

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
APRIL 6, 2010**

CALL TO ORDER

Mayor Ferguson called the 2075th 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 Tim Ramis, Operations Director Paul Shirey, Community Development and Public Works Director Kenny Asher, Engineering Director Gary Parkin, Operations Director Paul Shirey, Operations Supervisor Storm/Wastewater Ronelle Sears, Utility Worker II Storm/Wastewater Rob Livingstone, Resource Economic Development Specialist Alex Campbell, and Information Coordinator Grady Wheeler

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Clackamas Community College Report

Carlotta Collette, representative on the Clackamas Community College (CCC) Board of Education, provided a status report on the institution. Student Government President, Alisa Fava, was also present. Milwaukie had more students attending CCC than any other city in the Clackamas County School District. CCC had 37,000 students last year. In the current economic times, people were recognizing that community college was the most affordable transition from high school or unemployment to a job or to a higher education. Last year, CCC offered approximately \$13 million in student support which was an increase of 57% over the previous year. The Board was reaching out as hard as they could to make sure that finance was not a barrier to someone getting a better education. She reviewed the CCC Report via PowerPoint.

Ms. Fava shared her story of how she became associated with CCC and how her experiences there have transformed her life. She intends to transfer to Stanford University to get her bachelor's in philosophy. Upon receiving her MBA and PhD, she will return to CCC as a college administrator and continue to give back to her community.

Ms. Collette stated that one thing the CCC Board is most proud of is students like Ms. Fava who were tremendous leaders. Board President, Joanne Truesdell, who had not thought about going to college, let alone running a college, got her first degree at CCC. Ms. Collette felt going to CCC was more nurturing than going to the university and that community college was the most cost effective form of higher education available. Students who go through CCC programs did much better than students who went directly from high school to the university.

Councilor Loomis believed CCC was fulfilling a lot of the needs that existed in Milwaukie.

Councilor Barnes was grateful that CCC had the skills competition for all the area high schools every year. It was a great way for high school students in the region to see what

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CCC was like while competing there. She would like to see if CCC could get more work study kids or other programs where students could come to the City for on-the-job-training, internships or job shadowing with City employees. She also wanted to talk to the Board about the Harmony Road development. She believed a compromise had to exist because the neighborhoods had said very clearly that they did not want the expansion. She wanted to find a way to fulfill the needs of the community college without expanding Harmony Rd. Some trees were being marked for removal now and before that happened, she hoped Ms. Collette could help the City and CCC find a way to save those trees.

Ms. Collette responded that she had asked the County to mark all the trees that would have to be removed so the community could understand how many actual trees would have to come down, so that might be what was going on. People were saying that a certain percentage of trees would be removed but people did not even know what trees were being discussed. The Board had heard a lot of support for expanding the campus and doing the kinds of campus things the Board wanted. Many of the students were from Milwaukie, so most of the traffic would be coming from Milwaukie to the campus. A shuttle now existed between the Green Line Light Rail Station, the Oregon City campus and the Harmony campus. She recognized the concern and would be happy to continue to work on it.

Councilor Chaimov asked what opportunities existed for CCC on the Harmony campus with OIT's possible move to the Wilsonville site.

Ms. Collette responded CCC had not yet thought through exactly how OIT's possible move would be addressed, but it did open the opportunity for CCC to buy the OIT building. No decision had been made yet. CCC hated to see them leave because a great partnership existed with them. On the other hand, CCC also had a Wilsonville campus, so the partnership would continue. A lot of the Harmony vision planning, including having a sustainable campus was done with OIT.

Councilor Stone commented she was glad to know that a shuttle existed from the light rail station to the Oregon City and Harmony campuses. She asked if the shuttle was being used all the time or was CCC finding that less commuter traffic existed to the school by car because of the shuttle. Anything to minimize the impact on Harmony Rd was a good idea.

Ms. Collette replied the shuttle service just started on April 5, 2010 so no reports had been made yet.

Councilor Stone believed it would be a good idea to have another roundtable discussion about the proposal by the County to change the configuration of Harmony Rd because the neighborhoods were speaking out against it and wanted the trees to be saved.

Ms. Collette explained the changes to Harmony Rd were really not about the college. The college expansion was just one of many plans the County considered and it really was a County road project. CCC was partnering to the degree that they could, but they did not really have any veto power over the road. The County had heard everybody's concerns and had tried to scale the project back as much as they could. She was still trying to negotiate with the County and believed CCC still had some leverage.

Mayor Ferguson clarified that the shuttle was not stopping at the Harmony campus yet. He was hopeful the City would have some kind of transit connection between the Harmony campus and the Green Line because a gap in service existed.

Theresa Tuffli, CCC Dean, explained the college was still hoping for a full shuttle at the Harmony campus to take care of the entire neighborhood and surrounding businesses.

The shuttle was a separate initiative brought on by the County who wanted to get employees from the Green Line up to the Red Soils campus. The County received a grant and asked CCC to take part in the shuttle project for CCC's employees at the Oregon City campus. CCC was still hoping the shuttle would stop at the Harmony Campus and they were working with the TNA. She asked that Mayor Ferguson lend his support in promoting the shuttle.

Mayor Ferguson said he knew two-way communication existed between the City and the Harmony Rd campus, but he wanted to see more communication as far as what kinds of services were offered. He was familiar with the small business services provided, but was not fully aware of everything available until he took a tour of the Harmony campus. Many people with small businesses in Milwaukie could be served by what was offered on campus. He wanted the City of Milwaukie and the Harmony campus to be better connected.

Ms. Collette suggested putting a link on the City's and CCC's websites.

Ms. Tuffli suggested having a meeting with Council or an open house.

Mayor Ferguson stated the City recently put Milwaukie's vision for the Kellogg Treatment Plant on their website and believed it would be good for CCC to really get plugged into what was being done at the plant. An open house would occur on April 15, 2010 at the Masonic Lodge from 5:00 p.m. to 7:00 p.m. and maybe some people from CCC would like to attend to see what the City was doing and start some conversation.

Ms. Collette agreed that was a good idea. Mr. Asher briefed her on the plan and she noticed the college's logo was already on the draft. Her colleagues on the Metro Council were also intrigued by the plan. Although she preferred the original plan of getting rid of the plant, it was a great vision given that the plant had to stay.

Mayor Ferguson responded that it may be an even better vision because it provided an excellent opportunity for education right in an active treatment facility on the waterfront. It would bring people to Milwaukie and supported and encouraged higher education.

Ms. Collette stated she would see if someone from CCC could be at the open house because the college did have several wastewater programs that trained people for facilities like the Kellogg Treatment Plant.

Mayor Ferguson noted comments he made several months ago about sustainability education when Council had to review and raise the garbage collection rates in the City. He would like to see CCC students become involved with Ms. Herrigel and the garbage haulers to discuss sustainability practices that could be implemented within the city. This would have a direct benefit to both the students and residents.

Ms. Fava explained that last year the student government started a recycling program at the college. Every building now had recycling receptacles and members of student government collected and returned the cans and made sure students were aware that recycling was important. Sustainability seminars, which could be opened to the public, were held to help make sure all students were consciously aware of the impact they were making. She agreed that more could be done.

Proposed Stormwater Illicit Discharge Regulations

Paul Shirey said he would be grateful to find a student intern to help do the greenhouse gas inventory, which was very labor and data intensive. He intended to do some outreach along those lines.

Mr. Shirey provided the staff report along with **Ms. Sears** and **Mr. Livingston**, who appeared before Council to discuss a proposal to change the Code to address Elicit Discharges to the stormwater system. The Municipal Code currently lacked language

that allowed the City to readily enforce illegal dumping of non-stormwater into the storm system. Under the current Code, the burden of proof was so high that, in most cases, the City could not prosecute illegal dumping. This was in direct violation of the City's stormwater permit issued by the State. He reviewed the Clean Water Act and National Pollution Discharge Elimination System (NPDES), noting the means to regulate the stormwater system was called the Municipal Separate Storm Sewer System (MS4) permit. The permit stated the City must control, through ordinance or permit, pollutants contributed by industrial activities, illicit discharges to the municipal system and spills, dumping or disposal of materials to the system other than stormwater. The City has had a permit since the mid 90s and it was renewed about every 5 years. Currently, Staff was negotiating the next permit with other jurisdictions in the area. All past and current permits have required that the City control non-storm drainage that contributed pollution to receiving streams and that the City have an ordinance that provided for enforcement and penalties for failure to comply. The new permit would be even more stringent in that regard.

The City Code currently lacked sufficient specificity to allow staff to enforce for non-storm water dumping into the storm system. Staff's proposed language was borrowed heavily from the City of Gresham. The new language gave staff the authority to ensure the compliance with the permit in a number of ways including adding some needed definitions regarding the stormwater manager and street wash water. The new language defined the jurisdictional waters of the State within the City limits, defined non-stormwater discharges, stipulated what are permissible and prohibited stormwater discharges, created the authority to inspect and monitor suspected discharge violations and it increased the penalties from \$250 to \$500 per occurrence per day up to \$1,000.

He reviewed a list of non-stormwater discharges still permissible under the current MS4 permit that would still be permitted with Code amendments. The intent of enforcing this new and rather strict language was to work with residents and business owners and maintain compliance. The Code treated anything on private property that might contribute to polluted run-off as a potentially enforceable act. The City's intent was to work with homeowners and businesses to help address the more egregious pollution sources and to use enforcement and issue citations as a last resort.

The Code changes would provide the public and staff with more clarification on what was permitted and what was prohibited. Compliance also shielded the City from third party lawsuits which were people who wanted to see the State more strictly enforce the Clean Water Act. The penalties for non-compliance by the City were ten times those for individual violators. The changes would put Milwaukie's Code on par with all other cities in the region.

Councilor Stone stated she was glad to see that the City was going to get the Code to a point where people who were in violation of the Code could actually be prosecuted. She did have some questions about the two versions of the proposed Code amendments, the strikeout and the clean version. She noted that in the clean version, MMC Section 13.14.025(j)(5) stated Milwaukie would be adopting the City of Portland's Stormwater Management Manual, yet the staff report mentioned using the City of Gresham's language.

Mr. Livingston explained that language referred to the City of Portland's stormwater standards for what would be improvements such as retentions ponds, green streets, rain gardens, etc. That City of Portland manual has been adopted by many surrounding communities and would be adopted into the City of Milwaukie's Code.

Councilor Stone noted that some language was missing on page 8 of 11 of the clean version of the proposed Code amendments compared to the strikeout version in Item #3 and #5. She believed it should say, "Seek to comply with any applicable TMDLs," which

was missing from the clean version. Also, #5 stated, "All provisions of the federal law..." but the strikeout version stated, "*Comply with* all provisions of the federal law..." She also asked what "reasonable cause" and "reasonable times" meant on page 10 of 11 in the clean version under Inspection and Enforcement.

Mr. Ramis explained the reasonable cause provision required the City to have sufficient facts that it would be reasonable to conclude a violation existed. Reasonable times would probably be business hours. The terms would frequently be defined by courts.

Councilor Chaimov commented that when he was in charge of the office that drafted proposed legislation for the legislature, his office would have treasured having anyone read their work to Councilor Stone's level of scrutiny. He asked under what circumstances, if any, would these new regulations apply to the operations of a wastewater treatment facility.

Mr. Livingston replied that Oregon wastewater treatment plants were issued a 1200C industrial stormwater permit from the state of Oregon. The City was already under permit for any stormwater discharges that would emanate from the plant and that was through DEQ.

Councilor Chaimov commented that one way to read Section 13.14.105 was if a wastewater treatment facility were to be in violation of that permit that would make the treatment plant amenable to enforcement under the Code. He suggested staff or Mr. Ramis look to see if that was how the Code worked.

Mayor Ferguson stated that as a former swimming pool owner, he had moved from a chlorinated pool to a hydrogen peroxide pool. It would be helpful if Milwaukie residents understood the impact of pool chemicals on the stormwater system and learned how to de-chlorinate their pools and neutralize the chemicals before they pumped their pools. He would also like to promote the use of natural, biodegradable car washes.

Mr. Ramis noted the reference to Subsection 5 on page 11, Section 13.14.025(j)(5), which is the failure to operate in accordance with the adopted City of Portland Stormwater Management Manual, was a reasonable way to operate, but in describing it, the City needed to be aware that would be the manual in effect today. When the City of Portland amended that manual, the City of Milwaukie would not automatically get an amendment or ordinance. In order to make that clear to people in the future, Council might want to say, "Adopted by the City of Portland Stormwater Management Manual in effect on the date of this ordinance;" that way it would be flagged so if the manual were updated in the future, the City would know to return and do an amendment of the ordinance.

Mr. Shirey stated he would be before City Council on April 20, 2010 with an ordinance for adoption.

Earthquake and Tsunami Awareness Month

Mayor Ferguson read a proclamation designating April 2010 as Earthquake and Tsunami Awareness Month in the City of Milwaukie. He noted that a citizen group was working on an emergency preparedness plan for the City of Milwaukie to find places of refuge within the city.

CONSENT AGENDA

Councilor Barnes noted the map of the Linwood repaving project and asked if sufficient detours existed during the time of the paving because no way existed for people to get off Linwood Ave once on Linwood Ave. Information on the detours needed to be well publicized.

Mayor Ferguson noted Clackamas County was closing Linwood Ave between Johnson Creek Blvd and King Rd from April 12, 2010 through sometime in June 2010. He believed having Linwood Ave closed for that amount of time would be detrimental to the city.

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

A. Resolution 30-2010: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Execute a Contract for the Paving of Linwood Avenue in the Amount of \$244,723.31; and

B. Resolution 31-2010: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Sign a Contract with Northstar Associates LLC for the Construction of Phase 1 of the Decant Facility Project in the Amount of \$103,800.

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

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

A. Contract Approval for Phase 4 of the South Downtown Planning Project

Mr. Asher provided the staff report in which City Council was asked to adopt a resolution authorizing the City Manager Pro Tem to execute a contract not to exceed \$81,000 with Walker Macy for planning and urban design services for Phase 4 of the South Downtown Planning Project. The City has been talking about this project since November 2006 and staff had been engaged in actual planning with citizens and consultants over the last two years. He reviewed why this project was a high priority and why staff was working specifically in the South Downtown area, not on the whole of downtown with these comments:

- The South Downtown area had become an urgent and special area due to progress made on light rail and the light rail station that would be built there. It was very important that TriMet designed light rail to be compatible with the area. The vision adopted on the books today did not provide enough detail or consensus to actually give good guidance to TriMet. When the South Downtown planning process started, no light rail station existed. Development might follow construction of the light rail station and staff wanted that development to be neighborhood friendly and right for Milwaukie. If development did not come with light rail, staff needed to be actively inviting the right kind of new development by marketing the South Downtown area and being able to say what should happen in that area.
- Staff wanted to see a successful public plaza downtown, which had been a concept that went back to the Downtown Plan. Several designers confirmed that the south end of Main St could be transformed into a very successful public plaza if designed correctly.

- Staff also wanted people to experience Dogwood Park, a future Kellogg Creek walking path, Kronberg Park and Riverfront Park as one continuous system of green space.
- Staff wanted to create a special place downtown that did not feel overly commercialized, imposing or cheap in how it was developed. Sometimes real estate development without local influence could leave people feeling that way. The plan and the phases that have already been completed spoke very clearly about the desire that Milwaukie citizens have for a place that lifted human values above commercial values. That would not happen unless the City actively planned for it and tried to use whatever means available through regulations, incentives and the powers of the government to help make that happen.
- It was also important to support the vision of Main St as a retail-friendly street by creating an attractor at the south end that entices pedestrians to walk its full length. This would make the whole street more successful for businesses and more enjoyable for citizens and visitors.
- Staff wanted to avoid the construction of two, 65-ft tall, full block buildings south of Washington St, which was allowed in the current Downtown Plan. An upcoming phase would address that concern.
- The City wanted citizens to have a hand in guiding downtown Milwaukie's future through planning processes. More people need to live, work, shop, and spend money downtown, and the City needed to continually nurture downtown as a place for investment, first in new and invigorated buildings and then in businesses to inhabit those buildings, places for people to live, etc.

He explained that Phase 4 was important because it would do four things:

- Phase 4 would test the document's pattern language, which set staff up to do many things described. A lot of open ended questions, contradictions and potential conflicts existed in the document as well as patterns that would be nearly impossible to achieve. Those conflicts and patterns needed to be identified.
- Phase 4 would refine the armature diagram, which was a very evocative drawing and not too detailed. The diagram began to show the shape of the building parcels in the plaza, but did not do enough to actually direct staff what to do next. The armature and pattern language both talked about a network of streets, lanes, bikes and pedestrians over cars, but staff would not be able to rely on that alone to figure out what to allow and where to allow it. At the end of Phase 4, a concept drawing would exist that would be easier to understand for everyone involved.
- Phase 4 would engage more people in the community to participate in this phase than could be accommodated in the last phase.
- Phase 4 would set staff up for the next steps. Many code and zoning questions would arise from this project and discussions were needed on policies. Some policies may not be applied the same way for South Downtown as everywhere else.

Mr. Asher continued that Walker Macy was the firm selected to help staff through Phase 4 with support from LMN Architects in Seattle. Staff was very confident and comfortable that these were the right firms to help staff through Phase 4. The scope of work was attached and showed five to six months of planned work. The firms wanted to put together a small group of development advisors who have development experience,

tended to do things in a nontraditional way, and have pulled off projects that were not so market driven. The costs for the development advisors were not included in the contract and would be done under a separate contract directly with the City. Staff would not be subcontracting the advisors through Walker Macy.

The total cost of Phase 4 would be \$94,000, of which \$81,000 would go to Walker Macy. All the money had been appropriated by City Council in this year's budget and was available for this use. The project was difficult because it could not be completed quickly, but he believed it was important and urgent given how much coordination needed to happen in that part of town. The next phase would use a steering committee and include anyone from the Group of 9, who helped with the work that had already been done. Neighborhood representatives would also be included, as well as representatives from the Riverfront Board, Parks Board, Design and Landmarks Committee and the property owners.

Mayor Ferguson said he had heard requests from at least three City Councilors that a Council member should be appointed to the Steering Committee and that Council had a candidate lined up.

