

**CITY OF MILWAUKIE
CITY COUNCIL REGULAR SESSION
SEPTEMBER 4, 2012**

CALL TO ORDER

Mayor Ferguson called the 2133rd meeting of the Milwaukie City Council to order at 7:02 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Bill Monahan, City Attorney Tim Ramis, City Recorder Pat DuVal, Community Development & Public Works Director Kenny Asher, Associate Engineer Matt Palmer, and Public Affairs Coordinator Grady Wheeler

Media: Victoria Edwards, *The Oregonian*

PLEDGE OF ALLEGIANCE**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS****CONSENT AGENDA**

No items scheduled

AUDIENCE PARTICIPATION

Mary King, Milwaukie, Ardenwald resident, spoke in opposition to coal trains coming through Milwaukie. The City Council must consider it was making a decision on the climate for the rest of the years on Earth. This was a global decision. The coal would be burned in China and come back to us in the form of air pollution. Why should we care about Coos Bay? There was no payback for the other communities.

Jean Baker, Milwaukie, spoke in opposition to coal trains. They were out of place. It would be a dirty, heavy industrial use going through some of our most precious land. It was important to stand up for the community and protect what we have. She discussed how dangerous it could be for emergency vehicles and observed long trains could be deathtraps for our community.

Ed Aaron, Main/Monroe Investors, talked about his ongoing frustration with Public Area Requirements (PAR) and a letter he had recently received from Brad Albert in the Engineering Department that stated he owed \$26,500 because of impacts caused by a change of use. He had restored a 50-foot façade through the grant program and now had a tenant in the building. He read a memo into the record. According to the letter from Mr. Albert, the certificate of occupancy would not be issued until the PARs were paid. Mr. Aaron looked forward to a speedy resolution of the PAR issue.

Chris Ortolano, Milwaukie, Hector Campbell Neighborhood, spoke in opposition to the coal train proposal on behalf of the Milwaukie Coal Train Task Force. He pointed out the risks to public health and safety. He hoped that David Petrie would have a seat at the September 25 City Council study session.

Vincent Alvarez, Milwaukie, Lake Road Neighborhood, spoke in opposition to the transportation of coal via rail through Milwaukie. He stated he did not see any upside for Milwaukie or any other communities along the rail lines as the profits of this enterprise would probably not be shared. He addressed health impacts and congestion.

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APPROVED MINUTES

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Clodine Mallinckrodt, Milwaukie, talked about her first-hand experiences with the health impacts of heavy metals. She hoped the Milwaukie City Council would consider health implications when making its decisions.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

A. Kellogg Bike/Pedestrian Bridge Betterments Intergovernmental Agreement

Mayor Ferguson recused himself and Council President Chaimov presided over the discussion.

Mr. Asher and **Mr. Palmer** reviewed the elements of the intergovernmental agreement (IGA) for City infrastructure improvement projects to be considered as future additions to the light rail project construction contract including the Kellogg Multiuse Bridge and Trail. Certain City projects in close proximity to the alignment could be considered with TriMet working with the contractors and the City hopefully getting a better price. These might be stormwater or sewer pipe upgrades or transportation improvements. **Mr. Asher** said one betterment under the IGA was the Kellogg Multiuse Bridge using \$200,000 in grant funds which the City would commit to TriMet. He added the trail portion of the project would go through the Planning Commission. He discussed the connection to the Lake Road Station with crosswalks and a "go slow" street design.

Councilor Miller asked who would pick up the difference if the project exceeded the \$1.4 million.

Mr. Asher said the IGA acknowledged that permitting and cost overrun responsibilities were the City's. Staff would inform the City Council if the Bridge costs were much higher than estimated.

It was moved by **Councilor Hedges** and seconded by **Councilor Loomis** to adopt the resolution authorizing the City Manager to sign an intergovernmental agreement with TriMet for City infrastructure improvements to be considered as future additions to the light rail project contract including the Kellogg Multi-Use Bridge and Trail. Motion passed with the following vote: Councilors Hedges, Loomis, and Miller and Council President Chaimov voting "aye." [4:0]

RESOLUTION 51-2012:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN AN INTERGOVERNMENTAL AGREEMENT WITH TRIMET FOR CITY INFRASTRUCTURE IMPROVEMENTS TO BE CONSIDERED AS FUTURE ADDITIONS TO THE LIGHT RAIL PROJECT CONTRACT, INCLUDING THE KELLOGG MULTI-USE BRIDGE AND TRAIL.

