

CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
DECEMBER 15, 2009

7664

### CALL TO ORDER

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

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

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

### PLEDGE OF ALLEGIANCE

### PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

#### Milwaukie High School Student of the Month

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

#### Announce Winner of the Downtown Milwaukie "Passport to Prizes"

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

### CONSENT AGENDA

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

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

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

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

### AUDIENCE PARTICIPATION

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

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

**Councilor Stone** asked the fee amounts being requested.

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

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

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

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

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

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

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

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

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

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

## **ADJOURNMENT**

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

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

Pat DuVal  
Pat DuVal, Recorder

# REGULAR SESSION

# AGENDA

## MILWAUKIE CITY COUNCIL DECEMBER 15, 2009

**MILWAUKIE CITY HALL**  
10722 SE Main Street

**2068<sup>th</sup> MEETING**

### REGULAR SESSION – 7:00 p.m.

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|---|--------|
| <b>1. CALL TO ORDER</b><br>Pledge of Allegiance   |        |
| <b>2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS</b>   |        |
| <b>A. Milwaukie High School Student of the Month</b><br>Presenter: Mayor Ferguson   |        |
| <b>3. CONSENT AGENDA</b> <i>(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the “Consent” portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)</i>   |        |
| <b>A. City Council Minutes for the October 6, 2009 Regular Session</b>  | 2      |
| <b>B. City Council Minutes for the October 20, 2009 Regular Session</b>   | 7      |
| <b>C. City Council Minutes for the November 3, 2009 Regular Session</b>   | 15     |
| <b>D. Authorize the City Manager to Sign Purchase Orders for City Vehicles and Public Works Equipment – Resolution</b>  | 20     |
| <b>E. National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater System Support Services (MS4) – Resolution</b>   | 27     |
| <b>F. Grant Agreement for American Rivers/NOAA Contribution to Planning Phase for Kellogg-for-Coho Initiative – Resolution</b>  | 31     |
| <b>4. AUDIENCE PARTICIPATION</b> <i>(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are “not on the agenda” may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, “all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous.” The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)</i> |        |

**5. PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*

**A. Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 & 19.321.3 – Ordinance**  
**Staff: Mike Swanson, City Manager**

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

**A. Amendment to Intergovernmental Agreement with the Oregon Department of Transportation (ODOT) Regarding Federal Stimulus Project (Jackson Street Improvements) – Resolution** **45**  
**Staff: Alex Campbell, Resource and Economic Development Specialist**

**B. Council Reports**

**7. INFORMATION**

**8. ADJOURNMENT**

**Public Information**

- Executive Session: The Milwaukie City Council may meet in executive session pursuant to ORS 192.660.
- All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities (ADA). If you need special accommodations, please call 503.786.7502 or email [ocr@ci.milwaukie.or.us](mailto: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.

3.  
CONSENT AGENDA

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
OCTOBER 6, 2009**

**CALL TO ORDER**

**Mayor Ferguson** called the 2063<sup>rd</sup> meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Planning Director Katie Mangle, Associate Planner Brett Kelper, Resource & Economic Development Specialist Alex Campbell

**PLEDGE OF ALLEGIANCE****PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS****A. Oak Lodge Sanitary Sewer General Obligation Bond Measure 3-348**

**Michael Read**, Oak Lodge Sanitary General Manager, provided background on the District and the treatment project intended to serve customers for the next 50 years. Measure 3-348 will be on the November 3, 2009 ballot seeking district ratepayer approval of the sale of up to \$44 million in bonds.

**B. Milwaukie Poetry Series Report**

**Tom Hogan**, Poetry Series Project Manager and Library Board Chair, thanked the City Council, Poetry Committee members, and Paulann Peterson for their work on the project. He discussed the relationship with Milwaukie High School that included sponsoring youth writing workshops and open mic evenings. He offered an overview of the 3<sup>rd</sup> Season.

**C. Natural Resource Overlay Code Amendment Project**

**Ms. Mangle** and **Mr. Kelper** talked about the current project to update the zoning code related to natural resources.

**Mr. Kelper** stated the City already had one overlay zone that protected streams and wetland water quality by establishing a buffer in which certain activities were limited. The current project had to do with a new overlay that would expand protection to habitat, mostly upland, and establish effective wildlife corridors. This work was being done as the City and other groups were working on Kellogg Creek, Johnson Creek, and Minthorn Springs. Mr. Kelper discussed Metro's Nature in the Neighborhoods Program that involved sustainable development education as well as a regulatory element. Entities in Metro were required to show substantial compliance. The Metro model code and maps will be adapted for Milwaukie with the help of the Angelo Planning Group. He addressed the importance of public outreach efforts, the roles of the Advisory Group, and the City webpage. Staff hoped to have an open house shortly after the first of the year and looked forward to a summer 2010 adoption.

**Councilor Barnes** noted one of the identified areas was adjacent to her home and asked if there would be a conflict.

**City Attorney Monahan** noted this was very early in the process but should be declared at some time.

**Mr. Kelder** added some specific groups like the Wetlands Conservancy, North Clackamas Parks and Recreation District, and the 600 property owners were notified. The Advisory Group will be advisory to the Planning Commission and ideally be a microcosm of the community with diverse perspectives. The Group had porous boundaries with no firm barriers. He considered all who attended the meeting and those who wished to attend as members of the group. Meetings will be on an as-needed basis and specific site tours would be scheduled. The website will be the City's central point for information.

#### **D. National Archives Month**

**Mayor Ferguson** read a proclamation naming October as *National Archives Month* in the City of Milwaukie.

#### **E. Bike or Walk to School**

**Mayor Ferguson** read a proclamation naming October 7, 2009 as *Bike or Walk to School Day*.

#### **F. High Speed Rail**

**Mr. Asher** briefly reported on a meeting with the Cities of Lake Oswego, Tualatin, Oregon City, and Portland to discuss the possibility of high speed light rail particularly on the Oregon Electric line. Interest was generated during the summer when the Oregon Department of Transportation (ODOT) applied to the federal government for stimulus funds to make improvements to the existing Amtrak line and also do an Environmental Impact Study (EIS) looking at alternatives for future high-speed rail improvements. One of these alternatives would be what is known in Milwaukie as the Tillamook Branch. He reported there was consensus as to where future high-speed rail ought to go when considering land use. The Oregon Electric line goes through Milwaukie, Lake Oswego, and Tualatin downtown areas but misses Oregon City which had already made significant investments in its current Amtrak station. The consensus of the various staff representatives was that it should stay on the mainline and that information would be shared with their respective Councils. The City of Portland really had no other alternatives and was excited by the prospect of improvements resulting from high-speed rail in the corridor. Regionally it made sense but not at the expense of small downtowns. There was a meeting scheduled for early November that would include the City of Wilsonville and Metro which was interested in livability and preserving transportation corridors. There should be a response to the application by the end of the year. Wendy Hemmen was Milwaukie's coordinator in this effort.

**Mayor Ferguson** offered to attend meetings with other elected officials.

**Councilor Barnes** suggested contacting the City's congressional delegation.

**Mr. Asher** recommended waiting until there was more information, and staff would let the City Council know when it became critical.

### **CONSENT AGENDA**

**Councilor Chaimov** stated under the circumstances it was better if he abstained from an agreement that involved a client which in this case was Clackamas River Water.

**It was moved by Mayor Ferguson and seconded by Councilor Stone to adopt consent agenda items A, B, and C:**

#### **A. City Council Minutes of the August 4, 2009 Regular Session;**

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- B. City Council Minutes of the August 18, 2009 Work Session; and
- C. City Council Minutes of the September 1, 2009 Work Session

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

It was moved by Mayor Ferguson and seconded by Councilor Barnes to adopt consent agenda item D:

- D. Resolution no. 59-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Execute a Contract with Clackamas River Water (CRW) for the Relocation of a Portion of Their Water Main that Conflicts with the Upcoming Northeast Sewer Extension Project.

Motion passed with the following vote: Councilors Stone, and Barnes, and Mayor Ferguson voting “aye” and Councilor Chaimov abstaining. [3:0:1]

## AUDIENCE PARTICIPATION

None.

## PUBLIC HEARING

### A. Logus Road Closeout/Budget Adjustments – Resolution

**Mayor Ferguson** called the public hearing on the proposed transfer of appropriations to order at 7:45 p.m. The purpose of the hearing was to consider public comment on the transfer of funds for the completion of the Logus Road Improvement Project.