Mike Miller, 4206 SE Somewhere Dr, Milwaukie, stated he served on the Group of 9 Committee that worked with the Center for Environmental Structure (CES) on the South Downtown Plan. The plan was developed by CES with information gleaned from citizens through interviews asking the question, "What do you want to see your City look like, feel like and provide for you?" CES did this through a pattern language concept and even though it was very hard to grasp and difficult to explain, it served to put into pictures the abstract design that the citizens said they wanted. He wanted to express his appreciation to CES for all their work, adding he was sorry to see CES was no longer involved. He now feared the project would become just another transit-oriented development (TOD) surrounded with high-rise buildings. He hoped that that small town look and feel that the citizens said they wanted would be achieved.

He explained he was not there to prejudge Walker Macy. At Walker Macy's presentation before Council, they seemed sincere and willing to continue the work of CES and the Group of 9. He asked whose vision of the South Downtown was staff going to promote; the citizen's vision, CES's vision, Walker Macy's vision or staff's vision. He felt this question had to be answered in order to go forward with the South Downtown project.

Both the concurrence and physical impact of the staff report stated that concerns by a Group of 9 committee member delayed the project, putting it behind schedule. He was concerned about this because expressing concerns and posing questions was what the citizen process was all about. The Group of 9 worked long and hard putting together this plan and to place blame for delay of the project on a committee member was wrong. He hoped the point had not been reached in Milwaukie where citizen concerns and citizen input was not welcome. He hoped citizens had not reached the point where they did not speak when they did not like what was happening and just sat back to let others decide what was best for them. Everyone needed to work together to make this project successful.

Dave Aschenbrenner, 11505 SE Home Ave, Milwaukie, stated he was also a member of the Group of 9. He felt this project needed to move forward and the way to make South Downtown into what citizens wanted it to be was to continue to be involved. He was looking forward to sitting down with Walker Macy as soon as possible and start having discussions about where the Group of 9 vision was, where CES's pattern language fit into play and how that could be taken forward, especially with the issues of light rail and other things that were going on around the community. He encouraged Council and staff to continue forward with the project and to keep citizens and the Group of 9 involved.

Councilor Barnes agreed it was important to now bring in a Councilor to join in the discussion, especially because of the light rail situation. Phase 4 was called pattern language testing and refinement and for her, part of the problem was explaining what this was to the community. She wanted to see the language made clearer and things put into real terms so people would know what the City was doing in South Downtown.

She acknowledged that the Group of 9 worked hard and she would like to see fresh voices brought into the project, such as those interested in becoming business partners in the community. The City should reach out to the Milwaukie Chamber of Commerce to see if any active Chamber members were interested in being a voice for the business community. She did not believe staff had reached out enough to the North Main Village residents who live downtown on Main St. Some kind of tenant group should exist just for them and they should be contacted. She believed South Downtown was an area that would be shared by all of Milwaukie and voices were needed from outside the Historic Milwaukie area.

She would vote in favor of this because she now saw the need for new voices, and more input from Councilors, who have their own ideas. Then the City could determine priorities because a voice is also needed in the light rail planning stage to tie the project all together.

Councilor Loomis stated his budget concerns were answered. He felt what CES had done was remarkable in the sense of bringing in the community, which was kind of fractured, and different people together. He did not have confidence in the beginning that this project would occur in his lifetime, but he wanted to see something happen, especially to tie Riverfront Park and Kronberg Park all together. He was happy with the change and would vote in favor.

Councilor Chaimov considered this a vital project and a seed from which the rest of the downtown rejuvenation and restoration would grow. If nurtured well, this project would make the rest of downtown better.

Councilor Stone was concerned about how much money had been spent collectively on the downtown vision over the last several years. The staff report stated the cost would not exceed \$81,000, but she wondered if another bill would exist for a future phase and what the project's actual cost would be once completed. When she voted for CES, she did not think that another phase to the project would exist. The total cost was going to be \$170,000. The South Downtown project was being done because the City wanted to make sure something was available to present to TriMet that the City and citizens could live with the light rail coming. Her idea was to spend down the \$5 million commitment made to TriMet and use some of that money toward the South Downtown work. She knew the money was supposed to be for mitigation, but this project was not inexpensive and TriMet needed to partner with the City financially to get the project moving. She did not feel TOD money should be coming in and developing in the usual and customary fashion as things springing up along light rail lines. Everybody wanted something unique with a small town feel and that really defined Milwaukie.

Mr. Asher responded that the City had the most control when spending its own money. He agreed it did sound like a lot of money that had been expended over the last two or three years and more money would have to be expended in the future. It was difficult to spend money on anything right now, but if a longer view was taken, it would be a huge mistake not to give the City its best chance at attracting the kind of development that the City and citizens wanted to see. This could not be done by the City alone. Talented designers and development professionals were needed because they understood how to put land agreements together. Lawyers would be needed as well. The area needed to be planned out and rendered artistically in a way that people would understand it and then get excited about it. A new Code also needed to be created for the area. All these

things would cost money, but that was why the City had a Community Development Department, budget, Director and a planning budget. He knew the only way to get what the City and citizens wanted was to actually invest tens of thousands of dollars in the planning now so the City could get the millions of dollars of real investment back.

Mayor Ferguson asked when the decision needed to be made about who would be attending the Steering Committee from the Council.

Mr. Asher answered the decision could be made at any time. The first Steering Committee meeting would probably take place in early May 2010.

Mayor Ferguson said that the Council would choose someone tonight. He explained that he was disappointed to see CES leaving the project and expressed appreciation for the hard work CES had done. He agreed the armature needed a different name. As far as terminology for the pattern languages was concerned, it was important to keep that language but a definition was needed to explain what the pattern language was in a concise way. As the Steering Committee worked on the project, it would be important to keep that terminology so no one lost sight that the language is part of the guiding document. He also appreciated the citizen involvement piece in the Steering Committee and understood that staff would be looking for input. He believed the need for a transparent process was very important.

Councilor Chaimov referred to the staff report under physical impact. He sensed that staff had left off the letter 's' from the word "member" which may have given Mr. Miller the impression that staff was addressing a single member of the Group of 9 committee as being responsible for delays in the project. Based on the context of Mr. Asher's statement, he felt that sentence was intended to mean that staff was responding to the concerns of all of the committee members and that was what took some time.

Mr. Asher apologized to Mr. Miller if he felt singled out or that his concerns were being dismissed or diminished in any way. Most of the delay had to do with the lengthy consultant selection process. One committee member was very concerned about switching consultants and had contacted the consultant team that was not selected. At that point, the media became involved and quite a stir existed in the community about the project, switching consultants, etc. Staff was not trying to single anyone out for expressing concerns, but it was a statement of fact that the project was a little bit more behind due to several factors. It would be untruthful to state several members caused the delay because it was only one member that expressed that concern to him.

Mayor Ferguson stated he did not feel the project was behind. Maybe from staff's perspective the project was not where they wanted it to be, but he thought everything was happening in a way to ensure citizen concerns had been addressed as well as his own concerns. He had delayed the process himself because he wanted to have further discussion about the selection process.

Mr. Asher explained that overall the project was not behind schedule. He wanted to have a plan in place before TriMet had the final design which would occur in October 2010 and that could still be achieved. All of the \$81,000 would not be expended by June 30, 2010 and they were only behind in that context. Every effort would be made to have the Steering Committee meetings happen at 4:00 p.m. to enable staff members involved with the project to attend. Many are all engaged in other committees and projects that already meet up to three times a week in the evenings. He asked that Council consider the timing of the meetings when choosing a Council representative.

Following a brief discussion about work schedules, Council decided to get back to Mr. Asher with a decision on who would be the City Council representative on the Steering Committee.

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the resolution authorizing the City Manager to execute a contract for \$81,000 with Walker Macy for Phase 4 of the South Downtown Planning Project. Motion passed with the following vote: Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting "aye." [5:0]

RESOLUTION 32-2010:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR \$81,000 WITH WALKER MACY FOR PHASE FOUR OF THE SOUTH DOWNTOWN PLANNING PROJECT.

B. Board and Commission Appointments

Mayor Ferguson sought direction from Council about the appointment of JoAnne Bird to the Public Safety Advisory Committee, but asked to table the other two appointments until at least the next Council meeting to see if anyone else would apply for the Arts Committee and the Planning Commission. He wanted to continue with the appointment of JoAnne Bird because she had already been nominated by the Island Station Neighborhood Association. He was in favor appointing JoAnne Bird to the Public Safety Advisory Committee.

The City Council concurred.

C. Council Reports

Councilor Barnes reported the first community Wastewater Partnership Group meeting took place. The meeting was tense but short and Alice Norris was selected to chair. It was clear to her that from the representatives that were chosen and the brief discussion that took place that this is not a pro-Milwaukie group. The group would only be meeting once every two to three months.

Mayor Ferguson announced that Providence Milwaukie Hospital and the Milwaukie Police Department would be teaming up together for an event to allow citizens to anonymously drop off unneeded or expired prescription drugs for safe disposal. The event would take place on Saturday, April 10, 2010 from 10:00 a.m. to 3:00 p.m. at the Milwaukie Public Safety Building. He noted that disposing of drugs by throwing them down the toilet or sink was improper because of the very negative impact to the environment.

He announced that a new vision for the Kellogg Treatment Plant as well as an update on wastewater treatment rate negotiations and how the City charged for its utilities would be the focus at an open house set for Thursday, April 15, 2010 from 5:30 p.m. to 7:00 p.m. at the Masonic Lodge. The Council's goal had been to get this information out to the public and provide an opportunity for citizens to give feedback to the Council so they could continue their talks with Clackamas County and continue with the vision for the Kellogg Plant

He announced that a family event called the Campbell Community Fun Day would take place on Saturday, April 17, 2010 from 11:00 a.m. to 4:00 p.m. at Campbell Elementary.

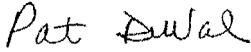
He noted the location of the Milwaukie monthly light rail meeting had been changed to the Public Safety Building. The next meeting would be Monday, April 19, 2010 at 6:00 p.m.

Following tonight's meeting, City Council would 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. The City Council would not be returning to regular session.

ADJOURNMENT

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

Mayor Ferguson adjourned the regular session at 8:37 p.m.



Pat DuVal, Recorder

REGULAR SESSION

REVISED
AGENDA

MILWAUKIE CITY COUNCIL
APRIL 6, 2010

MILWAUKIE CITY HALL
10722 SE Main Street

2075th MEETING

REGULAR SESSION – 7:00 p.m.

- | | Page # |
|---|---------------|
| 1. CALL TO ORDER
Pledge of Allegiance | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | 1 |
| A. Clackamas Community College Report
Presenter: Carlotta Collette | |
| B. Proposed Stormwater Illicit Discharge Regulations
Staff: Paul Shirey, Operations Director | 2 |
| C. Earthquake and Tsunami Awareness Month Proclamation | 31 |
| 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> | 32 |
| A. Contract Award for Linwood Avenue Paving – Resolution | 33 |
| B. Contract Award for Decant Facility – Resolution | 38 |
| 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 <i>(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.)</i> | |
| A. None Scheduled | |

- 6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)* **59**
 - A. **Contract Approval for Phase 4 of the South Downtown Planning Project – Resolution** **60**
Staff: Kenny Asher, Community Development and Public Works Director
 - B. **Board and Commission Appointments**
 - C. **Council Reports**

7. INFORMATION

8. ADJOURNMENT

Public Information

- **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.
- 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: Paul Shirey, Operations Director
Ronelle Sears, Stormwater Supervisor

Subject: Update of Stormwater Illicit Discharge Regulations

Date: March 29 for April 6, 2010 Regular Session

Action Requested

Seek Council input regarding proposed code modifications that would enhance municipal enforcement of illicit discharges into the City's stormwater systems.

History of Prior Actions and Discussions

None

Background

The National Pollution Discharge Elimination System (NPDES) is a federal law, enforced at the state level by the Oregon Department of Environmental Quality. Every public stormwater provider is required to obtain and implement a NPDES MS4 Stormwater Discharge Permit (Permit) along with an approved Stormwater Management Plan (SWMP) for their municipal storm sewer system. The purpose of the NPDES MS4 Permit is for the City to eliminate or minimize pollutants in its stormwater system and for the City to monitor its stormwater quality to ensure that control measures are effective. Milwaukie's first Permit was issued in 2005 and the City is currently negotiating with the state for a new five-year permit.

Compliance with the City's Permit and the SWMP includes periodically updating the Milwaukie Municipal Code (MMC) to include enhanced enforcement for any non-stormwater discharges into the City's storm sewer system and to take enforcement action against violators.

The City's municipal code does not currently provide adequate flexibility for effective enforcement of non-stormwater discharges that enter the storm sewer system. Reliance on the City's Nuisance Chapter (specifically MMC 8.04.070 D) is problematic for controlling illicit discharges because it requires proof that pollution of a waterway has already occurred.

Current code language requires that an illicit discharge enter the City's storm sewer system, flow through its entirety, discharge from an outfall into a water body, and reach a level of "pollution" in order for City staff to take any enforcement action. The proposed modifications to the existing code were modeled from the City of Gresham's adopted code language and will give City staff and the public the ability to deter non-stormwater discharges as they *enter* the storm sewer system. The proposed revised language will address General Discharge and Waste Disposal prohibitions giving City staff clear direction as to what is, and is not allowed into the storm sewer system. It spells out material or characterizations of materials that are illegal to introduce into the City's stormwater system.

Current code language:

Milwaukie's current code, as shown below, does not begin to address the requirements of the Permit in terms of taking steps to limit the introduction of pollutants into the stormwater system. The language broadly prohibits pollution of a water body and requires proof of pollution in order to prosecute violations.

MMC 8.04.070 Nuisances Affecting Public Health.

D. Water Pollution. Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial wastes or other substances placed in or near such water in a manner that will cause harmful material to pollute the water.

City of Milwaukie 2005 NPDES Permit, Schedule D, states:

Each co-permittee must maintain adequate legal authority, through ordinance(s), interagency agreement(s) or other means, to effectively implement and enforce the provisions of this permit. The legal authority must enable the co-permittee to:

- a) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity.
- b) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer.
- c) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water.

Each permittee is further required to comply with all conditions of its Permit. Failure to comply with any permit condition is a violation of the Clean Water Act and Oregon Revised Statutes (ORS) 468B.025, and 40 Code of Federal Regulations (CFR) Section 122.41(a), and grounds for an enforcement action. Failure to comply is also grounds for the Department to modify, revoke, or deny renewal of a permit. The state has the

authority to impose civil penalties up to \$10,000 per day for violation of a term, condition, or requirement of a permit.

Changes to City Code to comply with Permit

Milwaukie's current code language does not allow the City to enforce section (C) above unless the City can prove that pollution of a water body has taken place. The new code language would allow the City to take enforcement action for all illicit discharges in the City municipal stormwater sewer system.

- The new code section 13.14.025 clarifies the City's responsibility for compliance with the Permit. The new section defines procedures for the business/industry for accidental spill control and response. The new section addresses expectations for future development projects to comply with requirements under the City's new five-year permit, currently in negotiation. The section also adds language regarding illicit connections to the storm water system, remediation of illicit connections and the design and construction of detention and treatment facilities located on private property.
- New code section 13.14.020, clarifies the definition of "manager" of the stormwater system, defines Public Works Standards as adopted by the City and defines underground injection facility (dry wells). "Street wash water" is defined to include publicly funded street washing activities and the term "toxic substances" was clarified.
- Amendments to section 13.14.100 paragraph C were added to define the jurisdictional waters of the state within the City limits.
- New code section 13.14.105 defines non-stormwater discharges to the storm sewer system, and paragraph E of that section stipulates permissible and prohibited stormwater discharges.
- New code section 13.14.115 establishes the authority to inspect and monitor suspected discharge violations, as required by the Permit.
- Amendments to 13.14.120 increase the monetary penalty from \$25 - \$500 per day per occurrence to \$1,000 per day/occurrence in order to be more consistent with other City Municipal Codes.
- New code section 13.14.130 was added to protect the City's interest in the implementation of the Permit and enforcement of permit language.

Non-stormwater discharges that are permissible under the current MS4 permit that will continue to be allowed under City's new code language include:

- water line flushing
- landscape irrigation
- diverted stream flows
- rising groundwater
- uncontaminated groundwater infiltration (via dry wells) to the municipal separate storm sewer system
- uncontaminated pumped groundwater
- discharges from potable water sources
- foundation drains
- air conditioning condensation
- irrigation water
- natural springs
- water from crawl space pumps
- footing drains, lawn watering,
- individual residential car washing
- flows from riparian habitats and wetlands
- de-chlorinated swimming pool discharges
- street wash water, and
- flows from fire fighting.

All other discharges will be enforced upon.

Under Milwaukie's existing code, the City is not able to sanction violators who dumped material or who permitted contaminated materials to run off a site into City storm sewers. For example, recently a citizen watched as a company emptied tanks from a truck directly into the storm sewer system. When the City tried to enforce on the company, even with the testimony of the eye-witness, the citation was thrown out of court because the City could not prove that the discharge from the truck was a pollutant.

Under the new code regulations, enforcement actions can be taken by city code enforcement officials against violators such as the person above and fines and penalties can be levied for anyone caught dumping anything into City storm system, excepting the list of activities and materials above.

The goal of enforcement is to obtain and maintain compliance with applicable Federal and State statutes or administrative rules set forth by the Clean Water Act. Without suitable enforcement language the City is in violation of its NPDES MS4 Stormwater Discharge Permit, without the ability to protect public health, the environment, and livability of the community. City staff needs the ability to deter violations and apply appropriate and consistent enforcement measures where necessary.

Concurrence

The City Attorney has reviewed the proposed code language and finds no legal issues with adopting the new code and enhancing the existing code. The Economic Development Specialist has reviewed the proposed language and concurs with the changes to code. The Engineering Department concurs with the changes to the code. The Code Compliance Coordinator has reviewed and concurs with the new language.

Fiscal Impact

Unless the City amends its code, there is risk of being in violation of the MS4 permit and incurring penalties of up to \$10,000 per day per occurrence.

Work Load Impacts

The City's Code Enforcement officials will have the responsibility of enforcing the new code as it has under current code. It is likely that the new code will create additional work load for Code Enforcement including an increase in warnings and citations. Code Enforcement and Public Works will work together on a strategy to communicate the new code requirements to the community. Use of the city Web site, an article in the Pilot and possibly inserts to utility billings are some of the means to get the word out.

Alternatives

Approval of the proposed code amendments will ensure that the City remains in compliance with its MS4 NPDES Permit.

