into the City when they need or want to connect to City sewer in the future. Future property annexations are not being required by the City for any other reason. This means that if you don't need or want to connect to the City's new sewer line, you will not be required to annex.

Annexation of the streets in the project area will technically create unincorporated islands.¹ Per state statute, islands can be annexed. The City will not require and/or initiate annexation of islanded properties not currently connected to City sewer.

Expedited Annexation Process

Expedited annexation applications are not land use decisions and do not require a public hearing. They do, however, require approval by City Council at a regularly scheduled public meeting. Pursuant to Metro Code Section 3.09.045(b), an annexation application cannot use the expedited annexation process if a necessary party objects to the proposed annexation in writing prior to the scheduled City Council meeting. A necessary party is any county, city, district, or local unit of government whose boundary includes, or who provides services to, the proposed area to be annexed.

Expedited Annexation Approval Criteria

The criteria to be used by City Council in reaching a decision are found in Milwaukie Municipal Code Section 19.1502.3 Boundary Change Approval Criteria; Milwaukie Comprehensive Plan Chapter 6 City Growth and Governmental Relationships; Metro Code Chapter 3.09 Local Government Boundary Changes, and; Oregon Revised Statutes Chapter 222 City Boundary Changes. Copies of these criteria are available upon request.

How to Submit Comments

You are invited to submit written and/or verbal comments on this application prior to or at the October 20 meeting. Written comments submitted in advance of the meeting should be directed to the Milwaukie Planning Department. Written and/or verbal comments submitted at the meeting, should be made during the "Audience Participation" portion of the meeting.

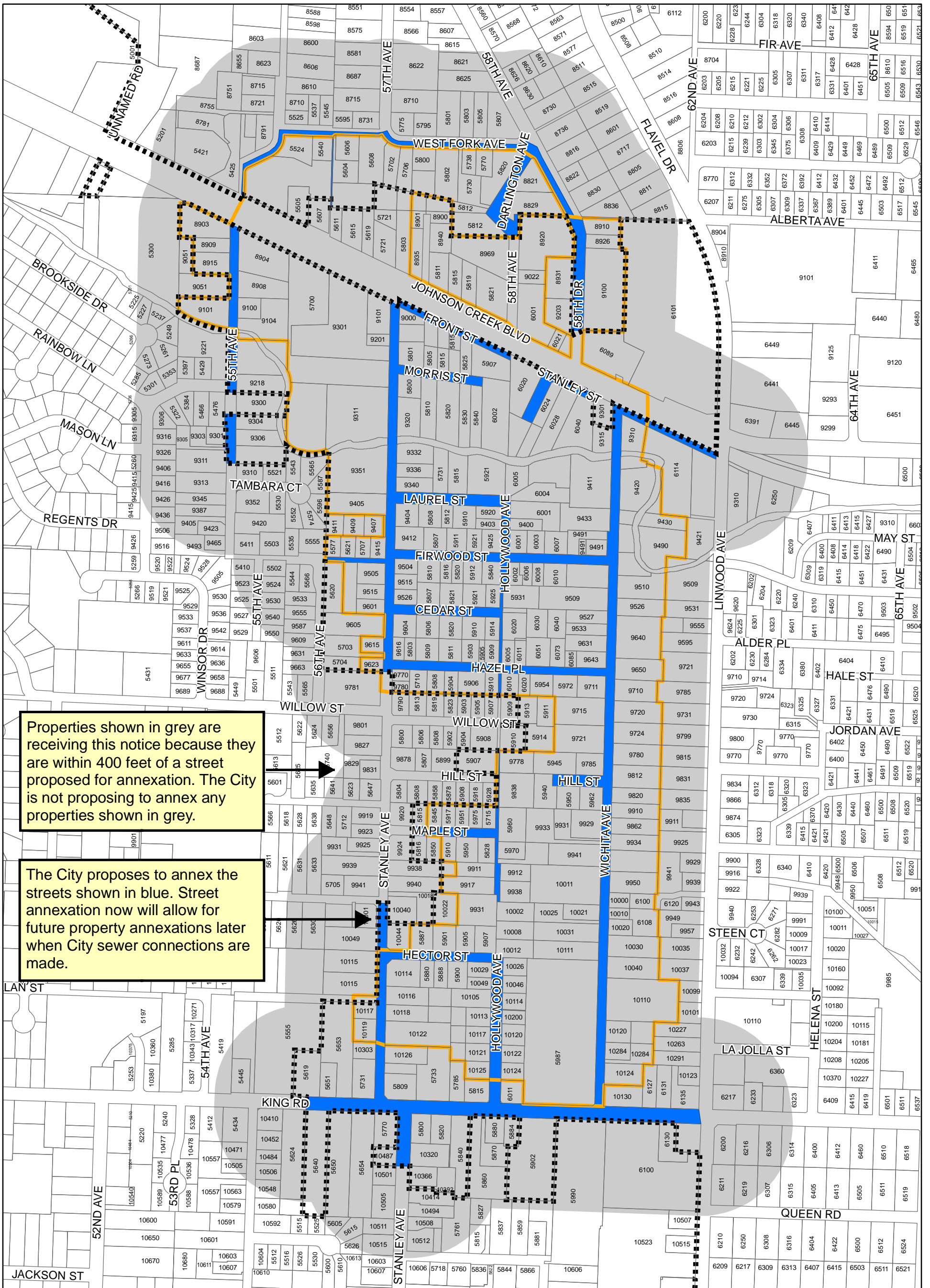
Where to Get More Information

If you have any questions about the proposed street annexation, please contact Susan P. Shanks in the Planning Department at 503-786-7653 or shankss@ci.milwaukie.or.us. If you have any questions about the NE Sewer Extension Project, please contact Grady Wheeler in the Community Services Department at 503-786-7503 or wheeler@ci.milwaukie.or.us.

The application and all applicable approval criteria and ordinances are available for inspection at the Planning Department at 6101 SE Johnson Creek Blvd. A staff report will be available for public review after 8:00 a.m. on Wednesday, December 30, 2009 at the Planning Department; Ledding Library, local information shelf; <http://www.ci.milwaukie.or.us/council/currentmeetings.html>; and City Hall, 10722 SE Main. Copies of any materials, including the staff report, are available for purchase at a reasonable cost.

For assistance/service per the Americans with Disabilities Act (ADA), dial TDD (503) 786-7555





¹ Per state statute, islands are territories not in the City but that are completely surrounded by the corporate boundaries of the City. Islands are not created when a street constitutes more than 25% of the perimeter of any given territory.

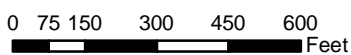


Properties shown in grey are receiving this notice because they are within 400 feet of a street proposed for annexation. The City is not proposing to annex any properties shown in grey.

The City proposes to annex the streets shown in blue. Street annexation now will allow for future property annexations later when City sewer connections are made.

NE Milwaukie Sewer Extension Project Right-of-Way (ROW) Annexation

-  City Boundary
-  Sewer Extension Project Boundary
-  Proposed ROW Annexation
-  Properties within 400 feet of Proposed Annexation Receiving Notice



Data Sources: City of Milwaukie GIS
Metro Data Resource Center

Date: September 2009

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

GIS Coordinator
City of Milwaukie
3200 SE Harrison Street
Milwaukie, OR 97222
(503) 786-7498



ATTACHMENT 9
Public Comments
Right-of-Way Annexation in NE Sewer Extension Project Area

TELEPHONE CALLS:

1. Wayne Every at 9862 SE Wichita (10/2/09) – Concerned about foreclosed property across street, possible rezone of that property, and possible densification. Interested in staying in neighborhood, connecting to sewer, and doing home addition over septic field instead of moving to larger house.
Staff response: No City plans to rezone property. If property owner requested rezone, public hearings and City Council approval would be required.
2. Bonnie Quick (10/2/09) – Concerned about paving of Hollywood Ave and what that might mean for traffic safety and existing blind corner.
Staff response: Referred to Gary Parkin, Engineering Director.
3. Property Owner at 10320 SE Stanley (10/2/09) – Concerned that map was showing his property incorrectly.
Staff response: Map correct. Property not in the City but connected to City sewer.
4. Bob George, District Engineer for CRW at 503-722-9228 (10/5/09) – Had general ROW annexation and City/CRW IGA questions.
Staff response: City proposing to annex ROW not private property so no change in water service provision proposed at this time. ROW annexation proposed to facilitate future sewer hook-ups. City understanding of IGA was that CRW would continue to be the water service provider in this area until such time as that agreement was renegotiated.
5. Ronald Frit at 5840 SE King Rd (10/5/09) – Confirmed that his property was not in the City but connected to City sewer.
Staff response: Confirmed.
6. Shirley Kaufman at 5880 SE King Rd (10/5/09) – Confirmed that her property was not in the City but connected to City sewer.
Staff response: Confirmed.
7. Glorianne Menely at 5884 SE King Rd (10/6/09) – Confirmed that her property was in the City and connected to City sewer.
Staff response: Confirmed.
8. Annette Frary calling on behalf of her aunt, Billie Mae Hill, at 9950 SE Wichita and including undeveloped lot to north (10/13/09) – House at 9950 is not occupied. Aunt is in a care facility. Undeveloped property to north in the name of the aunt's deceased parents, William and Pearl Hill. She had general questions about ROW annexation proposal but more questions about the sewer project.
Staff response: Referred to Grady Wheeler, Information Coordinator.
9. Barbara MacNamey at 10126 SE Stanley (10/19/09) – Confirmed that her property was not in the City but connected to City sewer. She thinks highly of Milwaukie and supports sewer project but does not want to annex for fear that she would not longer be able to show/breed dogs. The County cracked down on puppy mills a while back but allowed breeders that showed dogs to continue their operations as long as they continued to show dogs and maintained their license through the County. She indicated that if license lapsed, she would not be able to get it back. She is likely nonconforming in County.
Staff response: City may allow her to continue to breed dogs in the City if use was legally established in the County.

10. Larry Burlson on north side of Westfork Ave (12/21/09) – Had questions about when sewer would be installed in Westfork Ave and the costs and timeline associated with connection.
Staff response: Referred to Gary Parkin, Engineering Director, for answer to sewer installation question. Referred to County for answers to questions related to sewer connection since the properties on the north side of Westfork Ave will be served by the County not the City.
11. Dave Bradley on King Rd (12/21/09) – Had questions about existing sewer service and street maintenance. He was not happy that the City will become responsible for road maintenance on King Rd near his house in the near future, as he doesn't believe that the City has maintained King Rd well in the past.
Staff response: Confirmed that his property was not in the City but connected to City sewer. As a result, annexation to the City would not be triggered by sewer connection since his property is already connected. Clarified that transfer of street jurisdiction, not street annexation, conferred street maintenance responsibilities on the City.

E-MAILS:

1. Janice Beard at 5706 SE Westfork (10/3/09) – Unhappy that her neighborhood will be served by City sewer. She doesn't want to annex to the City. Also phoned 12/17/09 to confirm that Westfork was still being proposed for annexation.
Staff response: City sent a letter to all Westfork residents on Nov 25, 2009 explaining why properties on the south side of Westfork Ave will be served by the City and on the north side will be served by the County.
2. Steve Branch, Development and Operations Manager for Northwest Family Services at 6200 SE King Rd (10/6/09) – Questions about whether sewer construction would impact their driveway access.
Staff response: Referred to Jason Rice, Wasterwater Engineer.



To: Mayor and City Council

**Through: Mike Swanson, City Manager &
Kenneth Asher, Community Development & Public Works Director**

From: Alex Campbell, Resource & Economic Development Specialist

**Subject: Amendment to Intergovernmental Agreements with ODOT Regarding
Federal Stimulus Project (Jackson Street Improvements)**

Date: December 18, 2009 for January 5, 2010 Regular Session

Action Requested

Authorize the City Manager to sign amendments to the Intergovernmental Agreements (IGA) with ODOT concerning federal stimulus funding for the Jackson Street Improvement project and Linwood Ave. resurfacing project.

History of Prior Actions and Discussions

November 2009: Council approved a Resolution (No. 73-2009) authorizing an IGA with TriMet to govern Jackson Street Improvement project cooperation and cost share between the City and TriMet.

April 2009: Council approved a Resolution (No. 20-2009) authorizing original project IGAs between ODOT and the City governing stimulus fund contribution to the projects.

March 2009: Council approved a Resolution (No. 14-2009) providing for design funds to expand the Jackson Street bus shelter project to ensure project eligibility for federal stimulus funding.

Background

The Jackson Street Improvement Project includes the following elements:

- Full reconstruction of Jackson Street and associated streetscape (i.e., sidewalks, etc.) between Main and 21st Avenue.
- Utility under-grounding.
- New bus shelters, consolidating the existing scattered grouping of bus shelters along Jackson and 21st Avenue to two high-quality shelters on Jackson.
- Stormwater pre-treatment facilities (i.e. rain gardens).
- Street furniture, street trees, trash cans, pedestrian-scale lighting, and City medallions, in conformance with the streetscape design specified in the Public Area Requirements element of the Downtown and Riverfront Land Use Framework.

The American Recovery and Reinvestment Act (ARRA) was enacted by the federal government. One portion of the ARRA provides funds for federal aid “highway” projects. A share of these funds was made available to the City of Milwaukie through a regional allocation. Because of the numerous and complex requirements, City staff selected projects that were of greatest benefit to the public, but also met all of the program requirements. JPACT approved a project slate that included \$725,000 for the Jackson Street project and \$208,000 for pavement re-surfacing on Linwood Avenue.

Staff have requested that ODOT consolidate all stimulus funds (\$933,000) on the Jackson Street project. This shift of resources was pursued for two reasons. As discussed in Zach Weigel’s staff report for the November 17, 2009 Regular Session, as the design of Jackson Street Improvement project has progressed, the cost estimate for the project has been updated accordingly. The total cost for the Jackson Street Improvement project at 95% plans was estimated to be \$1.47 million.

Through the course of the summer 2009, City staff initiated consultant selection to assist with the federal-aid requirements and reporting for the Linwood Resurfacing project. As City staff negotiated with a selected consultant on the fee and level of effort to provide those services, it became clear that the cost of federalizing the Linwood Resurfacing project would absorb most (over 75%) of the ARRA funds. These increased costs, combined with the additional staff time necessary to manage a federally funded project, made for an inefficient use of the ARRA funds for the Linwood Resurfacing project.

As a result, staff felt that requesting a transfer of the Linwood Resurfacing ARRA funding to the emerging funding gap in the Jackson Street project was a wise course of action. The Linwood Resurfacing project will still be constructed using Milwaukie Street Surface Maintenance funds, avoiding the costly federal regulations associated with the ARRA funds.

The very latest cost estimates for the project (at 100% plans) put the total cost of the project at \$1.49 million. In addition, ODOT requires a “bid risk” contingency to be available at the time of bid letting. ODOT’s practice is to award a project even if bids come in at 10% above the estimate. Therefore, the combination of City, TriMet and ARRA funds that need to be available at the start of February 2010 is expected to be \$1.56 million. Currently available total project resources are \$1.47 million.

Staff is prepared to seek a budget amendment at the second January Regular Session to allow expenditure of up to \$100,000 of SSMP funds on the project. The project includes over \$100,000 of street surface improvements. (Because of the high volume of bus traffic on the street, the plan includes a full re-construct of the street with concrete, rather than asphalt.) Jackson Street is classified as a collector, and, therefore, an eligible street under the SSMP program. It was rated at a PCI of 81 in 2004, but has had significant wear since that time. Linwood Avenue will be overlaid this coming summer. If the project final costs come in below 110% of the final engineer’s estimate, the City will be refunded the difference, which would be returned to the SSMP. The final engineer’s estimate includes a 3.5% project contingency, and bids are currently coming in below ODOT engineer’s estimates. Therefore, staff is optimistic that most of this allocation will be refunded.

The increases in cost estimates (a total of approximately \$300,000) since spring of last year have been driven by a number of factors, including a significant underestimate of the various costs associated with federal-aid projects:

- Several Preliminary Engineering efforts expanded beyond what was originally estimated (approximately \$30,000 in additional costs).
- Approximately \$45,000 in ODOT administrative costs that were not anticipated.
- Construction Engineering will cost the equivalent of approximately 25% of hard costs, as opposed to a more typical 15% (a difference of \$75,000).

Several specific bid items increased between the 95% engineer’s estimate and the 100% estimate (such as additional traffic control, additional excavation, and increased unit costs for paving surfaces), collectively totaling approximately \$50,000.

Finally, there was a small right-of-way cost (\$7,000) due to the need for a temporary construction easement, which was not initially expected. In addition, the original cost estimate did not include construction engineering contingency (in case of any claims resulting from the project) and the bid “risk” contingency required to be available at the time of bid. These items together total \$84,000.

The current project total, including all sources of funds and expected expenditures is attached (Attachment 2).

Concurrence

Engineering staff have been working closely with Community Development staff. Engineering has provided concurrence on the decisions to remove ARRA funding from Linwood and the appropriateness of the use of SSMP funds on the Jackson Street project.

Fiscal Impact

These decisions do impact the fund balances within the SSMP, but will not significantly impact City's project planning and will not delay any projects that are time-critical.

Work Load Impacts

Significant staff resources have been invested in this project over the preceding year. Continued staff support, particularly related to construction, is anticipated through summer 2010, and is within existing work plans.

Alternatives

Due to the nature of ARRA/Stimulus funds, the City has very limited options at this point. The City is no longer in a position to deliver the Linwood Ave. resurfacing project in a manner consistent with federal requirements within the required timelines.

Attachments

1. Resolution
2. Project Costs and Resources

ATTACHMENT 1

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
AUTHORIZING AMENDMENT OF AGREEMENTS WITH THE OREGON DEPARTMENT
OF TRANSPORTATION FOR ECONOMIC STIMULUS PROJECTS.**

WHEREAS, the Federal government established the American Recovery and Reinvestment Act (ARRA) of 2009 with the purpose of stimulating the economy, in part, through the funding of local public improvement and transportation projects; and

WHEREAS, the Joint Policy Advisory Committee on Transportation (JPACT), acting as the MPO for the Portland metro-region approved the use of ARRA funds on two City of Milwaukie projects (Jackson Street improvement and Linwood Avenue resurfacing); and

WHEREAS, the City requested consolidation of all of the City share of ODOT-managed ARRA stimulus funds on the Jackson Street improvement project;

NOW, THEREFORE, BE IT RESOLVED that the Council authorizes the City Manager to sign an amendment to the "Local Agency Agreement" for the Jackson Street improvements project, which is attached as Exhibit A, and an amendment terminating the "Local Agency Agreement" for the Linwood Avenue project, which is attached as Exhibit B.

Introduced and adopted by the City Council on January 5, 2010.

This resolution is effective immediately.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

AMENDMENT NO. 02
LOCAL AGENCY AGREEMENT
American Recovery and Reinvestment Act of 2009
Jackson Street: Main Street - 21st Avenue Sidewalks
City of Milwaukie

The State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "State", and the City of Milwaukie, acting by and through its elected officials, hereinafter referred to as "Agency", entered into Local Agency Agreement No. 25498 on April 17, 2009, and Amendment No. 1 on June 16, 2009. Said Agreement covers reconstruction of sidewalks and streetscape, including street trees, street furniture, curb extensions and utility undergrounding.

It has now been determined by State and Agency that the Agreement referenced above, shall be amended to add funds to cover an increase in estimated project costs due to changes in the scope of the project. The additional funds are made possible through cost savings from Agency's Linwood Avenue: Monroe Street – Railroad Avenue Resurfacing project. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

Terms of Agreement, Paragraph 2, Page 2, which reads:

2. The Project shall be conducted as a part of the ARRA Program under Title 23, United States Code. The total Project cost is estimated at **\$765,000**, which is subject to change. ARRA Program funds for this Project shall be limited to **\$725,000**. The Project will be financed with ARRA funds at 100 percent of the maximum allowable federal participating amount. Agency will not be required to provide a match for the ARRA funds but will be responsible for any non-participating costs, including all costs in excess of the available federal funds. No ARRA funded invoices will be accepted and no ARRA funded payments will be made after September 30, 2015.

Shall be deleted in its entirety and replaced with the following:

2. The Project shall be conducted as a part of the ARRA Program under Title 23, United States Code. The total Project cost is estimated at **\$1,380,000**, which is subject to change. ARRA Program funds for this Project shall be limited to **\$933,000**. The Project will be financed with ARRA funds at 100 percent of the maximum allowable federal participating amount. Agency will not be required to provide a match for the ARRA funds but will be responsible for any non-participating costs, including all costs in excess of the available federal funds. No ARRA funded invoices will be accepted and no ARRA funded payments will be made after September 30, 2015.

SPECIAL PROVISIONS, Paragraphs 8 through 14, shall be added and shall read as follows:

8. Job Recruitment – In addition to normal recruitment processes on all ARRA funded projects, the contractor and all subcontractors shall also list job openings through “WorkSource Oregon” with the exception that job listings are not necessary when the contractor or subcontractor fills a job opening with a present employee, a laid-off former employee, or a job candidate from a previous recruitment.
9. Agency shall include the ARRA requirements in any contract it enters into, including consultant contracts, and subcontracts at any tier. Agency may modify language to match its own specifications, but such modifications shall be reviewed and approved by State prior to incorporation into any contract.
10. Agency shall comply with ARRA that provides the U.S. Comptroller General and his representatives with the authority: “(1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to the contract or subcontract; and (2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.”
11. Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this Agreement, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.
12. Agency shall comply with the ARRA requirements that provide authority for any representatives of the Inspector General to examine any records or interview any employee or officers working on this Agreement. Agency is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this Project. Section 1515(b) of the ARRA further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.
13. Whistleblower Protection – The Agency and its Contractor shall, and shall require its subcontractors to, comply with Section 1553 of ARRA, which prohibits all non-federal contractors of ARRA funds, including the State of Oregon, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee as a reprisal for the employee’s disclosure of information that the employee reasonably believes is evidence of: (a) gross mismanagement of a contract or grant relating to ARRA funds; (b) a gross waste of ARRA funds; (c) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (d) an abuse of authority related to implementation or use of ARRA funds; or (e) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. The

Contractor and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of ARRA.

14. False Claims Act – The Contractor shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor or other person has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

This Project is amended into the 2008-2011 Statewide Transportation Improvement Program, Key No. **16457** that was approved by the Oregon Transportation Commission on November 14, 2007 or will subsequently be approved by amendment to the STIP.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways, to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

Agency/State
Agreement No. 25486

City of Milwaukie, by and through its
elected officials

By _____

Date _____

By _____

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Agency Counsel

Date _____

Agency Contact:
Alex Campbell, Econ Dev Specialist
6101 SE Johnson Crk Blvd
Milwaukie, OR 97206
campbella@ci.milwaukie.or.us
(503) 786.7608

State Contact:
Tom Weatherford, ODOT Region 1
123 NW Flanders Street
Portland, OR, 97209-4012
Thomas.L.WEATHERFORD@odot.state.or.us
503.731.8238

STATE OF OREGON, by and through
its Department of Transportation

By _____
Deputy Director, Highways

Date _____

APPROVAL RECOMMENDED

By _____
Local Government Section Manager

Date _____

By _____
Region 1 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

AMENDMENT NUMBER 01

TERMINATION

American Recovery and Reinvestment Act of 2009
1R-Paving

**Linwood Avenue: Monroe Street - Railroad Avenue Resurfacing
City of Milwaukie**

The State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "State", and the City of Milwaukie, acting by and through its elected officials, hereinafter referred to as "Agency", entered into an Agreement on April 15, 2009. Said Agreement covers paving of various streets and roads.

It has now been determined by State and Agency that the Agreement referenced above shall be terminated in its entirety. The reason for this termination is as follows:

Agency is terminating the Linwood Avenue 1R Paving project and will be using the ARRA funds on another ARRA project.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

This Project is amended into the 2008-2011 Statewide Transportation Improvement Program, Key No. **16489** that was approved by the Oregon Transportation Commission on November 14, 2007 or will subsequently be approved by amendment to the STIP.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways, to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

Agency/State
Agreement No. 25473

City of Milwaukie by and through its
elected officials

By _____

Date _____

By _____

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Agency Counsel

Date _____

Agency Contact:

Alex Campbell
6101 SE Johnson Crk Blvd
Milwaukie, OR 97206
campbella@ci.milwaukie.or.us
(503) 786.7608

STATE OF OREGON, by and through
its Department of Transportation

By _____
Deputy Director, Highways

Date _____

APPROVAL RECOMMENDED

By _____
Local Government Section Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date: _____

State Contact:

Tom Weatherford, ODOT Region 1
123 NW Flanders Street
Portland, OR, 97209-4012
Thomas.L.WEATHERFORD@odot.state.or.us
503.731.8238

Attachment 2
Project Resources and Costs

TriMet Funds

Tot. TriMet funds	\$497,000
Art set-aside	-\$7,455
TriMet HHPR contract	-\$54,920
Reserve for shelter	-\$295,000
Balance available to constr phase	\$139,625

Funds Nec to Award Const Contract

Itemized bid items (per 100% eng. est.)	\$696,218
3.5% contingency	\$24,368
Sub-total	\$720,586
110% of sub-total (bid risk calc.)	\$792,644
Constructin Engineering (incl. contingency items)	\$196,500
Total	\$989,144

City Funds

City funds	\$40,000
HHPR contract expended	-\$24,775
TCE appraisal	-\$3,000
TCE payment	-\$3,800
Reserve for private electrical reconnect	-\$2,500
Balance available to constr phase	\$5,925

Summary

Total Resources	\$1,470,000
Total Cost	-\$1,490,680
All funds avail to construct	\$896,406
Total funds required to award	-\$989,144
Gap	-\$92,738

ARRA funds

Tot. ARRA funds	\$933,000
HHPR base contract	-\$131,114
HHPR conting. expected	-\$6,030
Possible ODOT billings*	-\$45,000
Balance available to constr phase	\$750,856

*PE at \$20K, constr at \$25K



To: Mayor and City Council

**Through: Mike Swanson, City Manager &
Kenneth Asher, Community Development & Public Works Director**

From: Alex Campbell, Resource & Economic Development Specialist

**Subject: Grant Agreement for American Rivers/NOAA Contribution to
Planning Phase for Kellogg-for-Coho Initiative**

Date: December 18, 2009 for January 5, 2010 Regular Session

Action Requested

Authorize the City Manager to sign a grant agreement to accept funds from American Rivers to contribute to costs of the planning phase for the Kellogg-for-Coho Initiative.

History of Prior Actions and Discussions

April 2009: Council approved a Three Party Grant Agreement to accept MTIP funds for KFCI planning phase (Resolution No. 19-2009).

February 2009: Staff briefed Council on recent public involvement and project development efforts.

June 2006: Council approved, by Resolution (No. 27-2006), an application for Regional Flexible Funds ("MTIP") to pay for planning and design under a City of Milwaukie-led effort to remove the Kellogg Lake dam and restore fish passage.

February 2002: Council authorized City Manager to commit to City participation in a U.S. Army Corps of Engineers-led study on dam removal feasibility.

September 2000: Council adopted the Downtown and Riverfront Framework Plan. A restored Kellogg Creek is an element of the "Amenities and Open Space Framework."

Background

The Kellogg-for-Coho Initiative builds on a number of years of City, County, and federal watershed planning. The primary goal of the project is restoration of fish passage and habitat improvement in the Kellogg/Mt. Scott watershed via removal of the Kellogg Lake dam/box culvert and elimination of Kellogg Lake.

The City received a federal contribution towards the project in 2007. The City received an award of \$1.055 million in regionally-allocated “flexible funds” (often referred to as “MTIP” funds because they are reflected in the Metro Transportation Improvement Program). The City committed to providing a local match of 10.27% to this allocation.

In late 2008, the City applied for funds from the American Rivers/NOAA Community Based Restoration Program Partnership to contribute to planning work, focused in particular on detailed work related to fish habitat design and fish passage modeling. The City was awarded \$45,000 in grant funds. The attached resolution authorizes the City Manager to sign the grant agreement accepting this award.

Since April, when Council was last briefed, staff work has continued in several areas:

First, staff prepared a detailed application for federal stimulus funding to design and construct the entire project. Staff held several community discussions regarding this opportunity, including a special meeting for lake neighbors to share information about the likely phasing of the project and what they should expect to see on the ground. The outcome of these discussions was a higher level of understanding between City staff and residents of the neighbors’ concerns and likely project outcomes. Neighbors were heartened to see examples of comparable restoration projects and the rapid pace at which plants do re-establish in this kind of environment. While the application was well-received by NOAA staff, the size of the project clearly pushed the bounds of the agency’s comfort. (The City request was over two times the largest award made.)

Second, as reported by JoAnn Herrigel and Nicole West at a September 2009 Council meeting, City staff have convened, and have been providing support to a group of concerned citizens that have come together to advocate for the improved health of Kellogg Creek and related water bodies. This group has been formally recognized by Clackamas County as the North Clackamas Urban Watersheds Council.

Third, staff has made significant progress towards bringing a consultant on-board. Staff used ODOT’s “mini-solicitation” procedures to advertise the planning project. CH2M Hill was selected out of six very capable proposers. Staff has negotiated a detailed scope of work. However, in part due to the very heavy work-load of federal stimulus projects, approval of that scope of work has been held up for several months due to the need for

Federal Highway Administration (FHWA) review and approval. Staff anticipates the completion of that process in December or early next year. The result will be a single contract with CH2M Hill, to be funded by a portion of the MTIP grant, the AR/NOAA grant, and local matching funds. Most of the City's match will be provided by in-kind services, i.e., staff time devoted to the project.

The planning phase will address the following issues:

- Fish passage approach selection, including hydraulic modeling and preliminary design, alternatives development and evaluation.
- Restoration design
- ODOT Prospectus and Environmental Checklist
- Pre-planning for NEPA/Permitting, including sediment disposition considerations.

The contractor scope includes ample consultant time to support stakeholder involvement through a Technical Advisory Committee, public stakeholder meetings, and City Council briefings. (Attachment 2 lists the public involvement plan.)

Staff is also nearing completion of an oral history of Kellogg. The final product will review information available from written sources and include relevant portions of 15 interviews conducted with community members. The oral history will be made available to the Milwaukie Museum and serve as a project resource.

Concurrence

Community Services has been closely consulted on public involvement planning.

Fiscal Impact

All necessary matching funds are currently budgeted.

Work Load Impacts

Project can be managed within existing workloads.

Alternatives

None.

Attachments

1. Resolution
2. Public Involvement Plan

ATTACHMENT 1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING EXECUTION OF A GRANT AGREEMENT WITH AMERICAN RIVERS TO SUPPORT A PLANNING PHASE FOR THE KELLOGG-FOR-COHO INITIATIVE.

WHEREAS, the City has planned to pursue the restoration Kellogg Creek through the adoption of the Downtown And Riverfront Land Use Framework Plan, participation in the U.S. Army Corps of Engineers feasibility study, and applying for regional flexible funds to support the project ; and

WHEREAS, the project has the potential to contribute to the recovery of several threatened salmon species, improve the aesthetic appeal of the area, increase recreational opportunities, and support redevelopment of the southern end of downtown; and

WHEREAS, American Rivers has been provided funding from the National Oceanic and Atmospheric Administration (NOAA) to make grants to local governments and non-profits to support restoration of habitat for endangered fish; and

WHEREAS, the Kellogg-for-Coho Initiative is a key element of the City’s efforts to improve water quality and mitigate stormwater run-off impacts; and

WHEREAS, the City is prepared to initiate a planning phase of work to fully define the project and select the best approach to restoring fish passage.

NOW, THEREFORE, BE IT RESOLVED that the Council authorizes the City Manager to sign a Grant Agreement with American Rivers to accept funds, which will support the KFCL planning phase. The Grant Agreement is attached hereto as Exhibit A.

Introduced and adopted by the City Council on January 5, 2010.

This resolution is effective on January 6, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Exhibit A

**American Rivers-NOAA
Community-Based Restoration Program Partnership Grant
Grant Agreement # 335**

Organization: City of Milwaukie

Project: Kellogg Creek Dam and Culvert Design

Amount of Grant: \$45,000

City of Milwaukie is responsible for complying with all conditions of this Agreement, including all referenced materials. For the purposes of this Agreement, City of Milwaukie is referred to as the "Grantee."

1. Purpose of Grant. This grant is made to the Grantee for the purposes of the project proposal dated December 08, and described as follows:

Grant funds would pay for the design of a restored stream channel for Kellogg Creek. The larger project includes removal of an existing box culvert/dam and the restoration of approximately 0.75 miles of naturalized stream channel and 14 acres of riparian habitat. The project will greatly improve fish passage for multiple native species and provide cold-water rearing and refuge areas for Coho and Spring Chinook salmon, and potentially spawning habitat as well.

2. Grant Conditions.

Use of Funds. Funds may only be used for the project described in Section 1 of this Agreement and the proposal dated December 08, in the manner described in the Approved Project Budget (Attachment A).

Final Review of Construction Design. If funds are being used on project construction, once the project design is finalized, these designs will be submitted to American Rivers for final approval. American Rivers holds the right to withhold funding for the project based on a final review of construction designs.

Prohibition Against Lobbying. Funds provided under this Grant may not be used to support lobbying activities, defined as any attempt to influence any legislation through an effort to affect the opinions of the general public or any segment thereof (grass roots lobbying), and any attempt to influence any legislation through communication with any member or employee of a legislative body or with any government official or employee who may participate in the formulation of legislation (direct lobbying).

Prohibition Against Assignment of Rights and Benefits. As of the date of this Agreement, the Grantee has not and will not assign or convey any rights or benefits arising from or connecting to either the Project or this Agreement to any party without the prior written consent of American Rivers. This includes but is not limited to photographs, newspaper and magazine articles, publishing rights or marketing agreements.

Unused Funds and Reversion. Any portion of the Project Total not expended at the end of the grant period will be returned to American Rivers within thirty (30) days, along with any interest earned on the American Rivers-NOAA Community-Based Restoration Program partnership grant.

3. **Payment Schedule.** Funds will be disbursed by American Rivers to the Grantee based on the following pay schedule:

	Percentage of Award Amount	Required Minimum Documentation
Initial Payment	60%	<ul style="list-style-type: none"> • A signed copy of this Agreement • A completed and signed W-9 form • Copies of all required permits (for Construction Grants only)
Second Payment	up to 30%	<ul style="list-style-type: none"> • Copies of contractor invoices reflecting expenditures to date • Any outstanding progress reports
Final Payment	up to 10%	<ul style="list-style-type: none"> • Upon receipt of final report, which includes a project narrative and a final reconciled budget

If funds are being used to pay for salaries, monies covering those expenses can be disbursed prior to receipt of all required permits. If the pay schedule outlined above will negatively affect the final project outcome or put an undue hardship on the Grantee, please contact Serena McClain so that other arrangements can be discussed.

4. **Cash Management of Federal Funds.** This Grant consists of \$45,000 in federal funds appropriated by NOAA for use as an American Rivers Grant. In accepting these funds, Grantee must comply with federal equal opportunity employment, the Davis-Bacon Act, the Americans with Disabilities Act, drug-free work place requirements and all other provisions of federal law and regulations.

Grantee is also subject to all terms and conditions of applicable OMB Circulars (See Section 12); Grantee's financial management system must comply with internal control requirements covering, but not limited to, cash receipts, cash disbursements, indirect costs, procurement, labor costs, and interest earned on federal funds.

Subgrantees. If the Grantee uses federal funds to make sub-grants to other entities, all conditions applicable to this Agreement to federal funds shall be transferred in writing to the sub-grantee(s). Grantee must inform all sub-grantees that funds provided consist of federal

funds, and must provide American Rivers with documentation that all requirements applicable to federal funds have been passed on to sub-grantees.

5. Reporting Requirements. The Grantee will keep American Rivers informed of project progress and will inform American Rivers via email as soon as the initiation date of the deconstruction phase of the project is known, if applicable. *The Grantee also will provide American Rivers with an update every six (6) months from the date the Grantee signs this contract during the duration of the grant.* In this update, at a minimum, the Grantee will use the enclosed reporting forms to detail in writing to American Rivers both the project progress and the amount of the grant expended by the Grantee up to that date and the purpose of such expenditures. At the sole discretion of American Rivers, payment of any and all portions of the remaining grant may be withheld until such a report is received.

Final Report. The final report is due within three (3) months of completion of the funded portion of the project or by the end of the grant period, whichever comes first. The final report must include:

- Accomplishments achieved and knowledge gained during the term of the grant as compared to the goals and objectives described in the approved proposal and any additional conditions outlined in Section 2 of this document;
- Final accounting for all receipts and grant expenditures compared to the approved budget.
- Completed reporting forms (see attachment B); and
- Copies of publications, press releases, and other “products” produced as a result of the grant funding that have not already been transmitted to American Rivers by Grantee.

One hard copy and one electronic copy (PDF preferred) are to be provided. The final report should be sent to Serena McClain at the Washington, DC office of American Rivers, see Section 17 for mailing address.

The Grantee must inform American Rivers in writing if problems are anticipated in providing these reports on a timely basis. Inaccurate or incomplete forms will delay payment of requested funds. Failure to provide complete and timely reports will be considered a breach of this Agreement.

6. Financial/Administrative Responsibilities. American Rivers may, as its sole discretion, postpone any or all payments if the Grantee fails to submit satisfactory and timely reports, as set forth in Section 5, or otherwise fails to comply with the terms of this Agreement.

Procurement Procedures. Grantee agrees to establish procurement procedures to ensure against unnecessary or duplicative purchases. The Grantee will provide American Rivers documentation of the competitive bids received for project implementation or written explanation of why the project was not put out for formal bid.

Third-Party Payments. American Rivers can, in consultation with the Grantee, pay third-party vendors directly where said payment will expedite the project. The Grantee shall serve as an intermediary in submitting vendor invoices to American Rivers, and amounts paid to vendors shall be deducted from the amount of funds paid to the Grantee under this Agreement. Requests to handle contract payments through third-party payments must be submitted via email by the grantee to Serena McClain at smcclain@amrivers.org.

Supporting Documentation/Record Keeping. In addition to the reporting requirements set forth in Section 5, the Grantee will keep systematic records of all expenditures relating to this grant. Vouchers consisting of bills, invoices, canceled checks, receipts, etc., will be retained by the Grantee for three (3) years after the submission and acceptance of a final report by American Rivers and will be available for inspection and audit by representatives of American Rivers or the US Government at any time during this period.

Audit. American Rivers may, at its own expense, examine, audit or have audited the records of the Grantee insofar as they relate to activities supported by this grant. Grantee will reimburse American Rivers, at the Grantee's sole expense, the amount of any expenditure disallowed by auditors through an audit exception or other appropriate means. This will be noted as a written finding that such expenditures failed to comply with any provision of this Agreement including the cash management of federal funds (Section 4 and Section 12).

A-133 Audits. For all federal funds, the Grantee is responsible for determining the audit requirements and conditions set forth in OMB Circular A-133 and other OMB Circulars (Section 12). If an OMB A-133 audit is found to be required, a copy of the audit must be submitted to American Rivers within nine (9) months after the end of the Grantee's fiscal year in which the American Rivers-NOAA Grant was received.

7. Publicity and Credit. Grantee will acknowledge, and give proper credit to, the National Partnership between the NOAA Community-based Restoration Program and American Rivers when discussing this project publicly. Such acknowledgement and credit shall include, but shall not be limited to, press releases, annual reports, brochures, video credits, dedications, and other public communications. Copies of such material should be provided to American Rivers as part of the reporting process. American Rivers may request the opportunity to review materials prior to publication or release. The partner must also display, where appropriate and practical, publicly visible signs indicating that the project has received funding through the NOAA Community-based Restoration Program. These signs should also identify other contributing partners.

8. Patents and Copyrights. Grantee has the right to obtain patents and copyrights on any work produced under this Agreement. Grantee agrees to provide American Rivers a non-exclusive, royalty-free license to utilize and publish any and all works produced under this Agreement.

9. Amendments and Extensions. American Rivers makes this grant with the understanding that all grant funds will be used in accordance with the project description and budget as approved. Should there be any material change in the purpose, objectives, character, method of operation, budget, or grant period for the project, the Grantee will request changes in writing to

American Rivers. Explanatory narrative, progress to date, revised budget and as appropriate new project timeline must always accompany requests for amendments or extensions. Grantee must receive written acceptance by American Rivers of any proposed changes prior to proceeding with the revised project.

10. Termination. Should Grantee fail to comply with any of the conditions of this Agreement, American Rivers may, at its sole discretion, immediately terminate the grant and demand the Grantee to repay, within sixty (60) days, all American Rivers grant funds and interest earned thereon which have been advanced but not expended. Moreover, American Rivers may cancel all unpaid installments of the Project Total. This grant may also be terminated by mutual agreement, in which case any sums advanced, but not expended, shall be returned to American Rivers including any interest earned.

11. Liability. In making this grant, American Rivers assumes no liability for injuries or loss to persons or property resulting from Grantee's activities under this Agreement. The Grantee agrees to indemnify and to hold American Rivers, its directors, officers, employees, and agents harmless from and against all claims, actions, damages, liabilities, demands, costs, and expenses, including reasonable attorney fees, whether well founded or baseless, resulting from or attributable to any action of the Grantee, its employees, or agents, whether (i) in violation of any of the provisions of this agreement, or (ii) in violation of any law, rule, or regulation of the United States or its agencies or of any state or its agencies, or (iii) resulting from the negligence or willful misconduct of the Grantee, its employees, or agents. The foregoing indemnity provision shall survive and remain in full force and effect following termination of this agreement for any such act occurring during the initial term or any renewal term of this agreement. In case of state institutions barred by law from accepting this liability clause, a letter so stating and citing the appropriate statute must be submitted to American Rivers.

Safety Plans – The Grantee is required to have a written safety plan for management of volunteers, if applicable, and should conduct a safety briefing for volunteers immediately prior to their participation in restoration activities. A liability release waiver should be signed by all volunteers prior to their involvement in outdoor and/or risk prone restoration activities funded under this grant.

12. Insurance. Grantee shall maintain commercial general liability (CGL) coverage which includes coverage for (1) bodily injury, property damage, products liability, and contractual liability; and (2) advertising injury and personal injury relating to activities undertaken by grantee pursuant to this Agreement. Grantee shall maintain limits of at least \$250,000 per occurrence for all coverages listed in (1) and (2) above. Grantee shall provide American Rivers with evidence of required insurance coverage no later than thirty (30) days prior to the date that the project is scheduled to commence.

13. Federal Rules and Regulations. The Grantee certifies to the best of their knowledge and belief that they and their principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any Federal department or agency;
- (b) Have not within a three year period preceding the proposal been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in

- connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction of contract under a public transaction; violation of Federal or State antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not currently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated here;
 - (d) Have not within a three-year period preceding the proposal had one or more public transactions (Federal, State, or local) terminated for cause or default. A false statement on this certification may be grounds for termination of the award. In addition, under 18 USC Section 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

The Grant Agreement requires an understanding of, and compliance with, all relevant documents issued by the US Office of Management and Budget. The items indicated below are incorporated by this reference. Please check with your accountant and notify American Rivers if you need copies.

- OMB Circular A-21 or A-87 or A-122 (Allowable Costs)
- OMB Circular A-102 or A-110 (Uniform Administrative Requirements)
- OMB Circular A-128 or A-133 (Audit Guidelines)

14. Choice of Law. This agreement will be governed by the laws of the District of Columbia.

15. Additional Support. In making this grant, American Rivers assumes no obligation to provide further funding or support to the Grantee beyond the terms stated herein.

16. Legal Relationship of Parties. Nothing in this Agreement shall be construed as constituting a partnership, joint venture, employment relationship, agent/principal relationship, or other association of any kind, between the parties hereto, and neither party shall have the power to obligate or bind the other party in any manner whatsoever.

17. Notice. Correspondence between the parties should be addressed to:

American Rivers: Serena McClain
American Rivers
1101 14th Street, NW
Suite 1400
Washington, DC 20005
202-347-7550 fax: 202-347-9240
e-mail: rivergrants@amrivers.org

Grantee: Mr. Mike Swanson
City of Milwaukie
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206-

Grantee will notify American Rivers immediately of changes to personnel, address, telephone, etc.

This agreement is executed and made effective as of the date signed by the authorized representative of American Rivers.

W.P. Lee

William P. Lee
Chief Operating Officer

8/20/09
Date

City of Milwaukie acknowledges receipt of this Agreement and pertinent attachments as referenced above for Kellogg Creek Dam and Culvert Design #335. The terms and conditions set forth herein are acceptable and we agree to comply with them. We understand that failure to comply with all conditions listed herein may result in immediate termination of this grant.

Signature: _____ Date: _____
Mike Swanson

Title: _____

Please sign and return to:
Serena S. McClain
American Rivers
1101 14th Street, NW
Suite 1400
Washington, DC 20005

Once we receive this signed grant agreement, a completed Form W-9, and copies of all required permits an initial payment will be issued and mailed to you. All subsequent payments will be issued once American Rivers is invoiced by the Grantee.

Electronic versions of the reporting attachments can be provided upon request.

Budget Item		Total Project Budget	AR NOAA Request	Other Federal Funds (Received)	Matching Non-Federal (City of Milwaukee)
Personnel					
	City project manager (1/4 time)	22,500			22,500
	Community development project specialist (1/2 time)	8,000			8,000
Contractual Services					
	Prelim design, evaluation & selection of barrier removal approach (bridge replacement or retrofit)	125,000		100,000	25,000
	Stormwater/ H&H Modeling	30,000	10,000	20,000	
	Detailed design (30-50% design) of lower 200 feet of stream channel	30,000	15,000	15,000	
	Conceptual level design of lake bed stream channel & alcove restoration	20,000	20,000	0	
	Additional sediment sampling & development of preliminary sediment removal/stabilization plan	60,000		60,000	
	Establish relevant baselines and monitoring, measuring and assessment methodologies	15,000		15,000	
	Construction phasing & constructability issue review	20,000		20,000	
	Completion of Prospectus check-list, including environmental, cultural resource, 4(f), wetlands, etc. Issue review	125,000		125,000	
	Pre-Planning for Permitting	25,000		25,000	
	Sub-total contractual services	450,000	45,000	380,000	25,000
	Contingency (20% of contractual)	90,000		90,000	
Total		570,500	45,000	470,000	55,500

Completion Time from NTP (months)	Task	Tech Deliverable	TAC (x = meeting)	Stakeholder Group (Public)	City Council
0			Letter to all interested persons explaining nature of work to occur over next year		
1	1.1 1.2	Project Instructions, Charter Workshop			Briefing 1
2	2.1.3.1 2.1.4.1 7	Draft Fish Passage Existing Conditions Technical Memorandum; Alternative Development Workshop; Survey Base Mapping	X		
3					
4	2.1.3.4	Draft Fish Passage Alternatives Analysis Technical Memorandum***	X		
5	2.2 3.2	Draft Cost Estimate; Draft Reservoir Rehabilitation Alternatives Analysis Report	X	Meeting (focus on 2.1.3.4 and 3.2)	
6	2.1.3.5 2.1.4.10	Final Fish Passage Alternatives Analysis Technical Memorandum; Draft Analysis Feasibility Technical Memorandum	X		Briefing 2
7	3.2 6	Final Reservoir Rehabilitation Alternatives Analysis Report; Draft Assessment Methodology		Meeting (focus on 2.1.3.5 and 3.2)	
8	6	Final Assessment Methodology	X		
9	2.1.4.11 3.4 4 2.2 5.7	Final Alternative Feasibility Technical Memorandum; Final Cost Estimate; Landscape Sketch; Draft ODOT Prospectus; Draft Permitting/NEPA Strategy			Resolution
10	4	Final ODOT Prospectus	X	Meeting	
11	5.8	Final Permitting/NEPA Strategy	X		
12					