**Mr. Campbell** provided background on the project. Staff anticipated completing the project in the previous budget year but given a number of circumstances that was not accomplished. The proposed resolution carried forward funds that were budgeted last year but not expended. It further increased the Street Surface Maintenance Program’s contribution from \$75,000 to \$150,000 to address the discovery of a degraded base requiring excavation and reconstruction. An event was planned on October 15 to introduce some of the green development aspects of the project.

Correspondence: None.

Audience Testimony: None.

Questions from City Council: **Councilor Stone** asked for clarification the on maintenance reserve.

**Mr. Campbell** responded an element of the rain garden was the 4-year plant establishment period. It was typical for this type of project to include maintenance and was included as a bid item. Once the plants were established less maintenance would be required, and the City was committed to maintenance to the extent necessary to deal with stormwater. City staff had also discussed with residents their role in helping with the landscaping.

Closure of the public hearing: **Mayor Ferguson** closed the public testimony portion of the hearing at 7:53 p.m.

There was no further Council discussion.

It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt the resolution authorizing budget appropriation for the completion of the Logus Road Improvement Project. Motion passed with the following vote: Councilors Chaimov, Stone, and Barnes and Mayor Ferguson voting “aye.” [4:0]

**RESOLUTION NO. 60-2009:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING BUDGET APPROPRIATION FOR THE COMPLETION OF THE LOGUS ROAD IMPROVEMENT PROJECT.**

**OTHER BUSINESS**

**A. Cooperative Intergovernmental Agreement between the Library District of Clackamas County and Member Cities – Resolution**

**Mr. Swanson** reviewed the process and provisions of the agreement. Property tax revenue would come to the County in mid-November representing the first significant payment to the libraries. The City budgeted \$875,000 in revenue for FY 2009-2010. He noted the City maintained its commitment to the citizens by using the funds to increase hours, staffing, and programs. Although there were 2 outstanding issues, identifying a process for resolving service area disputes and timing of the closure of the 2 County branches, he recommended approval of the master library agreement. The third issue had to do with representation on the Library District Advisory Board which would be addressed in the next agenda item.

**It was moved by Councilor Chaimov and seconded by Councilor Barnes for adoption of the resolution approving the cooperative intergovernmental agreement between the Library District of Clackamas County and the member cities and authorizing the City Manager to execute the same.**

**Councilor Stone** commented this was a wonderful thing for our libraries, but the District measure had been proposed based on the threatened loss of timber funds. What happened to the \$10,000 each library gave toward the campaign since Congress extended the timber monies? She thought it would be a wonderful gesture on the County's part to return those funds.

**Mr. Swanson** replied the County ran a success information campaign. He noted this ballot measure had postponed the problem of library funding but did not really solve it. A number of smaller cities would be faced with the issue of continued funding because this was a rate and would probably not keep up with expenses. He discussed future service area responsibilities and accompanying revenues.

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

**RESOLUTION NO. 61-2009:**

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

**B. Amend Milwaukie Municipal Code Section 2.28.020 Regarding Appointment of a Library Board Member to the Clackamas County Library District Advisory Board**

**Mr. Swanson** stated he felt this was an accurate reflection of the will of the voters and referred to language in the ballot measure explanatory statement. He recommended adding language to the Milwaukie Municipal Code Section 2.28.020 regarding the City's appointment to the Clackamas County Library District Advisory Board. The Library

Board would appointment one of its members, and the City Council would affirm the appointment to the District.

**City Attorney Monahan** added this issue had been raised in a number of District meetings and memos, but the County Counsel was fixed in his position.

**Councilor Stone** understood the City Council of Milwaukie would still appoint Library Board members and subsequently affirm to the District the name and the City's District representative.

**It was moved by Councilor Chaimov and seconded by Councilor Stone for the first and second readings by title only and adoption of the ordinance amending Milwaukie Municipal Code Section 2.28.020 regarding the appointment of a member to the Clackamas County Library District Advisory Board as amended. Motion passed with the following vote: Councilors Stone, Barnes, and Chaimov and Mayor Ferguson voting "aye." [4:0]**

**Mr. Swanson** read the ordinance two times as corrected.

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

**ORDINANCE NO. 2008:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MCC SECTION 2.28.020 REGARDING THE APPOINTMENT OF A MEMER TO THE CLACKAMAS COUNTY LIBRARY DISTRICT ADVISORY BOARD**

**C. Council Reports**

**Councilor Stone** encouraged people to participate in the Ardenwald Walk or Bike to School event and the Milwaukie High School Dance Team fundraiser at the Davis Graveyard.

**Councilor Chaimov** attended the light rail station planning event which was well-attended by a cross section of the community.

**Mayor Ferguson** recognized those who volunteered for the City on boards and commissions and in the neighborhoods. He announced vacant positions on various boards and commissions and encouraged people to apply

**ADJOURNMENT**

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

**Mayor Ferguson** adjourned the regular session at 8:22 p.m.

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Pat DuVal, Recorder

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
OCTOBER 20, 2009**

**CALL TO ORDER**

**Mayor Ferguson** called the 2064<sup>th</sup> meeting of the Milwaukie City Council to order at 7:10 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Planning Director Katie Mangle, Assistant Planner Susan Shanks, Community Development & Public Works Director Kenny Asher, Engineering Director Gary Parkin

**PLEDGE OF ALLEGIANCE**

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

**A. Milwaukie High School Student of the Month**

**Principal Mark Pinder** introduced Milwaukie High School Student of the Month **Phoebe Wilson** to the City Council and public.

**B. Metro Update**

**Metro Councilor Carlotta Collette** discussed *Making the Greatest Place* that integrated land use planning, transportation planning, and the urban growth report. A new piece was added to this process that looked at funding infrastructure needs and keeping established communities vibrant. The region was committed to not extending the urban growth boundary unless necessary to protect farmland and forests, investing in existing communities like the City of Milwaukie to maintain and improve what we already had, and being accountable by reporting back. The other big emphasis was jobs in the region. Metro released a staff report from Chief Operating Officer Michael Jordan that outlined local reactions from various groups. The 6 goals were vibrant communities, economic prosperity, safe and reliable transportation choices, leadership on climate change, clean water and air, and equity so that the burdens and benefits of growth and change were distributed equitably. She discussed the 2002 Urban Growth Boundary (UGB) expansion that brought in Damascus and part of Washington County. Development had not occurred and many were concerned about accommodating future growth. The report called for setting the bar higher before bringing in more land. Urban reserves would be established that made sense to urbanize in the future. Concept planning will be done before bringing land into the UGB to better address governance, infrastructure, and planning. This was important to cities like Milwaukie and Gladstone because of the vested interest in helping make the best use of what was inside the UGB.

**Councilor Barnes** hoped Metro understood Milwaukie's concerns about high-speed rail and requested Councilor Collette's support.

**Councilor Collette** hoped this was only a placeholder and not become a rail corridor because of its future significance as a bike and pedestrian path.

**Councilor Chaimov** appreciated Councilor Collette's work particularly in looking out for the interests of the City. Whenever possible he urged letting local communities figure out how to achieve Metro's desired outcomes. He used business recycling as an example of a process that might have been handled differently.

**Councilor Stone** commented on dramatic alterations to local communities as a result of regional planning. She noted the Tacoma park-and-ride being planned and the impact of proposed signals in the Ardenwald Neighborhood. It was important for local jurisdictions to figure out how to comply rather than being told so that livability would be preserved and not let cut-through traffic negatively impact the neighborhoods.

**Councilor Collette** commented that Oak Grove was engaged in a planning process and was pushing TriMet to design a different kind of station at Park Avenue to fit with the environment. She hoped those involved with the Tacoma Station would engage in a discussion of what they wanted to build and make a great project for the neighborhood.

**Councilor Stone** noted there had been significant engagement in light rail issue. She discussed concerns with the Lake Road area and the need to be sensitive to making a project fit in. She urged that there be amenities to enhance what we already had.

**Councilor Loomis** agree with the other Councilors' comments. He appreciated that Councilor Collette was so familiar with Milwaukie's concerns.

**Mayor Ferguson** agreed with all the statements and would forward his comments to her on high-speed rail.

**Councilor Collette** discussed the Intertwine Program that coordinated trails, open space, and parks.

**Mayor Ferguson** announced a change to the agenda that moved discussion of the Waste Water Partnership Agreement up in the order of business.