If Council does not approve the code amendments, enforcement of illicit dumping into the storm system will remain problematic and ineffective. The City will be in non-compliance with its MS4 NPDES Permit and subject to fines.

While Council may feel that further work is required before approving new Code in this connection, the risk of non-compliance will remain.

Attachments

1. Exhibit A - Strike out version of proposed code language
2. Exhibit B - Clean copy of proposed code language
3. Ordinance

EXHIBIT A
Proposed Code Amendments (Strikeout Version)

CHAPTER 13.14 STORMWATER MANAGEMENT

13.14.010 PURPOSE

The City finds and declares that absent effective maintenance, operation, regulation, and control, existing stormwater drainage conditions in all drainage basins and subbasins within the City constitute a potential hazard to the health, safety, and general welfare of the City. The City Council further finds that natural and manmade stormwater facilities and conveyances together constitute a stormwater system and that the effective regulation and control of stormwater can best be accomplished through formation, by the City, of a stormwater utility.

13.14.020 DEFINITIONS

“City” means the City of Milwaukie, a municipality, and its authorized employees.

“City Council” means the City Council of Milwaukie.

“Customer” means a person in whose name service is rendered as evidenced by the signature on the application/contract for stormwater, sanitary sewer, or water service or, in the absence of a signed instrument, by the receipt and payment of bills regularly issued in ~~his or her/her/its~~ their name.

“Developed” means an area which has been altered by grading or filling of the ground surface, or by construction of any improvement or other impervious surface area, which affects the hydraulic properties of the location.

“Equivalent service unit (ESU)” means a configuration of development or impervious surface estimated to contribute an amount of runoff to the City’s stormwater system which is approximately equal to that created by the average developed single-family residence within Milwaukie. One ESU is equal to two thousand seven hundred six (2,706) square feet of impervious surface area.

“Impervious surface” means that hard surface area which either prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions. Impervious surfaces may include, but are not limited to, rooftops, concrete, or asphalt paving, walkways, patios, driveways, parking lots, or storage areas, trafficked gravel, and oiled, macadam, or other surfaces which similarly impede the natural infiltration or runoff of stormwater.

“Improved premises” means any area which the Public Works Director determines has been altered such that the runoff from the site is greater than that which could historically have been expected. “Improved premises” do not include public roads under the jurisdiction of the City, County, State or federal government.

“Manager” means the City Manager or his/her designee to manage the City stormwater management system.

“One- or two-family residential” means an area which is improved with one (1) or two (2) attached single-family dwelling units for occupancy each by a single family or a similar group of people, provided each dwelling has a separate billing within the City’s utility billing system.

“On-site mitigation control system” means a stormwater drainage facility which the Public Works Director has determined prevents the discharge, or substantially reduces the discharge, of stormwater, or nonpoint source pollution into a receiving water or public stormwater system facility.

“Person responsible” means the occupant, lessee, tenant, contract purchaser, owner, agent, or other person having possession of property, or if no person is in possession, then the person in control of the use of the property, or in control of the supervision of development on the property.

“Public Works Standards” means the City of Milwaukie Public Works Standards and the referenced City of Portland Stormwater Management Manual that the City requires be complied with for the design and construction of on-site mitigation facilities including stormwater detention, retention, and water quality treatment facilities.

“Stormwater” means water from precipitation, surface or subterranean water from any source, drainage, and nonseptic wastewater.

“Stormwater system” means any structure or configuration of ground that is used or by its location becomes a place where stormwater flows or is accumulated, including but not limited to pipes, sewers, curbs, gutters, manholes, catch basins, ponds, creeks, underground injection control (UIC) facilities, open drainageways, and their appurtenances. “Stormwater system” does not include the Willamette River.

“Stormwater service” means the operations of the City’s stormwater utility in providing programs and facilities for maintaining, improving, regulating, collecting, and managing stormwater quantity and quality within the City’s service area.

“Street wash water” means water that originates from publicly financed street cleaning activities consistent with the City’s National Pollutant Discharge Elimination System (NPDES) municipal stormwater permit.

“Toxic Substances” means any chemical listed as toxic under Section 307(a)(1) of the federal Clean Water Act (CWA) or Section 313 of Title III of Superfund Amendments and Reauthorization Act (SARA).

“Undeveloped” means any area which has not been altered by grading or filling of the ground surface, or by construction of any improvements or other impervious surface area, which affects the hydraulic properties of the location.

13.14.025 REGULATIONS AND REQUIREMENTS

A. Compliance with Industrial NPDES Stormwater Permits

Any industrial discharger, discharger associated with construction activity, or other discharger subject to any NPDES permit issued by the Oregon DEQ, from which pollutants may enter the public or private stormwater system, shall comply with all provisions of such permits, including notification to and cooperation with local entities as required by federal regulations. Proof of compliance with said permits may be required in a form acceptable to the manager of the City stormwater management system prior to issuance of any grading, building, or occupancy permits or business license.

B. Compliance with State, Local, and Federal Regulations

All users of the public stormwater system, and any person or entity whose actions may affect the system, shall comply with all applicable federal, State, and local laws.

Compliance with the requirements of this chapter shall in no way substitute for, or eliminate the necessity for compliance with, applicable federal, State, and local laws.

C. Conflicts with Existing and Future Regulatory Requirements of Other Agencies

Any provisions or limitations of this chapter, and any rules adopted pursuant hereto, are superseded and supplemented by any applicable federal, State, or local requirements existing or adopted subsequent hereto which are more stringent than the provisions and limitations contained herein. Any provision of this chapter and rules adopted pursuant hereto which are more stringent than any such applicable federal, State, or local requirement shall prevail and shall be the standard for compliance by the connectors to and the discharges to the public stormwater system.

D. Accidental Spill Prevention and Control

Dischargers who are not required to obtain an NPDES permit; but who handle, store, or use hazardous or toxic substances or discharges prohibited under Subsection 13.14.105.E General Discharge Prohibitions on their sites; shall prepare and submit to the manager, at the manager's request, an Accidental Spill Prevention Plan within 60 days of notification by the City. If other laws or regulations require an Accidental Spill Prevention and Control Plan, a plan that meets the requirement of those other laws and regulations will satisfy the requirement of this section.

E. Notification of Spills

As soon as any person in charge of a facility, or responsible for emergency response for a facility, becomes aware of any suspected, confirmed, or unconfirmed release of material, pollutants, or waste creating a risk of discharge to the public stormwater system, such persons shall:

1. Begin containment procedures.
2. Notify proper emergency personnel in case of an emergency.
3. Notify appropriate City and/or State officials regarding the nature of spill.
4. Follow up with the City regarding compliance and modified practices to minimize future spills, as appropriate.

The notification requirements of this section are in addition to any other notification requirements set forth in federal, State, or local regulations and laws. The notification requirements do not relieve the person of necessary remediation.

F. Requirement to Eliminate Illicit Connections

1. The manager may require by written notice that a person responsible for an illicit connection to the public stormwater system comply with the requirements of this chapter to eliminate the illicit connection or secure approval for the connection by a specified date.
2. If, subsequent to eliminating a connection found to be in violation of the chapter, the responsible person can demonstrate that an illicit discharge will no longer occur, that person may request approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense.

G. Requirement to Remediate

Whenever the manager finds that a discharge of pollutants is taking place, or has taken place, which will result in, or has resulted in, pollution of stormwater or the public stormwater system, the manager may require by written notice to the responsible person that the pollution be remediated and the affected property restored, to the standards established by the manager, within a specified time.

H. Requirement to Monitor and Analyze

Whenever the manager determines that any person is engaged in any activity, and/or owns or operates any facility, which may cause or contribute to stormwater pollution or illicit discharges to the public stormwater system, the manager may, by written notice, order that such person undertake such monitoring activities and/or analyses, and furnish such reports, as the manager may deem necessary to demonstrate compliance with this chapter. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator; including costs of these activities, analyses, and reports; shall bear a reasonable relationship to the need for the monitoring, analyses, and/or reports and the benefits to be obtained. The recipient of such order shall undertake and provide the monitoring, analyses, and/or reports within the time frames set forth in the order.

I. Stormwater Treatment

The quality of stormwater leaving the site after development shall be equal to or better than the quality of stormwater leaving the site before development, based on the following criteria:

1. On-site mitigation facilities for water quality required for development shall be designed, installed, and maintained in accordance with the Public Works Standards.
2. Land use activities of particular concern as pollution sources shall implement additional Best Management Practices for pollution control including, but not limited to, those management practices specified in the Public Works Standards.
3. Development in a watershed that drains to streams with established Total Maximum Daily Load (TMDL) limitations; as provided under the CWA, Oregon Law, Administrative Rules, and other legal mechanisms; shall assure that on-site mitigation facilities for water quality control meet the requirements for pollutants of concern.

J. Design and Performance Criteria for Stormwater Detention and Water Quality Treatment Facilities Constructed on Private Property

1. All on-site mitigation facilities; including stormwater detention, retention, and water quality treatment facilities required by the City; shall be designed and constructed to meet the Public Works Standards.
2. Except as permitted by the Engineering Director, as provided by the Public Works Standards, on-site mitigation facilities shall be located on private property and shall not be located on property that will become a public right-of-way, public stormwater easement, or future street plan.
3. Except as permitted by the manager, as provided by the Public Works Standards, once constructed, the on-site mitigation facilities shall be privately owned, operated, and maintained. Maintenance responsibility shall include all elements of the stormwater detention and water quality treatment system up to the point of connection with a drainage structure or waterway of the public stormwater system. Such connection shall be subject to City approval.

4. Maintenance as required by the Public Works Standards shall be specified in an operation and maintenance plan submitted to and approved by the manager prior to issuance of a Notice to Proceed with public improvements. Prior to the time of project acceptance, the developer or applicant shall enter into an agreement with the City to ensure the implementation of the operation and maintenance plan, and a memorandum of agreement shall be recorded with Clackamas County. Private stormwater detention and water quality treatment facilities are subject to periodic inspection by the City to ensure proper maintenance and performance.
5. Failure to properly operate or maintain on-site mitigation facilities for stormwater detention, retention, and water quality treatment according to the operation and maintenance plan of the adopted City of Portland Stormwater Management Manual is a violation.

13.14.030 REQUEST FOR SERVICE, INITIATION OF BILLING

A request for water service constitutes a request for stormwater service and will initiate appropriate billing for stormwater services as established in this chapter. If development of a parcel does not require initiating water service, the creation of an improved premises from which stormwater may be discharged into the public stormwater system shall constitute a request for service and initiate the obligation to pay the fees and charges authorized in this chapter.

13.14.040 CHARGES FOR STORMWATER SERVICE

- A. Except as the charges may be reduced under Subsection 19.13.040.C, the obligation to pay stormwater service charges arises whenever there is a request for stormwater service for an improved premises. Unless another person responsible has agreed in writing to pay and a copy of that writing is filed with the City, the person receiving the City's water utility charge bill shall pay the stormwater charges as set by City Council resolution. If there is no water service to the property or if water service is discontinued and the property is an improved premises, the stormwater charges shall be paid by the person responsible for the property. The person required to pay the charge is hereafter referred to as the "customer."
- B. The City Council may by resolution establish fees and charges necessary to provide and operate a stormwater system and service.
- C. Upon completion of the on-site mitigation credit application package available from the City's Public Works Department, a customer of the utility may request a reduction of the stormwater service charge. The service charge will be reduced in relation to the customer's ability to demonstrate that on-site stormwater facilities meet or exceed the City's standards for stormwater quantity and quality control at that site.

Any reduction given shall continue until the condition of the property is changed or until the Public Works Director determines the property no longer qualifies for the credit given. Upon change in the condition of the property, another application may be made by a person responsible.

- D. Service charge avoidance may be requested through the application package available from the Public Works Department. The criteria for waiver of the service charge as it applies to a specific customer includes total retention of stormwater with no effective discharge to the City's stormwater system; the petitioner's ability to demonstrate through hydrologic/hydraulic analysis that the site receives no stormwater service from the City's stormwater system; and proof that stormwater facilities are constructed and maintained to City standards.

- E. For the purposes of this chapter, dry wells are not an on-site mitigation control system eligible for service charge reduction or service charge avoidance because of the potential water quality impact that dry wells may have on the City's groundwater resources.

13.14.050 STORMWATER CHARGES—BILLING

- A. Charges for stormwater service supplied by the City to any customer shall be charged for and billed to each such customer in accordance with rates established by the City Council. Prior to the establishment of stormwater service fees and charges by the City Council, the Milwaukie Citizens Utility Advisory ~~Committee~~ Board shall prepare and deliver a report and recommendation on rates to the City Council. ~~The Committee shall prepare and deliver its recommendation to City Council on an annual basis, according to the rules established by City Council. Stormwater service fees and charges as established by the City Council shall be added to and made a part of the billings for water and sewer service.~~
- B. The customer shall be responsible for all stormwater service fees and charges, except as allowed by Section 13.14.040. The City may require deposits prior to providing stormwater service or in lieu of a deposit, obtain a signed agreement from the property owner, whether the customer or not, that they will be ultimately liable for the charges and that the City may use a lien as one method to secure payment if the charges are not paid. However, the City may not require a property owner to sign such an agreement.
- ~~C. Billings May be Prorated~~
- C. Billings may be prorated. The proration shall be a daily rate determined by dividing the annual minimum billing by three hundred sixty-five (365) days times the number of days of occupancy from last meter reading and/or billing date.
- D. A reduced stormwater service charge may be charged for customers who qualify as low income utility customers under the provisions of Chapter 13.20 of this code.
- E. All money collected through stormwater fees and charges shall be deposited in the stormwater utility account as established and maintained by the City's Finance Director.

13.14.060 STORMWATER CHARGES—WHEN DELINQUENT

- A. The City shall prepare and mail billings for stormwater fees and charges on the last business day of each month. Payment is due on the 15th of the month following the billing date. Accounts are delinquent if the City does not receive full payment by 5:00 p.m. on the last business day of the month immediately following the billing date.
- B. A delinquent fee, in an amount established by resolution of the City Council, shall be added to all delinquent accounts.
- C. The Finance Director (or designee) is authorized to determine what constitutes a de minimis account balance and to waive the penalties in ~~subsections B and D of this section~~ Subsections 13.14.060.B and D in de minimis or extenuating circumstances.
- D. In addition to other lawful remedies, the Finance Director may enforce the collection of charges authorized by this chapter by withholding delivery of water to any premises where the stormwater service fees and charges are delinquent or unpaid, following the procedures and standards for shutting off water service for nonpayment of water bills as provided in Chapter 13.04. However, the Finance Director shall not deny or shut off water service to any subsequent tenant based upon an unpaid claim for services furnished to a previous tenant who has vacated the premises.

13.14.070 DELINQUENT CHARGES—LIEN

If the property owner elects pursuant to Subsection 13.14.050.B to authorize the use of a lien on real property to secure stormwater charge payment in lieu of a security deposit, all stormwater charges shall be a lien against the premises served from and after the date of billing and entry on the ledger or other records of the City pertaining to its municipal stormwater system, and such ledger record or other record shall be made accessible for inspection by anyone interested in ascertaining the amount of such charges against the property. Whenever a bill for stormwater service remains unpaid sixty (60) days after it has been rendered, the lien thereby created may be foreclosed in the manner provided for by ORS 223.610 or in any other manner provided by law or City ordinance.

13.14.080 APPEAL

Any customer aggrieved by any decision made with regard to the customer's account or a decision on charge reduction or avoidance may appeal to the ~~City Manager or Manager's designee~~ manager by filing with the City a written request for review no later than ten (10) days after receiving the decision. The ~~City Manager's or designee's~~ manager's decision shall be subject to review by the City Council upon filing of an appeal within fifteen (15) days of the notice of decision.

13.14.090 RIGHT OF ACCESS

Employees of the City shall be provided access during regular business hours to all parts of the premises which include portions of the City's stormwater drainage system for the purpose of inspecting the condition of the pipes and fixtures and the manner in which the system is used. Should there be no one available on the premises, notice will be provided to the owner, tenant, occupant, or their agent that arrangements must be made to allow the inspection.

13.14.100 TAMPERING WITH SYSTEM

- A. No unauthorized person shall damage, destroy, uncover, deface, or tamper with any conduit, structure, appurtenance, or equipment which is a part of the stormwater system.
- B. The ~~City Manager or Manager's designee~~ manager may adopt such rules and regulations as are necessary to protect the stormwater system and the public health, safety, and welfare. Violation of said rules or regulations ~~are~~ is deemed a violation of this chapter and shall be punished accordingly.
- C. Portions of Johnson Creek, Kellogg Creek, and their natural tributaries are within the boundaries of the city and are considered waters of the United States pursuant to the CWA. In order to protect the waters the City has a comprehensive enforcement program to comply with:
 1. The 1987 Amendments to the CWA, as implemented by the Environmental Protection Agency (EPA) NPDES regulations adopted November 16, 1990, make necessary the adoption of plans and programs for stormwater management meeting specified criteria.
 2. Section 402(p) of the CWA (33 U.S.C. 1251 et seq.), as amended by the Water Quality Act of 1987, requires that municipalities must:
 - a. Prohibit nonstormwater discharge into the public stormwater system; and
 - b. Require controls to reduce the discharge of pollutants from stormwater to the maximum extent practicable.

3. Seek to comply with any applicable TMDLs. Section 303(d) of the CWA requires states and the EPA to identify certain substandard waters and to set "total maximum daily loads" (TMDLs). The Oregon Department of Environmental Quality has and will continue to establish TMDLs for some water bodies within the city. The City seeks to comply with all TMDL requirements.
4. Comply with the requirements of the Endangered Species Act (ESA) and associated 4(d) rules covering protection of West Coast salmon and steelhead.
5. Comply with all provisions of the federal law by implementing a stormwater management plan, in conjunction with other co-permittees.
6. Seek to comply with all provisions of the Safe Drinking Water Act and Divisions 40 and 44 of Chapter 340 of the Oregon Administrative Rules pertaining to UIC facilities.

13.14.105 DISCHARGE REGULATIONS

A. Discharge of Pollutants

The commencement, conduct, or continuance of any nonstormwater discharge to the public stormwater system is prohibited and is a violation of this chapter, except as described below.

1. The prohibition shall not apply to any nonstormwater discharge permitted or approved under an Industrial or Municipal NPDES permit, waiver, or discharge order issued to the discharger and administered by the DEQ, provided that the discharger is in full compliance with all requirements of the permit, waiver, or discharge order and other applicable laws or regulations and provided that written approval has been granted by the City for any discharge to the municipal separate storm wastewater system (MS4).
2. Except as provided in Subsection 13.14.105.A.3, the prohibition shall not apply to the following nonstormwater discharges to the public stormwater system: municipal water line flushing, landscape irrigation, diverted stream flows, rising groundwater, uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)) to the municipal separate storm sewer system (MS4), uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and flows from fire fighting activities.
3. The manager may require best management practices to reduce pollutants, or may prohibit a specific discharger from engaging in a specific activity identified in Subsection 13.14.105.A.2, if at any time the manager determines that the discharge is, was, or will be a significant source of pollution.

B. Discharge in Violation of Permit

Any discharge that would result in or contribute to a violation of an existing or future Municipal NPDES Permit and any amendments, revisions, or reissuance thereof, either separately considered or when combined with other discharges, is a violation of this chapter and is prohibited. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge, and such persons shall defend, indemnify, and hold harmless the City in any administrative or judicial enforcement action against the permit holder relating to such discharge.

C. Illicit Connections and Illicit Discharges

It is prohibited to establish, use, maintain, or continue illicit connections to the public stormwater system, or to commence or continue any illicit discharges to the public stormwater system.

D. Waste Disposal Prohibitions

1. No person may throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, catch basin, inlet, or other component of the public stormwater system, materials that may cause or contribute to pollution, including but not limited to any refuse, rubbish, garbage, litter, yard debris, landscape materials, compost, topsoil, bark, gravel, sand, dirt, sod, sediment or sediment-laden runoff from construction or landscaping activities, hazardous materials, or other discarded or abandoned objects, articles, and accumulations.
2. Runoff from commercial or industrial operations or businesses that wash or detail vehicles, engines, transmissions, equipment, interior floors, or parking lots, shall not discharge directly to a private or public stormwater system; this includes but is not limited to outdoor commercial, industrial, or business activities that create airborne particulate matter, process by-products or wastes, hazardous materials or fluids from stored vehicles, where runoff from these activities discharges directly or indirectly to a private or public stormwater system.

E. General Discharge Prohibitions

1. Discharge to Public Storm Sewer System

It is unlawful to discharge or cause to be discharged directly or indirectly into the public stormwater system any of the following:

- a. Any discharge having a visible sheen, or containing floating solids or discoloration (including but not limited to dyes and inks).
- b. Any discharge having a pH of less than 6.5 or greater than 8.5 or that contains toxic substances.
- c. Any discharge which causes or may cause damage, interference, nuisance, or hazard to the public stormwater system or the City personnel.
- d. Any discharge containing human sanitary waste or animal feces.

13.14.110 COMPLIANCE REQUIRED

The provisions of this chapter must be strictly complied with in every instance, and service must be paid for by all premises supplied, according to the rates established by the City Council. Exceptions to these provisions shall be made only upon the written authorization of the ~~City Manager or the manager's designee~~ manager.

13.14.115 INSPECTION AND ENFORCEMENT

A. Authority to Inspect

1. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the manager has reasonable cause to believe that there exists in any building or upon any premises any condition which may constitute a violation of the provisions of this chapter, the manager may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the manager by this chapter; provided that (i) if such building or premises is occupied, he or she first shall present proper credentials and request entry; and (ii) if such building or premises is unoccupied, he or she first shall make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.
2. The property owner or occupant has the right to refuse entry but, in the event such entry is refused, the manager is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry and performing such inspection.
3. As used in this section, inspection includes, but is not limited to, the physical inspection of a facility, and the review and copying of records relating to compliance with Sections 13.14.025 to 13.14.130.

B. Authority to Sample, Establish Sampling Devices, and Test

With the consent of the owner or occupant, or with court consent, the manager may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the manager may take any samples deemed necessary to aid in the pursuit of the inquiry or to record the on-site activities.

C. Continuing Violation

Unless otherwise provided, a person shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued, or permitted by the person.

D. Concealment

Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation of the chapter.

E. Acts Resulting in Violation of Federal Law

Any person who violates any provision of this chapter, or any provision of any stormwater-related permit issued by DEQ, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the CWA, Safe Drinking Water Act, or the ESA and may be subject to the sanctions of these Acts including civil and criminal penalties.

F. Violations Deemed a Nuisance

Any condition caused or permitted to exist in violation of any provision of this chapter is a threat to public health and safety. Any such condition is unlawful and constitutes a nuisance. In addition to any other remedies, the manager may enforce this chapter by compliance order, stop work order, abatement proceedings, or civil action as provided in MMC 08.04.070, or as otherwise authorized by law.

13.14.120 VIOLATION—PENALTY

Any person, firm, or corporation violating any provisions of this chapter shall be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00) for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. Violation of any provision of this chapter by any person, firm, or corporation is punishable by a fine of not more than \$1,000. Each day on which a violation occurs or continues is a separate offense.

13.14.130 DISCLAIMER OF LIABILITY

The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering, and other relevant technical considerations. The standards set forth herein are minimum standards and the chapter does not imply that compliance will insure that there will be no unauthorized discharge of pollutants into the public stormwater system. This chapter shall not create liability on the part of the City, or any agent or employee thereof, for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

EXHIBIT B
Proposed Code Amendments (Clean Version)

CHAPTER 13.14 STORMWATER MANAGEMENT

13.14.010 PURPOSE

The City finds and declares that absent effective maintenance, operation, regulation, and control, existing stormwater drainage conditions in all drainage basins and subbasins within the City constitute a potential hazard to the health, safety, and general welfare of the City. The City Council further finds that natural and manmade stormwater facilities and conveyances together constitute a stormwater system and that the effective regulation and control of stormwater can best be accomplished through formation, by the City, of a stormwater utility.

13.14.020 DEFINITIONS

“City” means the City of Milwaukie, a municipality, and its authorized employees.

“City Council” means the City Council of Milwaukie.

“Customer” means a person in whose name service is rendered as evidenced by the signature on the application/contract for stormwater, sanitary sewer, or water service or, in the absence of a signed instrument, by the receipt and payment of bills regularly issued in their name.

“Developed” means an area which has been altered by grading or filling of the ground surface, or by construction of any improvement or other impervious surface area, which affects the hydraulic properties of the location.

“Equivalent service unit (ESU)” means a configuration of development or impervious surface estimated to contribute an amount of runoff to the City’s stormwater system which is approximately equal to that created by the average developed single-family residence within Milwaukie. One ESU is equal to two thousand seven hundred six (2,706) square feet of impervious surface area.

“Impervious surface” means that hard surface area which either prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions. Impervious surfaces may include, but are not limited to, rooftops, concrete, or asphalt paving, walkways, patios, driveways, parking lots, or storage areas, trafficked gravel, and oiled, macadam, or other surfaces which similarly impede the natural infiltration or runoff of stormwater.

“Improved premises” means any area which the Public Works Director determines has been altered such that the runoff from the site is greater than that which could historically have been expected. “Improved premises” do not include public roads under the jurisdiction of the City, County, State or federal government.

“Manager” means the City Manager or designee of the City stormwater management system.

“One- or two-family residential” means an area which is improved with one (1) or two (2) attached single-family dwelling units for occupancy each by a single family or a similar group of people, provided each dwelling has a separate billing within the City’s utility billing system.

“On-site mitigation control system” means a stormwater drainage facility which the Public Works Director has determined prevents the discharge, or substantially reduces the discharge, of stormwater or nonpoint source pollution into a receiving water or public stormwater system facility.

“Person responsible” means the occupant, lessee, tenant, contract purchaser, owner, agent, or other person having possession of property, or if no person is in possession, then the person in control of the use of the property, or in control of the supervision of development on the property.

“Public Works Standards” means the City of Milwaukie Public Works Standards and the referenced City of Portland Stormwater Management Manual that the City requires be complied with for the design and construction of on-site mitigation facilities including stormwater detention, retention, and water quality treatment facilities.

“Stormwater” means water from precipitation, surface or subterranean water from any source, drainage, and nonseptic wastewater.

“Stormwater system” means any structure or configuration of ground that is used or by its location becomes a place where stormwater flows or is accumulated, including but not limited to pipes, sewers, curbs, gutters, manholes, catch basins, ponds, creeks, underground injection control (UIC) facilities, open drainageways, and their appurtenances. “Stormwater system” does not include the Willamette River.

“Stormwater service” means the operations of the City’s stormwater utility in providing programs and facilities for maintaining, improving, regulating, collecting, and managing stormwater quantity and quality within the City’s service area.

“Street wash water” means water that originates from publicly financed street cleaning activities consistent with the City’s National Pollutant Discharge Elimination System (NPDES) municipal stormwater permit.

“Toxic Substances” means any chemical listed as toxic under Section 307(a)(1) of the federal Clean Water Act (CWA) or Section 313 of Title III of SARA.

“Undeveloped” means any area which has not been altered by grading or filling of the ground surface, or by construction of any improvements or other impervious surface area, which affects the hydraulic properties of the location.

13.14.025 REGULATIONS AND REQUIREMENTS

A. Compliance with Industrial NPDES Stormwater Permits

Any industrial discharger, discharger associated with construction activity, or other discharger subject to any NPDES permit issued by the Oregon DEQ, from which pollutants may enter the public or private stormwater system, shall comply with all provisions of such permits, including notification to and cooperation with local entities as required by federal regulations. Proof of compliance with said permits may be required in a form acceptable to the manager of the City stormwater management system prior to issuance of any grading, building, or occupancy permits or business license.

B. Compliance with State, Local, and federal Regulations

All users of the public stormwater system, and any person or entity whose actions may affect the system, shall comply with all applicable federal, State, and local laws. Compliance with the requirements of this chapter shall in no way substitute for, or eliminate the necessity for compliance with, applicable federal, State, and local laws.

C. Conflicts with Existing and Future Regulatory Requirements of Other Agencies

Any provisions or limitations of this chapter, and any rules adopted pursuant hereto, are superseded and supplemented by any applicable federal, State, or local requirements existing or adopted subsequent hereto which are more stringent than the provisions and limitations contained herein. Any provision of this chapter and rules adopted pursuant hereto which are more stringent than any such applicable federal, State, or local requirement shall prevail and shall be the standard for compliance by the connectors to and the discharges to the public stormwater system.

D. Accidental Spill Prevention and Control

Dischargers who are not required to obtain an NPDES permit; but who handle, store, or use hazardous or toxic substances or discharges prohibited under Subsection 13.14.105.E General Discharge Prohibitions on their sites; shall prepare and submit to the manager, at the manager's request, an Accidental Spill Prevention Plan within 60 days of notification by the City. If other laws or regulations require an Accidental Spill Prevention and Control Plan, a plan that meets the requirement of those other laws and regulations will satisfy the requirement of this section.

E. Notification of Spills

As soon as any person in charge of a facility, or responsible for emergency response for a facility, becomes aware of any suspected, confirmed, or unconfirmed release of material, pollutants, or waste creating a risk of discharge to the public stormwater system, such persons shall:

1. Begin containment procedures.
2. Notify proper emergency personnel in case of an emergency.
3. Notify appropriate City and/or State officials regarding the nature of spill.
4. Follow up with the City regarding compliance and modified practices to minimize future spills, as appropriate.

The notification requirements of this section are in addition to any other notification requirements set forth in federal, State, or local regulations and laws. The notification requirements do not relieve the person of necessary remediation.

F. Requirement to Eliminate Illicit Connections

1. The manager may require by written notice that a person responsible for an illicit connection to the public stormwater system comply with the requirements of this chapter to eliminate the illicit connection or secure approval for the connection by a specified date.
2. If, subsequent to eliminating a connection found to be in violation of the chapter, the responsible person can demonstrate that an illicit discharge will no longer occur, that person may request approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense.

G. Requirement to Remediate

Whenever the manager finds that a discharge of pollutants is taking place, or has taken place, which will result in, or has resulted in, pollution of stormwater or the public stormwater system, the manager may require by written notice to the responsible person that the pollution be remediated and the affected property restored, to the standards established by the manager, within a specified time.

H. Requirement to Monitor and Analyze

Whenever the manager determines that any person is engaged in any activity, and/or owns or operates any facility, which may cause or contribute to stormwater pollution or illicit discharges to the public stormwater system, the manager may, by written notice, order that such person undertake such monitoring activities and/or analyses, and furnish such reports, as the manager may deem necessary to demonstrate compliance with this chapter. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator; including costs of these activities, analyses, and reports; shall bear a reasonable relationship to the need for the monitoring, analyses, and/or reports and the benefits to be obtained. The recipient of such order shall undertake and provide the monitoring, analyses, and/or reports within the time frames set forth in the order.

I. Stormwater Treatment

The quality of stormwater leaving the site after development shall be equal to or better than the quality of stormwater leaving the site before development, based on the following criteria:

1. On-site mitigation facilities for water quality required for development shall be designed, installed, and maintained in accordance with the Public Works Standards.
2. Land use activities of particular concern as pollution sources shall implement additional Best Management Practices for pollution control including, but not limited to, those management practices specified in the Public Works Standards.
3. Development in a watershed that drains to streams with established Total Maximum Daily Load (TMDL) limitations; as provided under the CWA, Oregon Law, Administrative Rules, and other legal mechanisms; shall assure that on-site mitigation facilities for water quality control meet the requirements for pollutants of concern.

J. Design and Performance Criteria for Stormwater Detention and Water Quality Treatment Facilities Constructed on Private Property

1. All on-site mitigation facilities; including stormwater detention, retention, and water quality treatment facilities required by the City; shall be designed and constructed to meet the Public Works Standards.
2. Except as permitted by the Engineering Director, as provided by the Public Works Standards, on-site mitigation facilities shall be located on private property and shall not be located on property that will become a public right-of-way, public stormwater easement, or future street plan.
3. Except as permitted by the manager, as provided by the Public Works Standards, once constructed, the on-site mitigation facilities shall be privately owned, operated, and maintained. Maintenance responsibility shall include all elements of the stormwater detention and water quality treatment system up to the point of connection with a drainage structure or waterway of the public stormwater system. Such connection shall be subject to City approval.
4. Maintenance as required by the Public Works Standards shall be specified in an operation and maintenance plan submitted to and approved by the manager prior to issuance of a Notice to Proceed with public improvements. Prior to the time of project acceptance, the developer or applicant shall enter into an agreement with the City to ensure the implementation of the operation and maintenance plan, and a

memorandum of agreement shall be recorded with Clackamas County. Private stormwater detention and water quality treatment facilities are subject to periodic inspection by the City to ensure proper maintenance and performance.

5. Failure to properly operate or maintain on-site mitigation facilities for stormwater detention, retention, and water quality treatment according to the operation and maintenance plan of the adopted City of Portland Stormwater Management Manual is a violation.

13.14.030 REQUEST FOR SERVICE, INITIATION OF BILLING

A request for water service constitutes a request for stormwater service and will initiate appropriate billing for stormwater services as established in this chapter. If development of a parcel does not require initiating water service, the creation of an improved premises from which stormwater may be discharged into the public stormwater system shall constitute a request for service and initiate the obligation to pay the fees and charges authorized in this chapter.

13.14.040 CHARGES FOR STORMWATER SERVICE

- A. Except as the charges may be reduced under Subsection 19.13.040.C, the obligation to pay stormwater service charges arises whenever there is a request for stormwater service for an improved premises. Unless another person responsible has agreed in writing to pay and a copy of that writing is filed with the City, the person receiving the City's water utility charge bill shall pay the stormwater charges as set by City Council resolution. If there is no water service to the property or if water service is discontinued and the property is an improved premises, the stormwater charges shall be paid by the person responsible for the property. The person required to pay the charge is hereafter referred to as the "customer."
- B. The City Council may by resolution establish fees and charges necessary to provide and operate a stormwater system and service.
- C. Upon completion of the on-site mitigation credit application package available from the City's Public Works Department, a customer of the utility may request a reduction of the stormwater service charge. The service charge will be reduced in relation to the customer's ability to demonstrate that on-site stormwater facilities meet or exceed the City's standards for stormwater quantity and quality control at that site.

Any reduction given shall continue until the condition of the property is changed or until the Public Works Director determines the property no longer qualifies for the credit given. Upon change in the condition of the property, another application may be made by a person responsible.

- D. Service charge avoidance may be requested through the application package available from the Public Works Department. The criteria for waiver of the service charge as it applies to a specific customer includes total retention of stormwater with no effective discharge to the City's stormwater system; the petitioner's ability to demonstrate through hydrologic/hydraulic analysis that the site receives no stormwater service from the City's stormwater system; and proof that stormwater facilities are constructed and maintained to City standards.
- E. For the purposes of this chapter, dry wells are not an on-site mitigation control system eligible for service charge reduction or service charge avoidance because of the potential water quality impact that dry wells may have on the City's groundwater resources.

13.14.050 STORMWATER CHARGES—BILLING

- A. Charges for stormwater service supplied by the City to any customer shall be charged for and billed to each such customer in accordance with rates established by the City Council. Prior to the establishment of stormwater service fees and charges by the City Council, the Milwaukie Citizens Utility Advisory Board shall prepare and deliver a report and recommendation on rates to the City Council. The Committee shall prepare and deliver its recommendation to City Council on an annual basis, according to the rules established by City Council. Stormwater service fees and charges as established by the City Council shall be added to and made a part of the billings for water and sewer service.
- B. The customer shall be responsible for all stormwater service fees and charges, except as allowed by Section 13.14.040. The City may require deposits prior to providing stormwater service or in lieu of a deposit, obtain a signed agreement from the property owner, whether the customer or not, that they will be ultimately liable for the charges and that the City may use a lien as one method to secure payment if the charges are not paid. However, the City may not require a property owner to sign such an agreement.
- C. Billings may be prorated. The proration shall be a daily rate determined by dividing the annual minimum billing by three hundred sixty-five (365) days times the number of days of occupancy from last meter reading and/or billing date.
- D. A reduced stormwater service charge may be charged for customers who qualify as low income utility customers under the provisions of Chapter 13.20 of this code.
- E. All money collected through stormwater fees and charges shall be deposited in the stormwater utility account as established and maintained by the City's Finance Director.

13.14.060 STORMWATER CHARGES—WHEN DELINQUENT

- A. The City shall prepare and mail billings for stormwater fees and charges on the last business day of each month. Payment is due on the 15th of the month following the billing date. Accounts are delinquent if the City does not receive full payment by 5:00 p.m. on the last business day of the month immediately following the billing date.
- B. A delinquent fee, in an amount established by resolution of the City Council, shall be added to all delinquent accounts.
- C. The Finance Director or designee is authorized to determine what constitutes a de minimis account balance and to waive the penalties in Subsections 13.14.060.B and D in de minimis or extenuating circumstances.
- D. In addition to other lawful remedies, the Finance Director may enforce the collection of charges authorized by this chapter by withholding delivery of water to any premises where the stormwater service fees and charges are delinquent or unpaid, following the procedures and standards for shutting off water service for nonpayment of water bills as provided in Chapter 13.04. However, the Finance Director shall not deny or shut off water service to any subsequent tenant based upon an unpaid claim for services furnished to a previous tenant who has vacated the premises.

13.14.070 DELINQUENT CHARGES—LIEN

If the property owner elects pursuant to Subsection 13.14.050.B to authorize the use of a lien on real property to secure stormwater charge payment in lieu of a security deposit, all stormwater charges shall be a lien against the premises served from and after the date of billing and entry on the ledger or other records of the City pertaining to its municipal stormwater system, and such ledger record or other record shall be made accessible for inspection by anyone interested in ascertaining the amount of such charges against the property. Whenever a bill for stormwater service remains unpaid sixty (60) days after it has been rendered, the lien thereby created may be foreclosed in the manner provided for by ORS 223.610 or in any other manner provided by law or City ordinance.

13.14.080 APPEAL

Any customer aggrieved by any decision made with regard to the customer's account or a decision on charge reduction or avoidance may appeal to the manager by filing with the City a written request for review no later than ten (10) days after receiving the decision. The manager's decision shall be subject to review by the City Council upon filing of an appeal within fifteen (15) days of the notice of decision.

13.14.090 RIGHT OF ACCESS

Employees of the City shall be provided access during regular business hours to all parts of the premises which include portions of the City's stormwater drainage system for the purpose of inspecting the condition of the pipes and fixtures and the manner in which the system is used. Should there be no one available on the premises, notice will be provided to the owner, tenant, occupant, or their agent that arrangements must be made to allow the inspection.

13.14.100 TAMPERING WITH SYSTEM

- A. No unauthorized person shall damage, destroy, uncover, deface, or tamper with any conduit, structure, appurtenance, or equipment which is a part of the stormwater system.
- B. The manager may adopt such rules and regulations as are necessary to protect the stormwater system and the public health, safety, and welfare. Violation of said rules or regulations is deemed a violation of this chapter and shall be punished accordingly.
- C. Portions of Johnson Creek, Kellogg Creek, and their natural tributaries are within the boundaries of the city and are considered waters of the United States pursuant to the CWA. In order to protect the waters the City has a comprehensive enforcement program to comply with:
 1. The 1987 Amendments to the CWA, as implemented by the Environmental Protection Agency (EPA) NPDES regulations adopted November 16, 1990, make necessary the adoption of plans and programs for stormwater management meeting specified criteria.
 2. Section 402(p) of the CWA (33 U.S.C. 1251 et seq.), as amended by the Water Quality Act of 1987, requires that municipalities must:
 - a. Prohibit nonstormwater discharge into the public stormwater system; and
 - b. Require controls to reduce the discharge of pollutants from stormwater to the maximum extent practicable.

3. Section 303(d) of the CWA requires states and the EPA to identify certain substandard waters and to set "total maximum daily loads" (TMDLs). The Oregon Department of Environmental Quality has and will continue to establish TMDLs for some water bodies within the city. The City seeks to comply with all TMDL requirements.
4. The Endangered Species Act (ESA) and associated 4(d) rules covering protection of West Coast salmon and steelhead.
5. All provisions of the federal law by implementing a stormwater management plan, in conjunction with other co-permittees.
6. The City seeks to comply with all provisions of the Safe Drinking Water Act and Divisions 40 and 44 of Chapter 340 of the Oregon Administrative Rules pertaining to UIC facilities.

13.14.105 DISCHARGE REGULATIONS

A. Discharge of Pollutants

The commencement, conduct, or continuance of any nonstormwater discharge to the public stormwater system is prohibited and is a violation of this chapter, except as described below.

1. The prohibition shall not apply to any nonstormwater discharge permitted or approved under an Industrial or Municipal NPDES permit, waiver, or discharge order issued to the discharger and administered by the DEQ, provided that the discharger is in full compliance with all requirements of the permit, waiver, or discharge order and other applicable laws or regulations and provided that written approval has been granted by the City for any discharge to the municipal separate storm wastewater system (MS4).
2. Except as provided in Subsection 13.14.105.A.3, the prohibition shall not apply to the following nonstormwater discharges to the public stormwater system: municipal water line flushing, landscape irrigation, diverted stream flows, rising groundwater, uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)) to the municipal separate storm sewer system (MS4), uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and flows from fire fighting activities.
3. The manager may require best management practices to reduce pollutants, or may prohibit a specific discharger from engaging in a specific activity identified in Subsection 13.14.105.A.2, if at any time the manager determines that the discharge is, was, or will be a significant source of pollution.

B. Discharge in Violation of Permit

Any discharge that would result in or contribute to a violation of an existing or future Municipal NPDES Permit and any amendments, revisions, or reissuance thereof, either separately considered or when combined with other discharges, is a violation of this chapter and is prohibited. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge, and such persons shall defend, indemnify, and hold harmless the City in any administrative or judicial enforcement action against the permit holder relating to such discharge.

C. Illicit Connections and Illicit Discharges

It is prohibited to establish, use, maintain, or continue illicit connections to the public stormwater system, or to commence or continue any illicit discharges to the public stormwater system.

D. Waste Disposal Prohibitions

1. No person may throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, catch basin, inlet, or other component of the public stormwater system, materials that may cause or contribute to pollution, including but not limited to any refuse, rubbish, garbage, litter, yard debris, landscape materials, compost, topsoil, bark, gravel, sand, dirt, sod, sediment or sediment-laden runoff from construction or landscaping activities, hazardous materials, or other discarded or abandoned objects, articles, and accumulations.
2. Runoff from commercial or industrial operations or businesses that wash or detail vehicles, engines, transmissions, equipment, interior floors, or parking lots, shall not discharge directly to a private or public stormwater system; this includes but is not limited to outdoor commercial, industrial, or business activities that create airborne particulate matter, process by-products or wastes, hazardous materials or fluids from stored vehicles, where runoff from these activities discharges directly or indirectly to a private or public stormwater system.

E. General Discharge Prohibitions

1. Discharge to Public Storm Sewer System

It is unlawful to discharge or cause to be discharged directly or indirectly into the public stormwater system any of the following:

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- b. Any discharge having a pH of less than 6.5 or greater than 8.5 or that contains toxic substances.
- c. Any discharge which causes or may cause damage, interference, nuisance, or hazard to the public stormwater system or the City personnel.
- d. Any discharge containing human sanitary waste or animal feces.

13.14.110 COMPLIANCE REQUIRED

The provisions of this chapter must be strictly complied with in every instance, and service must be paid for by all premises supplied, according to the rates established by the City Council. Exceptions to these provisions shall be made only upon the written authorization of the manager.

13.14.115 INSPECTION AND ENFORCEMENT

A. Authority to Inspect

1. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the manager has reasonable cause to believe that there exists in any building or upon any premises any condition which may constitute a violation of the provisions of this chapter, the manager may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the manager by this chapter; provided that (i) if such building or premises is occupied, he or she first shall present proper credentials and request entry; and (ii) if such building or premises is unoccupied, he or she first shall make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.
2. The property owner or occupant has the right to refuse entry but, in the event such entry is refused, the manager is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry and performing such inspection.
3. As used in this section, inspection includes, but is not limited to, the physical inspection of a facility, and the review and copying of records relating to compliance with Sections 13.14.025 to 13.14.130.

B. Authority to Sample, Establish Sampling Devices, and Test

With the consent of the owner or occupant, or with court consent, the manager may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the manager may take any samples deemed necessary to aid in the pursuit of the inquiry or to record the on-site activities.

C. Continuing Violation

Unless otherwise provided, a person shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued, or permitted by the person.

D. Concealment

Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation of the chapter.

E. Acts Resulting in Violation of Federal Law

Any person who violates any provision of this chapter, or any provision of any stormwater-related permit issued by DEQ, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the CWA, Safe Drinking Water Act, or the ESA and may be subject to the sanctions of these Acts including civil and criminal penalties.

F. Violations Deemed a Nuisance

Any condition caused or permitted to exist in violation of any provision of this chapter is a threat to public health and safety. Any such condition is unlawful and constitutes a nuisance. In addition to any other remedies, the manager may enforce this chapter by compliance order, stop work order, abatement proceedings, or civil action as provided in MMC 08.04.070, or as otherwise authorized by law.

13.14.120 VIOLATION—PENALTY

Violation of any provision of this chapter by any person, firm, or corporation is punishable by a fine of not more than \$1,000. Each day on which a violation occurs or continues is a separate offense.

13.14.130 DISCLAIMER OF LIABILITY

The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering, and other relevant technical considerations. The standards set forth herein are minimum standards and the chapter does not imply that compliance will insure that there will be no unauthorized discharge of pollutants into the public stormwater system. This chapter shall not create liability on the part of the City, or any agent or employee thereof, for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

ATTACHMENT 3

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MILWAUKIE APPROVING PROPOSED CODE MODIFICATIONS TO SECTION MMC 13.14.025 (REGULATIONS AND REQUIREMENTS), ADOPT NEW DEFINITIONS TO EXISTING MMC 13.14.020 (DEFINITIONS), ADOPT AMENDMENTS TO EXISTING MMC 13.14.100 (TAMPERING WITH THE SYSTEM), ADOPT NEW PROPOSED CODE SECTION MMC 13.14.105 (DISCHARGE REGULATIONS), ADOPT NEW PROPOSED CODE SECTION MMC 13.14.115 (INSPECTION AND ENFORCEMENT), ADOPT AMENDMENTS TO EXISTING MMC 13.14.120 (VIOLATION - PENALTY), ADOPT NEW PROPOSED CODE SECTION MMC13.14.130 (DISCLAIMER OF LIABILITY), TO ENHANCE ENFORCEMENT OF ILLICIT STORMWATER DISCHARGES.

WHEREAS, the City of Milwaukie is required by federal law to have an approved National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Stormwater Discharge Permit along with an approved Stormwater Management Plan (SWMP) for its municipal storm sewer system; and

WHEREAS, the City is responsible for updating its municipal codes to include enhanced enforcement for any non-stormwater discharges into the City's storm sewer system and to take enforcement action against violators; and

WHEREAS, at the present time, the City's municipal code does not provide flexibility for enforcement of non-stormwater discharges entering the stormwater sewer system; and

WHEREAS, the proposed code language will provide City staff with clear direction as to what is, and what is not, allowed into the storm sewer system; and

WHEREAS, the proposed code language will allow the City to take enforcement action for all illicit discharges into the City municipal stormwater sewer system; and

WHEREAS, under the current code language staff assigned responsibility for city code enforcement was not authorized to sanction those violators who dump illicit stormwater discharges into City storm sewers; and

WHEREAS, under the proposed language enforcement actions will be authorized against violators and fines and penalties can be levied against those causing discharges into the City storm system; and

WHEREAS, the goal of enforcement is to obtain and maintain compliance with applicable Federal and State statutes or administrative rules set forth by the Clean Water Act;

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

Section 1. Title 13 of the Milwaukie Municipal Code is amended as described in Exhibit A (strikeout version) and Exhibit B (clean version).

Section 2. All sections not amended as described in Exhibits A and B remain as written.

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

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

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

PROCLAMATION
EARTHQUAKE AND TSUNAMI AWARENESS MONTH
CITY OF MILWAUKIE

- WHEREAS,** Clackamas County suffered considerable damage from a moderate magnitude 5.3 earthquake event in 1993 known as the Scotts Mills Earthquake; and
- WHEREAS,** scientific evidence indicates that the State of Oregon is at risk for much larger and potentially more damaging earthquakes and tsunamis; and
- WHEREAS,** a magnitude 8 or greater earthquake associated with the Cascadia Subduction Zone is expected to generate strong ground shaking throughout western Oregon and a destructive tsunami along the coast; and
- WHEREAS,** Oregon enacted laws in 1995 and 2001 that require schools, state and local agencies, and large private employers to instruct and drill students and employees on emergency procedures such as those related to earthquakes and tsunamis; and
- WHEREAS,** seismic strengthening of existing buildings and education is strongly encouraged to further reduce loss of life and property damage; and
- WHEREAS,** the City of Milwaukie will highlight these preparedness and mitigation procedures and provide increased earthquake information to employees and the public during April.

NOW, THEREFORE, BE IT RESOLVED that I, Jeremy Ferguson, Mayor of the City of Milwaukie, Oregon, do hereby proclaim the month of April 2010 as

EARTHQUAKE AND TSUNAMI AWARENESS MONTH

In the City of Milwaukie and encourage all citizens and employees to join in these education and awareness efforts.

Jeremy Ferguson, Mayor of the City of Milwaukie
Signed this 6th day of April 2010

3.

CONSENT AGENDA



To: Mayor and City Council

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

From: Brenda Reiner, Associate Engineer

Subject: Contract Award for Linwood Avenue Paving

Date: March 26 for April 6, 2010 Regular Session

Action Requested

Authorize the City Manager to execute a contract for the paving of Linwood Avenue from Monroe to Railroad with Brix Paving, in the amount of \$244,723.31.

History of Prior Actions and Discussions

January 2007: The Street Surface Maintenance Program (SSMP) was developed during 2006 with extensive public outreach and input. The SSMP was formally adopted on January 2, 2007 by Ordinance Number 1966 and took effect on July 1, 2007.

Background

During the first three years of the Street Surface Maintenance Program, eight street sections (listed in the following table) were repaved. The Pavement Condition Index (PCI) was assigned during the program's initial assessment survey performed by the City's consultant. It represents the state of the asphalt surface on a scale of 0-100. A newly repaved street would have a PCI of 100. Maintaining a citywide average PCI of 75 is the goal of the SSMP as it optimizes maintenance funding.

Date	Street	Section	PCI	Treatment
Sept 2007	42 nd Avenue	Johnson Creek to Harvey	55	Grind & Overlay
Sept 2007	37 th Avenue	Lake To Hwy 224	53	Rehab & Overlay
June 2008	Washington Street	99E to Hwy 224	69	Grind & Overlay
Aug 2008	King Road	Hollywood to 43 rd	40	Reconstruction
Sept 2008	Oak Street	Hwy 224 to Monroe	55	Rehab & Overlay
April 2009	Logus Road	Stanley to 49th	60	Reconstruction & Overlay
June 2009	27 th Avenue	Lake Road to Washington	72	Grind & Overlay
Sept 2009	River Road	Lark to 99E	76	Grind & Overlay

Linwood Avenue had a PCI of 79 in 2004. The Linwood Avenue project area is 4800-feet long and 36-feet wide. Linwood was chosen to be paved early (in year 3) of the SSMP because paving now will extend the useful life of the roadway by at least ten more years. Additionally, the public utilities, located within the roadway, are in good condition and there are no capital projects scheduled for construction in this section within the next 5 years.

This project went through a competitive bidding process per Chapter 30 of the City's Public Contracting Rules. The lowest responsive, responsible bid amount is \$244,723.31 from Brix Paving. Brix paved 27th Avenue in the summer of 2009, and did a good job. The following table is a summary of all bid amounts and the engineer's estimate:

Contractor	Bid Amount
1. Brix Paving	\$244,723.31
2. K.F. Jacobson	\$246,742.00
3. Eastside Paving	\$258,148.00
4. Kodiak Pacific	\$264,825.00
5. Knife River	\$266,972.31
6. Eagle Elsner	\$268,245.00
7. Lakeside Industries	\$273,130.00
8. Granite Northwest	\$278,278.00
9. McCafferty-Whittle	\$280,704.00
10. Portland Road & Driveway	\$284,925.00
*** Engineer's Estimate	\$350,000.00

On the east side of Linwood, across from Linwood Elementary, there is about 650 linear feet of extruded curb (extruded curb is on top of the asphalt). This curb is between the travel lane and the bike lane, and it will be removed prior to paving. This curb will be replaced with a white bike lane stripe paint to delineate the bike lane from the roadway. The curb is hazardous because it can't be seen in the dark and a bicyclist could be thrown off the bike if a tire comes into contact with the curb.

The City Street Department installed a project sign at both ends of the project to inform drivers of the upcoming construction. Residents and businesses along the project will also be notified with door hangers. The City will contract with AKS Engineering to provide a full-time construction inspector, to ensure compliance with the City's Public Works Construction Standards.

The construction may start anytime between April 15th and June 15th, depending on the weather and contractor's schedule. The City will coordinate with the contractor and Linwood Elementary for access during construction.

Concurrence

The Street Department concurs with awarding this contract. The Community Services Department is aware of this project and will publish a notice in the next issue of *the Pilot*. The City and contractor will coordinate with Clackamas County for the traffic signal work and areas where the City and County road jurisdiction meet, such as at Linwood and Monroe.

Fiscal Impact

This project is being awarded at \$105,000 under the \$350,000 budgeted amount.

Work Load Impacts

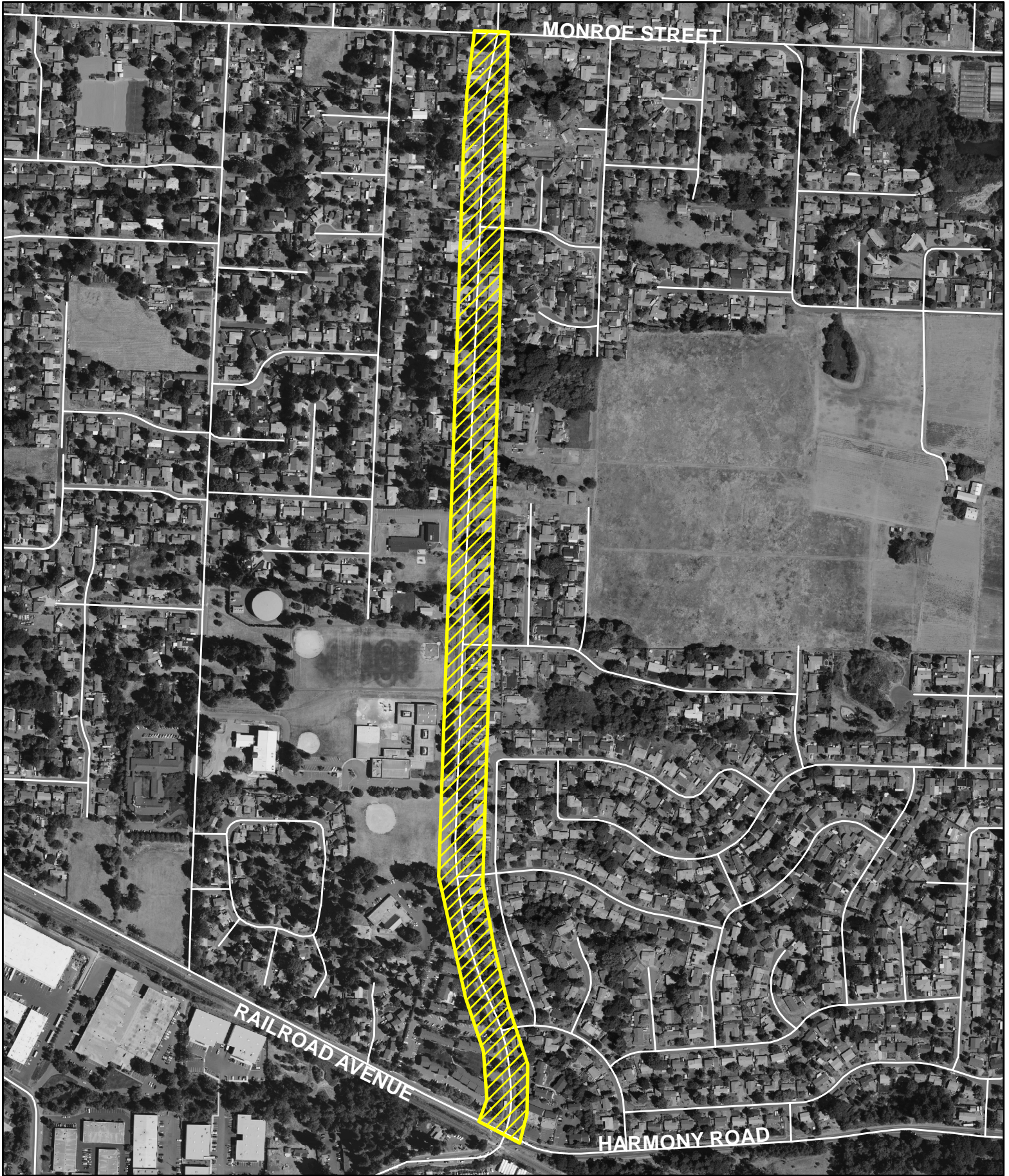
This work is part of the Engineering work plan and Community Services has incorporated the outreach program into its work plan.

Alternatives

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

Attachments

1. Vicinity Map
2. Resolution



MILWAUKIE
Dogwood City of the West

2009 Paving Linwood Avenue
Project Vicinity Map
RS PAGE 36



ATTACHMENT 2

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR THE PAVING OF LINWOOD AVENUE IN THE AMOUNT OF \$244,723.31.

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

WHEREAS, Linwood Avenue was selected for treatment in year three of the program after analysis of the street system; and

WHEREAS, the project was approved for \$350,000 in funding in the 2009/2010 budget; and

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

WHEREAS, Brix Paving is the lowest responsive, responsible bidder;

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie authorizes the City Manager to sign a contract for the paving of Linwood Avenue in the amount of \$244,723.31.

Introduced and adopted by the City Council on April 6, 2010.

This resolution is effective on April 6, 2010.

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
Gary Parkin, Engineering Director

From: Brad Albert, Civil Engineer

Subject: Decant Facility Phase I

Date: March 26, 2010 for April 6, 2010 Regular Session

Action Requested

Authorize the City Manager to sign a contract for the construction of Decant Facility Phase I, with Northstar Associates LLC, in the amount of \$103,800.

History of Prior Actions and Discussions

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

Background

The City is in need of a Decant Facility to dewater excavated material, stormwater catch basin and drywell material, and street sweeping material collected by the City's Operations Department. The project is consistent with the City's emphasis on protecting the environment as it will limit runoff and enable more material to be removed from stormwater facilities.

The Oregon Department of Environmental Quality (DEQ) requires that excavated material and street sweeping material must be dewatered before the material is hauled to designated landfills. The City disposes wet material at special landfills that are able to dewater the material. The City incurs more cost per load of wet material than if the City were able to dry the material. The City has recognized the need for a decant

facility and took steps towards the construction of a decant facility with the design and construction of a gabion wall at the north end of the JCB campus in the fall of 2005.

The Decant Facility will be constructed in two phases because of budget constraints. Phase I consists of a steel roof structure to cover the existing concrete bunkers at the north end of the City's Johnson Creek Boulevard campus, and the construction of a water quality facility (attachment 1). The City installed the concrete bunkers in the fall of 1989 for the storage of materials used in the Operations Department. The steel roof structure is 27 feet in height, 152 feet in width, and 37 feet in depth. The structure will be enclosed on the north, east, and west sides with steel sheeting. The structure will be painted light blue to match the other buildings on the JCB campus. The construction for phase I will start mid April and be complete by the end of July. The construction for phase II will start in mid July or early August and be complete by October.

The project was taken through a conditional use process with the Planning Department. A condition of approval of the conditional use permit is a stormwater management plan in accordance with the City's Public Works Standards. The City's Public Works Standards requires a water quality facility to treat the impervious area created by the roof structure. A project is allowed to treat an equivalent impervious area on the same site to account for the impact of the new impervious surface. The City has elected to treat the south portion of the parking lot in lieu of the new roof structure. The water quality facility will be a swale located in the planter strip between employee parking spaces at the south end of the JCB campus.

The Decant Facility Phase II project consists of reconstructing the concrete floor in the existing concrete bunkers, installing catch basins in each bunker for water runoff collection, the installation of an oil/water separator to trap potential contaminant before entering the wastewater system, and connection to the wastewater main onsite. The concrete floors will gently slope to the catch basins. The wet material collected by the Operations Department will be dumped onto the concrete floors. The material will stay in place and drain the water into the catch basins. This process will allow the material to dry before transporting to the landfill.

The project went through a competitive bidding process in accordance with Chapter 30 of the City's Public Contracting Rules (attachment 2). The City received eight (8) bids by the March 23, 2010 2:00 PM bid opening. The following table is a summary of all bid amounts as well as the engineer's estimate.

The low bidder is not recommended for award because the contractor was not pre-qualified with the Oregon Department of Transportation as required by the contract documents.

	Contractor	Bid	Pre-qualified
1	Columbia Paving & Exc.	\$96,873.33	N
2	Northstar Associates LLC	\$103,800.00	Y
3	Duke Construction and Excavation LLC	\$117,866.00	Y
4	Columbia General Contractors, Inc.	\$124,464.10	N
5	2KG Contractors, Inc. Columbia-Cascade	\$124,500.00	Y
6	Construction, Inc.	\$127,739.00	Y
7	Oregon Underground, Inc.	\$133,117.40	Y
8	Paradigm Construction, LLC	\$139,567.98	N
***	<i>Engineers Estimate</i>	<i>\$95-\$115,000</i>	

Concurrence

Engineering staff coordinated with Operations and Planning on both concept and design phases of the project. The Decant Facility received conditional use approval from the Planning Department.

Fiscal Impact

The Decant Facility Phase I project is part of the 2009/2010 Budget. The approved budget from the Street, Stormwater, Wastewater, and Water Funds include \$143,333 for this project.

The Decant Facility Phase II project is planned as part of the 2010/2011 Budget. The Street, Stormwater, Wastewater, and Water Fund budgeted \$160,000 for Phase II. The total cost of the project is estimated at \$300,000.

Work Load Impacts

The Decant Facility Phase I construction project can be accommodated within existing Engineering workloads. Engineering staff will provide project management and inspection for the duration of the project.

Alternatives

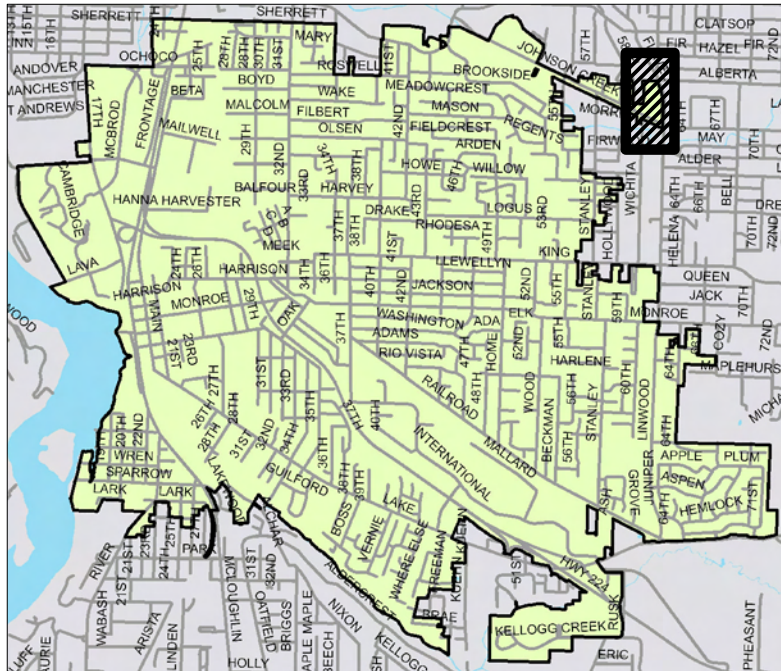
- 1) Do not award project (defer indefinitely). The project would be removed from the CIP list.
- 2) Reject all proposals and direct staff to re-advertise for new proposals for any reason.
- 3) Reject all proposals and direct staff to amend the Request for Proposals and re-advertise for submission of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

Attachments

1. Plan
2. Invitation to Bid
3. Resolution
4. Contract

ATTACHMENT 1

CITY OF MILWAUKIE, OREGON DECANT FACILITY PHASE I CIP-05-001



City of Milwaukie
Brad Albert, P.E.
Project Manager/ Inspector
503-786-7609

Utility Contact List
Comcast Cable Services
503-596-3767
Northwest Natural Gas
503-226-4211 ext. 6746
Portland General Electric
503-464-7777 (Emergency)
503-736-8280 (Service and Design)
Qwest Communications
503-242-0304



SHEET INDEX

COVER SHEET WITH VICINITY MAP	SHEET 1 OF 5
EXISTING CONDITIONS PLAN	SHEET 2 OF 5
ROOF CROSS SECTIONS PLAN	SHEET 3 OF 5
WATER QUALITY FACILITY PLAN	SHEET 4 OF 5
LANDSCAPING PLAN	SHEET 5 OF 5
EROSION PREVENTION PLAN	SHEET 1 OF 1

1			
2			
3			
4			
#	DATE	BY	REVISION

NOTICE
0 1
IF THIS BAR DOES NOT
MEASURE 1" THEN THIS
DRAWING IS NOT
TO SCALE.

BSA
DESIGNED
BSA
DRAFTED
GHP
CHECKED



MILWAUKIE
Dogwood City of the West

6101 SE JOHNSON CREEK BLVD.
MILWAUKIE, OR 97206

PHONE: 503-786-7800
FAX: 503-774-8236

DECANT FACILITY – PHASE 1
COVER SHEET
6101 SE JOHNSON CREEK BLVD

SHEET
1 OF 5

PROJECT NO.: CIP-05-001 | 2/23/2010

ATTACHMENT 2

Invitation to Bid

for construction of

**City of Milwaukie
Decant Facility – Phase I
CIP-05-001**

Sealed bids for Decant Facility – Phase I project will be received at the City of Milwaukie Community Development Office located at 6101 SE Johnson Creek Boulevard, Milwaukie, OR 97206 until 2:00 PM on March 23, 2010, at which time the sealed bids will be publicly opened and read. Bids received after 2:00 PM shall not be considered.

The project consists of supply and construction of a pre-fabricated steel building, construction of on-site storm water quality facilities, and performance of such additional and incidental work as called for by the Contract Documents. The engineer's estimated project cost is between \$95,000 and \$115,000.

The Contract Documents may be examined or obtained for no cost at the City of Milwaukie, Community Development Office located at 6101 SE Johnson Creek Boulevard, Milwaukie, OR 97206. The Contract Documents may be obtained by standard mailing upon request for a fee of \$25.

A mandatory pre-bid meeting will be held at 6101 SE Johnson Creek Boulevard, Milwaukie, OR 97206 on Tuesday, March 16, 2010 beginning at 10:00 AM. Bids submitted by a firm that was not represented at the pre-bid meeting will be rejected as non-responsive.

All bids shall be submitted on the furnished Bid Submission Packet in a sealed envelope plainly identifying the project name, project number, bid opening time and date, bidder's name, and contractor's license number. Sealed bids shall be addressed to Bradley Albert, Civil Engineer, City of Milwaukie, Community Development, 6101 SE Johnson Creek Boulevard, Milwaukie, OR 97206. All bids shall be submitted in the prescribed form and said manner as indicated in the Information for Bidders. Bids shall be accompanied by a certified check, cashier's check, or bid bond executed in favor of the City of Milwaukie in an amount of ten percent (10%) of the total bid amount. Bidders shall be pre-qualified with the Oregon Department of Transportation, in the Class of Work "Buildings" prior to the public opening and reading of the bids.

No bid will be considered unless the bid contains, or is accompanied by, a statement by the bidder that the provisions required by ORS 279C.838 or ORS 279C.840, as applicable, pertaining to prevailing wages, shall be included as part of the Contract.

For additional information regarding this project, contact Brad Albert at 503 786-7609.

Dated this 2nd day of March 2010.

ATTACHMENT 3

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH NORTHSTAR ASSOCIATES LLC FOR THE CONSTRUCTION OF PHASE I OF THE DECANT FACILITY PROJECT.

WHEREAS, a decant facility is needed to dewater excavated material, storm catch basin and drywell material, and street sweeping material collected by the City's Operations Department.

WHEREAS, a roof structure is needed to cover pre-existing concrete bunkers on the north side of the City of Milwaukie's Johnson Creek Boulevard Campus; and

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

WHEREAS, the project was approved for funding in the 2009/2010 budget; and

WHEREAS, a pre-bid meeting was conducted with prospective bidders where the site location was witnessed prior to bid submittal; and

WHEREAS, Northstar Associates LLC is the lowest responsive and responsible bidder;

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie authorizes the City Manager to sign a contract for the Decant Facility Phase I project with Northstar Associates LLC, in the amount of \$103,800.00.

Introduced and adopted by the City Council on April 6, 2010.

This resolution is effective on April 6, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

ATTACHMENT 4



PUBLIC IMPROVEMENT CONTRACT WITH THE CITY OF MILWAUKIE FOR DECANT FACILITY PHASE I

THIS CONTRACT, made and entered into this ____ day of _____, 2010, by and between the City of Milwaukie, a municipal corporation of the State of Oregon, hereinafter called "City" and Northstar Associates LLC, 4872 SE Casa Del Ray, Milwaukie, Oregon 97222 hereinafter called "Contractor", duly authorized to perform such services in Oregon.

RECITALS

WHEREAS, the City requires services which Contractor is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, time is of the essence in this contract and all work under this contract shall be completed within the time period stated in the Bid;

THEREFORE, in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

1. Services

Contractor may have some contact with the public in the course of performing this contract. Contractor shall maintain good relations with the public. Failure to maintain good relations with the public shall constitute a non-curable material breach allowing the City to terminate under Section 14A and to disqualify Contractor from future work for the City.

Contractor's services under this Agreement shall consist of the following:

The project consists of supply and construction of a pre-fabricated steel building, construction of on-site storm water quality facilities, and performance of such additional and incidental work as called for by the Contract Documents.

2. Prevailing Wage

The provisions of ORS Chapter 279C and all other Oregon and Federal provisions pertaining to minimum salaries and wages are incorporated herein by reference as if fully set forth. The Contractor agrees that the workmen in each trade or occupation required for the work to be done pursuant to the contract, employed in the performance of the Contract, either by the Contractor or Subcontractor or other person doing or contracting to do any part of the work contemplated by the Contractor shall be paid not less than the prevailing, minimum hourly rate of wage specified by the Commissioner of the Bureau of Labor, and attached hereto.

For contracts \$50,000 or greater, City shall pay a fee to the Bureau of Labor and Industries and shall be mailed or otherwise delivered to the Bureau at the following address:

Bureau of Labor and Industries
Wage and Hours Division
Prevailing Wage Unit
800 NE Oregon Street, # 32
Portland, Oregon 97232

3. **Contract Documents**

The Contractor is hereby bound to comply with all requirements of this agreement, the Contractor's proposal, the detailed specifications and requirements, the drawings, and the special conditions and modifications in conditions as set forth in the documents prepared by the City Engineer and the performance pertaining to this contract, in the City of Milwaukie, Oregon, and by this reference made a part hereof to the same legal force and effect as if set forth herein in full.

4. **City's Representative**

For purposes hereof, the City's authorized representative will be the City Engineer, 6101 SE Johnson Creek Blvd., Milwaukie, Oregon 97206 Telephone 503-786-7600.

5. **Contractor's Representative**

For purpose hereof, the Contractor's authorized representative will be Dale Henningsen.

6. **Contractor Identification**

Contractor shall furnish to the City the Contractor's employer identification number, as designated by the Internal Revenue Service, or Contractor's social security number, as City deems applicable.

7. **Compensation**

A. **Progress Payments:** City agrees to pay Contractor One Hundred Three Thousand Eight Hundred Dollars (\$103,800) for performance of those services provided hereunder, which payment shall be based upon the following applicable terms:

Payment shall be based upon the unit prices bid by the Contractor, as listed in attached bid. Contractor shall prepare and submit each month to the City Engineer, 6101 SE Johnson Creek Blvd., Milwaukie, Oregon 97206, a statement of services rendered, (indicating the description of each service used in the bid and the dollar amount of each service completed through the stated date), together with a request for payment duly verified by the Contractor's Representative.

Payment by the City shall release the City from any further obligation for payment to Contractor for services performed or expenses incurred as of the date of the statement of services. Payment of installments shall not be

considered acceptance or approval of any work or waiver of any defects therein. City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

Contractor shall include proof of payment to any and all subcontractors and suppliers with each statement submitted to the City. The City shall retain the right to withhold payments if required proof of payment to subcontractor and suppliers is not included with a statement.

- B. Timing of Payments:** Progress payments, less a five percent retainage as authorized by ORS 279C.555, shall be made to the Contractor within twenty (20) days of the City's receipt of the statement of services. The Contractor agrees that the "Time of Completion" is defined in the Bid, and agrees to complete the work by said date. The Contractor and City agree that the City will suffer damages each day the work remains uncompleted after the Time of Completion and that the amount of those damages are difficult to calculate. Contractor and City agree that a reasonable amount of damages for late completion is \$ **150** per calendar day and Contractor agrees to pay damages in that amount if the work is not completed by the Time of Completion.
- C. Final Payment:** The Contractor shall notify the City in writing when the Contractor considers the project complete, and the City shall, within 15 days after receiving the written notice, either accept the work or notify the Contractor of work yet to be performed on the contract.

Upon acceptance by the City, the entire balance due to the Contractor, including the retained percentage, shall be paid to the Contractor, by the City within 30 days after the date of said final acceptance.

The City shall pay to the Contractor interest at the rate of one and one-half percent per month on the final payment due the Contractor, to commence 30 days after the work under the Contract has been completed and accepted and to run until the date when final payment is tendered to the Contractor. If the City does not, within 15 days after receiving written notice of completion, notify the Contractor of work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run 30 days after the end of the 15-day period.

As a further conditions of final acceptance, the City may require the Contractor to submit evidence, satisfactory to the City's Representative, that all payrolls, material bills, and other indebtedness connected with the project have been paid, except that in case of any disputed indebtedness or liens, the Contractor may submit in lieu of evidence of payment, a surety bond satisfactory to the City guaranteeing payment of all such disputed amounts when adjudicated in cases where such payment has not already been guaranteed by surety bond.

8. 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 670.600 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of said finding.
- 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.
- C. If this payment is to be charged against Federal funds, Contractor certifies that he or 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.
- D. 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.
- E. Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- F. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

9. Subcontracts - Assignment & Delegation

Contractor shall submit a list of Subcontractors for approval by the City, and 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.

This agreement, and all of the covenants and conditions hereof, shall inure to the benefit of and be binding upon the City and the Contractor respectively and their legal representatives. Contractor shall not assign any rights nor delegate any duties incurred by this contract, or any part hereof without the written consent of City, and any assignment or delegation in violation hereof shall be void.

10. Contractor - Payment of Benefits - Hours of Work

A. The Contractor shall:

- 1) Make payment promptly, as due, to all persons supplying to such Contractor labor or material for the prosecution of the work provided for in this contract;
- 2) Pay all contributions or amounts due the under the Worker's Compensation Law from such Contractor or Subcontractor incurred in the performance of this contract;
- 3) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 4) Not permit any lien or claim to be filed or prosecuted against the City of Milwaukie, on account of any labor or material furnished;

B. The Contractor or the Contractor's Surety and every Subcontractor or the Subcontractor's Surety shall file certified statements with the City in writing in form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage, which certificate and statement shall be verified by the oath of the Contractor or the Contractor's Surety or Subcontractor or the Subcontractor's Surety that the Contractor or Subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the Contractor's or Subcontractor's knowledge.

- 1) The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid.
- 2) Each certified statement required herein shall be delivered or mailed by the Contractor or Subcontractor to the City. A true copy of the certified statements shall also be filed at the same time with the Commissioner of the Bureau of Labor and Industries. Certified statements shall be submitted as follows:
 - a) For any project 90 days or less from the date of the award of the contract to the date of completion of work under the contract, the statements shall be submitted once before the first payment is made, and once before final payment is made of any sum due on account of the contract.

- b) For any project exceeding 90 days from the date of the award of the contract to the date of completion of work under contract, the statements shall be submitted once before the first payment is made, at 90 day intervals thereafter, and once before final payment is made of any sum due on account of the contract.
 - c) Each Contractor or Subcontractor shall preserve certified statements for a period of three years from the date of completion of the contract.
- C. The Contractor agrees that if the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with this contract as such claim becomes due, the proper office of the City of Milwaukie may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of such contract. Payment of a claim in this manner shall not relieve the Contractor or the Contractor's Surety from obligation with respect to any unpaid claims.
- D. Contractor agrees that no person shall be employed for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency or where the City of Milwaukie absolutely requires it, and in such cases the laborer shall be paid at least time and a half pay for all overtime in excess of ten (10) hours a day and for work performed on Saturday and on any legal holiday as specified in ORS 279C.540.
- E. No City employee shall be required to work overtime or on a Saturday, Sunday or holiday in the fulfillment of this contract except where the Contractor agrees to reimburse the City in the amount of money paid the employee for such work as determined by state law, the City's personnel rules or union agreement. The Contractor shall require every Subcontractor to comply with this requirement.

11. **Drug Testing Program**

ORS 279C.505 requires that all public improvement contracts contain a provision requiring contractors to demonstrate that an employee drug-testing program is in place. The Contractor demonstrates that a drug-testing program is in place by signing of the contract. The drug testing program will apply to all employees and will be maintained for the duration of the Contract awarded. Failure to maintain a program shall constitute a material breach of contract.

12. **Contractor's Employee Medical Payments**

Contractor agrees to pay promptly as due, 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 Contractor's employees, all sums which the Contractor agreed to pay for such services and all money and sums which the Contractor collected or deducted from employee

wages pursuant to any law, contract or agreement for providing or paying for such service.

13. Early Termination

- A. This agreement may be terminated without cause prior to the expiration of the agreed upon term by mutual written consent of the parties and for the following reasons:
 - 1) If work under the Contract is suspended by an order of a public agency for any reason considered to be in the public interest other than by a labor dispute or by reason of any third party judicial proceeding relating to the work other than a suit or action filed in regard to a labor dispute; or
 - 2) If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Contract.
- B. Payment of Contractor shall be as provided by ORS 279C.660 and shall be prorated to and include the day of termination and shall be in full satisfaction of all claims by Contractor against City under this Agreement.
- C. Termination under any provision of this paragraph shall not affect any right, obligation, or liability of Contractor or City which accrued prior to such termination.

14. Cancellation 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, or
 - 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.
 - 5) If Contractor fails to maintain reasonable relations with the public. Verbal abuse, threats, or other inappropriate behavior towards members of the public constitutes grounds for termination.

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

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

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

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

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

15. 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.

16. Work is Property of City

All work performed by Contractor under this Agreement shall be the property of the City.

17. Adherence to Law

A. Contractor shall adhere to all applicable laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning workers' compensation, and minimum and prevailing wage requirements.

B. To the extent applicable, the Contractor represents that it will comply with Executive Order 11246 as amended, Executive Order 11141, Section 503 of the Vocational Rehabilitation Act of 1973 as amended and the Age

Discrimination Act of 1975, and all rules and regulations issued pursuant to the Acts.

- C. As provided by ORS 279C.525, all applicable provisions of federal, state or local statutes, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the work under this contract are by reference incorporated herein to the same force and affect as if set forth herein in full. If the Contractor must undertake additional work due to the enactment of new or the amendment of existing statutes, ordinances or regulations occurring after the submission of the successful bid, the City shall issue a Change Order setting forth the additional work that must be undertaken. The Change Order shall not invalidate the Contract and there shall be, in addition to a reasonable extension, if necessary, of the contract time, a reasonable adjustment in the contract price, if necessary, to compensate the Contractor for all costs and expenses incurred, including overhead and profits, as a result of the delay or additional work.

18. Changes

City may at any time, and without notice, issue a written Change Order requiring additional work within the general scope of this Contract, or any amendment thereto, or directing the omission of or variation in work. If such Change Order results in a material change in the amount or character of the work, an equitable adjustment in the Contract price and other provisions of this Contract as may be affected may be made. Any claim by Contractor for and adjustment under this section shall be asserted in writing within thirty (30) days from the date of receipt by Contractor of the notification of change or the claim will not be allowed. Whether made pursuant to this section or by mutual agreement, no change shall be binding upon City until a Change Order is executed by the Authorized Representative of City, which expressly states that it constitutes a Change Order to this Contract. The issuance of information, advice, approvals, or instructions by City's Representative or other City personnel shall not constitute an authorized change pursuant to this section. Nothing contained in this section shall excuse the Contractor from proceeding with the prosecution of the work in accordance with the Contract, as changed.

19. Force Majeure

Neither City nor Contractor shall be considered in default because of any delays in completion of responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the party so disenabled, including, but not restricted to, an act of God or of a public enemy, volcano, earthquake, fire, flood, epidemic, quarantine, restriction, area-wide strike, freight embargo, unusually severe weather or delay of Subcontractor or suppliers due to such cause; provided that the party so disenabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the causes 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 Contract.

20. **Nonwaiver**

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

21. **Warranties**

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

22. **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's fees and court costs including attorney's fees and court costs on appeal.

23. **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 questions arising under this Agreement must be brought in the appropriate court of the State of Oregon.

24. **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 and the bid of the Contractor, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said bid conflicting herewith.

25. **Indemnification**

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

Contractor agrees to indemnify and defend the City, its officers, agents and employees and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except liability arising out of the sole negligence of the City and its employees. If any aspect of this indemnity shall be found to be

illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

26. 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 risks arising directly or indirectly out of Contractor's activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is primary insurance with respect to the interests of City and that any other insurance maintained by City is excess and not contributory insurance with the insurance required hereunder.

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, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1986 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

Coverage	Limit
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 are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide 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 to obtain such coverage." This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 each accident.

- D. Additional Insured Provision: The City of Milwaukie, Oregon, its officers, directors, and employees shall be added as additional insureds with respect to this contract. All Liability Insurance policies will be endorsed to show this additional coverage.
- E. 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 30 days notice of cancellation provision shall be physically endorsed on to the policy.
- F. Insurance Carrier Rating: Coverage 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.
- G. Certificates of Insurance: As evidence of the insurance coverage required by the contract, the contractor shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.
- Certificates of Insurance should read "Insurance certificate pertaining to contract for Decant Facility Phase I. The City of Milwaukie, its officers, directors and employees shall be added as additional insureds with respects to this contract. Insured coverage is primary" in the description portion of certificate.
- H. 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.
- I. Primary Coverage Clarification: All parties to this contract hereby agree that the contractor's coverage will be primary in the event of a loss.
- J. Cross-Liability Clause: A cross-liability clause or separation of insureds clause will be included in 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:

Office of City Recorder
City of Milwaukie
10722 SE Main St.
Milwaukie, Oregon 97222

Business Phone: 503-786-7519
Business Fax: 503-653-2444
Email Address: howardj@ci.milwaukie.or.us

Such policies or certificates must be delivered prior to commencement of the work. Ten days cancellation notice shall be provided City by certified mail to the name at the address listed above in event of cancellation or non-renewal of the insurance.

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.

27. **Method and Place of Giving Notice, Submitting Bills and Making Payments**

All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as follows:

City of Milwaukie	Northstar Associates LLC
Attn: Accounts Payable	Attn: Dale Henningsen
10722 SE Main St., Milwaukie, Oregon 97222	Address: 4872 SE Casa Del Ray, Milwaukie, OR 97222
Phone: 503-786-7524	Phone: 503-679-5333
Fax 503-786-7528	Fax: N/A
Email finance@ci.milwaukie.or.us	Address: Email dale.henningsen@comcast.net

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. 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 whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

28. **Hazardous Materials**

Contractor shall supply City with a list of any and all hazardous substances used in performance of this Agreement. That list shall identify the location of storage and use of all such hazardous substances and identify the amounts stored and used at each location. Contractor shall provide City with material safety data sheets for all hazardous substances brought onto City property, created on City property or delivered to City pursuant to this Agreement. For the purpose of this section, "hazardous substance" means hazardous substance as defined by ORS 453.307(4). Contractor shall complete the State Fire Marshall's hazardous substance survey as required by ORS 453.317 and shall assist City to complete any such survey that it may be required to complete because of substances used in the performance of this Agreement.

29. **Hazardous Waste**

If, as a result of performance of this Agreement, Contractor generates any hazardous wastes, Contractor shall be responsible for disposal of any such hazardous wastes in compliance with all applicable federal and state requirements. Contractors shall provide City with documentation, including all required manifests, demonstrating proper transportation and disposal of any such hazardous wastes. Contractor shall defend, indemnify, and hold harmless City for any disposal or storage of hazardous wastes generated pursuant to this Contract and any releases or discharges of hazardous materials.

30. **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 remainder of this Agreement shall remain in full force and effect and shall in no way be affected or invalidated thereby.

31. **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, the City has caused this agreement to be executed by its duly authorized undersigned officer, acting pursuant to authorization of the City Council, duly passed at the regular meeting held on the ____ day of _____, 2010, and the Contractor has executed this agreement on the date herein above first written.

CITY OF MILWAUKIE

CONTRACTOR

Signature

Signature

Printed Name & Title

Printed Name & Title

Date

Date

6.
OTHER BUSINESS



To: Mayor and City Council

Through: Pat DuVal, Interim City Manager

From: Kenneth Asher, Director of Community Development & Public Works

Subject: Contract Approval for Phase 4 of the South Downtown Planning Project

Date: March 22 for the April 6, 2010 Regular Session

Action Requested

Authorize the Interim City Manager to execute a contract not to exceed \$81,000 with Walker Macy for planning and urban design services for Phase 4 of the South Downtown planning project.

History of Prior Actions and Discussions

February 2010 – Staff introduced the team of Walker Macy/LMN Architects to Council. The Walker Macy/LMN team was selected by a selection committee in January 2010.

October 2009 – CES presented the efforts of Phases 1-3, including the *Patterns*, armature drawing, and updates on support for light rail-related tasks.

August 2009 – Brief update and distribution of the draft *Pattern Language for South Downtown Milwaukie* to Council, along with the armature drawing image and reminder of planned closures of street segments in the South Downtown.

August 2008 – Approval of South Downtown phases two and three under the direction of the Center for Environmental Structure (Resolution 78-2008)

May 2008 – Selection of Lake Road as the future Milwaukie light rail station location (Resolution 51-2008).

April 2008 – Approval of first phase of work with the Center for Environmental Structure for studying the south downtown area and Milwaukians' hopes and aspirations for the area (Resolution no. 28-2008).

March 2008 – Work Session discussion to consider staff's intention to move the South Downtown planning effort to the next stage of development.

November 2007 – Work Session discussion to review a preliminary concept Plan created by Gast-Hillmer Urban Design.

April 2007 – Work Session discussion to solicit Council ideas for South Downtown.

November 2006 – Work Session discussion regarding the Cash Spot, Robert Kronberg Park and the need for coordinated planning at the south end of downtown.

Background

After reviewing eight proposals, conducting six interviews and meeting on the topic several times, a selection committee has chosen the team of Walker Macy and LMN Architects for the next phase of the South Downtown project.

Staff now recommends approval of the attached contract with Walker Macy (Attachment 1) to begin Phase 4 of the South Downtown planning process.

Walker Macy is a landscape design firm in Portland that has worked on several public plazas and open space projects, including Pioneer Courthouse Square, the Oregon state capital mall, and Tualatin Commons. LMN Architects, based in Seattle, bring the "bricks and sticks" expertise, having worked on many mixed use and civic projects in the northwest. Mark Hinshaw, a principal at LMN, is a published author on placemaking, having written about urban form and design. (See staff report or related record from February 16 City Council work session for a description of Walker Macy's and LMN's experience and past work).

The South Downtown planning process is broken into the following phases:

Phase 1	2008	▪ South Downtown Concept Plan Review, Validation, Exploration and Development
Phase 2	2008-09	▪ Diagnosis ▪ Pattern Language for a New South Downtown Concept Plan
Phase 3	2009	▪ Guidelines and Strategies for Implementation
Phase 4	2010	▪ Pattern Language Testing and Refinement
Phase 5	2011-12	▪ Preparing the Land, Capital and Non-Profit Land Trust ▪ Creating and Approving new Zoning and Land Use Codes ▪ Sequencing Construction Phases
Phase 6	2013	▪ Finalizing Development Agreements ▪ Early Stage Construction Activities
Phase 7	2014-	▪ Gradual but Continual South Downtown Redevelopment

Phase 4, the current phase for which these consulting services are sought, will refine and advance the concepts from the prior work (Pattern Language and Armature Diagram) by studying and recommending details of circulation, land parcelization, integration with light rail development, integration with the Kellogg-for-Coho Initiative, and resolution of plaza size and function.

The proposed scope of work for Phase 4 has the following components:

Orientation Tasks: The consultant team will establish a Project Management Team (comprised of project staff and consultants), a Steering Committee (comprised of citizen members, project staff and consultants) and a Development Advisory Council (comprised of three development experts selected for their knowledge of non-traditional development approaches). After creating a detailed survey of the South Downtown area, the consultant team will meet with the Project Management Team and will interview stakeholders previously involved with the project. The deliverable from these tasks will be a “Goals and Objectives Memo” that summarizes the views expressed by the stakeholders. This will set a direction for the remainder of the phase.

Plan Evaluation and Assessment: The Steering Committee will be brought in at this point for the first of several discussions with the consultant team about the opportunities and obstacles inherent in the Pattern Language as drafted. Specifically, in this phase, the team will respond to the “Questions to Be Addressed” section in the back of the Pattern Language, which were questions asked by the citizens working on the document with the Center for Environmental Structure. The Walker Macy team might suggest modifying some of the patterns, or perhaps adding patterns identified as missing. Input will also be gathered from TriMet and Ankrom Moisan, the architectural firm working on the triangle site/light rail station concept. The deliverables from these tasks will be a set of maps and diagrams to explain the vision for the site, and a technical memo that Walker Macy/LMN will draft, cementing the ideas from earlier phases that the new team sees as essential to the success of the vision, and questioning those that are deemed problematic. This will clearly describe how future decisions will support the direction established in the earlier phases of the project.

Alternative Concepts and Community Open House: The goal in these tasks is to develop 2-3 alternatives for implementing the vision in the South Downtown. The Walker Macy team includes three development experts whose opinions will be instrumental in translating what the vision calls for into concepts that the team believes are feasible. The alternative concepts will be shared with the Steering Committee and then with the public in an open house and through other channels.

Preferred Concept and Implementation Measures: The final set of tasks will result in a single, preferred concept, based on feedback gathered from the public and committee. The concept will be rendered in a drawing and will include a hierarchy of street cross-sections and block-by-block building envelopes (i.e. a description of how much built space is anticipated on each block). An Implementation Strategy will also be provided to the City with a prioritized list of development projects or plan elements that should be pursued.

Phase 4 is expected to last 5 to 6 months, which would mean selection of a preferred concept in September or October of 2010.

Concurrence

Several of the citizen members of the committee that worked on the Pattern Language have expressed support for the selection of the Walker Macy team and the Phase 4 scope of work. One member of that group expressed concern that the Walker Macy selection was made by staff without involvement from a member of the citizen committee, and concern that the change in consultants would lead to a more conventional plan with increased density.

Fiscal Impact

The contract amount, \$81,000 is available in the current year Community Development budget, which anticipated completion of Phase 4 planning. An additional \$13,000 will be expended on the development advisors under separate contracts.

Because of the lengthy consultant selection process and necessary time it took to respond to the concerns of the citizen committee member, the Phase 4 work is beginning several months behind schedule. One result of the delayed start is that the project will not be complete by the end of the fiscal year; not all of the funds will have been expended. Staff will monitor the work under this contract and the budget process to determine how much to spend in this fiscal year, and how much to budget in fiscal year 2010-11.

Work Load Impacts

The South Downtown planning effort is one of a handful of high priority Community Development work areas, along with Portland-to-Milwaukie light rail, the Kellogg Plant/Riverfront issue, the Kellogg-for-Coho Initiative, the Jackson Street project and the NE Milwaukie sewer extension project. The Phase 4 work will consume considerable staff time from the Community Development and Planning Directors, but will streamline efforts going into light rail planning.

Alternatives

Should Council not want to take this action, staff would explore the following options with Council in an upcoming work session:

- a. Stop all planning efforts for the South Downtown
- b. Modify the approach to the current planning effort
- c. Reopen the solicitation to find a different consulting team
- d. Postpone the work until a later date

Staff does not recommend any of these alternatives. Although redevelopment does not appear imminent on any of the South Downtown parcels, light rail planning will be

entering final design in October 2010 and the City will be better served by having an adopted vision for the light rail station area before light rail design progresses too much farther. South Downtown planning progress will also help advance the communities desire for a station building on the triangle site, and will accelerate zoning code revisions that will ensure that new development occurs in keeping with the vision described in the Pattern Language.

Attachments

1. Walker Macy Contract with Phase 4 Scope of Work
2. Resolution



**PERSONAL SERVICES AGREEMENT
WITH THE CITY OF MILWAUKIE, OR
FOR SOUTH DOWNTOWN CONCEPT REFINEMENT**

THIS AGREEMENT made and entered into this 7th day of April, 2010 by and between the City of Milwaukie, a municipal corporation of the State of Oregon, hereinafter called City, and Walker Macy, 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

Contractor shall initiate services immediately upon receipt of City's notice to proceed, together with an executed copy of this Agreement.

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 December 31, 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 Eighty One Thousand Dollars (\$81,000) 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.
- B. Payment will be made in installments based on Contractor's invoice, subject to the approval of the City Manager, or designee, and not more frequently than monthly. Payment shall be made only for work actually completed as of the date of invoice.
- C. Payment by City shall release City from any further obligation for payment to Contractor, for services performed or expenses incurred as of the date of the invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.
- D. Where applicable, Contractor must make payment promptly as due to persons supplying Contractor labor or materials for the execution of the work provided by this order. Contractor must pay all contributions or amounts due from Contractor to the Industrial Accident Fund incurred in the performance of this order. Contractor shall not permit any lien or claim to be filed or prosecuted against City or any subdivision of City on account of any labor or material to be furnished. Contractor further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- E. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person as such claim becomes due, City's Finance Director may pay such claim and charge the amount of the payment against funds due or to become due the Contractor. The payment of the claim in this manner shall not relieve Contractor or their surety from obligation with respect to any unpaid claims.
- F. If labor is performed under this order, then no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, or emergency or where the public policy absolutely requires it, and in such cases, except cases of contracts for personal services as defined in ORS 279A.055, the labor shall be paid at least time and a half for all overtime in excess of eight (8) hours a day and for all work performed on Saturday and on any legal holidays as specified in ORS 279B.020. In cases of contracts for personal services as defined in ORS 279A.055, any labor shall be paid at least time and a half for all hours worked in excess of forty (40) hours in any one week, except for those individuals excluded under ORS 653.010 to 653.260 or under 29 USC §§ 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 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:

Coverage	Limit
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 South Downtown Concept Refinement. 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:

Office of City Recorder
 City of Milwaukie
 10722 SE Main St.
 Milwaukie, Oregon 97222

Business Phone: 503-786-7519
 Business Fax: 503-653-2444
 Email Address: howardj@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: Walker Macy
Attn: Kenny Asher	Attn: Michael W Zillis
6101 SE Johnson Creek Blvd, Milwaukie, Oregon 97206	Address: 111 SW Oak, Suite 200 Portland OR 97204
Phone: 503-786-7654	Phone: 503-228-3122
Fax: 503-774-8236	Fax: 503-273-8878
Email Address: asherk@ci.milwaukie.or.us	Email Address: mzillis@walkermacy.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 Community Development and Public Works Director, Kenny Asher, 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.

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

Printed Name & Title

Date

Date

WALKER·MACY

Landscape Architecture Urban Design Planning

March 5, 2010

Kenny Asher
Community Development Dept.
City of Milwaukie
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206

**RE: Proposed Scope of Work
South Downtown Concept Refinement**

Dear Kenny:

We are excited to have the opportunity to work with you and the community on Milwaukie's South Downtown Concept Refinement. The City has taken great strides in establishing a compelling approach to the redevelopment of South Downtown Milwaukie. Our task is to refine and advance the Center for Environmental Structure's (CES) work to date, building on their concept plan to study details of circulation, anticipated lot and plat feasibility, integration with TriMet's proposed light rail facility, interface with the Kellogg Creek natural area, public space design and density.

Project Team

Walker Macy will lead the effort and provide urban design and landscape architectural services. We will work closely with LMN Architects on matters of architecture and urban design. The City will provide the services of DKS to provide traffic engineering services as needed for the project.

Development Strategist

There is also a need for a team member to address related project elements suggested by CES, such as land organization, tenure and ownership, financial planning, fiscal strategies and other alternative mechanisms. We propose to utilize the services of Marilee Utter with Citiventure for this effort. Citiventure Associates LLC is a Denver-based real estate advisory firm established in 1991 that specializes in mixed-use projects and has particular expertise in large-scale master-plans and transit-oriented developments (TOD). We assume that Citiventure's scope of work and contract will be directly coordinated with you, with our input.

Project Partners

Based on our understanding of the project's needs and objectives, we recommend that the following groups participate in this process:

1. **Development Advisors:** We recommend that an advisory group be established to evaluate and recommend improvements at least once during this process in a half-day session (with the potential for further review via email and conference call). The group should be comprised of experts in real

111 SW Oak, Suite 200 Portland, OR 97204
Phone 503-228-3122 Fax 503-273-8878

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estate development, public-private partnerships, community building and financing mechanisms. The following are our 3 recommended Advisors:

- **Marilee Utter**, Citiventure, Inc., Denver. Marilee is a development advisor for Transit-Oriented Developments and a leader in the Urban Land Institute.
<http://www.citiventure.com/what.htm>
 - **Ron Sher**, Developer, Seattle. Ron is a developer of 'unconventional' retail which includes public Commons or "Third Places"
 - **Jerry Johnson**, real estate market and regional economic development consultant. Mr. Johnson has consulted on a broad range of real estate development and land use economic topics, for both public- and private-sector clients. As a Principal with Johnson Reid, Mr. Johnson is involved in research design, economic and financial modeling, and market analysis.
2. **City Project Management Team:** It is recommended that a PMT be formalized, comprised of you, Katie Mangle and others, to guide this process closely. The Walker Macy team will have direct regular contact during the project with the PMT. A regularly scheduled meeting between the city and the local team will be conducted throughout the project to ensure good communication.
 3. **Steering Committee:** Members from the original Ad Hoc Pattern Language Committee should be invited to participate, along with other new members, as this project's Steering Committee, meeting on a regular basis to guide and review our work and act as local proponents for the project. The Steering Committee will also include representation from the Design & Landmarks Committee, the Planning Commission, City Council and Budget Committee, as well as other citizen volunteers to be determined.
 4. **City Council and Public:** The citizens of Milwaukie will be essential team members on this effort and we will seek their input as regularly as possible. The City Council will also be a key contributor and should be consulted at several key points in the process.

Interface with TriMet

TriMet's ongoing work on the planning and construction of the Milwaukie Light Rail Lake Road facility will require extensive coordination with the City. Our team is available to meet with TriMet on a regular basis, provide design critique, and be an advocate for the City's interests. We have outlined three meetings with TriMet in this scope that would be conducted in concert with the South Downtown refinement.

Interface with Triangle Site design team

We have worked extensively in the past with your consultants on the Triangle Site, Ankrom Moisan. We will meet with them separately 3 times through this process. Further discussion could occur, if Ankrom Moisan is invited to the TriMet meetings and to select City PMT meetings.

SCOPE OF WORK

Task 1

Orientation and Kickoff Steering Committee Meeting

An initial kickoff meeting with the PMT will establish specific schedules, objectives and a coordination process. The team will also research other relevant current studies affecting the study

area (beyond the CES work) and the current status of transportation or private development projects in the area. We will tour the site extensively with the PMT and members of the Steering Committee and photo-document existing conditions.

It will be essential to conduct interviews with other key city staff, particularly Public Works. We will gain a closer understanding of plans for the Kellogg for Coho Initiative, through interviews with city staff, Metro and other applicable natural resource agencies. The first of three meetings with TriMet will take place to discuss their work to date. We will also conduct a first coordination meeting on plans for the Triangle site.

Stakeholder interviews will also be scheduled with landowners in and adjacent to the study area. Other interests that will be consulted include the Downtown Development Association, Historic Milwaukie Neighborhood District Association, Island Station Neighborhood District Association, and North Clackamas School District. The City will arrange and host the stakeholder interviews in a concentrated session at City offices. Walker Macy will follow up with additional telephone interviews separately if needed.

We will obtain base information with the assistance of city staff. GIS or CAD mapping information will be provided from the City in order to prepare an accurate base map for subsequent graphics. It is highly recommended that the City obtain a detailed ortho-photo survey for the study area to determine precise utility locations, curbs and trees as well as exact property boundaries. This survey typically will cost \$3000-\$5000 for a study area of this scale.

Meetings: One meeting with City Project Manager and Project Management Team. TriMet and Triangle Coordination Meetings #1. Stakeholder interviews.

Deliverable: Memo summarizing Goals and Objectives of Plan. A draft will be provided for initial City comment. Meeting Notes from Steering Committee and key stakeholder interviews.

Schedule: Within one month of project's initiation.

Task 2

Plan Evaluation and Initial Assessment

A first meeting between the Walker Macy team and the Steering Committee will be conducted to establish the goals, objectives and strategies for the CES armature concept refinement. There will be a total of three work sessions with this Committee during the project. This first meeting will serve as an introduction for the Walker Macy team to gain a deeper understanding of the South Downtown planning efforts and establish the opportunities and obstacles for this process. The team will prepare a site analysis based on existing information and our review of the area and previous studies such as CES's land diagnosis. This analysis will help our team define the character of the site and inform any modifications to the existing concept. The mapping will include key elements of the area as well as opportunities and constraints for development (e.g. property ownership, light rail facilities, circulation, significant views, historic sites and areas, sensitive environmental areas). We will summarize these analysis maps in a set of opportunities and constraints diagrams.

We will evaluate and assess the armature concept plan associated with the South Downtown Pattern Language. This evaluation will consider our site analysis and results from stakeholder

interviews. We will form this evaluation around the “Questions to be Addressed” described on pages 64-72 of the Pattern Language). Our criteria for this evaluation will be based on elements such as:

- circulation
- transit connectivity
- feasibility of implementation
- feasibility of proposed building form and construction methods
- appropriate scale for public space and relationship of adjacent development
- feasible land uses and tenants for new space in South Downtown
- sustainability and integration of the built environment with natural systems
- adjacency to Kellogg Creek natural system and habitat corridor
- potential for catalyzing public-private development

The team will suggest ways to modify some of the Patterns or add any missing Patterns. We will present our Assessment to the PMT, then the Steering Committee. Work will also include continued coordination with TriMet. We will draft a Technical Memo describing significant findings from the previous study, which will determine the major elements that should be preserved as well as major elements that we believe need to be reconsidered.

We will introduce the Development Strategist and Development Advisors at this early stage to evaluate the viability of the existing plan and Patterns in an honest assessment of opportunities and constraints. This will lead to a thorough brainstorming of potential alternatives to the current armature plan, while still keeping true to the overarching principles that have driven the plan to date.

Meetings: PMT meeting, Steering Committee Meetings #1 and #2, TriMet and Triangle Site coordination meetings #2. Development Strategy Meeting.

Deliverable: Base mapping with site analysis (including property ownership), photographic documentation of the study area and an opportunities and constraints analysis in graphic form. Assessment Memo with results of Development Strategy meeting. Technical Memo with major modifications and key plan elements. Meeting Notes

Schedule: The second month of the work

Task 3

Alternative Concepts and Community Open House

Once we have gained familiarity with the community’s geography, citizen desires and the preceding work by CES, we will develop 2-3 alternative approaches for refinement of the South Downtown armature concept, based on our team’s expertise and a preliminary range of program possibilities suggested by the Development Strategist. These refinements will also be based on our site analysis work, assessment of the Pattern Language and meetings with the City and TriMet. We will present initial versions of these concepts to the PMT for review then revise them for presentation to the Steering Committee. We will also review the schemes with our Development Strategist via email and conduct a conference call. Upon refinement of the schemes, we will hold another meeting here for more detailed review of the concepts.

Alternative solutions will be conceived and physically explored in plan and three dimensions. The team will explore development scenarios through testing of various elements, building typologies, parking impacts, circulation patterns, and public realm components. The team will explore alternative approaches to land division of the district, proposed by CES, to understand how parcelization and changes to the public right of way affect the plan and program.

We will conduct a public open house, to help understand the community's preferences and concerns expressed in the Pattern Language and get to a consensus and wider public support for the plan. To supplement the Open House, we will display the work at City Hall or in another location such as the Milwaukie Library, in order to obtain written and oral feedback from the public. Website postings of project information will also be essential, effective methods.

As noted previously, a critical element of this project's implementation will be continued coordination with TriMet's plans for the Lake Street light rail station and the Triangle Site. After a third meeting with TriMet, we suggest that the City draft a Memo of Understanding (to complement the existing June 2008 MOU) to determine who is responsible for what aspects of the preferred concept we have created.

Meetings: Community Open House. Project Steering Committee Meeting #3. TriMet coordination and Triangle Site meetings #3. Development Strategist Conference Call and Meeting #2.

Deliverable: 2-3 alternative concepts (with interim review by city staff). Meeting Notes.

Schedule: Two months

Task 4

Preferred Concept and Implementation Measures

Based on the feedback from the community open house, the Steering Committee, and discussions with the PMT and city staff, a preferred concept will be developed, perhaps as a hybrid of several alternatives. The concept will be well-illustrated, with cross-sections and other sketches or illustrations of details. We will then refine this concept, illustrating it with computer graphics such as a Sketchup model. It will be important to ensure a continued assessment of the concept's adherence to the guiding principles outlined in the CES Pattern Language (and any additional Patterns or refinements proposed by this team).

The final concept will also include a hierarchy of street cross-sections and block-by-block building envelopes. The final preferred scheme for an urban design concept plan such as this should reflect physical and market realities, while also providing a clear path to implementation. The preferred concept will include a phasing and implementation action plan that guides City decision-making, including a prioritized, specific list of development projects or elements of the plan.

Meetings: One meeting with PMT (#5).

Deliverables: Preferred Concept and Implementation Strategy. Prioritized list of development projects. Meeting Notes

Schedule: Two months

On-call Urban Design Consulting

You have asked our team to be available for on-call downtown planning and development consulting, for tasks as yet un-programmed. We will be readily available for this service, on a time and materials basis.

Schedule

We estimate that this process could be completed within 5 to 6 months. Our team could also consider an option to proceed with work up to **Task 3**, for completion by the end of June, with the remaining work scheduled for the subsequent fiscal year.

Walker Macy is eager to work with the City of Milwaukie on the continued crafting of an enduring, sustainable strategy for a livable, vital, mixed-use and transit-oriented downtown that is rooted in its riverside landscape.

Sincerely,
WALKER MACY

Michael W. Zilis
Principal

ATTACHMENT 2

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR \$81,000 WITH WALKER MACY FOR PHASE FOUR OF THE SOUTH DOWNTOWN PLANNING PROJECT.

WHEREAS, the City of Milwaukie has invested time and resources over the past three years to prepare and position the portion of downtown south of Washington Street for redevelopment that is supportive of community desires; and

WHEREAS, the South Downtown area can become a focal point that connects public parks, natural areas, main street pedestrian activity, a public plaza and a light rail station; and

WHEREAS, the City has worked with dozens of citizens and a team of professional advisors in creating a Pattern Language for the South Downtown which describes, in words, the qualities and character that should be cultivated in the district; and

WHEREAS, the Pattern Language culminated three phases of planning work for the area, which included validating whether a plaza would work at the south end of Main Street, developing a concept for supporting the plaza, and establishing the mutually held goals of individual citizens and stakeholders regarding this portion of downtown; and

WHEREAS, in September 2009, the City publicly solicited for design consulting services to assist with Phase Four of the South Downtown planning project and received eight proposals and interviewed four firms; and

WHEREAS, the interviewed firms were asked to describe how they would interpret, for implementation purposes, the Pattern Language and concept that has been developed for the South Downtown; and

WHEREAS, Walker Macy was chosen by a selection committee as the most qualified firm to interpret the prior planning work for implementation purposes; and

WHEREAS, Walker Macy's presented its approach to the City Council at a work session on February 16, 2009, and received constructive feedback from the Council; and

WHEREAS, the Community Development Department budget has funds available in the current fiscal year to fulfill this contract;

NOW, THEREFORE, BE IT RESOLVED that the City Council authorize the City Manager to execute a contract with Walker Macy in the amount of \$81,000.

Introduced and adopted by the City Council on _____ .

This resolution is effective on _____ .

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney