

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
MARCH 16, 2010**

CALL TO ORDER

Mayor Ferguson called the 2073rd meeting of the Milwaukie City Council to order at 7:15 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 Pro Tem Pat DuVal, City Attorney Bill Monahan, Public Works and Community Development Director Kenny Asher, Building Official Tom Larsen and Library Director Joe Sandfort

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Milwaukie High School Student of the Month

Mayor Ferguson and City Council recognized Luis Espinosa as Milwaukie High School Student for the Month of March 2010.

Light Rail Conceptual Design Report

Mr. Asher was joined by Dave Unsworth and Leah Robbins of TriMet. Conceptual design report where 30% design and answer some of the questions.

Mr. Unsworth status standpoint one year ago given permission to enter into preliminary engineering that will be completed March 21, 2010. 30% cost estimate would also be underway. Apply for entry into final design in October. Final environmental impact statement expected to be published in May 2010. 25% cost estimate showed cost continued to be \$1.4 billion, and he discussed the project funding that included federal new starts at 60%.

Project schedule final design October 2010 to January 2012. Willamette Bridge construction July 2011.

Ms. Robbins provided a project description with visual simulation.

Councilor Stone commented she had attended meetings and reiterated some of the concerns all shared in Milwaukie re design and how it impacts. Concerned about Roswell Street slide and was concerned about the residents. Could that situation be better for those people by visually blocking and they will hear train noise.

Mr. Unsworth issue of noise and vibration. Looked specifically at noise. Fed requirement use noise and vibration analysis and looked at sound bouncing off the retaining walls. Consultant noise did not reach impact level. From visual done significant reduction in size. Cannot cross railroad at grade.

Councilor Stone in all fairness people did not realize that was the case and not transparent. Concerned about the size of the structure coming through the downtown.

Mr. Unsworth echo Planning Commission and Design and Landmarks Committee special attention to substations, cabinets, walls, and poles.

Councilor Stone concerned about the visual aspect of elevated structure. Chief Jordan has noted safety elements. She was concerned about the visual of the structure. Did not want people to be able to loiter and commit crimes.

Councilor Loomis agreed with Councilor Stone re elevated and visual impacts. Wished had pushed harder for McLoughlin Boulevard. He asked how the local shares were determined.

Mr. Unsworth all projects put together with different funding sources.

CONSENT AGENDA

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

- A. City Council Minutes for the January 5, 2010 Regular Session;
- B. City Council Minutes for the January 19, 2010 Work Session;
- C. Resolution 21-2010: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Melissa Arne to the Milwaukie Budget Committee;
- D. Resolution 22-2010: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Gabe Storm to the Milwaukie Budget Committee;
- E. Resolution 23-2010: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Ed Zumwalt to the Milwaukie Ledding Library Board;
- F. Resolution 24-2010: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Ron Rasch to the Milwaukie Ledding Library Board;
- G. Resolution 25-2010: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Christie Schaeffer to the Milwaukie Park and Recreation Board;
- H. Resolution 26-2010: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Lisa Batey to the Milwaukie Planning Commission;
- I. Resolution 27-2010: A Resolution of the City Council of the City of Milwaukie, Oregon, authorizing Execution of an Intergovernmental Agreement with the State of Oregon to Prepare Draft Code Amendments Based on the City's Code Amendment Priorities as Described in the 2009 Smart Growth Code Assessment Final Report;
- J. Resolution 28-2010: A Resolution of the City Council of the City of Milwaukie, Oregon, Transferring \$15,000 from Building Department Budget Line Item 300-613-9510-0000 (Contingencies) to Line Item 300-613-6020-0000 (Contractual Services) in Order to Pay the City of Happy Valley for Inspection Services Performed under the Terms of an Intergovernmental Agreement between the Cities;
- K. Resolution 29-2010: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the Interim City Manager to Sign a Personal Services Agreement with Oakmont Engineering, LLC for Wastewater Engineering Services; and
- L. An OLCC Application for Big Kahuna's Bar, 11050 SE 21st Avenue, Change of Ownership.

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

AUDIENCE PARTICIPATION

Ed Zumwalt, Milwaukie resident, copy of letter into the record.

At this time you, as a Council, are in the process of selecting a city manager, or interim city manager, to run the daily business affairs of Milwaukie. I am asking you to think about an alternative.

The last two city managers have been a contrast in styles. Mr. Dan Bartlett, who served as manager for 13 years, prior to Mike Swanson, as very much a hands on, controlling type boss. Mike Swanson was everybody's friend but had a completely different management style and delegated a great deal of responsibility, and I might add, power to his staff basically giving them their head on many important projects that will forge the face and character of Milwaukie for years to come. Both management styles are a perfect example of too much authority in the hands of unelected chief executives.

I admire all of you for the dedication, effort, and time you put into the job of councilors and mayor as basically volunteers. You devote all of that time and effort for a mere stipend, and it is sometimes not appreciated enough by the general public. You all have professions, careers, and families, and the time you dedicated here must put tremendous pressure on and create conflict in your personal lives. But, yet, and here's the kicker, you cannot possibly run this city as our elected representatives on this part time basis. All power and authority eventually ends up in the hands of un-elected employees. This creates frustration, which leads to general apathy by the citizens. You know, "No one's listening to us, or cares, so why give a damn?" This is not what we want.

In 1999 or so, Dolly Macken-Hambright and I researched a strong mayor type government relying heavily on the experience of Spokane, WA whose officials kindly supplied us with the material they developed and used in their transition to strong mayor. We floated the idea around town which was not received kindly by the administration at the time, but that was the idea anyway. We decided that the time was not ripe for a strong mayor in Milwaukie. The idea has cropped up since from time to time but never got traction.

I want to make this clear. I'm not pushing for a strong mayor government in Milwaukie now. I don't think it is time yet and may never be. What I think is possible is that there is a small town type, structured government out there that will fit Milwaukie and give our elected officials more power thus giving the people more power.

For example, an elected part-time mayor paid approximately the salary of a Metro councilor, roughly \$37,000 to \$38,000 a year to run the City. All resolutions would still be debated and decided by the Council of which the mayor might still be a member, and the mayor would then pass on instructions to staff. Councilors would also be raised in pay to \$12,000 to \$15,000 a year on a part-time basis. After a few years more and after more City growth, a strong mayor form of government might be feasible. The required Charter change in this new government should include a clause mandating a review by the Council every 2 to 4 years to make a decision on a strong mayor government.

This is just one hair brained idea, but maybe it's a step. I am asking you, as a Council, to form a committee to research this hybrid type government I have suggested to determine if it is feasible. It must be a concentrated, fast acting committee because

time is of the essence. I think if you take my suggestion an interim city manager would be in order for now.

The people in Milwaukie want to be heard, not just patronized, and this maybe one way to heal this City – a promise made but not fulfilled by previous administrations. This is why I came before you two weeks ago and asked for a forum for the NDA's. The people want to get back in touch with their government and participate in sharing their City's future.

Russ Stoll, Milwaukie resident, expressed concerns with the proposed traffic signal at 42nd Avenue and Johnson Creek Boulevard. He wanted to know city's plans and wanted to know who to talk to.

Mayor Ferguson recommended putting in a request for information with Ms. Hemmen or Mr. Asher. Are you contemplating a signal? He was concerned about how a signal would work without a left-turn lane. He did not want a signal.

Ms. Robbins was working through and as information contemplating a potential signal and only contemplated without a left turn pocket. Concern was property impacts at those intersections due to new signal. Goal of project would be signal with a separate left-turn lane. She said that they could provide examples.

Mr. Stoll said he didn't know how a signal would work without a left-turn pocket and he wanted information.

Councilor Stone signal of 42nd Avenue and Johnson Creek behoove the City Council to look at the Transportation System Plan (TSP). Told at the time could always be revisited. She asked the City Council to put that on a work session or regular session to see if that is the direction that the TSP needed to go. There was no public testimony on that issue at the time of the Plan adoption and she felt it would a good idea to resurrect that and have another discussion.

Mr. Asher replied this matter was on the 4/20 City Council agenda.

Mayor Ferguson five total green sheets

Richard Cayo, Milwaukie resident, read a statement into the record:

I would like to recap my meeting with you people last July and give you my impressions of the March 2, 2010, meeting which I attended doing my duty as a concerned citizen. Only July 21, 2009, I asked you people to do whatever you could to mitigate three things that I saw as very dangerous in our neighborhood. The reason I came directly to you people instead of going to the neighborhood meetings was nothing ever seems to get done if you go there with a problem.

Item 1 – the brush overhang on Johnson Creek Blvd. between SE 53rd and 54th on the north side of the road. I told you the brush was overhanging the roadway so far that the semi trucks coming from the east to keep from tearing the right side of their rigs off had to cross over the center line. This might cause cars coming from the other direction to run off the road and come crashing down on the 40 Milwaukie Loop ± 25-feet below and about only 10-feet away horizontally. This is not good. Today the brush has been trimmed back, but it took about 5 months to get the job done. This seems like an awfully slow process to me. It still needs more work.

Item 2 – the bicycle path crossing at the bridge on 45th and Johnson Creek Blvd. (Springwater Trail). I told you that while driving I almost hit a gal on a bicycle that came booming across JCB from the east that I couldn't see because of all the brush and grass growing on the little island in the middle of the road at the bike path. A half a million dollar lawsuit for hitting some bicyclist puts the fear of god in all automobile drivers. Many times I've seen some nice thoughtful (scared of a lawsuit) driver going north on JCB stop to let a bicyclist cross JCB while the traffic light is green. By the time they or a pedestrian walking their dog makes it across lots of cars are backed up. When the road is finally clear to proceed the stoplight has changed to red. Everyone is grinding their teeth and the backed up cars are clear up the hill to 42nd Street. Is this any way to move traffic? Why don't you mitigate the Springwater Trail bikers and walkers to stand back and try not to cross until all auto traffic is clear from both directions or put signs up that say all automobile traffic has the right of way and everyone on the Loop will be fined if they try to cross while car traffic is on JCB. This probably would solve the problem but will probably go over like a lad balloon with bicyclists. Another way to mitigate the problem is to put a bike bridge over JCB or a tunnel under JCB. Then the problem is solved for all parties. You could also take the proposed stop lights at 42nd and put them at the Loop crossing. Tie them into the traffic lights at the bridge, and that could also solve the problem. So far I've seen nothing happening to resolve this problem. I've gotten no response about my concerns nor feedback. It's as if you figure the problem and I will go away if you ignore us.

Item 3 – Associated Chemists own the property adjoining mine on the north side. I asked you people to please try and get them to keep the ivy trimmed off their cottonwood trees so it won't send their spores all over my property. I pick up out of my forest 2,000 to 3,000 of their sprouts every spring, and it takes a lot of time to do this. I think I also mentioned the dangerous 40-foot 10-inch vertical drop from my property to their driveway level. If I didn't then this is what we have. Their excavating of this hill so close to my property is absolutely illegal. I have no doubt that unless I cut my trees down in this area to reduce the ground weight we are going to have a giant landslide onto their property. 5-feet 11-inches north of my fence is the drop off which is a killer for any bum or kid walking on their side of the fence. If they misstep and go over the edge over 40-feet straight down. Associated has no warning signs or barricades up. My easterly neighbor and I keep fences up to try and keep everyone away. But it is not our responsibility. It is Associated Chemists. The Portland planning and building department lets them get away with this. If anyone from Milwaukie complains Portland's response is, "buzz off." I know. I've called them in the past. So you see our love for Portland and their tactics is nonexistent. A better description would be extreme dislike.

After I finished reading my three items not one of you thanked me for doing my civic duty nor said anything whatsoever. I did notice that you Council people seemed more interested in getting back to your giddiness about Jeremy becoming mayor than solving problems.

Now to the meeting of March 2, 2010. I don't come down here to harass you people or to play patty cake. Getting things accomplished is my goal. If I see other things along the way that could be improved I say so. My objective in being here now is to get the stop light proposal change at 42nd Street voided, cancelled, stopped, and gone bye-bye forever.

I've talked to the premier traffic light engineer in Portland, and they have informed me that no way can stop lights be put in at this location without a new left-turn from 42nd

and JCB east to accommodate all the left-turn traffic onto 42nd going south. Getting a left-turn lane on JCB means widening the street by a minimum of 12-feet. If the 12-foot comes off the south side of JCB that puts the sidewalk right at my neighbor's living room bay window. He is not going to like that as his property will be devalued by probably \$50,000 to \$100,000. If the 12-foot comes off the north side of JCB then the sidewalk will be approximately 4-feet 2-inches from my living room bay window. I don't like that idea as my property will be devalued \$50,000 to \$100,000. Donna, my easterly neighbor, will not be able to back out of her driveway nor will the Hattelids east of her when the traffic goes roaring by at 50 to 60 mph. Rick Devries will lose about half of his southern driveway to his house if 6-feet were to be taken off each side of the existing road. That would be the fair way to do it. But knowing Portland and how they operate they will take it all off one side because that is cheaper, and they will pay you virtually nothing for the land taking.

The reason I hit Portland with my criticism at the last meeting is to show you people how they operate which is not in the best interest of us the folks in Milwaukie. Our traffic bottlenecks are at 32nd and 45th – not at 36th and 42nd. So figure it out and act accordingly. Don't approve it. To my surprise Portland responded with their usual vague comments to four of my five questions and nothing whatsoever on #5 about the unused and scrapped covers for the West Hills water reservoirs. This must be an awful embarrassment to them, and they probably are hoping that subject will go away if they don't mention it. Where I come from people get fired for mistakes like that. But it doesn't seem Portland has that attitude.

At the March 2 meeting the first thing I noticed was the mayor doesn't seem to be using his *Robert's Rules of Order*. This seems odd to me, but what do I know. The second thing I noticed we do not have a city manager (except Pat DuVal as temporary). We do not have a finance director, and we have a maintenance department for roads that I already knew to be inefficient. The reason I say this is because last fall my neighbors and I called the public works department in Milwaukie to complain about the manhole cover in front of my western driveway going clank-clank every time a car drove over it. To our surprise a 2 man crew was out looking at the problem within +/- 10 days later. I told them that a big divot (pot hole) on the east side of the cover was excavated by the 20 ton busses hitting it every 15 minutes and the cover was sprung and the way to fix it was to check the base, make sure it was level, and straighten out the cover in a press or put on a new cover and I left. It appears this is what they tried to do as whatever they did worked for about 3-4 weeks but then started clanking again. More calls to the maintenance department and they came back out and said "we will fix it this time, we are going to put in a whole new one base and all." I walked away in disbelief again. A couple of weeks later there were flaggers, compressors, dump trucks and you name it and they jack hammered out a perfectly good base that was set in reinforced concrete all the while disrupting traffic for approximately 4 hours. They then set in a different base and cover and threw in some black top mix around it and left. Within 4 hours half of the black top mix was gone, being deposited down the street by traffic tires, especially buses. More calls to the maintenance department and Pat DuVal. 10 days later, more flaggers, black toppers, etc. etc. This time they used a "hot" patch, which as sort of worked. At least there is no more clanking now but we now have a base set in blacktop instead of reinforced concrete. How long will it last?

I could have fixed the problem for less than \$800 and not interfered with any traffic whatsoever. The work would have been done between 2am and 3am in the morning and not woken a soul and there would not be any traffic to be disturbed. My estimate of the cost that the City incurred fixing this problem was \$5700 minimum. It infuriates

me to see our tax dollars wasted like this when some of our residents are having problems hanging on to their homes because of job losses and that money could be better spent helping those people.

So, Milwaukie has lots of problems, but we don't need Portland dumping more problems on us with the unnecessary stop sign replacement with stop lights at 42nd. The only way we have of slowing traffic down is to have stop signs at 36th and 42nd.

During the last part of the March 2 meeting you all were discussing "things" in general and how to get a new city manager plus how to get problems solved (Ed Zumwalt would come in with a problem) but no one seems to come up with a solution to solve the problem. I get the distinct feeling there is some disarray in our cities management.

If I were you people to solve your city manager problem I'd be begging Pat DuVal to stay on as permanent City Manager, she knows this town like no one else and has the correct personality and brains to solve the cities problems. At the end of the last meeting (March 2) I tried to give our mayor some hint on how to solve any and all problems, but he did not seem at all interested so I'll keep 80 years of experience to myself. Thank you.

Mayor Ferguson said that the stop light at 42nd and JCB would be on the April 20 agenda. He said he would follow up with staff on the 7/21/09 items Mr. Cayo mentioned in his testimony.

PUBLIC HEARING

A. Continue Milwaukie Municipal Code Amendments 19.321.7 and 19.321.3 – Ordinance

City Attorney Monahan provided background on the proposed code amendments. His recommendation was to continue this item to a 3-month period of time instead of 1-month period of time to allow for mediation and working agreements with the County.

It was move by Councilor Chaimov and seconded by Councilor Stone to continue the public hearing on the Milwaukie Municipal Code Amendment 19.321.7 and 19.321.3 to the June 15, 2010 City Council regular session. Motion passed with the following vote: Councilors Stone, Loomis, Barnes, and Chaimov and Mayor Ferguson voting "aye." [5:0]

OTHER BUSINESS

Mayor Ferguson sought City Council consensus on board and commission appointments.

Councilor Barnes expressed concerned about Mr. Dolan's background with TriMet and his fit with Planning Commission.

Councilor Loomis had questions about Mr. Dolan and felt recruitment should be continued to get a local citizen. Board and commission appointments was carried over to the next meeting.

Council Reports

Councilor Stone has been going to light rail meetings and encouraged people to attend to keep informed.

Mayor Ferguson read a number of community announcements.

Mayor Ferguson announced exec session pursuant to ORS 192.660 (2)(h) to consult with legal counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

ADJOURNMENT

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

Mayor Ferguson adjourned the regular session at 8:42 p.m.

Pat DuVal

Pat DuVal, Recorder

REGULAR SESSION

REVISED
AGENDA

MILWAUKIE CITY COUNCIL
MARCH 16, 2010

MILWAUKIE CITY HALL
10722 SE Main Street

2074th MEETING

REGULAR SESSION – 7:00 p.m.

- | | Page # |
|---|-----------|
| 1. CALL TO ORDER
Pledge of Allegiance | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | 1 |
| A. Milwaukie High School Student of the Month Eddie Espinosa
Presenter: Mark Pinder, Principal | |
| B. Light Rail CDR
Staff: Katie Mangle, Planning Director | 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> | 7 |
| A. City Council Minutes for the January 5, 2010 Regular Session | 8 |
| B. City Council Minutes for the January 19, 2010 Work Session | 17 |
| C. Reappoint Melissa Arne to Budget Committee – Resolution | 18 |
| D. Reappoint Gabe Storm to Budget Committee – Resolution | 19 |
| E. Reappoint Ed Zumwalt to Library Board – Resolution | 20 |
| F. Reappoint Ron Rasch to Library Board – Resolution | 21 |
| G. Reappoint Christie Schaeffer to Parks and Rec. Board – Resolution | 22 |
| H. Reappoint Lisa Batey to Planning Commission – Resolution | 23 |
| I. Smart Grown Amendment Project Grant – Resolution | 24 |
| J. Transfer \$15,000 from Building Contingency – Resolution | 44 |
| K. Wastewater Engineering Services Personal Services Agreement - Resolution | 50 |
| L. OLCC Application – Big Kahuna’s Bar 11050 SE 21st Ave. | 65 |
| 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.)*

A. **Continue Milwaukie Municipal Code Amendments 19.321.7 and 19.321.3 – Ordinance**
Staff: City Attorney Monahan

6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

A. **Council Reports**

7. **INFORMATION**

8. **ADJOURNMENT**

9. **EXECUTIVE SESSION**

The Milwaukie City Council will meet in executive session 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.

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



To: Mayor and City Council

**Through: Pat Duval, Interim City Manager
Kenneth Asher, Community Development and Public Works Director**

From: Katie Mangle, Planning Director

Subject: Light Rail Conceptual Design Report

Date: March 16, 2010

Action Requested

None. This is a briefing for discussion only. At the meeting, City and TriMet staff will present the Conceptual Design Report which describes the light rail project design at 30 percent completion.

History of Prior Actions and Discussions

March 2, 2010 - Preliminary Engineering update to the City Council.

November 3, 2009 – Preliminary Engineering update to the City Council.

September 1, 2009 – Preliminary Engineering update to the City Council.

May 5, 2009 – Preliminary Engineering update to the City Council.

2007- 2008 - Various actions and discussions related to the South Corridor Phase 2 Light Rail Project, also called Portland-to-Milwaukie Light Rail, including adoption of a locally preferred alternative and an Umbrella Agreement with TriMet regarding transit improvements and expectations in the City of Milwaukie over the next ten years.

Background

The Portland Milwaukie Light Rail (PMLR) project is reaching several milestones this spring. The project has been designed to a 30 percent level of completion and the FTA will soon publish the Final Environmental Impact Statement. In addition, TriMet has recently published the Conceptual Design Report (CDR) to describe what the project could look like and how it is being coordinated with local ongoing planning projects. The “Public Discussion Draft” version of the CDR is attached as Attachment 1 to this report.

The Conceptual Design Report is the first presentation of the project in a unified, design context. All prior presentations have been limited by the formats used to describe engineered plans. Through the CDR, the project partners can present the vision, process and preliminary design for the Portland-Milwaukie Light Rail Project in a visually meaningful way. The report describes a project vision that includes community input, staff discussions and decisions, and project committee actions taken over the past two years. The CDR is an attempt to communicate what the project will look like, how it will operate, and what issues still need resolution in later design stages.

The “urban design vision” described in the CDR will guide work in the “advanced PE” and Final Design phases of the project. TriMet, Metro, City of Milwaukie, and City of Portland staff collaborated on this document, though each agency has important goals and intentions for how the project will look and operate once it opens. Because most of these intentions are not apparent in the engineering plans, the CDR is attempting to provide illustrations and explanations.

Key Report Sections for Milwaukie

The CDR includes illustrations and descriptions of the whole alignment, including the new bridge over the Willamette River (p. 38-41). However, the following key sections are most pertinent to the Milwaukie community:

- *Key Next Steps* (p.8-9): Outlines what project staff will work on over the next few years to address the issues that have been raised in the CDR. For Milwaukie, this will include the South Downtown planning work to refine the vision and zoning for public and private development in the area around the Downtown Milwaukie station.
- *Tacoma Station* (p. 68-71): Describes an urban design vision for the station and park and ride structure, and lists the challenges related to access and environmental mitigation. This section also describes the potential for supporting redevelopment of the adjacent Pendleton building.
- *Tillamook Branch* (p. 72): Describes the section of the track just west of the Ardenwald neighborhood, where a new structure will carry the light rail over the freight tracks.

- *Milwaukie Station* (p. 73- 79): Describes the downtown section, including the station itself, the trackway design, urban design principles and related infrastructure between Harrison St and Lake Rd. This section includes an illustrated station plan that reflects some of the South Downtown concept and some preliminary ideas for development of a “station building” on the triangle site immediately east of the light rail platforms.
- *Kellogg Creek/ Island Station* (p. 80-81): Describes the new bridge over Kellogg Lake, which will be designed and constructed to accommodate a future pedestrian bridge that will connect Island Station and Kronberg Park to the station.
- *Public art* (p. 90-91): Describes TriMet’s public art program and how it is working for this project.
- *Preliminary Engineering Recommendations* (p. 94-105): Describes many recommendations that apply throughout the alignment. Of particular importance to Milwaukie are the sections on the establishment of Quiet Zones and requirements related to the Union Pacific freight rail trackway.

Design Achievements

The CDR is a useful document for understanding the progress that Milwaukie has made in influencing the light rail design to comply with the community’s vision. Within the CDR, the following design decisions have been documented:

- Enhancements to Johnson Creek and public art near the Tacoma station.
- Reduction of the Tacoma park and ride size by 200 parking spaces.
- Traffic calming on Johnson Creek Boulevard
- Design and siting of the Tacoma park and ride to support the redevelopment potential of the Pendleton property in Milwaukie
- Maintenance of existing freight access for North Industrial properties
- Reduced length of elevated structure over the Tillamook Branch
- Split platform configuration for downtown Milwaukie station to support adjacent development and reduce scale
- No park and ride facility in downtown Milwaukie
- Acknowledgement of Milwaukie’s need for distinctive transit shelters in downtown
- Bicycle and pedestrian improvements around downtown Milwaukie station
- Accommodation of future multi-use path under the Kellogg Creek Bridge structure
- Acknowledgement of the need for elements of distinction the Kellogg Creek Bridge structure

Outstanding Design Issues

The CDR is important for documenting design issues that are known, but not yet resolved. Examples that are of note to the City of Milwaukie include:

- Final design and character of the Tacoma park and ride
- Traffic mitigations to be constructed by the project near the Tacoma park and ride
- Pedestrian movements near the Tacoma park and ride
- Final design of the Tillamook Branch structure
- Mitigations for bell noise at Mailwell St and other railroad crossings
- Mitigations for visual impacts to Rockvorst St properties, due to retaining walls for Tillamook Branch structure
- Downtown Milwaukie station integration with sidewalks, ramps, stormwater facilities, new development and platforms
- Public art integration at Downtown Milwaukie station
- Final design of crossing gates and catenary systems throughout downtown
- Design and programming of the new building proposed for the “triangle site”
- Design of the Kellogg Creek bridge structure and its integration with the Trolley Trail and Island Station neighborhood
- Design of the stormwater facility at Bobwhite St

Public Review of the CDR

TriMet is broadly distributing the Public Discussion Draft of the CDR at neighborhood meetings and public events, including the recent open house at Milwaukie High School on February 25th. The entire document is available on the project website at: <http://www.trimet.org/pm/planninganddesign/index.htm#cdr>

This document will be useful to those in Milwaukie who want to understand the light rail project, and also to those who want to help shape it. It establishes an urban design vision for how light rail should look in Milwaukie, and will be a helpful shared resource as City and TriMet staff work with citizens and business owners to finish designing the project.

Concurrence

TriMet staff is attending all of Milwaukie’s NDA meetings in February or March to present the CDR, and is presenting the Report to the Planning Commission and Design and Landmarks Committee on March 9.

Fiscal Impact

None.

Work Load Impacts

City staff will work with TriMet staff to revise the draft document as needed, and will pursue the vision, goals and outstanding issues related in the CDR as the light rail project proceeds into advanced PE and Final Design. This will require significant dedication of staff resources, although the project is within departmental workplans.

Alternatives

Not applicable. No action requested.

Attachments

1. PMLRT Conceptual Design Report [copies to Council only]

3.

CONSENT AGENDA

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

3 . A .

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

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION

January 19, 2010

Mayor Ferguson called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Council Present: Councilors Deborah Barnes, Greg Chaimov, and Joe Loomis

Staff Present: City Recorder Pat DuVal

Board and Commission Interviews

The Council interviewed Nick Harris for a vacancy on the Planning Commission and Val Hubbard for a vacancy on the Arts Committee.

Mayor Ferguson adjourned the work session at 5:45pm

Pat DuVal, City Recorder

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REAPPOINTING MELISSA ARNE TO THE MILWAUKIE BUDGET COMMITTEE

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

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

WHEREAS, Melissa Arne possesses the necessary qualifications to serve on the Milwaukie Budget Committee.

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

SECTION 1: That Melissa Arne is reappointed to the Milwaukie Budget Committee.

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

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on March 16, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REAPPOINTING GABE STORM TO THE MILWAUKIE BUDGET COMMITTEE.

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

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

WHEREAS, Gabe Storm possesses the necessary qualifications to serve on the Milwaukie Budget Committee.

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

SECTION 1: That Gabe Storm is reappointed to the Milwaukie Budget Committee.

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

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on March 16, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REAPPOINTING ED ZUMWALT TO THE MILWAUKIE LEDDING LIBRARY BOARD

WHEREAS, a vacancy exists on the Milwaukie Ledding Library Board; and

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

WHEREAS, Ed Zumwalt possesses the necessary qualifications to serve on the Milwaukie Ledding Library Board.

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

SECTION 1: That Ed Zumwalt is reappointed to the Milwaukie Ledding Library Board.

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

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on March 16, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REAPPOINTING RON RASCH TO THE MILWAUKIE LEDDING LIBRARY BOARD

WHEREAS, a vacancy exists on the Milwaukie Ledding Library Board; and

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

WHEREAS, Ron Rasch possesses the necessary qualifications to serve on the Milwaukie Ledding Library Board.

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

SECTION 1: That Ron Rasch is reappointed to the Milwaukie Ledding Library Board.

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

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on March 16, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REAPPOINTING CHRISTIE SCHAEFFER TO THE MILWAUKIE PARKS AND RECREATION BOARD.

WHEREAS, a vacancy exists on the Parks and Recreation Board ; and

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

WHEREAS, Christie Schaeffer possesses the necessary qualifications to serve on the Milwaukie Parks and Recreation Board.

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

SECTION 1: That Christie Schaeffer is appointed to the Milwaukie Parks and Recreation Board.

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

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on March 16, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REAPPOINTING LISA BATEY TO THE MILWAUKIE PLANNING COMMISSION.

WHEREAS, a vacancy exists on the Milwaukie Planning Commission; and

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

WHEREAS, Lisa Batey possesses the necessary qualifications to serve on the Milwaukie Planning Commission.

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

SECTION 1: That Lisa Batey is reappointed to the Milwaukie Planning Commission.

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

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on March 16, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



To: Mayor and City Council

Through: Pat DuVal, Interim City Manager
Kenneth Asher, Community Development and Public Works Director

From: Katie Mangle, Planning Director

Subject: Intergovernmental Agreement for State of Oregon Code Assistance
Grant for Improving Residential Design Standards and Land Use
Review Procedures

Date: March 9, 2010 for March 16, 2010 Regular Session

Action Requested

Approve a resolution (Attachment 1) to enter into an intergovernmental agreement with the State of Oregon to prepare draft code amendments based on the City's code amendment priorities as described in the 2009 Smart Growth Code Assessment Final Report.

History of Prior Actions and Discussions

October 2009: Staff presented the Smart Growth Code Assessment Final Report. Council concurred with the code amendment priorities identified in the report and requested that staff move forward with the next phase of the project.

August 2009: Staff briefed Council on the City's Smart Growth Code Assessment Project, focusing on the Angelo Planning Group (APG) code evaluation memorandum that identified a number of code problems and some preliminary solutions.

July 2009: During a joint session with the Planning Commission, Council reviewed the work plan for improving the City's zoning code.

May 2009: Staff informed Council that the City received a grant from the State of Oregon to conduct an assessment of several parts of the Milwaukie Municipal Code related to zoning and development.

May 2008: During a work session review of the Downtown Plan, council directed staff to continue to implement the vision outlined in the Plan, but to “refresh the code” to allow a little more flexibility.

Background

In March 2009, the City received a grant from the State of Oregon’s Transportation and Growth Management (TGM) Code Assistance Program to fund a Smart Growth Code Assessment of Milwaukie’s Zoning Code (Title 19).¹ The TGM Program retained a local consulting firm, Angelo Planning Group, to assess the following areas of the City’s code:

- Residential Design Standards
- Land Use Review Criteria and Procedures
- Downtown Zone Uses and Standards
- Manufacturing Zone Uses and Standards

After several work sessions with the Planning Commission and City Council, the assessment was completed in August 2009. The final report was presented to City Council in October 2009, at which time Council directed staff to proceed with plans to obtain funding to undertake some of the code projects identified in the final report’s Action Plan. The Action Plan identifies the City’s near-term code amendment priorities, which are as follows:

Residential Design Standards

High: Single-Family Residential Design; Infill Compatibility

Medium: Multifamily Residential Design and Development Standards

Low: Accessory Dwelling Units (ADUs); Townhouses; Duplexes

Land Use Review Criteria and Procedures

High: Amendments and Administrative Provisions; Conditional Uses, Variances, Exceptions, and Nonconforming Uses

Downtown Zone Uses and Standards

Medium: Downtown Uses; Design Standards; Design Review

Manufacturing Zone Uses and Standards

Low: Manufacturing Uses and Development Standards

¹ The TGM Program promotes smart development principles that enable communities to meet transportation needs while retaining their livability and economic vitality.

Commercial Zone Uses and Standards²

High: Commercial Uses and Development Standards

In October 2009, staff applied for a second grant from the TGM Program,³ and was awarded a grant in the amount of \$50,000 for the 2010-11 fiscal year. Based on this award amount, Angelo Planning Group and City staff developed a draft Statement of Work (Attachment 2) that took the City's code amendment priorities and TGM program goals into consideration. The Statement of Work (SOW), which is currently under review by the State, provides for the development of draft code amendments to the following sections of the City's code.

- Residential Design Standards
- Land Use Review Criteria and Procedures

The goal of this code amendment project is to clarify, streamline, and consolidate the various different procedures currently used in the City's land use review process, and possibly create a new Development Review chapter. Additionally, the project would focus on eliminating redundancies, simplifying code requirements through consolidation, and utilizing tables and graphics to make design and development standards easier to use and understand.

Updating the City's residential standards is expected to result in three primary outcomes:

- Improved single-family residential design standards that address issues of infill design and compatibility.
- Design standards for multifamily residential development that require well-designed and compatible development. (Since the City has almost no tools to regulate multifamily development, the TGM Program directed staff to include multifamily design standards in this project even though it was ranked as a medium priority code project in the Action Plan.)
- Design standards for ADUs and removal of procedural barriers to this type of development. (The City does not currently have any design standards for ADUs.)

Updating the City's review procedures is expected to result in three primary outcomes:

- A modern zoning code that is consistent with Oregon state law.

² The Smart Growth Code Assessment project did not include an assessment of the commercial zones outside of downtown. However, the Planning Commission indicated that they would like to see code amendments for commercially-zoned areas outside of downtown, which is why this topic appears in the action plan but not in the code assessment portion of the final report.

³ Staff's application consisted of the minutes from the October 20, 2009 City Council meeting wherein Council directed staff to proceed with implementation of the code amendment priorities identified in the 2009 Smart Growth Code Assessment Final Report.

- A code that is easier to use. This may include the addition of a new Development Review chapter to improve organization, fill procedural gaps, and consolidate regulations into one place for ease of use.
- Reasonable review criteria, appropriate level of review, and a more flexible approach to variances and nonconforming situations. The goal would be to create efficient review procedures that reduce unnecessary process and expense (for both City staff and applicants), and that results in desired development that is consistent with the Comprehensive Plan.

The intergovernmental agreement required by the State for the expenditure of the \$50,000 TGM Program grant obligates City staff to work with the program's consultants to complete the work described in the SOW by June 2011. City staff expects the State to finalize the SOW in the next few weeks.

Concurrence

Planning Department staff consulted with the Planning Commission, the Design and Landmarks Committee, and the Community Development Department in the development of the code amendment priorities that this project proposes to address.

Fiscal Impact

The intergovernmental agreement between the City and the State commits the State to fund the code amendment project as described in the SOW. No matching funds from the City are required beyond the commitment of staff time. This project is currently on the Planning Department's work plan. Due to the project's scope, however, it cannot be accomplished without outside funding. The TGM Program grant is an opportunity for the City to address some major deficiencies with the City's development code that have been identified by the community over the past several years, some of which have a negative fiscal impact on the City. A modernized code would reduce costly inefficiencies for both the City and the development community.

Work Load Impacts

The intergovernmental agreement between the City and the State commits staff to undertake the code amendment project as described in the SOW. This project would be a significant part of the Planning Department's workload for the 2010-11 fiscal year and would require a minimal amount of involvement from the Community Services, Community Development, and Engineering Departments.

Alternatives

Council has the following options:

- Sign the intergovernmental agreement, which would mean:
 - Accepting the \$50,000 TGM Program grant.
 - Directing staff to develop draft code amendments to the City's review procedures and residential design standards.
- Do not sign the intergovernmental agreement, which would mean:
 - Rejecting the \$50,000 TGM Program grant.
 - Directing Planning Department staff to remove this project from its 2010-11 work plan since no other funding source has been identified.

Attachments

1. Resolution to enter into an Intergovernmental Agreement with the State of Oregon for the 2010-11 Smart Growth Code Amendment Project.
2. Statement of Work for 2010-11 Smart Growth Code Amendment Project.

ATTACHMENT 1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON TO PREPARE DRAFT CODE AMENDMENTS BASED ON THE CITY'S CODE AMENDMENT PRIORITIES AS DESCRIBED IN THE 2009 SMART GROWTH CODE ASSESSMENT FINAL REPORT.

WHEREAS, City staff applied for and received a \$50,000 grant from the State of Oregon's Transportation and Growth Management (TGM) Program to fund the City's 2010-11 Smart Growth Code Amendment Project; and

WHEREAS, City staff worked with the TGM Program staff and its consultants to develop a Statement of Work (SOW) for this project which took the City's code amendment priorities and TGM program goals into consideration; and

WHEREAS, the SOW provides for the development of draft code amendments to the City's residential design standards and land use review procedures; and

WHEREAS, the State of Oregon requires an intergovernmental agreement with the City for the expenditure of grant money for this project; and

WHEREAS, the intergovernmental agreement obligates City staff to work with the TGM program staff and its consultants to complete the work described in the SOW by June 2011;

NOW, THEREFORE, BE IT RESOLVED that the Council authorizes the City Manager to sign an intergovernmental agreement (IGA) with the State of Oregon to fund the City's 2010-11 Smart Growth Code Amendment Project.

Introduced and adopted by the City Council on _____ .

This resolution is effective immediately.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

ATTACHMENT 2

DRAFT

STATEMENT OF WORK

ODOT/DLCD Transportation and Growth Management Program
Code Assistance Project for City of Milwaukie

Phase 2 – Procedures and Residential Design Standards

A. PROJECT MANAGEMENT TEAM

Consultants

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B. INTRODUCTION

Background

The City of Milwaukie (City) is a historic community of 20,500 residents. This is a time of transition and growth for the city: the Portland-to-Milwaukie Light Rail project is slated for completion in 2015; there has been an increase in properties annexing to the City; and the community is facing increasing development pressures due to its proximity to Portland and the natural beauty of the Willamette River.

This period of transition and growth provides an opportunity for the City to assess its current code standards, and identify areas of the code that do not support the type of development the community desires. In 2009, the City received a TGM Code Assistance Grant and Angelo Planning Group (Consultant) performed a code audit of Title 19 (Zoning) of the Milwaukie Municipal Code. That audit identified a number of code sections that were outdated, disorganized, difficult to understand and implement, and

inconsistent with State and City land use policies. As a result, the City decided to pursue the following two priority topics as part of a Phase 2 TGM Code Assistance Project:

1. Process and Procedures
2. Residential Design Standards

Goals for the Project

Topic 1 – Process and Procedures: Clarify, streamline, and consolidate the various different procedures currently used in the City’s land use review process, and possibly create a new Development Review chapter. Change the approach to regulating nonconforming situations and approving variances. Updating the procedures is expected to result in three primary outcomes:

- a. A code that is consistent with Oregon state law (e.g., procedures related to public notice, hearings, needed housing, etc.).
- b. A code that is easier to use. In addition to general editing, the consultant will eliminate duplication in the code, simplify and consolidate similar procedures, and add tables. Establish a development review chapter to improve organization, fill procedural gaps, and consolidate regulations in one place.
- c. Reasonable review criteria, an appropriate level of review for all land use actions, and a more flexible approach to variances and nonconforming situations. The City’s intent is to create efficient review procedures that reduce unnecessary process yet result in desired development, consistent with the comprehensive plan.

Topic 2 – Update Residential Standards: Eliminate redundancies, simplify code structure, and use tables and graphics to make code standards for residential development easier to use and understand. Updating the residential standards is expected to result in three primary outcomes:

- a. Updated single-family residential design standards that increase the requirements or level of review to address issues of infill design and compatibility. Evaluate implications of additional compatibility standards with case studies of two single-family zoned sites (R-10 and R-7).
- b. New design standards for Accessory Dwelling Units and removal of procedural barriers to this type of development.
- c. New multi-family design standards and review process to require well-designed and compatible development. Evaluate implications of existing and proposed code standards with case studies of two multi-family zoned sites outside of the downtown (R-1 and R-2).

Transportation Relationships and Benefits

The Transportation and Growth Management (TGM) Program is a joint effort of the Oregon Department of Transportation (ODOT) and the Oregon Department of Land Conservation and Development (DLCD). The purposes of TGM are to strengthen the capability of local governments to effectively manage growth and comply with the

Transportation Planning Rule, to integrate transportation and land use planning, and to encourage transportation-efficient land uses that support modal choice and the efficient performance of transportation facilities and services. Specifically TGM supports efficient use of land and resources, human-scaled designed, walkable communities, good connections between local destinations, and pedestrian, bicycle and transit-oriented development.

This project will advance these objectives by removing barriers to smart development that may exist in current regulations, and by revising or enacting new procedures, criteria and design standards consistent with TGM objectives.

C. SUMMARY OF CONSULTANT WORK TASKS

Task	Consultant Deliverables	Amount per Deliverable	Completion
TOPIC 1 – PROCEDURES (Tasks 1-5)			
1 – Research on Procedures & Development Review			
1.1	Memo summarizing research on practices, problems and examples. Summary spreadsheet of procedures in peer cities.	\$1,750	March 2010
1.2	Memo on Development Review options and recommended approach	\$2,000	March
1.3	PMT Meeting #1 & Notes	\$750	April
2 – Draft #1 of Procedures Chapter			
2.1	Procedures Chapter Draft #1	\$3,500	May
2.2	Summary table of existing and proposed Applications/Procedures	\$1,200	May
2.3	Draft #1 of targeted revisions to related code sections	\$1,500	June
2.4	PMT Meeting #2 & Notes	\$750	June
2.5	Planning Commission Work Session #1 & Notes	\$400	June
3 – Draft #1 of Development Review, and Revised Variance (VR)/Nonconforming (NC) Chapters			
3.1	Memo reviewing current NC/ VR policies with options for changes to approval criteria for Variances and Nonconforming Situations	\$2,230	July
3.2	Development Review Chapter Draft #1	\$1,500	July
3.3	NC/VR Chapters Draft #1	\$1,000	July
3.4	PMT Meeting #3 & Notes	\$400	July
4 – Draft #2 of Procedures, Development Review and Variance/NCU Chapters			
4.1	Amendments and Commentary Draft #2	\$2,800	August
4.2	Planning Commission Work Session #2 & Notes	\$400	August
5 – Draft #3 for Public Hearing and Adoption (Procedures)			
5.1	Amendments Draft #3 (for public review)	\$2,600	September
5.2	Commentary Draft #3	\$1,000	September
	Topic 1 Subtotal:	\$23,780	

TOPIC 2 – RESIDENTIAL STANDARDS (Tasks 6-10)			
6 – Code Review and Research on Residential Standards			
6.1	Memo summarizing research and recommended approach.	\$2,750	August 2010
7 – Illustrate Existing & Proposed Design Standards for Prototype Sites			
7.1	Prototype Site Illustrations.	\$5,500	August
7.2	Stakeholder Meetings (3) & Notes	\$1,500	August
7.3	PMT Meeting #4 & Notes	\$500	August
7.4	Work Session #1 with Design & Landmarks Committee (DLC) & Notes	\$1,000	August
8 – Draft #1 of Code Revisions for Residential			
8.1	Draft baseline code sections for SFR zones	\$1,500	October
8.2	Draft revised SFR design standards	\$1,250	October
8.3	Draft baseline code sections for MFR zones	\$1,500	November
8.4	Draft new MFR design standards	\$2,700	November
8.5	PMT Meeting #5 & Notes	\$500	November
8.6	Work Session #2 with DLC & Notes	\$1,000	December
9 – Draft #2 of Code Revisions for Residential			
9.1	Amendments Draft #2	\$2,200	January 2011
9.2	PMT Meeting #6 & Notes	\$370	January
10 – Draft #3 for Public Hearing and Adoption (Residential Standards)			
10.1	Amendments Draft #3	\$2,950	March
10.2	Commentary Draft #3	\$1,000	March
	Topic 2 Subtotal:	\$26,220	
	Total WOC:	\$50,000	

D. TASK DETAILS

This WOC encompasses code assistance focused on two primary topic areas (Procedures and Residential Standards) that will largely run sequentially, with a slight overlap in schedule. Tasks 1-5 address the Procedures topic and Tasks 6-10 address the Residential Standards topic. Links between the specific task numbers and consultant deliverables summarized above are shown in underline type.

TOPIC 1 – PROCEDURES

Task 1 – Research on Procedures & Development Review

Consultant Tasks

- 1.1 Research. Review existing Title 19 chapters that pertain to applications, review procedures, and decision authorities. Coordinate with staff to understand current practices for land use review, site plan review, and building permit review in Milwaukie. Identify and review pertinent zoning code sections highlighted by staff. Conduct on-line review of site/development review processes used in 3-4 metro area jurisdictions (with staff input on specific jurisdictions). Prepare spreadsheet to summarize the following key elements for each jurisdiction: a)

- procedure type, b) applicability and thresholds, c) decision authority, d) approval criteria, e) application fees. Prepare memo (no more than 10 pages) to summarize research.
- 1.2 Restructuring recommendation. Consultant will prepare a Memo (no more than 10 pages) with an outline and recommended format and approach for consolidating and clarifying Milwaukie's development review process. The memo will include links or attachments to examples of the recommended approach as applied in other cities. Memo will outline at least 2 alternative approaches to implementing the recommended restructuring - phased and non-phased - and explain the benefits and challenges associated with each approach.
 - 1.3 PMT Meeting #1. Consultant will facilitate Meeting #1 with the Project Management Team (PMT) to review and discuss the research and Task 1.1 and 1.2 deliverables. Consultant will prepare brief meeting notes (no more than 5 pages) to summarize the key decision points.

City Tasks

- Prepare Code History Memo. Memo to outline specific code sections that should be preserved, summarize past community discussions of issues to be addressed by this project.
- Prepare spreadsheet to identify particularly problematic code sections relating to procedures and/or applications that should be changed.
- Provide a brief summary of existing practices relating to review of site and building plans (particularly for MFR, commercial, or industrial projects that do not trigger land use review).
- Provide input on 3-4 metro area jurisdictions Consultant should review to provide background for Task 1.2 memo.
- Schedule and participate in PMT Meeting #1 and provide consolidated comments and feedback on Task 1.1 and 1.2 memos.

Task 2 – Draft #1 of Procedures Chapter

Consultant Tasks

- 2.1 Procedures Chapter Draft 1. Using Model Code and feedback from Task 1.1, prepare Draft #1 of Procedures Chapter, a new code chapter to replace Chapter 19.1000 Administrative Provisions. Draft will include commentary to explain key policy changes. The consolidated Procedures will be consistent with Oregon state law, including provisions relating to public notice, completeness review, hearings, appeals etc.
- 2.2 Summary Table. Prepare comprehensive table to summarize existing and proposed structure of all applications, relevant procedures (Type I, II, III, and IV), decision authority, and appeal authority. Will include cross-references to approval criteria.
- 2.3 Related Sections Draft 1. Prepare Draft #1 of revisions to code sections affected by changes to Chapter 19.1000 that are not included in task 2.1. Draft will include

underline and strikeout to show proposed changes, include commentary to explain key policy changes, and cross-references to the new Procedures chapter.

- 2.4 PMT #2. Consultant will facilitate Meeting #2 with the PMT to review and discuss Draft #1 of the Procedures Chapter and the Applications Table. Consultant will prepare brief meeting notes (no more than 5 pages) to summarize the key decision points.
- 2.5 PC #1. Facilitate Planning Commission Work Session #1 and present an overview of the highlights of the Procedures chapter. Present findings of research on Development Review (Task 1.2 memo) and request direction from Planning Commission. Consultant will prepare brief meeting notes (no more than 2 pages) to summarize the Planning Commission work session.

City Tasks

- Provide direction to Consultant on applications that might be appropriate for a different procedure and level of review (e.g., Accessory Dwelling Units, Minor Adjustments).
- Schedule and participate in PMT Meeting #2 and provide consolidated comments and feedback on Draft #1 consultant deliverables.
- Provide introductory staff comments at Planning Commission Work Session #1.
- Coordinate City Attorney review for compliance with ORS (Note: city staff to decide which draft(s) should be provided for legal review).
- Provide detailed minutes summarizing presentation and discussion at Planning Commission meeting.

Task 3 – Draft #1 of Development Review and Revised Variance (VR)/Nonconforming (NC) Chapters

Consultant Tasks

- 3.1 Current NC/VR Policy Review. Review 19.700 (Variances) and 19.800 (Nonconforming situations) and prepare memo (no more than 10 pages) that summarizes options for new policy direction and updated approval criteria.
- 3.2 Development Review Chapter Draft #1. Assuming positive feedback from Tasks 1.2, 2.5, and 3.1, prepare Draft #1 of new Development Review sections. Identify other sections of the code that may need to be deleted (such as 19.416 Transition Area Review) or revised (such as 19.1400 Transportation Facilities Review).
- 3.3 NC/VR Chapters Draft #1. Based on feedback on Task 3.1 memo, prepare Draft #1 of VR and NC chapters to reflect recommended policy changes and updated approval criteria. Draft will include underline and strikeout to show proposed changes, include commentary to explain key policy changes, and cross-references to the new Procedures chapter.

- 3.4 PMT Meeting #3. Consultant will facilitate Meeting #3 with the PMT to review and discuss Draft #1 of the Development Review, Variance, Nonconforming Situations, and related sections. Consultant will prepare brief meeting notes (no more than 5 pages) to summarize the key decision points.

City Tasks

- Prepare Code History Memo. Memo to outline specific code sections that should be preserved, summarize past community discussions of issues to be addressed by this project.
- Provide consolidated staff comments and direction to Consultant on Task 3.1 memo and Drafts provided in Tasks 3.2 and 3.3.
- Schedule and participate in PMT Meeting #3 and provide consolidated comments and feedback on Draft #1 of Development Review and updated Variance and Nonconforming Situations Chapters.
- Coordinate City Attorney review for compliance with ORS (Note: city staff to decide which draft(s) should be provided for legal review).

Task 4 – Draft #2 of New and/or Revised Code Sections

Consultant Tasks

- 4.1 Amendments Draft #2. Based on consolidated staff, Planning Commission and/or City Attorney comments on Draft #1 Code (Procedures, Development Review, Variances, Nonconforming Situations, and related sections), consultant will prepare Draft #2 with associated commentary on proposed policy changes.

In addition to the primary sections noted above, Draft #2 will ensure that all changes are seamlessly integrated into the code and all code references are updated appropriately.

- 4.2 PC #2. Facilitate Planning Commission Work Session #2 and present an overview of Draft #2 code changes – with an emphasis on the Development Review section (if it is pursued) and changes to the Variance and Nonconforming Situations Chapters. Consultant will prepare brief meeting notes (no more than 2 pages) to summarize the Planning Commission work session and key recommendations and decision points.

City Tasks

- City staff will test proposed “Draft 2” amendments on case studies to determine the potential affects of the amended code.
- Schedule and coordinate with Consultant on agenda and presentation of Draft #2 at Planning Commission Work Session.
- Provide consolidated staff comments and direction to Consultant on Draft #2.
- Provide template and instructions to Consultant for formatting Draft #3 and inserting commentary to track code changes.

Task 5 – Draft #3 of Code Revisions for Public Hearing and Adoption Process

Consultant Tasks

- 5.1 Amendments Draft #3. Prepare draft code amendments using City formatting, of all draft amendments for public review. Amendments will be presented in underline/strikeout format for revisions, or clean format for replacement chapters.
- 5.2 Commentary Draft #3. Prepare code commentary for revised sections. This draft will include a level of detail sufficient to explain the proposed policy changes to the broader community.

City Tasks

- Prepare all required notices for public hearing(s) on proposed code revisions (DLCD, Measure 56, etc.)
- Take lead role on any additional stakeholder review meetings of Draft #3 with neighborhood groups, business community, etc.
- Prepare and present staff report and findings to the Planning Commission and City Council to support recommended code changes.
- Prepare and coordinate revisions to Draft #3 that result from the public hearing and adoption process.
- City attorney review of final draft prior to City Council adoption.
- Prepare all required notices of final local decision on code revisions.
- Take lead role on codifying final code changes with city's code publisher.

TOPIC 2 – RESIDENTIAL STANDARDS

Task 6 – Code Review and Research on Residential Standards

Consultant Tasks

- 6.1 Research and recommended approach memo. Review existing Title 19 base zone chapters that pertain to single-family zones (R-10, R-7 and R-5) and multi-family zones (R-3, R2.5, R-2 and R-1). Prepare memo (no more than 10 pages) that outlines:
 - 2-3 alternative approaches to consolidating and/or streamlining presentation of residential zones and uses and standards. At least one example will suggest consolidating single-family zones in one section and consolidating all multi-family zones in another section and presenting development standards in tables (similar to the approach used for the downtown zones).
 - 2-3 examples of clear and objective multi-family design standards and illustrations from the Model Code or other codes.
 - Pertinent existing code sections
 - Options to remove procedural and/or design barriers to ADU development.

City Tasks

- Prepare Code History Memo. Memo to outline specific code sections that should be preserved, summarize past community discussions of issues to be addressed by this task.
- Staff recommendation memo on SFR regulations. Staff to review 2009 Code Assessment report and provide guidance on recommended approach and best practices for improving SFR design standards. This memo will provide guidance to Consultant during subsequent tasks.
- Expand and share photo library of Milwaukie SFR and MFR housing stock with the Consultant.
- Analyze R-10 zones to identify case study sites (2) to test implications of potential SFR compatibility standards.
- Analyze MFR zones (outside of downtown) to identify case study sites (2) to test the implications of potential MFR design standards.
- Provide consolidated staff comments on Consultant Task 6.1 memo.

Task 7 – Illustrate Existing & Proposed Design Standards for Prototype Sites

Consultant Tasks

- 7.1 Prototype Site Illustrations. Consultant team (SERA) will prepare a maximum of 6 simple illustrations for 2-3 SF and 2-3 MF sites identified by staff. The illustrations are intended as a tool to communicate the scale and character of development possible under *existing* code standards (such as height, lot coverage, setbacks, SF design requirements, etc.). The illustrations will also be used as a tool to communicate the implications of potential *revised or new standards* (such as step-backs, garage location standards, MFR design standards, etc.)
- 7.2 Stakeholder Meetings. Consultant will facilitate up to 3 stakeholder meetings to review Task 7.1 illustrations and discuss existing and potential residential standards. We have assumed that two of the meetings will focus on the SFR case studies and one will focus on the MFR case studies. Each stakeholder meeting could involve 4-5 people with common interests (such as neighborhood representatives, SFR developers, apartment developers/managers, etc.). Consultant will prepare brief notes summarizing each stakeholder meeting.
- 7.3 PMT #4. Consultant will facilitate Meeting #4 with the PMT to review and discuss the Task 7.1 case study illustrations and feedback from the Task 7.2 stakeholder interviews. The agenda and format of the first work session with the Design & Landmarks Commission (DLC) will also be discussed at this PMT meeting. Consultant will prepare brief meeting notes (no more than 5 pages) to summarize the key decision points from PMT Meeting #4.
- 7.4 DLC Meeting #1. Consultant team (including SERA) will facilitate Work Session #1 with the DLC. This work session will include an overview of existing and potential approaches to SF and MF compatibility and design standards. SERA will present the findings of the case study illustrations. Consultant will also summarize the feedback from the stakeholder meetings. Consultant will prepare

brief meeting notes (no more than 2 pages) that summarize the input from the DLC.

City Tasks

- Provide input to Consultant on key design standards to highlight in the case studies.
- Identify and contact parties for three stakeholder interviews. Coordinate the schedule and meeting place.
- Participate in the stakeholder meetings.
- Provide input to Consultant on the agenda and work session with the DLC.

Task 8 – Draft #1 of Code Revisions for Residential

Consultant Tasks

- 8.1 SFR Zones Baseline Chapter Draft #1. Draft baseline chapter(s) for SFR zones (R-10, R-7 and R-5). This draft will reflect primarily any proposals to streamline and reformat base zone regulations, and will be the basis for discussing policy changes in subsequent tasks. Draft to include proposed consolidation, reformatting, and new tables. Draft will include underline and strikeout or replacement pages to show proposed amendments, include commentary to explain key policy changes, and cross-references to the new Procedures and Development Review chapters.
- 8.2 SFR Design Standards Draft #1. Draft revised SFR design standards to increase the number of required features and/or provide additional compatibility standards for the R-10, 7, and 5 zones. The document completed in Task 8.1 is the basis for the code drafted in this task. Provide 3 simple code graphics to illustrate the standards.
- 8.3 MFR Zones Baseline Chapter Draft #1. Draft baseline chapter(s) for MFR zones (R-1, R-2, R-2.5 and R-3). This draft will reflect primarily any proposals to streamline and reformat base zone regulations, and will be the basis for discussing policy changes in subsequent tasks. Draft to include proposed consolidation, reformatting, and new tables. Draft will include underline and strikeout or replacement pages to show proposed amendments, include commentary to explain key policy changes, and cross-references to the new Procedures and Development Review chapters.
- 8.4 MFR Design Standards Draft #1. Draft new section with clear and objective design standards for MFR development. Aspects of design to be addressed include transition to lower density neighborhoods, urban design, and massing. Provide 3 simple code graphics to illustrate the standards. The document completed in Task 8.3 is the basis for the code drafted in this task.
- 8.5 PMT #5. Facilitate PMT Meeting #5 and walk through Drafts #1. Discuss the agenda and presentation for the second DLC work session. Prepare brief meeting

notes (no more than 5 pages) to summarize the highlights of the PMT meeting and key decision points.

- 8.6 DLC #2. Consultant team (including SERA) will facilitate Work Session #2 with the DLC. This meeting will include an overview of the proposed code revisions and provide the opportunity for DLC input for revisions to Draft #1. Consultant shall prepare brief notes (no more than 2 pages) to summarize the DLC work session.

City Tasks

- Provide direction to consultant on code structure, particularly whether to include the MFR design standards in the base zone(s) or in another section of the code.
- Take lead role on any additional meeting or public outreach for review of Draft #1 Residential Standards and confirm the schedule for Draft #2.
- Provide consolidated staff comments on Draft #1.

Task 9 – Draft #2 of Code Revisions for Residential

Consultant Tasks

- 9.1 Amendments Draft #2. Prepare Draft #2, with associated commentary on proposed policy changes, based on consolidated staff comments and DLC input on Draft #1.
- 9.2 PMT #6. Facilitate PMT Meeting #6 and walk through Draft #2. Prepare brief meeting notes (no more than 5 pages) to summarize the highlights of the PMT meeting and key decision points.

City Tasks

- City staff will test proposed “Draft 2” amendments on case studies to determine the potential affects of the amended code.
- Take lead role on any additional meeting or public outreach for review of Draft #3 Residential Standards and confirm the schedule for delivery of Public Hearing Draft #3.
- Provide consolidated staff comments on Draft #2.
- Provide template and instructions to Consultant for formatting Draft #3 and inserting commentary to track code changes.
- Coordinate City Attorney review of new and/or revised Residential Standards for compliance with ORS (particularly the requirements for clear & objective standards for needed housing).

Task 10 – Draft #3 for Public Hearing and Adoption Process (Residential Standards)

Consultant Tasks

- 10.1 Amendments Draft #3. Prepare draft code amendments of all draft amendments for public review. Amendments will be presented in underline/strikeout format for revisions, or clean format for replacement chapters.
- 10.2 Commentary Draft #3. Prepare code commentary for revised sections. This draft will include a level of detail sufficient to explain the proposed policy changes to the broader community.

City Tasks

- Prepare all required notices for public hearing(s) on proposed code revisions (DLCD, Measure 56, etc.)
- Take lead role on any additional stakeholder review meetings of Draft #3 with neighborhood groups, residential developers, etc.
- Prepare and present staff report and findings to the Planning Commission and City Council to support recommended code changes.
- Prepare and coordinate revisions to Draft #3 that result from the public hearing and adoption process.
- City attorney review of final draft prior to City Council adoption.
- Prepare all required notices of final local decision on code revisions.
- Take lead role on codifying final code changes with city’s code publisher.

E. GENERAL PROVISIONS

For all tasks, City to provide existing code document for Consultant’s use in preparing and formatting draft amendments and related commentary.

City will provide written guidance on format, style, and editing guidelines for drafting the code and commentary documents. Consultant must follow these guidelines to the extent feasible within the allowed budget.

Deliverables

The following notes apply unless specified otherwise in the task description.

1. Previewing Materials
 - a. Consultant shall provide materials for PMT meetings at least one week prior to the meeting.
 - b. Consultant shall provide materials that are intended for public release at least two weeks prior to the scheduled release.
 - c. Comments will be provided to Consultant within two weeks of receipt of draft materials.
 - d. Consultant shall make minor revisions and corrections to materials based on comments received at least one week prior to release. Consultant is not required

to make major or extensive revisions without an approved contract amendment. This provision does not limit the right of the State to require correction of deliverables that do not meet the requirements of this SOW.

2. Graphics
 - a. As needed for this project, presentation graphics for meetings or work sessions are to be delivered as hard copies of each plan/section, approximately 2-foot by 3-foot (not required to be mounted and laminated)
 - b. All graphics must also be delivered as computer files in the native format (e.g., AutoCAD, ArcGIS, JPEG, Photoshop, PowerPoint, etc.) and in an open universally readable format (e.g., PDF).
3. Text memorandums, reports and code text
 - a. All memorandums, presentation handouts, and reports are to be formatted for 8 ½-inch by 11-inch paper, unless otherwise agreed upon.
 - b. All memorandums and reports are to be delivered to City and TGM program as computer files in the native format (e.g. Word, Publisher, PageMaker, etc.) and in an open universally readable format (e.g. PDF).
 - c. City shall provide Consultant with template to use for code revisions, along with formatting instructions.
4. Meetings
 - a. City will provide support for all meetings include published and mailed notice as appropriate, meeting space and collecting feedback after the meeting.
 - b. Meeting notes must, at a minimum, certify that Consultant conducted or attended the meeting required. Meeting notes are a brief (generally not exceeding one-page) summary of the attendees, topics discussed and decisions reached. Handwritten notes taken during the meeting are acceptable.

Key Personnel

Consultant acknowledges and agrees that Agency selected Consultant, and is entering into this WOC, because of the special qualifications of Consultant's key people. In particular, Agency through this WOC is engaging the expertise, experience, judgment, and personal attention of Mary Dorman ("Key Personnel"). Consultant's Key Personnel shall not delegate performance of the management powers and responsibilities he/she is required to provide under this WOC to another (other) Consultant employee(s) without first obtaining the written consent of Agency. Further, Consultant shall not re-assign or transfer the Key Personnel to other duties or positions such that the Key Personnel is no longer available to provide Agency with his/her expertise, experience, judgment, and personal attentions, without first obtaining Agency's prior written consent to such re-assignment or transfer. In the event Consultant requests that Agency approve a re-assignment or transfer of the Key Personnel, Agency shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Personnel. Any approved substitute or replacement for Key Personnel shall be deemed Key Personnel under this WOC.

Project Cooperation

This statement of work describes the responsibilities of all entities involved in this cooperative project. In this WOC Consultant shall only be responsible for those responsibilities and deliverables identified as being assigned to Consultant in this WOC and the statement of work. All work assigned to other entities is not subject to this WOC. References to work to be performed or responsibilities of any other entities in this statement of work other than references to Consultant are merely for informational purposes and are in no way binding. Neither are these other entities parties to this WOC. Any tasks or deliverables assigned to a sub-contractor shall be construed as being the responsibility of Consultant.

Any Consultant tasks or deliverables which are contingent upon receiving information, resources, assistance, or cooperation in any way from another entity as described in this statement of work shall be subject to the following guidelines:

- a. At the first indication of non-cooperation, Consultant shall provide written notice (email acceptable) to Agency Contract Administrator of the specific acts or inaction indicating non-cooperation and of any deliverables that may be delayed due to such lack of cooperation by other entities referenced in the statement of work.
- b. Agency Contract Administrator shall contact the non-cooperative entities to discuss the matter and attempt to correct the problem and/or expedite items determined to be delaying the project.
- c. If Consultant has followed the notification process described in item A, and delinquency or delay of any deliverable is found to be a result of the failure of other referenced entities to provide information, resources, assistance, or cooperation, as described in the statement of work, Consultant will not be found in breach or default of contract; nor shall Consultant be assessed or liable for any damages. Neither shall Agency be responsible or liable for any damages to Consultant as the result of such non-cooperation by other entities. The Agency Contract Administrator will negotiate with Consultant in the best interest of the State, and may revise the delivery schedule to allow for delinquencies beyond the control of Consultant. Revised delivery date beyond the expiration date requires an amendment to this WOC.



To: Mayor and City Council

Through: Pat Duval, Interim City Manager
Kenneth Asher, Community Development and Public Works Director

From: Tom Larsen, Building Official

Subject: Transfer of Funds within the Building Inspections Budget

Date: March 1, 2010 for the March 16, 2010 Regular Session

Action Requested

Adopt a resolution transferring \$15,000 from Building Inspections Budget Line Item 300-613-9510-0000 (Contingencies) to Line Item 300-613-6020-0000 (Contractual Services) in order to pay The City of Happy Valley for inspection services performed over the past two years under the terms of the Intergovernmental Agreement for Shared Inspection Services.

History of Prior Actions and Discussions

There have been no prior actions or discussions regarding this matter.

Background

In February 2007, Council adopted Resolution #5-2007, authorizing the City Manager to sign an Intergovernmental Agreement for Shared Inspection Services (See Exhibit A). Under the terms of the Intergovernmental Agreement, The City of Happy Valley was to bill the City of Milwaukie on a quarterly basis for hours of work performed minus any hours of work performed by the City of Milwaukie on behalf of the City of Happy Valley.

Due to some internal issues, the City of Happy Valley did not bill the City of Milwaukie on a quarterly basis, but recently submitted an invoice in the amount of \$22,470 for hours worked from May 2008 to January 1, 2010 (See Exhibit B). The hours have been verified by the City of Milwaukie Building Official.

The Building Department has only \$8,000 in the Contractual Services line item, but has sufficient funds in the Contingencies line item (\$63,790) to cover these costs.

Over the past three Fiscal Years, the Building Department has had budget authority to disburse \$38,000 within the Contractual Services line item. With this payment, the total amount disbursed during that period will be \$30,397.50

FY	AMOUNT BUDGETED	AMOUNT BILLED
07/08	\$20,000	\$7,927.50
08/09	\$10,000	- 0 -
09/10	\$8,000	\$22,470.00
TOTALS	\$38,000	\$30,397.50

If the Council approves the resolution, the Building Official estimates that the City of Happy Valley will not perform additional services during this fiscal year beyond the \$530 that will remain in the Contractual Services line item.

Concurrence

The City Attorney has reviewed the Resolution as to form.

Fiscal Impact

The funds involved in the proposed transfer are funds that have previously received budget approval, but are being disbursed at a later time than expected. The proposed transfer will have the effect of reducing the department's contingency fund, but this is unavoidable.

Although not specifically affected by this action, the continued economic downturn is expected to deplete the department's reserves by the end of FY-09/10.

Work Load Impacts

None

Alternatives

None

Attachments

1. Resolution
 - a. Exhibit A; Resolution #5-2007 establishing the Intergovernmental Agreement
 - b. Exhibit B; City of Happy Valley Invoice

ATTACHMENT 1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TRANSFERRING \$15,000 FROM BUILDING DEPARTMENT BUDGET LINE ITEM 300-613-9510-0000 (CONTINGENCIES) TO LINE ITEM 300-613-6020-0000 (CONTRACTUAL SERVICES) IN ORDER TO PAY THE CITY OF HAPPY VALLEY FOR INSPECTION SERVICES PERFORMED UNDER THE TERMS OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITIES.

WHEREAS, In February, 2007, the City of Milwaukie passed Resolution #5-2007 and entered into an Intergovernmental Agreement with the City of Happy Valley for shared inspection services; and

WHEREAS, The City of Happy Valley performed service for the City of Mikwaukie from May 2008 to January 1, 2010 and has presented an invoice to the City of Milwaukie in the amount of \$22,470; and

WHEREAS, The City of Milwaukie Building Department currently has only \$8,000 in its Contractual Services Line Item, but has \$63,790 in its Contingencies line item;

NOW, THEREFORE, BE IT RESOLVED that The City Council of the City of Milwaukie hereby transfers \$15,000 from the Building Department line item 300-613-9510-0000 (Contingencies) to line item 300-613-6020-0000 (Contractual Services) in order to pay the City of Happy Valley for inspection services performed under the terms of the Intergovernmental Agreement.

Introduced and adopted by the City Council on March 16, 2010.

This resolution is effective upon passage.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

EXHIBIT A

RESOLUTION NO. 5-2007

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
AUTHORIZING THE CITY MANAGER TO AMEND AN INTERGOVERNMENTAL
AGREEMENT WITH THE CITY OF HAPPY VALLEY FOR SHARED INSPECTION
SERVICES, ON AN AS-NEEDED BASIS.**

WHEREAS, the City of Milwaukie Building Department has a need for Inspection Services on an as-needed basis during staff vacation, sickness and training days; and

WHEREAS, the City of Happy Valley has qualified staff to perform these inspections; and

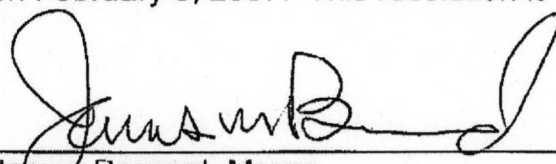
WHEREAS, the City of Happy Valley and the City of Milwaukie previously entered into an Intergovernmental Agreement for the sharing of Inspection Services on an as-needed basis, with payment to be "in-kind"; and

WHEREAS, the City of Milwaukie currently has a greater need for inspection services than the City of Happy Valley, causing the existing Agreement to require amendment.

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

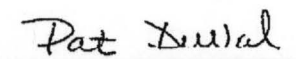
That the City Manager is authorized to amend the Intergovernmental Agreement with the City of Happy Valley, for the sharing of Inspection Services, on an as-needed basis.

Introduced and adopted by the City Council on February 6, 2007. This resolution is effective upon passage.


James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew, & Corrigan, LLP


Pat DuVal, City Recorder



City Attorney

EXHIBIT B
INVOICE
CITY OF HAPPY VALLEY

16000 SE Misty Drive
 Happy Valley, OR 97086
 503-783-3800 phone
 503-658-5174 fax

DATE: February 1, 2010

Bill To: City of Milwaukie Attn: Tom Larson Milwaukie, OR	For: Difference between Happy Valley and Milwaukie Inspection Hours for the time period May 08 - Jan 10 Per the IGA for Land Development and Building Inspection Services
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QTY	DESCRIPTION	UNIT PRICE	TOTAL
335	City of Happy Vally Inspection hours	70.00	23,450.00
(14)	Milwaukie Inspection hours	70.00	(980.00)
			-
			-
			-
TOTAL			22,470.00

Make all checks payable to:
Accounts Receivable, City of Happy Valley, 16000 SE Misty Dr, Happy Valley, OR 97086
 If you have any questions concerning this invoice, contact **Sheri Bartholomew 503-783-3800**

Please remit a copy of this invoice with your payment



To: Mayor and City Council
From: Pat DuVal, Interim City Manager
Subject: Personal Services Agreement for Wastewater Engineering Services
Date: February 22 for March 16, 2010 Regular Session

Action Requested

Adopt the resolution authorizing the Interim City Manager to sign a personal services agreement with Oakmont Engineering Services, LLC in an amount not to exceed \$35,000.

History of Prior Actions and Discussions

April 2009: The City Manager signs a personal services agreement with Oakmont Engineering, LLC in an amount not to exceed \$25,000. Oakmont was charged with the task of assisting in the development of the City's strategy to negotiate a new wastewater rate and associated issues related to the Kellogg Treatment Plant.

July 2009: The City Manager signs an amendment to the personal services agreement under the terms and conditions set forth in the original agreement not to exceed \$25,000.

January 2010: The City Manager signs an amendment to the personal services agreement under the terms and conditions set forth in the original agreement not to exceed \$25,000.

Background

Ted Kyle, PE, Oakmont Engineering, LLC owner, has been instrumental in assisting City Council and staff with the technical side of the discussions with Clackamas County Service District No. 1. The City and County have agreed to a process where mediation and possibly arbitration will be used in the coming months to establish new short term wastewater rates. As mediation nears with Clackamas County the City continues to need the services of a company with particular training, ability, knowledge, and experience possessed by this contractor.

City staff and the City Attorney find Oakmont Engineering, LLC is qualified and capable of performing the professional services the City requires and therefore requests that the City Council authorize the Interim City Manager to sign a personal services agreement. The proposed agreement would expire on June 30, 2010, and the compensation would not exceed \$35,000.

Concurrence

Based on experience and availability to meet the needs related to this assignment, it was the consensus of all those involved; including the City Attorney and Community Development and Public Works Director Kenny Asher, that Oakmont Engineering, LLC would be best qualified to provide the needed technical expertise.

Fiscal Impact

The compensation for the work provided through June 30, 2010 would not exceed \$35,000

Work Load Impacts

An effective and experienced member of the City of Milwaukie negotiating team will facilitate talks with Clackamas County. His level of technical expertise on the subject of wastewater is not available through City staff. The use of outside consulting services has and will allow City staff to focus on their work programs while mediation proceeds.

Attachments

1. Resolution
2. Personal Services Agreement Scope of Work

ATTACHMENT 1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE INTERIM CITY MANAGER TO SIGN A PERSONAL SERVICES AGREEMENT WITH OAKMONT ENGINEERING, LLC FOR WASTEWATER ENGINEERING SERVICES.

WHEREAS, the City of Milwaukie seeks technical engineering assistance in its work in securing a long-term wholesale wastewater treatment services agreement; and

WHEREAS, the City of Milwaukie is entering into mediation with Clackamas County regarding the provision and pricing of prior and future wastewater treatment service; and

WHEREAS, the City of Milwaukie initially contracted with Oakmont Engineering, LLC in April 2009 to assist with such matters; and

WHEREAS, the City continues to need the services of a company with the particular training, ability, knowledge, and experience possessed by Oakmont Engineering, LLC; and

WHEREAS, the City has determined that Oakmont Engineering is qualified and capable of performing the professional services the City requires;

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie authorizes the Interim City Manager to sign a personal services agreement with Oakmont Engineering, LLC for work provided through June 30, 2010 in an amount not to exceed \$35,000.

Introduced and adopted by the City Council on March 16, 2010.

This resolution is effective on March 16, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



ATTACHMENT 2

Contract # _____

PERSONAL SERVICES AGREEMENT WITH THE CITY OF MILWAUKIE, OR FOR WASTEWATER ENGINEERING

THIS AGREEMENT made and entered into this 16nd day of March 2010 by and between the City of Milwaukie, a municipal corporation of the State of Oregon, hereinafter called City, and Oakmont Engineering, LLC, hereinafter called Contractor.

RECITALS

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

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

THEREFORE the Parties agree as follows:

1. **SERVICES TO BE PROVIDED**

This agreement is a continuation of services provided by the Contractor under prior agreements. The Contractor is authorized to start work under this agreement when fee limit of the prior agreements has been reached.

Contractor agrees to complete work that is detailed in Exhibit A and by this reference made a part hereof. Contractor may have some contact with the public in the course of performing this contract and shall maintain good relations with the public. Failure to maintain good relations with the public shall constitute a breach of the contract. The City may treat the failure to maintain good relations as a non-curable breach allowing the City to terminate the contract and to disqualify Contractor from future work for the City.

2. **EFFECTIVE DATE AND DURATION**

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, by June 30, 2010. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. **COMPENSATION**

City agrees to pay Contractor not to exceed thirty-five thousand (\$35,000.00) for performance of those services described herein, which payment shall be based upon the following applicable terms:

- A. Payment by City to Contractor for performance of services under this Agreement includes all expenses incurred by Contractor, with the exception of expenses, if any identified in this Agreement as separately reimbursable.

ATTACHMENT 2

Contract # _____

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

H. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. OWNERSHIP OF WORK PRODUCT

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

5. ASSIGNMENT/DELEGATION

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

6. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR

Contractor certifies that:

A. Contractor acknowledges that for all purposes related to this Agreement, Contractor is and shall be deemed to be an independent contractor as defined by ORS 670.700 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of said finding.

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

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

Contractor and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or

more in the calendar year by any public employer participating in the Retirement System.

- C. Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- D. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. **INDEMNIFICATION**

City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor agrees that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a contractor's work by City shall not operate as a waiver or release.

As respects the operations of Contractor under this Agreement other than the performance of professional services, Contractor shall indemnify, hold harmless, and defend the City, its officers, agents, employees and volunteers from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees and other costs of defense, attributable to personal injury, bodily injury, including death, or property damage, including loss of use thereof, and arising out of or alleged to arise out of the negligence or willful misconduct of Contractor or anyone for whom Contractor is legally responsible, excepting only those claims, damages, liabilities, losses, and costs caused by the City's sole negligence or willful misconduct.

As respects the performance of professional services under this Agreement, Contractor shall indemnify and hold harmless the City, its officers, agents, employees and volunteers from and against liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees and other costs of defense, to the extent caused by the negligence or willful misconduct of Contractor or anyone for whom Contractor is legally responsible.

8. **INSURANCE**

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

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

- A. **Commercial General Liability Insurance**
Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily

ATTACHMENT 2

Contract # _____

Injury and Property Damage on an “occurrence” form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	2,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one fire)	50,000
Medical Expense (Any one person)	5,000

B. Commercial Automobile Insurance

Contractor shall also obtain, at contractor’s expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.

C. Workers’ Compensation Insurance

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers’ Compensation Law and shall comply with ORS 656.017, which requires them to provide workers’ compensation coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers’ compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer’s Liability Insurance with coverage limits of not less than \$500,000 each accident.

D. Professional Liability Insurance

Contractor shall also obtain, at Contractor’s expense, and keep in effect during the term of the contract, professional liability insurance. The limits of such professional liability coverage shall be \$1,000,000 per claim and in aggregate.

E. Additional Insured Provision

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City, its officers, directors, employees and volunteers as additional insureds with respect to this contract.

F. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage

provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days notice of cancellation to the City.

G. Insurance Carrier Rating

Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

H. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Contractor shall furnish a Certificate of Insurance to the City. No contract shall be affected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

Certificates of Insurance should read "Insurance certificate pertaining to contract for Wastewater Engineering. The City of Milwaukie, its officers, agents, employees and volunteers shall be added as additional insureds with respects to this contract. Insured coverage is "primary" in the description portion of certificate.

I. Independent Contractor Status

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

J. Primary Coverage Clarification

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

K. Cross-Liability Clause

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

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

Finance Office
City of Milwaukie
10722 SE Main St.

Business Phone: 503-786-7522
Business Fax: 503-786-7528

ATTACHMENT 2

Contract # _____

Milwaukie, Oregon 97222

Email Address: finance@ci.milwaukie.or.us

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

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

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

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

City	Contractor
City of Milwaukie	Company: Oakmont Engineering, LLC
Attn: Accounts Payable	Attn: Theodore S. Kyle, PE
10722 SE Main St., Milwaukie, Oregon 97222	Address: 2465 Randall Street, West Linn, OR 97068
Phone: 503-786-7524	Phone: 503.305.8832
Fax: 503-786-7528	Fax: 503.305.8831
Email Address: finance@ci.milwaukie.or.us	Email Address: ted.kyle@oakmontengineering.com

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

10. **MERGER**

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

11. **TERMINATION WITHOUT CAUSE**

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

12. **TERMINATION WITH CAUSE**

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

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

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

B. City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:

- 1) If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.
- 3) If Contractor fails to eliminate a conflict as described in Section 11 of this agreement.

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

If City terminates this Agreement under paragraph (b), Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall

be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

13. **ACCESS TO RECORDS**

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

14. **FORCE MAJEURE**

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disenabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

15. **NON-WAIVER**

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

16. **NON-DISCRIMINATION**

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

17. **ERRORS**

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

18. **EXTRA (CHANGES) WORK**

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

19. ATTORNEY'S FEES

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

20. GOVERNING LAW

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

21. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, ORS 279A.120, ORS 279B.020, ORS 279B.220, ORS 279B.225, ORS 279B.230, and ORS 279B.235, the provisions of which are hereby made a part of this agreement.

22. CONFLICT BETWEEN TERMS

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

23. AUDIT

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

24. SEVERABILITY

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

Agreement continued on next page. This portion of the page left blank intentionally.

25. COMPLETE AGREEMENT

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

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

CITY OF MILWAUKIE

CONTRACTOR

Signature

Signature

Pat DuVal, Interim City Manager
Printed Name & Title

Theodore. S. Kyle, Owner
Printed Name & Title

Date

Date

EXHIBIT A
SERVICES TO BE PROVIDED
WASTEWATER ENGINEERING

Purpose:

This engagement is intended to provide on-call wastewater engineering services to the City. Current wastewater issues include: the existing and proposed wholesale wastewater treatment agreement with Clackamas County Service District No. 1, the impact of the Kellogg Treatment Plant on the community, the long-term future of the Kellogg Treatment Plant, and the current wastewater partnership discussion. Other issues may arise during the course of this agreement.

The Contractor shall provide engineering services in support of the City's work in securing a wholesale wastewater treatment services agreement or other wastewater treatment service. The services shall be provided at the direction of the Interim City Manager. The Contractor shall assist the City Attorney in the preparation of technical information for the City Attorney's use in any legal proceeding or in its duties as City Attorney. The Contractor shall participate in a process to develop a concept for the Kellogg site and may engage subcontractors as needed for this work

Task 1: Negotiation Support Services

Analyze reports, letters, and proposals relating to wastewater treatment. Prepare letter, reports, and technical memoranda summarizing the analysis. The analysis can include, but is not limited to, wastewater treatment operating cost, cost allocations, historic investments, planned investment, facility flows and loads, and other factors relating to the City's cost obligations.

Task 2: Wastewater Facility Planning Services.

Assist the City, as directed by the Interim City Manager, to develop wastewater treatment options for the City. Options could include disconnecting from the Kellogg Treatment Plant and moving flow to another facility or service provider, concepts for eliminating the Kellogg Treatment Plant, concepts for making the Kellogg Treatment Plant an acceptable neighbor, or other ideas. Services beyond the fee limit will only be provided after the fee limit is adjusted to account for the additional work.

Task 3: Additional On-call Services

Oakmont Engineering agrees to provide additional services at the Interim City Manager's direction provided that these additional services in combination with services provided above can be accomplished within the fee limit of the Agreement. Services beyond the fee limit will only be provided after the fee limit is adjusted to account for the additional work.

Compensation:

Oakmont Engineering's fee is \$145.00 per hour of time for direct services. Expenses are bill at cost and include printing, copying, and reproduction costs incurred directly for the project. Sub-consultants costs will be billed at cost plus five percent.



To: Mayor Ferguson and Milwaukie City Council
Through: Pat DuVal, Acting City Manager
From: Bob Jordan, Chief of Police
Date: March 11, 2010
Subject: O.L.C.C. Application – Big Kahuna’s Bar – 11050 SE 21st Avenue

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Big Kahuna’s Bar – 11050 SE 21st Avenue.

Background:

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