### **C. Smart Development Code Action Plan**

**Ms. Mangle** discussed the State grant that was being used to address the most egregious parts of the municipal code. Staff had worked with the City Council and Design and Landmarks Committee to develop a priority list: residential design standards, administrative provisions and review criteria, commercial use and design standards, and downtown land uses and design standards. The City contracted with the Angelo Planning Group to develop an action plan to scope the project and identify specific problems, potential solutions, and issues the Planning Commission would grapple with to make the changes. The Planning Commission and staff worked to establish priorities in order to develop a second grant application. The next step was to develop the grant application for funding in the next biennium.

The Councilors appreciated the work and supported the continued effort.

## **CONSENT AGENDA**

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the consent agenda as presented:

- A. City Council Minutes of the August 18, 2009 Regular Session;**
- B. City Council Minutes of the September 15, 2009 Work Session;**
- C. Resolution No. 62-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of Contract for the Construction of Milwaukie Riverfront Park Water Main Relocation Project;**
- D. Resolution No. 63-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing a Contract Settlement for the Main Street Sewer Main Project;**

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- E. Resolution No. 64-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the Mayor to Sign an Intergovernmental Agreement for the Collection of Payments from the Clackamas County Development Agency to Defray the Private Sanitary Sewer System Connection Costs of Properties in the North Clackamas Urban Renewal District to be Served by the City of Milwaukie Sanitary Sewers;
- F. Resolution No. 65-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Standardizing How the City Zoning Map Shows Zone Boundaries Where the Boundary between Two or More Zones Occurs along a Public Right-of-Way; and
- G. An OLCC Application for Wine:30, 10835 SE Main Street, A new Outlet.

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

## AUDIENCE PARTICIPATION

None.

## PUBLIC HEARING

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

Mr. Swanson discussed the background of this matter and recommended continuation.

It was moved by Councilor Chaimov and seconded by Councilor Barnes to continue consideration of the amendments to Milwaukie Municipal Code Sections 19.321.7 and 19.321.3 to the regular session of November 17, 2009. Motion passed with the following vote: Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting “aye.” [5:0]

## OTHER BUSINESS

- A. City Code Update – Parks and Recreation – Ordinance

Ms. Herrigel requested that the City Council approve the ordinance amending Milwaukie Municipal Code Chapters 2.12. and 2.20 regarding establishment and membership of the Park and Recreation Board (PARB) and the Center/Community Advisory Board (CCAB). The PARB amendment acknowledged the creation of the North Clackamas Parks and Recreation District (NCPRD) and the City’s membership in the District, clarified the City Council and Board roles in advising the District Advisory Board (DAB), and cleaned up language regarding the Board’s participation in development and review of the District master plan, capital improvement plan, and other processes. PARB and staff worked closely with Milwaukie Center Director Joan Young to update language to reflect the recently amended intergovernmental agreement (IGA) between the City and the District. That included clarified decision-making authorities for operation, maintenance, and capital expenditures for the Milwaukie Center, the downsizing of the Board and the number of allowed terms, and the new nomination and representation policy for Board positions.

It was moved by Councilor Chaimov and seconded by Councilor Stone for the first and second readings by title only and adoption of the ordinance amending Milwaukie Municipal Code Chapters 2.12 and 2.20.

Councilor Loomis announced he was an employee of the Parks District but could be objective in his vote.

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

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

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

**ORDINANCE NO. 2009:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTERS 2.12 AND 2.20 OF MILWAUKIE’S MUNICIPAL CODE REGARDING ESTABLISHMENT AND MEMBERSHIP OF THE PARK AND RECREATION BOARD AND THE CENTER/COMMUNITY ADVISORY BOARD, RESPECTIVELY.**

**E. Wastewater Partnership Agreement – Resolution**

**City Attorney Monahan** prepared the memo that discussed the process in which Councilor Barnes had been the City’s representative. The bylaws had gone through several iterations and some communities had adopted an earlier version while several communities had asked questions that remained open. The latest draft incorporated changes suggested by the City of West Linn. The group would be advisory to the Board of County Commissioners (BCC) on waste water issues. The Partnership expected some response from the City by the end of the month. Staff recommended that the City participate on the Committee but not necessarily adopt this set of bylaws as there may be more amendments and therefore favorable to the City Council to see the actual final version before taking any action.

**County Commissioner Bob Austin** was relatively new to this issue and had attended 2 meetings. There was a rousing discussion of bylaws, and he felt there would be changes for clarification. He urged the City Council to strongly consider joining this River Partners group to have everyone at the table to discuss the future of waste water. He mentioned an October 31 deadline. He was looking to the future in terms of where the group might go as an advisory body.

**Damascus City Manager Jim Bennett** reported his was one of the cities that had approved the participation and the bylaws. He understood the years of planning going into the redevelopment of the Milwaukie waterfront and frustration with what to do with the Kellogg Treatment Plant. The City of Damascus had a lot of empathy for this community because it too had its challenges. He urged Milwaukie to consider joining in order to find a regional solution to waste water treatment concerns. It was better to be part of the process rather than be outside of the process. He did not think there could be a solution without Milwaukie’s being at the table.

**County Commissioner Ann Lininger** encouraged the City Council to consider joining this team and be part of the go-forward strategy. This was the group that would chart the course for the shared future.

**Mayor Ferguson** perceived Milwaukie as a community member in the County as a whole and saw value in finding a regional waste water solution. It was more than just decommissioning the Kellogg Treatment Plant. He saw Milwaukie as the gateway to North Clackamas County, and he was open to talking about reducing the Plant footprint or making other improvements to make Milwaukie a great gateway.

**Councilor Loomis** reiterated he was an employee of NCPRD but felt he could be objective in his comments. He wanted to be a member of the partnership, but recent emails indicated the City Council did not have the final document before it. He felt there

should be some language related to sharing the cost of major infrastructure improvements as well as the reduction or removal of infrastructure.

**It was moved by Councilor Barnes and seconded by Councilor Chaimov that the City of Milwaukie endorses the need and concept of a regional waste water solution in Clackamas County and that the City of Milwaukie looks forward to reviewing the final completed version of the bylaws of the proposed partnership agreement. Motion passed with the following vote: Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting “aye.” [5:0]**

#### **B. Update on South Downtown Planning**

**Mr. Asher and Randy Schmidt**, Center for Environmental Structure (CES), updated the City Council on planning efforts for Milwaukie’s South Downtown area recently completed under the guidance of Christopher Alexander and CES.

**Mr. Schmidt** identified the South Downtown project area and recapped the work done in Phase 1. He highlighted the recurring themes compiled during the initial work with a group of 34 citizens. In the current year CES continued the work with a smaller ad hoc group of 9 to develop a pattern, a series of word statements that captured people’s visions. The first step was a diagnosis of the site where people marked things on their maps which they felt were beautiful and needed to be protected as well as those things which were broken and needed healing. The Willamette River, of course, was a huge positive as was the natural basalt, the knoll in Dogwood Park, specific trees, views of the Hwy 99E Bridge, Kellogg Creek, certain buildings that offered solidity, the trestle, Main Street landscaping, and the Bernard’s garage sign. Concerns had to do with McLoughlin Boulevard noise. He showed sample diagnosis maps. They spent many hours working with the group of 9 in editing the pattern language to come up with an 80-page document that outlined hopes and what needed healing. He briefly reviewed the major chapters: the relationship of the South Downtown to its surroundings, a major plaza forming the core and focus of the South Downtown, the plaza at the head of Main Street, the light rail transit station leading directly into the plaza, the plaza given shape and character by an inner frontage ring of 2-story buildings, the outer ring with more loosely-placed 1 to 3-story buildings and open land with lanes, residences, businesses, and open space, 25% of the land bordering the plaza is open space, the prevailing form of buildings is shops and houses, the overall building density will be limited to a floor area ratio (FAR) of 1.51, all buildings will be built by individual craftspeople, owners and owner occupiers will be strongly encouraged to ornament their buildings, and there will be a web of connected paths, roads, cars, bike and pedestrian pathways, etc. working unobtrusively and smoothly together.

**Mr. Schmidt** discussed the armature or underlying structure upon which real buildings and plans could be hung. He pointed out the plaza, the ring of commercial buildings, colonnade, tower or some type of visual anchor, the lots upon which there would be some building and some open space, a terrace with parking below, pedestrian and vehicle access, trees, and light rail platform access. He showed photos of several rough models. Recommendations for the light rail station had to do with keeping a narrow bridge over Kellogg Creek to Kronberg Park by using a split platform design, keeping things in scale with the area, pedestrian access from the south of the plaza to the drop off to help enliven the area, desirability of a waiting room building, more useful applications of the Southern Pacific right-of-way for more useful applications, closing the ends of Lake Road, Main Street, and Adams Street, and keeping the platform widths to about 12-feet to keep with the scale.

In the coming year Mr. Schmidt recommended keeping a firm hand on the light rail station to control quality in the South Downtown, making preliminary implementation studies on how the area might grow and what that meant economically, and

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constructing an initial public item such as a fountain. He discussed the desirability of small 1,000 square foot projects to allow a path for correction. He thanked those who had worked so hard on the project.

**Jeff Klein** noted this was a unique way to look at what the community liked and wanted to keep. This had been a very positive experience for him, and he was proud to have been a part of it.

**Carlotta Collette** observed this was a project about timeless architecture that reflected community values. This could be a world-class project with amazing, organic structures.

**Dave Aschenbrenner** commented on the uniqueness of the project and how he still visits the area to feel what it might be. This was Milwaukie a project.

**Councilor Barnes** thought this was an exciting project and hoped it would be explained to the citizens to get their buy in. Was this the time City Council would begin talking about tax increment financing?

**Mr. Asher** replied that had to do with implementation. Tax increment financing would come along with urban renewal. If one looked at the armature there were a lot of public spaces, and part of the beauty of the plan was the balance of public and private spaces. There were spaces where the City might want to make some kind of investment which it could not do today. The City will eventually have to grapple with this and find a way to contribute money, land, or code; those were questions that were still out there.

**Mr. Schmidt** recognized the importance of that issue and said it would be addressed in the coming year.

**Councilor Chaimov** felt the people of Milwaukie owed a great debt to those who were involved in the project. He was pleased with the product so far and the method for reaching decisions. This was a good community legacy.

**Councilor Stone** read the pattern language with eagerness and found the concept intriguing. She appreciated how the group looked at the City's assets and how they might be enhanced. She hoped the City might be able to do something with the ODOT building north of Milwaukie and discussed the feasibility of an old-style train depot in South Downtown. She appreciated the environmental consciousness and particularly the value placed on the City's beautiful trees.

**Councilor Loomis** was excited about this project and believed in this kind of development for the City. A project can evolve with better ideas when people express themselves. He was encouraged by the pattern language.

**Councilor Stone** had concerns about financing, but it could come to fruition. She hoped to find creative funding so the citizens did not bear the burden. She hoped people would become excited about making a business investment.

**Mr. Schmidt** responded the prime mover behind the small, organic growth was an intersection between private and community interests. It would be best driven by small business investments to create a healthier process.

**Mayor Ferguson** thanked Mr. Schmidt for the visuals. He like the small town community feel and thanked the 34-member group and especially the group of 9.

**Mr. Asher** reported this wrapped up Phases 2 and 3 scoped in the CES contract. He recently put out a request for proposals (RFP) to continue the work.

**Mayor Ferguson** called for a brief recess.

### **C. Right-of-Way Annexation in NE Sewer Extension Project Area**

**Ms. Shanks** reported the City had notified the necessary parties as defined by Metro, and in this case Clackamas River Water (CRW) filed an objection. That meant the City could not proceed with this process or adopt the ordinance at this meeting. CRW said it would like to support the annexation but did not feel it had enough information on future water provision in the future. Staff will talk with CRW and likely come back to City Council under a non-expedited process that would begin with the Planning Commission.

### **D. Road Jurisdiction Transfer from Clackamas County to the City of Milwaukie in the NE Sewer Extension Project Area – Resolution**

**Mr. Parkin** provided the staff report. This matter had to do with construction of sewer mains in Dual Interest Area A, the NE Sewer Extension Project Area. The approximate 3-miles of right-of-way of way were currently under Clackamas County jurisdiction, and in order for Milwaukie to do this project it would have to be transferred. He briefly reviewed the process. The BCC would make the final decision on the transfer.

**Bill Garrity**, Clackamas County Department of Transportation, discussed rights-of-way that were a matter of public record.

The group discussed overlaying of existing streets.

**Mr. Parkin** noted most roads would be overlaid in conjunction with the sewer project. Many issues would be resolved as the area redeveloped. There were already some good roads in the area that would only have to be patched. Roads that were severely damaged by the project would be paved.

**Mr. Swanson** added Milwaukie currently had a number of public roads in the City including the Waverly area. The idea of accepting public roads was something the City had done for some time.

**It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the resolution requesting the transfer of jurisdiction by the Clackamas County Board of Commissioners portions of 55<sup>th</sup> Avenue, Stanley Avenue, Stanley Place, Hollywood Avenue, Wichita Avenue, 58<sup>th</sup> Drive, Laurel Street, Firwood Street, Cedar Street, Hazel Place, Hill street, Willow Street, Maple Street, Hector Street, and King Road to the City of Milwaukie. Motion passed with the following vote: Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting “aye.” [5:0]**

#### **RESOLUTION 66-2009:**

**A RESOLUTION REQUESTING THE TRANSFER OF JURISDICTION BY THE CLACKAMAS COUNTY BOARD OF COMMISSIONERS PORTIONS OF 55<sup>TH</sup> AVENUE, STANLEY AVENUE, STANLEY PLACE, HOLLYWOOD AVENUE, WICHITA AVENUE, 58<sup>TH</sup> AVENUE, LAUREL STREET, FIRWOOD STREET, CEDAR STREET, HAZEL PLACE, HILL STREET, WILLOW STREET, MAPLE STREET, HECTOR STREET, AND KING ROAD, TO THE CITY OF MILWAUKIE.**

### **F. Council Reports**

**Councilor Barnes** announced she would be part of the first Emerge Oregon graduating class.

**Councilor Chaimov** would attend the Milwaukie Poetry Series reading by Lex Runciman and attended the monthly light rail meeting. He encouraged Island Station residents to attend the Park Avenue Station planning session.

**Councilor Stone** attended the planning meeting for the Tacoma Street Station and encouraged people to be involved.

**Councilor Loomis** attended the monthly light rail meeting with Councilor Chaimov and Mayor Ferguson.

**Mayor Ferguson** urged people to look at the City's online events calendar. He attended the opening ceremony of Ardenwald Elementary School, toured downtown Camas businesses with Alex Campbell and others from the Milwaukie business group, and the monthly light rail meeting. He congratulated Bob's Red Mill on winning the Golden Spurtle Award. He encouraged people to donate to the 2009 Umbrella Parade.

## **ADJOURNMENT**

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

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

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Pat DuVal, Recorder

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
NOVEMBER 3, 2009**

**CALL TO ORDER**

**Mayor Ferguson** called the 2065<sup>th</sup> meeting of the Milwaukie City Council to order at 7:10 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Light Rail Design Coordinator Wendy Hemmen, Finance Director Ignacio Palacios

**PLEDGE OF ALLEGIANCE**

Den 2 Pack 259 presented the Colors.

**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS****Third Preliminary Engineering Update on Light Rail**

**Ms. Hemmen** provided an informational update on progress and issues related to Preliminary Engineering on the light rail project in the City of Milwaukie. There were 6 years remaining in the project until the scheduled opening of the line in 2015. Preliminary Engineering was scheduled to be done March 2010 bringing the project to 30% completion. The final design will begin late 2010, and construction in Milwaukie will start in 2012. She highlighted the areas of funding, progress on preliminary engineering, the Final Environmental Impact Statement (FEIS), and specific design efforts including station structures.

She discussed the federal match and estimated potential funding gap, and she stated she would have more to report to the City Council in March. Preliminary engineering was at about 25%, and there should be more plans to review by the beginning of December with comments due in January. She noted side platforms were in the plan set. The project budget was established by the 25% plan set. The FEIS addressed community impacts, traffic, utilities, archaeological, acquisitions and displacements, and things of that nature. The review of the recently received initial traffic report would begin, and she noted the visual simulation should be available soon. There would soon be an archeological dig at Kronberg Park. She commented on issues related to the Trolley Trail and whether it was a park or transportation corridor which would require less mitigation. Property owners affected by full and partial purchases and construction easements will be notified in the next couple of months. Ongoing design efforts included station structures in downtown Milwaukie and Park Avenue, and she briefly reviewed comments from interested persons attending the workshops. The Tacoma Springwater Station traffic was an ongoing issue particularly having to do with signals and traffic calming on Johnson Creek Boulevard. The Cities of Portland and Milwaukie were working together to come to a beneficial community solution for Johnson Creek Boulevard. At this time the Oregon Department of Transportation (ODOT) did not plan to do any modifications to on and off ramps to Hwy 99E. TriMet approved a trapezoidal tub design from Kellogg Lake to River Road creating a better visual. The H-columns were in the 25% plan that would allow a future pedestrian undercrossing that would give Island Station residents and Kronberg Park users direct access to the Milwaukie

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Downtown station and south downtown area. The Willamette Bridge portion of the project was close to going out for a design/build request for qualifications (RFQ) with the goal of meeting the summer 2011 in-water work window. The safety and security group was discussing access control in Milwaukie, relocation of the Trolley Trail, and bridge narrowing. A conceptual design report should be ready for presentation to the City Council at the end of preliminary engineering. It would address the memorandum of understanding (MOU) with TriMet on design goals and elements of the project in Milwaukie as well as Portland. Art opportunities will be incorporated into the 3 Milwaukie stations, and a committee was being formed to consider alternatives.

**Ms. Hemmen** summarized the next steps: 25% plan set review December 2009, FEIS draft review January 2010, continued monthly meetings, Project Management Group (PMG) and Steering Committee meetings, Milwaukie Station update, Union Pacific update, and Tacoma Park-and-Ride traffic update.

**Councilor Barnes** asked for clarification of the funding.

**Ms. Hemmen** responded the Federal Transit Authority (FTA) will make a decision in March on whether to fund 50% or 60% of the \$1.4 billion project. Because TriMet has shown a strong ability to produce effective projects the chances are good of getting 60% funding. A 60% match would result in a \$16 million gap and 50% in a \$115 million gap. The shortfall would come from the entire project from Lincoln Station to Park Avenue. Certain elements may be downgraded if possible, but the project would stay intact all the way to Park Avenue.

**Councilor Barnes** wanted to know as soon as possible if there was even a hint that the project would end in downtown Milwaukie and not go all the way to Park Avenue.

**Ms. Hemmen** replied the partners indicated that was not an option.

**Councilor Barnes** referred to staff report attachment 1, top issues to be addressed, and noted she did not care for tenor of TriMet's responses. She asked for an overview.

**Ms. Hemmen** noted many of the issues were driven by the City's development code standards, and there was some pushback because of additional costs in light of the funding gap. Most of those were being pushed until later, but some of the items were getting into the 25% plan set.

**Councilor Barnes** did not want Portland's needs to overwhelm Milwaukie's and asked that TriMet staff come before City Council if there was any more pushback.

**Councilor Chaimov** discussed the recent process related to downtown station design. On a Thursday evening staff marked out for residents what the station area might look like downtown. On Monday night there was another meeting about the downtown where additional information was made available followed by a healthy discussion of the pros and cons. The next day staff presented a detailed memo to Mayor Ferguson and Councilor Stone for their signatures that recommended a certain station design. Citizens have gotten the impression, not unreasonably, that the City did not care because it had its mind made up. The City needed to ask people's opinions, honor those opinions. Staff's professional opinion needed to be shared with the public in advance of any decision coming forward. He urged making every effort to honor what citizens wanted in this project.

**Ms. Hemmen** responded staff took fault for not having a better presence at that meeting and explaining what had taken place during the previous 4 months. Staff was not prepared with a presentation to explain the importance of the design and therefore not on equal footing. It was not planned that the decision would be made at that time between the center and side platform but staff allowed that to happen.

**Councilor Loomis** was concerned along with Councilor Barnes about the funding gap and agreed with Councilor Chaimov's comments related to public involvement.

**Mayor Ferguson** commented that TriMet was working on 3 station designs and took a few moments to explain the trapezoidal tub. It was important to stress that cost cutting measures had to be made equitably along the length of the project. He asked Ms. Hemmen to go into more detail on the trapezoidal tub and H columns.

**Ms. Hemmen** explained that H-columns would provide better pedestrian access from Kronberg Park and the Island Station to South Downtown and the downtown light rail station. She described the structure that was intended to provide a good link cross Hwy 99E and offer a uniform look.

**Mayor Ferguson** announced that Councilor Stone was excused from the meeting and that he would call for a recess at the end of the meeting to go into executive session and reconvene.

## **CONSENT AGENDA**

It was moved by Mayor Ferguson and seconded by Councilor Barnes to approve consent agenda item D.

**D. Resolution 69-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Execute a Two-Year Intergovernmental Agreement with Clackamas River Water District to Provide Apparatus and Vehicle Maintenance Services to the District.**

Motion passed with the following vote: Councilors Barnes and Loomis and Mayor Ferguson voting "aye" and Councilor Chaimov abstaining. [3:0:1]

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt consent agenda items A, B, C, and E.

- A. City Council Minutes of the September 1, 2009 Regular Session;**
- B. Resolution 67-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Affirming the Appointment of Ledding Library Board Member Mark Docken to Serve as the City of Milwaukie's Representative on the Clackamas County Library District Advisory Board;**
- C. Resolution 68-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Don Wiley to the Public Safety Advisory Committee as the Linwood Neighborhood Association Representative; and**
- E. OLCC Application for Mustafa, Inc., 4140 SE Harrison Street, Change of Ownership.**

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

## **AUDIENCE PARTICIPATION**

**Ed Zumwalt**, Historic Milwaukie Neighborhood Association, discussed the South End development and the planning process. He referred to a *Clackamas Review* article that quoted Randy Schmidt of the Center for Environmental Structure (CES). It seemed to Mr. Zumwalt that everything was being fast-tracked again without sufficient citizen input. It was a vision without resources and support heading for a nightmare. There needed to be full disclosure of everything related to the project as well as neighborhood association presentations and open houses to fully inform residents of what was going on in their City.

**Mr. Swanson** said Mr. Schmidt provided a presentation at the last City Council meeting, and Mr. Asher announced the City would go out with another request for proposals (RFP) to take the next steps to further develop the plan. He was not sure about the details of the citizen participation elements at this point.

**Mayor Ferguson** added Councilors Loomis and Stone had requested the RFP identify more citizen involvement than in the past.

**Mr. Zumwalt** discussed high speed and heavy rail. For years Carolyn Tomei talked about commuter rail to support her vision of an arts and entertainment niche in Milwaukie. County Commission Chair Lynn Petersen had mentioned heavy rail in Milwaukie at a number of meetings. Light rail will bring 150 trains a day crashing through our City. We have shown a distinct disrespect for our City, so can we expect otherwise from ODOT or Union Pacific? Right now the spur is used by only a half a dozen trains a week during the night. The City set a precedent to go into that gap which he understands will be wider than McLoughlin Boulevard. A previous mayor said many times, although he had since changed his mind, that it might be a marketing mistake to cut the City in two and construct a terminus at Kellogg Lake which was being considered at the time. If light rail goes to Park Avenue then that is where development will be. He urged the City Council to do everything possible to stop high speed rail.

**Councilor Chaimov** believed everyone was united in opposing any higher speed rail in Milwaukie, and representatives from several affected communities were meeting to discuss the issues.

**Mr. Zumwalt** discussed the \$5 million from Milwaukie to TriMet for light rail. Portland and Clackamas County were putting up much less when one considered size and budgets. In the case of the County, Milwaukie residents were being double-dipped. How much would the Riverfront Park cost? Why should we give money to TriMet after the railcar fiasco? His solution was to cancel the light rail project and put the money toward fixing the bridges and buying clean buses for the good of all. We cannot have the Lake Road terminus. What amenities might be cut in the City of Milwaukie? TriMet did not talk about livability any more because it has funding. Why were these large projects allowed to get off the ground without full funding? What will Milwaukie do if TriMet says it will stop at Lake Road?

## **PUBLIC HEARING**

None scheduled.

## **OTHER BUSINESS**

### **A. Supplemental Budget**

**Mr. Swanson** reported one supplemental budget was in the street department which was part of the Oak Street and 34<sup>th</sup> Avenue improvement project. Part of the work was done by Union Pacific, but the invoice was not reconciled until this fiscal year. The money carried over in the fund balance and now had to be appropriated and a spending category created. The other supplemental was in the stormwater fund and related to the King Road project where the work had been committed, but the funds were not expended.

**It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the resolution authorizing budget appropriation for the purpose of completing the Union Pacific Railroad and King Road Stormwater Improvement Projects. Motion passed with the following vote: Councilors Barnes, Chaimov, and Loomis and Mayor Ferguson voting “aye.” [4:0]**

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**RESOLUTION 70-2009:**

**A RESOLUTION OF THE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE AUTHORIZING BUDGET APPROPRIATION FOR THE PURPOSE OF COMPLETING THE UNION PACIFIC RAILROAD AND KING ROAD STORMWATER IMPROVEMENT PROJECTS.**

**B. Clackamas County Community Covenant**

**Mr. Swanson** reported the proposed resolution was a result of a request from Clackamas County regarding the Clackamas County Community Covenant and what communities could do to assist veterans, members of the military, and their families.

**Mayor Ferguson** discussed collaborating with the American Legion to get the names of Milwaukie residents who were serving or returning from overseas. He would attend the upcoming Board of County Commissioners meeting to sign the covenant with other Clackamas County mayors.

**It was moved by Councilor Barnes and seconded by Councilor Loomis to adopt the resolution supporting the Clackamas County Community Covenant and the commitments made to veterans, members of the military, and their families. Motion passed with the following vote: Councilors Barnes, Chaimov, and Loomis and Mayor Ferguson voting “aye.” [4:0]**

**RESOLUTION 71-2009:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE SUPPORTING THE CLACKAMAS COUNTY COMMUNITY COVENANT AND THE COMMITMENTS MADE TO VETERANS, MEMBERS OF THE MILITARY, AND THEIR FAMILIES.**

**C. Council Reports**

**Councilor Barnes** would attend the Waste Water Partnership meeting on Thursday and the upcoming high speed rail discussion.

**Mayor Ferguson** announced upcoming events.

**Mayor Ferguson** announced the City Council would go into executive session pursuant to ORS 192.660(2)(h) and recessed the regular session at 8:13 p.m. He reconvened the regular session at 8:39 p.m.

**Mr. Swanson** recapped issues related to the Waste Water Partnership. The City Council indicated by motion in its regular meeting two weeks ago that Milwaukie was interested in joining but wanted to see one final draft agreement before formally signing on. A letter to the Commissioners restated that, and Councilor Barnes would distribute it at the upcoming Partnership meeting.

**ADJOURNMENT**

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

**Mayor Ferguson** adjourned the regular session at 8:41 p.m.

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Pat DuVal, Recorder



**To:** Mayor and City Council

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

**From:** Ernie Roeger, Fleet Supervisor  
Paul Shirey, Operations Director

**Subject:** Authorize the City Manager to Sign Purchase Orders for City Vehicles and Public Works Equipment

**Date:** December 2, 2009 for December 15, 2009 Regular Session

**Action Requested**

Approve the attached Resolution authorizing the City Manager to sign purchase orders totaling \$275,000 for the purchase of two patrol cars, one detective car, one police sport utility vehicle, a forward-cab truck, two ½ ton extended cab two-wheel drive pickups and to postpone purchase of two additional vehicles scheduled for replacement this fiscal year.

**Background**

The City has a vehicle replacement program that is designed to replace vehicles on a regular schedule to insure the lowest overall cost possible and to provide safe and reliable vehicles (Attachment #1). Vehicles that meet the replacement criteria, whether due to high mileage or a combination of mileage and general condition of the vehicle, are candidates for replacement.

Police vehicles are replaced typically at a faster rate than other City service vehicles due to the demanding use that is placed on them, e.g: rapid acceleration in cold temperatures, rapid stops and high speed cornering. Therefore, they are replaced at four years of service or 80,000 miles, whichever is first.

Light duty vehicles, including pickup trucks are kept in service for 10 years and heavy-duty trucks for 15-years. The condition of a vehicle may reach a point prior to these time-frames where keeping the vehicle in service is no longer cost effective (it becomes more costly to maintain the vehicle than to replace it). Major vehicle operating systems are evaluated at regular service intervals for all City vehicles. Sometimes condition, rather than mileage or years in service, is the determining factor in deciding whether to replace a vehicle. The time interval to replace a vehicle is based on industry standards that consider a combination of mileage and/or years of service and general wear and tear.

Vehicles that serve City departments are on a preventive maintenance and replacement schedule. The Fleet Department applies this schedule to all vehicles and determines how much department's must contribute to a vehicle reserve account each year in order to accumulate necessary funds to purchase replacement vehicles according to the replacement schedule.

Fleet Services' replacement schedule for FY 2009/2010 calls for purchase of eight vehicles: three Police Department vehicles, four public works service vehicles and a vehicle for the Engineering Department. The replacement schedule includes the following:

1. **Two of the police 2004 higher mileage patrol vehicles** are being loaned to the swat team. Replacement criteria applied is years of service (five). Two new patrol vehicles will replace them.
2. **A Dodge Intrepid police detective vehicle** with 97,000 miles will be replaced. Replacement criteria applied is mileage. The replaced detective vehicle will be sold or used as a staff vehicle.
3. **One 2004 higher mileage patrol SUV** will be replaced. Replacement criteria applied is years of service (five). The replaced patrol SUV will be used to tow the police training equipment trailer.
4. **A 1991 Street Division short turning radius forward-cab truck** with questionable mechanical integrity will be replaced. Replacement criteria applied is vehicle condition and years of service (19). The replaced truck will be sold.
5. **A 1993 Street Division 4-WD one-ton crew cab pickup** with 99,000 miles will be replaced with a ½ ton extended cab 2-WD pickup. Replacement criteria applied miles on vehicle, mechanical integrity and years of service (17). The replaced pickup will be sold.
6. **A 1989 Facility Maintenance van** that has high mileage and questionable mechanical integrity will be replaced. It also has limited use due to its small size and will

be replaced by a ½ ton extended cab 2-WD pickup. The replacement criteria are years of service (20) and mechanical integrity. The replaced van will be sold.

7. **A 2001 one-ton service truck for Waste Water Division** that is on the 09/10 CIP is due to be replaced.

8. **A 1995 Engineering pickup** that is on the 09/10 CIP is due to be replaced.

After evaluating the replacement schedule, the Public Works Director elected to postpone the replacement of these last two vehicles – the Wastewater Service Truck and the Engineering pickup. Although there are funds available in the Fleet Reserve account, it was determined that these vehicles could service the Departments for another year. The appropriate adjustments will be made to the Fleet Replacement Schedule and Fleet Reserve Fund as a part of the upcoming budget process, once the staff sees budget projections and citywide needs.

The new vehicles, with one exception, will be purchased through the Oregon State Cooperative Purchasing Program. Vehicle number four (above) will be purchased in cooperation with another municipality by piggy-backing off an existing contract since the State program does not include this type of specialized vehicle. The amount budgeted for the replacement of the eight new vehicles and equipment is \$335,000. \$275,000 of this budget will be expended this year for the six new vehicles being purchased.

### **Concurrence**

The Public Works Operations Director and Fleet Supervisor have conferred with the Police Chief and Police Sergeant, as well as, the Public Works Supervisors on the number, type, and specifications for each vehicle needed for the respective departments.

### **Fiscal Impact**

The funds to purchase this equipment are included in the approved 2009-2010 Budget Fleet Reserve Fund. The Fleet Reserve Fund operates like a savings account for each department and division, which sets aside monies each year to replace vehicles and equipment on a regular replacement schedule.

### **Work Load Impacts**

Each new vehicle requires set-up costs and fleet staff time. This is figured into the overall cost of each vehicle and is included in the \$275,000.

**Alternatives**

Deny request or approve with modifications. This would mean modifying the purchasing program.

**Attachments**

1. Criteria for Vehicle Replacement
2. Resolution

# ATTACHMENT 1

## CITY OF MILWAUKIE FLEET SERVICES STANDARD CRITERIA FOR VEHICLE REPLACEMENT

**AGE:** We have set up a schedule of replacement for the various vehicles and equipment as follows:

**1. POLICE PATROL CARS – 4 YEARS or 80,000 MILES:** Patrol cars are used as an essential tool for the officers and receive much more stress on the drive train components than normal vehicles. This type of stress takes a toll on these vehicles and can become a safety issue.

**2. DETECTIVE, POLICE CHIEF AND CAPTAIN CARS - 5 YEARS:** Detective cars are replaced more often in order to remain anonymous. These vehicles are used for surveillance. The Police Chief and Police Captain's cars are replaced more often due to moderate to high stress and mileage.

**3. PICKUPS AND LIGHT DUTY TRUCKS – 10 YEARS:** These vehicles are the front line pickups, vans, service trucks and small dump trucks that are used in the everyday maintenance and inspection work of each division of Public Works.

**4. HEAVY DUTY TRUCKS – 15 YEARS:** The heavy-duty trucks are built to last longer and are not use as often.

**5. BACKHOES, LOADERS, ROLLERS AND AIR COMPRESSORS – 15 YEARS:** These vehicles are not used on an every day basis but are essential to the overall operations of Public Works.

**MILEAGE:** We look at the total mileage on a vehicle; being a small city we do not put high mileage on a vehicle (other than the police patrol cars). However, the usage is mostly stop and start city driving. This type of usage is much harder on the drive train of a vehicle than over the road or freeway driving.

**CONDITION:** Condition is a big factor in making a decision to replace a vehicle. Fleet staff evaluates the vehicle by looking at all of the components such as body condition, rust, door fit, door hinges, floorboard condition, paint and body damage. We look at the suspension and steering components, brake system, and perform a safety check to make sure the vehicle meets all the safety requirements. We evaluate the condition of the drive train, engine, transmission, and rear end to determine if a major repair is coming due.

**COST RECORDS:** Cost records gives staff the information of cost history, and repairs made. This would indicate to us if any future repairs would exceed the worth of the vehicle.

**WHAT IS THE VEHICLE USED FOR:** A major factor in vehicle replacement is what the vehicle is used for, and how often the vehicle is used. A good example is a police patrol vehicle that is used daily, even sometimes on a double shift, and in extreme conditions; compared to a backhoe that may only be used for emergency repairs possibly one time per week.

ATTACHMENT 2

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE PURCHASE OF CITY VEHICLES THAT WERE APPROVED FOR REPLACEMENT IN THE FISCAL YEAR 2009/2010, AS PER THE CITY VEHICLE REPLACEMENT CRITERA.**

**WHEREAS**, the 2009/2010 City budget was approved and adopted at the June 16, 2009 City Council meeting; and

**WHEREAS**, the approved City budget identified vehicles for the police Department and Public Works that are authorized for purchase during Fiscal Year 2009/2010, and

**WHEREAS**, the City established vehicle replacement guidelines that have been followed by City staff to procure prices for police and public works replacement vehicles; and

**WHEREAS**, the City is an eligible entity and a member of the Oregon Cooperative Purchasing Program and is authorized to purchase vehicles under the program, and

**WHEREAS**, the City will purchase the vehicles through a vendor approved through the Oregon Cooperative Purchasing Program that has submitted a competitive bid approved by the State for purchases by program members, and

**WHEREAS**, the City will purchase the police and public works vehicles through the Oregon Cooperative Purchasing Program at a total cost of \$275,000.

**NOW, THEREFORE, BE IT RESOLVED** that the City of Milwaukie authorizes the City Manager to sign purchase orders for obtaining six new vehicles from Oregon Cooperative Purchasing Program approved vendor at a total cost of \$275,000 as per the approved 2009/2010 budget.

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

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

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

ATTEST:

APPROVED AS TO FORM:

Ramis, Crew, & Corrigan, LLP

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

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



**To:** Mayor and City Council

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

**From:** Brenda Reiner, Associate Engineer

**Subject:** National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater System Support Services (MS4)

**Date:** December 4 for the December 15, 2009 Regular Session

### **Action Requested**

Authorize the City Manager to execute a contract for Stormwater Permitting Services with Brown and Caldwell Consultants, in the amount not to exceed (NTE) \$35,000.

### **History of Prior Actions and Discussions**

**December 2005** - The City Council awarded a contract to URS Corporation to assist with the NPDES Interim Evaluation Report, as required under the permit. The interim evaluation report included a gap analysis and update to the City's Stormwater Management Plan. This report was approved by DEQ in 2006.

### **Background**

The City of Milwaukie is required by federal law (the Clean Water Act) to have an approved stormwater permit and implementation plan for the municipal storm sewer system, to minimize and monitor pollutants such as bacteria, metals, and suspended solids in stormwater discharges. The City first obtained an NPDES permit in 1995. That permit was extended several times, including most recently in July 2005. It expired in February 2009. The City must now renew its NPDES permit with DEQ and then update the Stormwater Management Plan (SWMP) with the changes.

In the past the City was able to partner with the County on a combined permit with other Clackamas County co-permittees and hired URS Corporation to assist with work needed to fulfill requirements with the NPDES permit. The co-permittees included the Cities of Oregon City, Lake Oswego, Gladstone, Wilsonville, and West Linn, as well as unincorporated Clackamas County. The work included updates to the City's Stormwater Management Plan, and development of a required pollutant loads model to assess the City's stormwater discharges Total Maximum Daily Load (TMDL) waste load allocation. DEQ now requires the co-permittees to meet individually during permit negotiations.

There are many layers of reporting related to the NPDES Permit, the Total Maximum Daily Load (TMDL) requirements, and the Underground Injection Control (UIC) requirements. The monitoring and reporting requirements are addressed within a specialized area of environmental engineering and the City has chosen in the past to hire consultants to monitor and decode the regulatory process as it unfolds.

Three engineering consulting firms were contacted for informal quotes to assist the City with the NPDES permitting work. The firms included Brown and Caldwell Consultants, Kennedy Jenks Consultants, and OTAK Engineering. The consultants were ranked based on experience, project approach, and cost of services. Brown and Caldwell was ranked first as the best fit to assist the City. Brown and Caldwell is also representing the City of Oregon City, West Linn, and Clackamas County Water Environmental Services in NPDES permit renewal negotiations with DEQ. Since the same consultant will attend meetings and negotiate with DEQ, there will be some cost savings (not reflected in the NTE estimate) to the City, due to sharing the consultant costs with the other co-permittees.

Because of the need to cover DEQ's timeline, Brown and Caldwell was retained under a separate \$15,000 contract last month to acquire information and represent City interests in preliminary meetings with DEQ. The first contract did not obligate the City to continue with Brown and Caldwell to conclude the permit process. The contract proposed with this action provides for the actual drafting of the City's management plan and responding to DEQ's proposed permit language. Work under the contract is expected to complete in October, 2010.

### **Concurrence**

Staff consulted with the City attorney who stated that using the 3 informal quote method was the best fit for this type of specialized engineering services. The City selection team consisted of members from Operations and Engineering. The Operations Department and Engineering Department agree that this is the most cost-effective way to provide the mandated storm water permitting and reporting requirements.

**Fiscal Impact**

\$16,000 of the \$35,000 will come from the budgeted line item for stormwater permitting within the Stormwater Capital and Reserve fund. It is planned that \$9,000 will come from unused funds within the Stormwater Capital and Reserve and the additional \$10,000 will come be budgeted in next year's budget.

**Work Load Impacts**

This work is part of the Engineering and Operations Department's regular work load.

**Alternatives**

Not applicable at this time.

**Attachments**

1. Resolution

**ATTACHMENT 1**

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH BROWN AND CALDWELL CONSULTANTS IN THE AMOUNT NOT TO EXCEED \$35,000.**

**WHEREAS**, the City is required by the Clean Water Act to have an approved stormwater permit and implementation plan for the municipal storm water system; and

**WHEREAS**, the City's current MS4 NPDES stormwater permit expired in February of 2009 and due for renewal; and

**WHEREAS**, the monitoring and reporting requirements are a very specialized area within environmental engineering; and

**WHEREAS**, Brown and Caldwell is representing neighboring jurisdictions so that expense can be shared, and their project manager worked on the City's stormwater master plan; and

**WHEREAS**, Brown and Caldwell has a contract with the City, for \$15,000 for preliminary stormwater meetings; and

**WHEREAS**, the City's stormwater permit is currently under review with DEQ and the City must negotiate the permit conditions through an iterative process and many meetings and reporting;

**NOW, THEREFORE, BE IT RESOLVED** the City Council of the City of Milwaukie authorizes the City Manager to enter into a contract in the amount not to exceed \$35,000 with Brown and Caldwell Consultants.

Introduced and adopted by the City Council on December 15, 2009.

This resolution is effective on December 15, 2009.

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

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

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



**To: Mayor and City Council**

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

**From: Alex Campbell, Resource & Economic Development Specialist**

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

**Date: December 1 for December 15, 2009 Regular Session**

### **Action Requested**

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

### **History of Prior Actions and Discussions**

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

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

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

**September 2000:** Council adopted, by Ordinance, the "Milwaukie Downtown and Riverfront Land Use Framework Plan" as part of the Comprehensive Plan. The restoration of Kellogg Creek is listed as an element of the "Amenities and Open Space Framework" (pp. 20-21).

## **Background**

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

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

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

Since April, when this issue was last brought before Council, staff work on this project has focused in three areas:

First, staff prepared a detailed application for federal stimulus (ARRA) funding to design and construct the entire project. Staff held several community discussions regarding this opportunity, including a special meeting for lake neighbors to share information about the likely phasing of the project and what they should expect to see on the ground. While the application was well-received by NOAA staff, the size of the project clearly pushed the bounds of the agency’s comfort. (The City request was over two times the largest award made.)

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

Third, staff has made significant progress towards bringing a consultant on-board. Staff used ODOT’s “mini-solicitation” procedures to advertise the planning project. CH2M Hill was selected out of six very capable proposers. Staff has negotiated a detailed scope of work. However, in part due to the very heavy work-load of federal stimulus projects, approval of that scope of work has been held up for several months due to the need for Federal Highway Administration (FHWA) review and approval. Staff anticipates the completion of that process in December or early next year. The result will be a single

contract with CH2M Hill, to be funded by a portion of the MTIP grant, the AR/NOAA grant, and local matching funds. Most of the City's match will be provided by in-kind services, i.e., staff time devoted to the project.

The planning phase will address the following issues:

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

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

### **Concurrence**

Community Services has been closely consulted on public involvement planning.

### **Fiscal Impact**

All necessary matching funds are currently budgeted.

### **Work Load Impacts**

Project can be managed within existing workloads.

### **Alternatives**

None.

### **Attachments**

1. Resolution
2. Public Involvement Plan

ATTACHMENT 1

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

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

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

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

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

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

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

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

Introduced and adopted by the City Council on December 15, 2009.

This resolution is effective on December 16, 2009.

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

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

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

# ATTACHMENT 1 - EXHIBIT

## American Rivers-NOAA Community-Based Restoration Program Partnership Grant

### Grant Agreement # 335

**Organization:** City of Milwaukie

**Project:** Kellogg Creek Dam and Culvert Design

**Amount of Grant:** \$45,000

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

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

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

**2. Grant Conditions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction of contract under a public transaction; violation of Federal or State antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- (c) Are not currently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated here;
- (d) Have not within a three-year period preceding the proposal had one or more public transactions (Federal, State, or local) terminated for cause or default. A false statement on this certification may be grounds for termination of the award. In addition, under 18 USC Section 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

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

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

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

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

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

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

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

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

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

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

W.P. Lee

William P. Lee  
Chief Operating Officer

8/20/09  
Date

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Mike Swanson

Title: \_\_\_\_\_

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

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

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

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

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

6.  
OTHER BUSINESS



**To: Mayor and City Council**

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

**From: Alex Campbell, Resource & Economic Development Specialist**

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

**Date: December 1 for December 15, 2009 Regular Session**

### **Action Requested**

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

### **History of Prior Actions and Discussions**

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

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

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

### **Background**

The American Recovery and Reinvestment Act (ARRA) was enacted by the federal government. One portion of the ARRA provides funds for federal aid "highway" projects.

A share of these funds was made available to the City of Milwaukie through a regional allocation. Because of the numerous and complex requirements, City staff selected projects that were of greatest benefit to the public, but also met all of the program requirements. JPACT approved a project slate that included \$725,000 for the Jackson Street project and \$208,000 for pavement re-surfacing on Linwood Avenue.

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

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

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

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

Staff expects to seek a budget amendment in January to allow expenditure of up to \$100,000 of SSMP funds on the project. The project includes over \$100,000 of street surface improvements. (Because of the high volume of bus traffic on the street, the plan includes a full re-construct of the street with concrete, rather than asphalt.) Jackson Street is classified as a collector, and, therefore, an eligible street under the SSMP program. It was rated at a PCI of 81 in 2004, but has had significant wear since that time. Linwood Avenue will be over-laid this coming summer. If the project final costs come in below 110% of the final engineer's estimate, the City will be re-funded the

difference, which would be returned to the SSMP. The final engineer's estimate includes a 3.5% project contingency, and bids are currently coming in below ODOT engineer's estimates. Therefore, staff is optimistic that most of this allocation will be refunded.

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

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

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

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

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

### **Concurrence**

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

### **Fiscal Impact**

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

### **Work Load Impacts**

None.

### **Alternatives**

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

### **Attachments**

1. Resolution
2. Budget

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

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

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

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

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

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

Introduced and adopted by the City Council on December 15, 2009.

This resolution is effective immediately.

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

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

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

# ATTACHMENT 1 - EXHIBIT A

Misc. Contracts & Agreements  
Agreement No. 25498

AMENDMENT NO. 02  
LOCAL AGENCY AGREEMENT  
American Recovery and Reinvestment Act of 2009

**Jackson Street: Main Street - 21st Avenue Sidewalks**  
City of Milwaukie

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

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

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

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

2. The Project shall be conducted as a part of the ARRA Program under Title 23, United States Code. The total Project cost is estimated at **\$765,000**, which is subject to change. ARRA Program funds for this Project shall be limited to **\$933,000**. The Project will be financed with ARRA funds at 100 percent of the maximum allowable federal participating amount. Agency will not be required to provide a match for the ARRA funds but will be responsible for any non-participating costs, including all costs in excess of the available federal funds. No ARRA funded invoices will be accepted and no ARRA funded payments will be made after September 30, 2015.

**Insert new TERMS OF AGREEMENT, Paragraphs 17 through 21, to read as follows:**

17. Job Recruitment – In addition to normal recruitment processes on all ARRA funded projects, the contractor and all subcontractors shall also list job openings through "WorkSource Oregon" with the exception that job listings are not necessary when the contractor or subcontractor fills a job opening with a present employee, a laid-off former employee, or a job candidate from a previous recruitment.

Key No. 16457

18. Agency shall include the ARRA requirements in any contract it enters into, including consultant contracts, and subcontracts at any tier. Agency may modify language to match its own specifications, but such modifications shall be reviewed and approved by State prior to incorporation into any contract.
19. Agency shall comply with ARRA that provides the U.S. Comptroller General and his representatives with the authority: “(1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to the contract or subcontract; and (2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.”
20. Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this Agreement, which is funded with funds made available under the ARRA> Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.
21. Agency shall comply with the ARRA requirements that provide authority for any representatives of the Inspector General to examine any records or interview any employee or officers working on this Agreement. The Agency is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this Project. Section 1515(b) of the ARRA further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.
22. **Whistleblower Protection** – Agency or its Contractors shall, and shall require their subcontractors to, comply with Section 1553 of ARRA, which prohibits all non-federal contractors of ARRA funds, including the State of Oregon, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee as a reprisal for the employee’s disclosure of information that the employee reasonably believes is evidence of: (a) gross mismanagement of a contract or grant relating to ARRA funds; (b) a gross waste of ARRA funds; (c) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (d) an abuse of authority related to implementation or use of ARRA funds; or (e) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. The Contractor and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of ARRA.
23. **False Claims Act** – Agency or its Contractor shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent,

subcontractor or other person has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

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

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

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

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

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

Agency/State  
Agreement No. 25498

**City of Milwaukie**, by and through its  
elected officials

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Deputy Director, Highways

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Local Government Section Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

**Agency Contact:**

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

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

**State Contact:**

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



# ATTACHMENT 1 - EXHIBIT B

Misc. Contracts & Agreements  
No. 25473

## AMENDMENT NUMBER 01

### TERMINATION

American Recovery and Reinvestment Act of 2009  
1R-Paving

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

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

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

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

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

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

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

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

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

**City of Milwaukie** by and through its  
elected officials

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**

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

**State Contact:**

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

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Deputy Director, Highways

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Local Government Section Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

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

ATTACHMENT 2  
Project Resources Costs

*TriMet Funds*

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

*Funds Nec to Award Const Contract*

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

*City Funds*

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

*Summary*

Total Resources	\$1,470,000
Total Cost	-\$1,489,650
All funds avail to construct	\$897,436
Total funds required to award	-\$989,144
<b>Gap</b>	<b>-\$91,708</b>

*ARRA funds*

Tot. ARRA funds	\$933,000
HHPR base contract	-\$131,114
HHPR conting. expected	-\$5,000
Possible ODOT billings*	-\$45,000
<b>Balance available to constr phase</b>	<b>\$751,886</b>

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