Mayor Ferguson returned to the meeting.

B. Council Reports

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

ADJOURNMENT

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

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APPROVED MINUTES

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Mayor Ferguson adjourned the regular session at 7:44 p.m.

Respectfully submitted,

Pat DuVal
Pat DuVal, Recorder

REGULAR SESSION

Date: 6/4 / 12



I wish to address City Council on Agenda Item # 4

Name: MARY KING

Organization: SELF COAL TASK FORCE

Address: 

Phone: 

E-mail: 

- Speaking in support
- Speaking in opposition
- Providing neutral comments / or asking questions of clarification

Comments:

Date: 9-14



I wish to address City Council on Agenda Item # 2/

Name: Jean Baker

Organization: WDA

Address: _____

Phone: _____

E-mail: _____

- Speaking in support Speaking in opposition
- Providing neutral comments / or asking questions of clarification

Comments:

Date: 9/4/2012



I wish to address City Council on Agenda Item # 4

Name: ED AARON

Organization: MAIN/MANROE INVESTORS

Address: 

Phone: _____

E-mail: _____

- Speaking in support Speaking in opposition
- Providing neutral comments / or asking questions of clarification

Comments: SPEAKING ABOUT PARs

Date: 9/4



I wish to address City Council on Agenda Item # COAL HEARINGS

Name: Chris Ortolano

Organization: Orto LATNO

Address: _____

Phone: _____

E-mail: _____

- Speaking in support Speaking in opposition
- Providing neutral comments / or asking questions of clarification

Comments:

Date: 9-4-12



I wish to address City Council on Agenda Item # 4

Name: Vincent Alvarez

Organization: MUST

Address: 

Phone: 

E-mail: 

- Speaking in support
- Speaking in opposition
- Providing neutral comments / or asking questions of clarification

Comments: Coal Trains

Date: 9/4/12



I wish to address City Council on Agenda Item # Coal Trains

Name: Clodine Mallinckrodt

Organization: See

Address: _____
Phone: _____
E-mail: _____

- Speaking in support
- Speaking in opposition
- Providing neutral comments / or asking questions of clarification

Comments:

AGENDA

MILWAUKIE CITY COUNCIL SEPTEMBER 4, 2012

MILWAUKIE CITY HALL
10722 SE Main Street

2133rd MEETING

REGULAR SESSION – 7:00 p.m.

- | | Page
No. |
|---|-------------|
| 1. CALL TO ORDER
Pledge of Allegiance | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | |
| 3. CONSENT AGENDA <i>(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)</i> | |
| 4. AUDIENCE PARTICIPATION <i>(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)</i> | |
| 5. PUBLIC HEARING (Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)
A. None scheduled | |
| 6. OTHER BUSINESS <i>(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.)</i>
A. Kellogg Bike/Pedestrian Bridge Betterments Intergovernmental Agreement – Resolution
Staff: Kenny Asher, Community Development/Public Works Director
B. Council Reports | 2 |
| 7. INFORMATION | |
| 8. ADJOURNMENT | |

Public Information

- **Executive Session:** The Milwaukie City Council may meet in executive session immediately following adjournment of the regular session pursuant to ORS 192.660(2).
- 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 Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

6.
OTHER BUSINESS



Agenda Item: RS 6.A.
Meeting Date: 9/4/12

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Intergovernmental Agreement for Light Rail Betterments

Prepared By: Kenneth Asher, Director of Community Development and Public Works

Dept. Head Approval: Kenneth Asher

City Manager Approval: Bill Monahan

Reviewed by City Manager: 8/27/2012

ISSUES BEFORE THE COUNCIL

Staff is requesting Council authorize the City Manager to execute an IGA with TriMet for City infrastructure improvement projects to be considered as future additions to the light rail project construction contract, including the Kellogg Multi-Use Bridge and Trail.

STAFF RECOMMENDATION

Staff recommends Council authorize the City Manager to execute the IGA with TriMet.

KEY FACTS & INFORMATION SUMMARY

The City desires stormwater, wastewater and pedestrian improvements that are not part of the light rail project. These projects may be added to the light rail contract with TriMet under the Betterment Agreements IGA being presented to Council for approval.

OTHER ALTERNATIVES CONSIDERED

Council can seek to modify the terms of the IGA. Delaying adoption so might imperil project commitments already made through budgetary and grant funding processes. Postponing this action could adversely impact TriMet's ability to construct the Multi-Use bridge structure over Kellogg this spring.

CITY COUNCIL GOALS

n/a

ATTACHMENT LIST

1. IGA
2. Resolution

FISCAL NOTES

There is no fiscal impact related to the action. The Betterment projects have been anticipated and were included in the recently adopted city budget.



To: Mayor and City Council

Through: Bill Monahan, City Manager

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

Date: August 21, 2012 for the September 4 Regular Session

Subject: Intergovernmental Agreement for Light Rail Betterments

ACTION REQUESTED

Authorize the City Manager to execute an Intergovernmental Agreement (IGA) with TriMet for City infrastructure improvement projects to be considered as future additions to the light rail project construction contract, including the Kellogg Multi-Use Bridge and Trail.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

June 2012: City Council approved applying for an ODOT Transportation Enhancement grant for the project using \$200,000 of local funding.

October 2011: City Council approved applying for an ODOT Transportation Enhancement grant for the project using \$206,000 of local funding.

BACKGROUND

Certain City of Milwaukie infrastructure improvements in the vicinity of the light rail alignment are desired by the City but not part of the light rail project. These tend to be stormwater or sewer pipe upgrades, or transportation improvements. For example, several downtown sewer pipes near the new rail are clay construction and in need of replacement with plastic pipe. This should occur prior to street surface restoration that will happen after the light rail tracks are laid. The City also wants to increase the size of stormwater pipes at the Harrison and Monroe rail crossings.

Further, the City desires pedestrian improvements on Adams Street between Main and 21st, and across Kellogg Lake and through Kronberg Park.

Historically, TriMet has entered Betterment Agreements with local jurisdictions whereby projects like these can be added to the light rail contract through amendments, with each amendment being approved by the jurisdiction for design, scope and cost. That is the structure envisioned under this IGA.

Most of these improvements have not yet been designed. Under the agreement, the City is responsible for designing construction-ready plans for any Betterment that the City wants to have priced by TriMet's contractor, and for acquiring any required permits. TriMet is responsible for providing the City with a detailed cost proposal, to include any cost reductions related to light rail project savings that are captured due to Betterment work. (These will be modest). The City will have the option of directing TriMet to order the work, or seeking other bids and contracting with non-light rail contractors. Part of the rationale for undertaking Betterments in this fashion is the realization of cost savings from not having to mobilize and coordinate two contractors to do work at the same time on the same pipe, or in the same street section.

TriMet and the City will jointly inspect the Betterments once constructed, in the same fashion that the light rail work is being inspected. TriMet will invoice the City for Betterment work completed, and the City will pay TriMet within 30 days of receipt of invoice. The City will own the Betterments once they are constructed and accepted.

One Betterment under the IGA – the Kellogg Multi-Use Bridge and Trail – is “pre-approved,” by the City because its cost is fixed by grant funding and because the schedule requires action be taken now. The city's approval of the Kellogg Multi-Use Bridge and Trail is necessary so TriMet can amend its IGA with ODOT to receive the \$1.2 million in Transportation Enhancement funds for the project and begin the final design and procurement process for the bridge structure. The IGA also serves as the City's commitment to transfer \$200,000 for the project to TriMet.

The agreement fixes the budget for the bike/ped bridge at \$1.4 million, and, as with all the Betterments under consideration, acknowledges that permitting and cost overrun responsibility belongs with the City. Work on the Multi-Use Bridge and Trail is to be divided into two phases with Phase 1 focusing on the bridge portion and Phase 2 constituting the trail portion. TriMet will be the design lead for Phase 1 and the City will be the design lead for Phase 2. Phase 1 is expected to be complete by September 2013, and Phase 2 will need to be complete by September 2015. This will give the City time to coordinate the trail design with Kronberg Park master planning and the Kellogg-for-Coho Initiative stream restoration. The rest of the Betterments under consideration in the IGA will be constructed in calendar year 2013.

CONCURRENCE

The IGA has concurrence from the city attorney and the Finance and Engineering Departments. TriMet is prepared to execute the IGA. ODOT has been consulted on the Kellogg Multi-Use Bridge and Trail and is in accordance with the terms of the IGA.

FISCAL IMPACT

\$75,000 is budgeted in fiscal year 2012-13 for the potential stormwater pipe betterments. \$797,000 is budgeted in fiscal year 2012-13 for replacing clay sewer pipes with plastic pipe on SE 21st, Harrison, Monroe and Lake adjacent to the light rail line. (A waterline on Lake Road between Main and 21st will also be relocated). \$200,000 is budgeted in fiscal year 2012-13 as match for the Kellogg Multi-Use Structure and Trail.

There is no fiscal impact related to the action. The Betterment projects have been anticipated and were included in the recently adopted city budget.

WORK LOAD IMPACTS

Authorization of the IGA will allow the Engineering Department to continue with its planned CIP work program this year in the wastewater and stormwater utilities. One engineer is currently dedicating about fifty percent of his time working on pipe replacements/improvements related to light rail and the Street Surface Maintenance Program (SSMP). Should the City elect to utilize TriMet contractors for these projects, staff work load will be reduced because of contracting and inspection efficiencies.

The Community Development, Planning and Community Service Departments are factoring on workload impacts associated with the Kellogg Multi-Use Trail design and permitting process. Work plans are under discussion now. Because this element will not need to be completed until September 2015, there is time for these departments to develop work plans to accommodate the work loads.

ALTERNATIVES

Council can seek to modify the terms of the IGA, however doing so might imperil project commitments already made through budgetary and grant funding processes. If certain terms of the IGA are of concern to the Council, these might be worked through with the city staff and city attorney. Because the agreement does not require that the City rely on the TriMet's contractor to construct any of the betterments (excepting the Kellogg Multi-Use Bridge), there is no risk to the City for entering the agreement. In fact, postponing this action could adversely impact TriMet's ability to construct the Multi-Use bridge structure over Kellogg this spring.

Staff recommends Council take the action as requested.

ATTACHMENTS

1. IGA
2. Resolution

ATTACHMENT 1

TriMet-City of Milwaukie Betterments Intergovernmental Agreement

Recitals

- A. The City of Milwaukie (“City”) and the Tri-County Metropolitan Transportation District of Oregon (“TriMet”) (collectively the “Parties”) have agreed to jointly cooperate in the Portland-Milwaukie Light Rail Project (“Project”).
- B. The City has identified certain construction work that is not part of the Project scope, but which may be cost-effective to construct at the same time as the Project by the Project contractor (“City Betterment Work”). The City may wish to utilize TriMet’s Project contractor to complete the City Betterment Work through the process more fully described in Paragraph 2, below.
- C. One Betterment, the Kellogg Multi-Use Trail and Bridge Structure is a grant-funded Betterment between the City and ODOT, with the City contributing \$200,000 and ODOT contributing \$1,200,000.
- D. This IGA creates a framework that identifies City Betterment Work anticipated by the City at the start of Project construction. Other than the Kellogg Multi-Use Trail and Bridge Structure, the City may elect not to utilize the Project contractor to construct the City Betterment Work listed below.
- E. The City Betterments benefit the City and are City utility or transportation infrastructure improvements. Certain Betterments also benefit TriMet to the extent that they avoid municipal construction that may interfere with light rail construction.

Therefore, it is agreed as follows:

Terms

- 1. Betterment Types. City Betterments covered by this Agreement are identified below. Additional Betterments may be included within this agreement with the mutual written agreement of the Parties. There are two types of Betterments covered by this Agreement: (1) those that are included in the Project plans and (2) those that are not included in the Project plans. Those not included in the Project plans will be described with separate plans that will be developed in accordance with this agreement.
- 2. Scope Development.
 - a. Except for the Kellogg Muti-Use Trail and Bridge Structure, which will be designed as set out in Paragraphs 2(c) and (d), below, the City is responsible for providing the design of all Betterments not included in the Project plans, including those items in Paragraph 10(b). The City shall provide stamped

engineering Issued for Construction (IFC) design work for all Betterments not included in the Project plans. These City-provided IFC plans will be the basis for Contractor pricing.

- b. TriMet has provided the design of the two elements included in the Project plans noted in Paragraph 10(a).
- c. TriMet is responsible for providing the design of the bridge structure component of the Kellogg Multi-Use Trail and Bridge Structure.
- d. The City is responsible for providing the design of the trail component of the Kellogg Multi-Use Trail and Bridge Structure which connects the structure to McLoughlin Blvd.

3. Pricing and Contract Execution.

- a. TriMet shall provide City with a detailed cost proposal for each item of City Betterment Work from the Project contractor (“Betterment Price Proposal”) at least four weeks prior to the time the City Betterment Work needs to be performed. Pricing will be based on signed IFC drawings, per Paragraph 2(a), above, which capture the full scope of work. The City and TriMet will review and approve proposals prior to incorporating the City Betterment Work into the Project Construction Contract. Approved City Betterment Work will be incorporated into the Project Construction Contract.
- b. Betterment Price Proposals shall be the net of the Betterment scope of work minus any Project elements that are eliminated due to the City Betterment scope of work.

4. Permits.

City shall acquire all permits required for the City Betterment Work, including but not limited to land use, right-of-way, development review, erosion control and plumbing permits.

5. Changes.

The Parties recognize that there may be changes to the City Betterment Work based on unexpected conditions, changes in the field requiring modifications to design, or for other reasons. TriMet will initiate cost proposals for potential change orders to City Betterment Work. TriMet and the City will be signatories to change orders. City Betterment Work may continue during the negotiation of change order costs unless the City or TriMet wishes to stop work until a resolution to the change order is achieved. TriMet and the City shall provide timely responses and reviews of proposed change

orders. City shall pay TriMet actual costs of the City Betterment Work, including executed change orders, in accordance with Paragraph 7, below.

6. Construction and Inspection.

Acceptance of the City Betterment Work shall be performed by TriMet inspectors working in conjunction with City inspectors in accordance with construction/inspection methods in use by the Parties for Project-related work.

7. Payment.

City shall pay TriMet the cost of the City Betterment Work within 30 days of receipt of a proper invoice from TriMet, which shall include reasonable supporting documentation for the City Betterment Work.

8. Construction Standards. Construction of City Betterments that occur within existing City rights of way will be accomplished in accordance with the agreed upon plans and the City's Public Works Standards (PWS) dated Dec 30, 2011.

9. Ownership of Betterments. All Betterments constructed under this Agreement shall be owned and maintained by the City. In the event that TriMet is required to maintain ownership of any part of the Kellogg Multi-Use Trail and Bridge Structure due to federal rules, laws, or regulations, the City shall enter into a separate agreement with TriMet whereby the City will assume all responsibilities and liabilities associated with the Kellogg Multi-Use Trail and Bridge Structure, and will indemnify and hold TriMet harmless from the same, including maintenance and repair of the structure and injuries to third parties.

10. Betterments.

a. Betterments included in Project plans.

1. 100' of 24" HDPE solid smooth wall storm on Harrison Street west to SE 24th Ave (eliminates new manhole on west side of crossing)
2. 100' of 12" HDPE solid smooth wall storm on Monroe Street west to the existing manhole (eliminates new manhole on west side of crossing).

b. Betterments not included in the Project plans.

1. 220'+ of 10" HDPE sanitary sewer on Harrison east of the tracks to 26th Avenue
2. 300'+ of 8" HDPE sanitary sewer on Monroe east of the tracks to 25th Avenue

3. 600' of 10" HDPE sanitary sewer on Harrison at 26th east to existing manhole at 29th Avenue south
4. 460' of 12" HDPE sanitary sewer on 21st Avenue north from existing manhole south of Washington to existing manhole at Jefferson
5. 50' of 8" HDPE sanitary sewer from existing manhole midblock on 21st Avenue between Adams St and Lake Rd east to existing manhole in the adjacent parking lot.
6. 390' of 8" HDPE sanitary sewer on 21st Avenue south of rail lines to existing manhole in Lake Road
7. 480' of 12" HDPE sanitary sewer on Lake Road from Main Street southeast to existing manhole in Lake Road, east of 21st Avenue. This work includes relocation of 350' of 8" DI water main on Lake Road from Main Street to 21st Avenue.
8. Adams Street Connector Project
9. Kellogg Multi-Use Trail and Bridge Structure
 - A. Funding for Kellogg Multi-Use Trail and Bridge Structure will come from two sources. One source is FHWA Transportation Enhancement funds that will be transferred to FTA and then to TriMet to be used for the bridge structure and trail. This amount will be \$1,200,000. The second source of funds will be the City of Milwaukie. This amount will be \$200,000 and will be used as local match for the Transportation Enhancement funds.
 - B. The total budget for the Kellogg Multi-Use Trail and Bridge Structure is estimated to be \$1,400,000 and the scope is described in the Transportation Enhancement fund application approved by the Oregon Transportation Commission on July 18, 2012.
 - C. The City of Milwaukie will be responsible for all land use approvals and all permitting for the portion of the trail north and south of Kellogg Lake, including ODOT permits. TriMet has secured land use approval for the multi-use bridge structure.
 - D. TriMet and the City will, in good faith, cause the Kellogg Multi-Use Trail and Bridge Structure to be designed, permitted and built within the \$1,400,000 budget. TriMet will provide regular cost updates and construction cost estimates to the City of Milwaukie to assist with managing the \$1,400,000 budget. TriMet and the City of Milwaukie agree to work closely to engineer the design of the

Kellogg Multi-Use Trail and Bridge Structure to minimize the risk of cost overruns. The City of Milwaukie will be responsible for costs that exceed the \$1,400,000 budget, including those costs that are placed on the Project as a result of land use conditions or other permitting processes.

- E. Exhibit A is a drawing of the Kellogg Multi-Use Trail and Bridge Structure. Exhibit A is attached hereto and incorporated into this Agreement by this reference. Exhibit B is the Cost Estimate from the Transportation Enhancement fund application approved by the Oregon Transportation Commission on July 18, 2012. Exhibit B is attached hereto and incorporated into this Agreement by this reference. Work on the Kellogg Multi-Use Trail and Bridge Structure will be divided into two phases, as shown on the exhibits. Phase One will be the design, manufacture and installation of the Kellogg Bridge Structure. Phase Two will be the design, permitting and construction of the trail connections and any required natural resource mitigation. TriMet will manage Phase One of the Kellogg Bridge Structure work, including the contingency allowance set out in the Transportation Enhancement fund application approved by the Oregon Transportation Commission on July 18, 2012. Phase One will be the responsibility of TriMet, and shall be completed by September 2013. Phase Two will be the responsibility of the City, and shall be completed by September 2015.

11. Issue Resolution. It is understood by both Parties that City Betterment Work of this size and complexity may raise issues requiring speedy resolution. In the event of any issue or dispute between the City and TriMet, the Parties agree that they shall negotiate in good faith in an effort to resolve it. It is understood by both Parties that the dispute shall be referred for resolution as follows:

- a. Refer the dispute to Kenny Asher, City Project Manager, and Leah Robbins, TriMet Project Manager, who shall make a good faith effort to resolve it;
- b. If unresolved, refer it to the City Manager and TriMet's Executive Director of Capital Projects;
- c. If unresolved, the Parties agree to submit the dispute to mediation prior to any party commencing litigation. In such an event, the parties to this agreement agree to participate in good faith in a non-binding mediation process. The mediation shall take place in Portland, Oregon. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. Each party shall bear its own costs and expenses, but the mediator's fees and costs shall be borne equally by the Parties. In the event mediation is

unsuccessful, the Parties are free to pursue any legal remedies that may be available.

12. Time of the Essence. The Parties agree to act in good faith and to use reasonable judgment and decision making in all matters related to this Agreement. The Parties understand that due to the nature of construction work, the Scope Development process described in Paragraph 2, above, and change order negotiations described in Paragraph 5, above, may be time sensitive. The Parties agree to act in an expeditious manner when performing all of their obligations under this Agreement. The Parties also understand that failure to do so may increase the cost of the City Betterment Work.
13. Compliance with Law. Each party agrees to comply with all local, state and federal ordinances, statutes, laws and regulations that are applicable to the services provided under this Agreement. To the extent applicable to each of the respective parties, this Agreement is subject to all federal provisions prescribed for third-party contracts by the federal grant agreement.
14. Indemnification. Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the Parties shall hold harmless, indemnify and defend the other and its officers, employees and agents from and against all claims, demands, penalties, causes of action, and damages, of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent acts or omissions of the indemnitor, its officers, employees, or agents.
15. Choice of Law. This Agreement shall be construed according to the laws of the State of Oregon. Any litigation between Milwaukie and TriMet arising under this Agreement or out of work performed pursuant to this Agreement shall occur, if in the state courts, in the Clackamas County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.
16. Severance. If any clause, sentence, or portion of the terms and conditions of this Agreement becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law. All provisions concerning indemnity survive the termination of this Agreement for any cause.
17. Audit and Inspection of Records. The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the final date hereinafter written.

**Tri-County Metropolitan Transportation
District of Oregon**

City of Milwaukie

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to form:

Approved as to form:

TriMet Legal Department

City Attorney

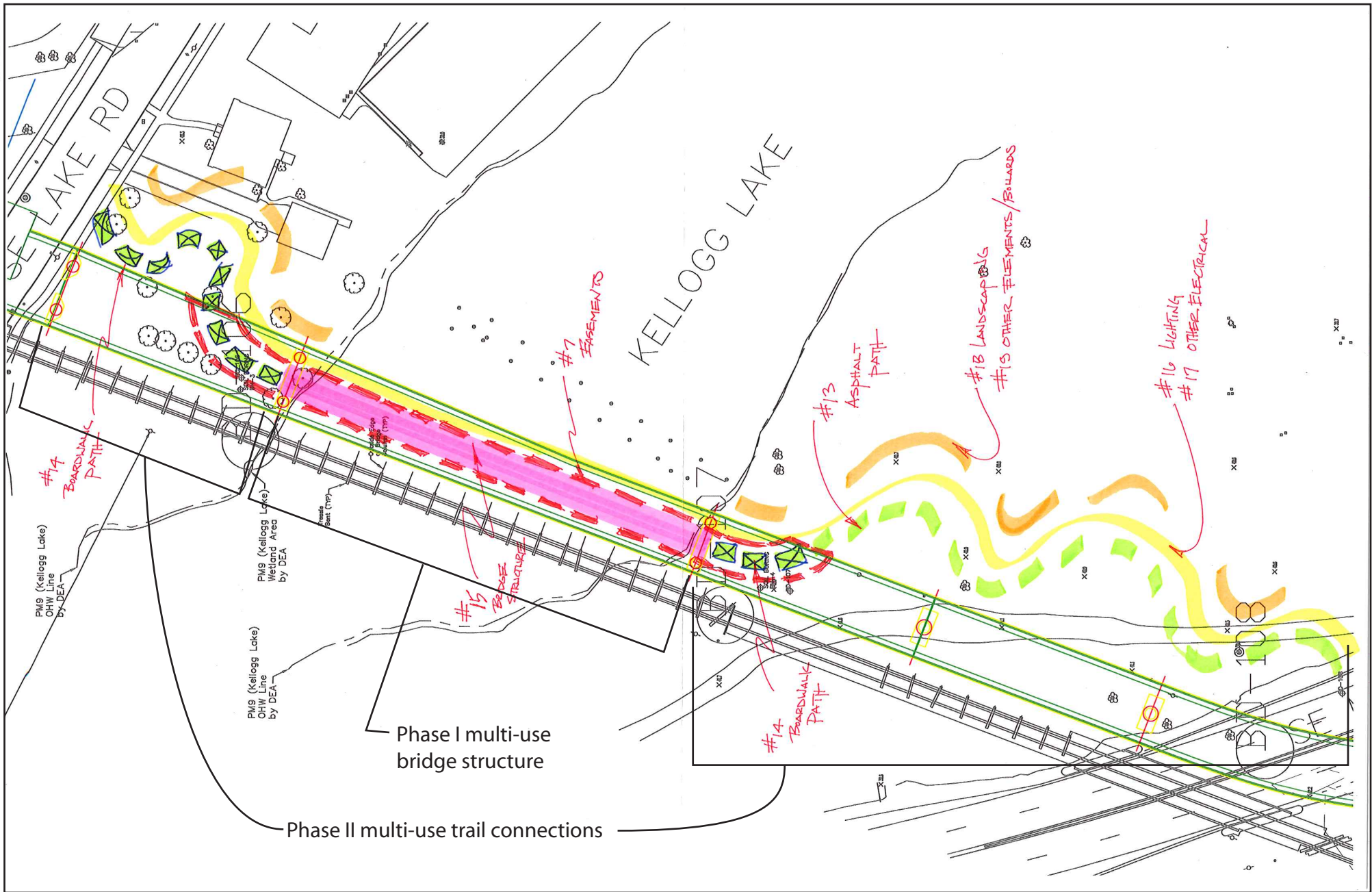


Exhibit A Kellogg multi-use trail and bridge structure

EXHIBIT B

		Phase 1					Phase 2					
Preliminary Engineering		Unit Price	Quantity	Unit	Extended	Notes	Quantity	Unit	Extended	Notes		
1	Project Administration					Included in item #2				Included in item #2		
2	Engineering and Administration		1	18%	LS	\$ 117,196	18%	LS	\$ 18,923			
3	Environmental					NEPA complete; local permits included in item #2				NEPA complete; local permits included in item #2		
4	Coordination					Included in item #2				Included in item #2		
5	Information Interpretive					Included in item #2				Included in item #2		
6	Other Development/PE					Included in item #2				Included in item #2		
Right of Way (ROW)												
7	Easements	\$ 0.35	3750	SF		\$ -	5476	SF	\$ -	Value of permanent easement on TriMet right-of-way		
8	Acquisitions					Already in public ownership				Already in public ownership		
9	Relocations					NA				NA		
10	Litigation					NA				NA		
Construction												
11	Construction Administration					Included in item #2				Included in item #2		
12	Site Preparation					Included in items #13-15				Included in items #13-15		
13	Asphalt Path	\$ 83.86			LF	\$ -	1194	LF	\$ 100,129	includes excavation, AC - 2.5", aggregate base, drainage, and labor		
14	Boardwalk Path	\$ 374.04			LF	\$ -		LF	\$ -	Includes boardwalk materials and labor		
15	Bridge Structure	\$ 197.50	3290	SF		\$ 649,775		SF	\$ -	Includes materials and labor		
16	Lighting	\$ 5,500.00			EA	\$ -		EA	\$ -	Includes fixtures and poles only		
17	Other Electrical	\$ 25.00			LF	\$ -		LF	\$ -	Includes wiring, metering, conduits		
18	Landscaping	\$ 45.00			LF	\$ -	1454	LF	\$ 5,000	Includes mitigation planting and monitoring		
19	Other Elements/Bollards	\$ 900.00			EA	\$ -		EA	\$ -	Removable bollard with key at each end		
20	Other Construction					NA				NA		
21	Contractor OH, Profit, & Risk			25%		\$ 162,444		25%	\$ 31,000			
22	Contingency			20%		\$ 129,955		20%	\$ 24,800	Based on conceptual design phase		
Ph1 Subtotal						\$ 1,059,370	Ph2 Subtotal					\$ 179,852
23	Year of Expenditure Escalation			10%		\$ 105,937		10%	\$ 17,985	Converts 2010 estimate to 2013 construction (3%/yr)		

Ph1 Total \$1,165,306

Ph2 Total \$197,837

Phase 1 Construction Only \$ 649,775
Phase 2 Construction Only \$ 105,129

ATTACHMENT 2

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN AN INTERGOVERNMENTAL AGREEMENT WITH TRIMET FOR CITY INFRASTRUCTURE IMPROVEMENTS TO BE CONSIDERED AS FUTURE ADDITIONS TO THE LIGHT RAIL PROJECT CONTRACT, INCLUDING THE KELLOGG MULTI-USE BRIDGE AND TRAIL.

WHEREAS, the City of Milwaukie and TriMet are collaborating on the Portland-Milwaukie Light Rail Project; and

WHEREAS, the City has identified certain construction work that is not a part of the light rail project but which may be cost-effective to construct at the same time as the light rail project by the light rail project contractor; and

WHEREAS, infrastructure improvements desired by the City and added to the light rail construction contract are referred to as Betterments; and

WHEREAS, the City and TriMet each have responsibilities for designing, pricing, permitting, constructing, inspecting and accepting Betterments; and

WHEREAS, the City has anticipated several wastewater, stormwater and transportation infrastructure projects that could be Betterment projects, and has budgeted funds to complete most of these projects in 2013; and

WHEREAS, one Betterment, the Kellogg Lake Multi-Use Bridge and Trail, is a grant-funded project which requires that TriMet and the City complete the design and construction of the project within a budget of \$1,400,000; and

WHEREAS, the Kellogg Lake Multi-Use Bridge and Trail, also requires the City obligate \$200,000 for reimbursement to TriMet as part of TriMet's administration of the Transportation Enhancement grant awarded by ODOT to the City for the Kellogg Multi-Use Bridge and Trail project in July 2012; and

WHEREAS, the City is not required to utilize TriMet's light rail contractor for any other Betterment but will make the determination to do so on each Betterment once that particular Betterment is scoped and priced by TriMet's contractor; and

WHEREAS, the City and TriMet benefit from having an Intergovernmental Agreement in place to describe the terms and conditions under which all Betterments will be considered and administered.

NOW, THEREFORE, BE IT RESOLVED that the City Manager is authorized to execute an Intergovernmental Agreement with TriMet for City Betterments to be considered as part of the Portland-Milwaukie light rail construction contract, including the Kellogg Multi-Use Bridge and Trail.

Introduced and adopted by the City Council on September 4, 2012.

This resolution is effective on September 4, 2012.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney