

## MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION  
October 3, 2006

**Mayor Bernard** called the work session to order at 5:35 p.m. in the City Hall Conference Room.

Council Present: Councilors Barnes, Collette, Loomis, and Stone.

Staff Present: City Manager Mike Swanson, City Attorney Gary Firestone, Finance Director Stewart Taylor, Community Services Director JoAnn Herrigel, Program Coordinator Beth Ragel, and Engineering Director Paul Shirey.

Media: Dennis McCarthy, *The Oregonian*

**Discussion of the intergovernmental agreement between the City and Metro regarding the Texaco/City Hall Parking Lot site**

**Mr. Swanson** prepared a Q&A form that addressed the issues being raised and which he presented to the Neighborhood District Association (NDA) leadership. They will be posted to the City's website and be the subject of a *Pilot* article. The most important had to do with the issue of the City's closing the Farmers' Market, and the response was 'not a chance.' The City is not nor will be making plans to close the Market. During some of the discussions leading up to this, he thought the City could have been more clear about how much the Market did mean and recognized it as an important part of the City's past, present, and future. There were a number of specific questions regarding the actual intergovernmental agreement (IGA) between the City and Metro. He did not wish to go through and read all of the questions and answers but did go over some of the highlights. One of the issues was that the IGA did require that the City provide indemnification with regard to contamination. The site being a former gas station would have issues. Implicit in the question was that the City was being exposed to a great deal of risk. The piece that was not clear because it was not included in the agreement was that this was an issue that was worked on very hard during negotiations. The City did not accept the indemnification lightly. Metro will not buy property and assume the indemnification. It was a policy, and Metro comes to the table with \$750,000. In order to make the deal happen, someone has to accept the liability for contamination of the site. However, this was after Metro spent \$39,000 studying and tracking the contamination. They also spent about \$20,000 to decommission and remove the tanks. He talked with Phil Whitmore of the Centers program who informed him that Metro would remove any contaminated soil it finds prior to any final sale of the site. Milwaukie was left with the decision of accepting the indemnification which the staff felt at most was a \$40,000 risk in return for Metro's investment of \$750,000. The answer was that the City felt the risk had been analyzed and that Metro had minimized it to the extent possible through its significant investment.

Another issue was that the agreement was arrived at in a non-public process. If one looked at the record there was an initial hearing before the Council at which the agreement was considered. At that time his recommendation was that it was not in a form that was acceptable and that more work needed to be done. The complicating factor at the time was that the closing on the sale of the property

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from the Olson family to Metro was scheduled several days prior to the next Council meeting. The agreement would have been required in order to close. At the initial meeting the Council delegated to the city manager the authority to negotiate, and specifically mentioned the contamination issue, and to execute the agreement so it would be available at the time of closing. The City and Metro worked on the issues and arrived at an agreement acceptable to both parties, but the closing date was changed. Instead of executing the agreement according to his authority, he and Mr. Firestone talked and decided that the reason he had been given that authority no longer existed. There was adequate time to bring the matter before Council prior to closing. It appeared that someone looked at the first half of the record and saw that the city manager was given the authority to negotiate and sign the agreement but did not see the follow up which was it was brought back to Council because the reason for the delegation was no longer appropriate. The Council considered the agreement in an open public meeting.

**Mayor Bernard** asked which level of testing Metro had undertaken on the site.

**Mr. Shirey** replied that Metro did Level 1 which researched previous uses on the site and moved to Level 2 because there was an indication of contamination and soil staining from the gas station. Both steps were done.

**Mayor Bernard** understood Metro removed that tanks at which time more testing was done, and then DEQ certified the site. In the history of the station, there was a pile of dirt on the property for years after the tanks were replaced about 9 years ago. All of that soil was removed from the site once it was certified clean. He felt comfortable with the test results, and any further work would be at a low cost.

**Mr. Firestone** added there has been a series of investigations and actions on the site over the past 20 years. Tanks and soil were removed, and the owners had DEQ involved so there was oversight. Metro's was probably the third or fourth set of investigations, and to some extent the investigation by Metro relied on previous action with DEQ's continued involvement. There was a good set of knowledge regarding contamination on site.

**Mr. Swanson** added far from merely executing the agreement and the indemnification clause there was a great deal of research into the matter to determine if there was an acceptable level of risk for the City. It was determined the risk was minor in comparison to Metro's investment in the property. The agreement did provide for the joint offering to be made through an open competitive process. There was some concern about an unsolicited proposal. The City has committed to a joint open competitive process. In the past year there was a sole source proposal that the City did not accept because its commitment was for an open competitive process. Those were the instructions staff got from Council, and that was the direction staff continued to take.

There was some concern about the City's losing interest in the City Hall parking lot when Texaco was acquired by Metro. The City owns approximately half of the block. The City was given a 5% interest in the Texaco property, and there was no change to the City's 100% interest in the City Hall parking lot. Rather than the City's ending up with only 5% of the entire block, it ended up with approximately 52.5% of the entire site. Metro granted the City an undivided 5% interest because it was managing the property and needed the ownership interest to exercise authority.

**Councilor Collette** asked Mr. Swanson to respond to the comment that the Market was not consulted before anything happened. She understood there have been surveys in the past that were part of the public record.

**Mr. Swanson** understood there were contacts with Market representatives. Some felt they were not consulted, and the City was now putting together a meeting with the Market Transition Team that would seek input from the market stakeholders before any move was made. He believed the Market was consulted prior to anything happening, but they did not feel that way. The City would go back to ensure the Market was part of the process through the transition.

**Councilor Loomis** added his personal feeling about the situation was that with Mayor Bernard also being the Market business manager he assumed all that discussion had taken place. He thought the ball had been dropped. He just assumed it had been done since Mayor Bernard was also the Market business manager. He may have dropped the ball when he assumed that. That line got blurred a lot during Council because Mayor Bernard talks about the Market, and a lot of people think it is a City Market. Councilor Loomis supported the Market and wanted to keep it. He did not know what kind of deal there was with the parking lot and how to help. It was separate from the City. The City supports it through Riverfest, but the lines get blurred sometimes during discussions. He apologized for assuming that everyone had been notified.

**Mayor Bernard** thought it was a good assumption. There was information available at the community booth as soon as plans were formed. There was also information before the market started that the City was going to repave the lot to make it more usable for the Market which was a City investment. He and the market master, his partner in the Farmers' Market, had gone to the riverfront and discussed the matter. A transition team was formed, but he had not gone to each vendor because he did not feel there was enough information. There was nothing to predict at this point beyond what was at the community booth. There was information at the booth, but he agreed a better job could be done. He looked forward to working with the transition team.

**Mr. Swanson** also apologized and wanted to communicate how important the Market was to the City of Milwaukie. It was a very important contributor, and it has grown over the years where people could come together. It was a signature event 25 times each year. He took responsibility for not having communicated that effectively. He provided the question and answer sheet to correct any mis-impressions. The committee dealing with the Texaco/Metro site will work hard and not be rubberstamping anything. He was sure many of the committee members had their own ideas and signatures they would want to add to the project. The transition group would follow through on the Market.

**Councilor Collette** had heard the downtown parking issue as an impending perfect storm. She understood only 50% of the downtown spaces were used on a regular basis and asked where the unused spaces were located.

**Mr. Swanson** replied parking was a critical issue that occupied a great deal of time and thought. It was a question that would have to be answered. He did not feel it had been answered well to date. There were a lot of vacant spaces, but there were complaints about the 15-minute spaces in front of Curves for example. He understood that people liked to park close. It was a challenge. He had talked with Mike McMenamin about the Masonic Lodge, and the issue was parking. The City would find a resolution.

**Mr. Asher** would provide a map because a survey had been done. Staff was counting cars and spaces to determine where there was over- and under-capacity. The downtown was a lot larger than most people thought, so there were mental maps that there were cars everywhere. When one counted there were spaces. They may not be totally convenient, but there were spaces. On the other hand perception was a reality, and there was a parking problem. He did not intend to diminish that by saying there were spaces available. Ms. Mangle was in the process of updating and implementing the downtown traffic management plan. It was impossible to answer any question about downtown parking embedded in any one project. It was a much larger issue. It was an issue for the neighborhoods, Library, and all the projects. It was a project in and of itself, so he did not wish to oversimplify it.

**Councilor Collette** added when the buses were moved, that would free up some spaces.

**Councilor Stone** asked Mr. Swanson speak to the part of the IGA that talked about amending zoning and development ordinance regulations to permit a five-story – the IGA under recital C says the letter of intent was a landmarks signature mixed-use project of four to five stories with retail uses on the ground floor and residential uses on the higher floors. It went on to say on page three that the City would exert its best efforts to amend its zoning and development ordinance regulations to put a project on block 14 consisting of residential over ground floor retail a minimum of five stories. The concern was the height of the building, and the way it was written gave the City no flexibility. It did not say the City ‘may’ amend; it says ‘will.’

**Mr. Swanson** replied that question kept coming up. The concern has always been that this set it at five stories. In fact it said the City would exert its best efforts which was to do the best that it could. What really controlled it was the land use process and the code amendment process. This agreement cannot provide an exception to the code either in terms of building heights or zoning. If there were a change in height requirements, then it would have to go through the land use process which would include notice, opportunity to be heard, the Planning Commission process that could be appealed to the City Council and ultimately the Land Use Board of Appeals (LUBA). The agreement cannot change the height requirements or the code requirements. It did say if five stories was found to be the most potentially successful option, then the City would try to do everything it could to amend its codes, but it could not do that without going through the Planning Commission. There was a final appeal to LUBA with safeguards through the process.

**Councilor Stone** assumed it would go through the Planning Commission process, but this implied that it would be done.

**Mr. Swanson** explained that an agreement could not amend code provisions.

**Councilor Stone** knew it would have to go through a process. That said the City would go through the process and exert its best efforts to get this done. That was what it was saying. She saw no reason why the City would not do that because it was involved in this IGA with Metro. She heard a lot of people talk about that.

**Mr. Firestone** clarified the legal effect of the language. Essentially that did commit staff to use best efforts to whatever was agreed through the land use process. Since it would involve a zone change the Planning Commission would hear it initially, and the Council would make the final decision. That language did

impose some obligation on staff, but it did not impose any on the Council. When the Planning Commission and City Council hear it the decisions would be made on land use standards. The IGA would not be relevant and would not affect the discretion to decide the matter. Best efforts was not a commitment to action; if it did then it would say "shall approve" which it could not do. Best efforts was the language used in these agreements to commit the City staff ...

**Councilor Stone** had a technical question in terms of language use. Why would "the City may" not be used instead? That implied discretion on the City's part to do that. "Will" implied obligation to do it.

**Mr. Firestone** understood Metro was looking for an obligation that City staff would work on this and let the City Council make the decision.

**Councilor Stone** did not see a lot of upheaval in terms of the community when the decision was made. She almost felt the Council put the cart before the horse and should have involved the community a little further before settling into this agreement with Metro.

**Mr. Swanson** explained that was about to happen. A lot of what was heard was that this or that was going to happen. There have been no proposals. The committee has met once, and he felt there would be some strong public opinion coming out of that committee. If there was a proposal to go to five stories there would be a lot of public opinion heard. A lot of people thought they knew what was going to happen, but there was nothing yet. This was still a blank slate. There would be a number of processes in which people would have an opportunity to provide their input.

**Councilor Stone** had a question about the 5% interest in title to the property. That was the Texaco piece. The City owned the other half of the block, but the interest was really 52.5%.

**Mr. Swanson** said the City owned half of the block – the City Hall parking lot. Additionally it had a 5% interest in the Texaco lot. He had that 2.5% because it was half the block. The ownership of the entire block was 52.5%. There were two tax lots. The City owned 100% of the City Hall parking lot, which was a separate tax lot. Metro owned 95% of the other half of which the City owns 5%.

**Councilor Stone** did not understand why it would not be 55%.

**Mr. Swanson** replied was looking at it as the whole block. The City had 5% of half of the block which was 2.5%.

**Councilor Stone** said theoretically in terms of block 14 the City owned the most interest. What kind of positions did that put the City in in terms of having a little more control over the agreement and what happened there.

**Mr. Swanson** responded that Metro did listen to the City and took into consideration what it had to say. Metro was spending \$750,000 out of its Urban Centers money, and there were certain things they would have to see in order to justify that expenditure. Metro would have to see a level of their program element met, or otherwise the City and Metro would have to sit down and talk about what was going to happen.

**Councilor Stone** would like to see a copy of their program elements. Did the City not have more clout?

**Mr. Swanson** replied that he has found that Metro wanted to work with the local communities. That was not formal clout. There was a point beyond which the City could not push because that would mean that Metro was spending the

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money in contradiction to what they have budgeted for. He would provide a description of the program to everyone.

**Mr. Firestone** added effectively in this situation neither party could do anything regarding the entire block without the participation of the other. In effect that gave each side the right to say 'no.' If Metro proposed something that was not acceptable to Milwaukie, then it would not happen without the City's approval and concurrence and vice versa. Milwaukie did have clout because it could say 'no', but Metro also had its own requirements.

**Councilor Collette** commented that 8 of the 9 people on the committee were Milwaukie residents. Metro appointed 4 people that included Dave Aschenbrenner and Gary Klein. The third was Brad Olson and the fourth was a real estate broker who had put together some of the more innovative small-scale mixed-use development around town that include projects she thought Milwaukie would be happy with. She felt the team was heavily weighted toward a project that would fit Milwaukie.

**Mayor Bernard** noted the committee was expanded to include a fifth member that was Mary King.

### Additional Matters

**Ms. Herrigel** introduced Robert Russell who just joined the community services department as the code enforcement assistant.

The Council agreed to schedule a joint work session with the Metro Council on November 21, 2006.

### Citizen Advisory Council Recommendation

**Mr. Swanson** said the memo before Council requested that it give direction on a recommendation regarding the Citizen Advisory Council (CAC) Wastewater Strategic Plan. This was before the City Council two weeks ago and it was deferred to this meeting because of time constraints. Since that time, he changed his mind but did not have the time to re-do the memo. He suggested setting a date outside the normal meeting schedule. He would provide a brief review followed by a brief CAC presentation on its process and recommendation. The meeting would then be opened up for testimony from interested citizens. With that he felt the Council would have more information in terms of it making its own recommendation. The CAC presented its recommendation to the Board of County Commissioners (BCC) on Thursday, and he understood the BCC had scheduled a hearing on October 26 and November 2. County Administrator Mantay said an evening meeting might be scheduled at which the BCC would take testimony. He suggested the Council meet to prepare a recommendation that could be forwarded to the BCC for its process that would begin October 26.

The group agreed to hold a special meeting on October 19, 2006 at 6:00 p.m.

**Mr. Swanson** felt there were a lot of people who would like to provide testimony. The Council may deliberate toward a decision, and notice would be provided in the newspaper and on the website.

**Councilor Stone** had been frustrated that the group did not convene as a Council before it talked publicly in terms of a work session to talk about the pros and cons before hearing public testimony. With the issues the Council had in the past that would have been helpful to have an understanding of the issue as a Council. She felt more prepared when she listened to public testimony. The Council still needed to deliberate because it might hear something that would

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make the group change its mind. That was the point of public testimony. She liked feeling prepared and had an understanding of both sides of the issue when it went forward.

**Mayor Bernard** thought the Council had an opportunity to have those questions answered.

**Councilor Collette** suggested another combined work session. This issue more than most had been considered in depth as a group. She had no problem taking 30 minutes or so prior to the special session.

**Mayor Bernard** agreed that would be a good plan.

**Councilor Stone** had read everything the other Councilors had read and had attended the meeting. The Council has not talked about this as a group.

**Councilor Loomis** commented the issue was not new. The decision may be new. He agreed with Councilor Stone that Councilors should be able to express how they feel in an informal discussion. A perfect example was the IGA. He assumed everyone had read it at length, but he did not remember it.

**Councilor Barnes** noted that she and Councilor Loomis had been excused from that meeting and did not vote on the matter.

**Councilor Stone** had a question about the IGA that was considered in September when there were three Council members at the meeting. She asked if that was actually in the packet or if it was handed out at the meeting on that day. She did not believe it was in the packet and that the Council got the IGA at the meeting.

**Councilor Collette** recalled it was discussed at a couple of meetings.

**Mr. Swanson** said it was not in the packet delivered one week prior to the Council meeting. It was delivered later or sent via e-mail.

**Councilor Collette** said it was discussed at an earlier meeting.

**Councilor Loomis** recalled telling Mr. Swanson at the first meeting to go forward with the IGA.

**Councilor Stone** asked if that was the September 20, 2005 meeting.

The Council agreed to discuss the CAC recommendation at the October 17, 2006 work session and to hold a special meeting on October 19, 2006.

**Mr. Swanson** provided copies of a letter from the Oregon Department of Transportation (ODOT) regarding a left-turn signal at Oak Street and Hwy 224.

**Councilor Loomis** distributed copies of the art that would be installed at the entrance to North Clackamas Park.

**Mr. Firestone** announced an executive session pursuant to ORS 192.660(2)(h) to consult with legal counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

**Mayor Bernard** adjourned the work session at 6:31 p.m.

*Pat DuVal*

Pat DuVal, Recorder

**AGENDA**  
**WORK SESSION**  
**MILWAUKIE CITY COUNCIL**  
**OCTOBER 3, 2006**

**MILWAUKIE CITY HALL**

Second Floor Conference Room  
10722 SE Main Street

A light dinner will be served.

***WORK SESSION – 5:30 p.m.***

Discussion Items:

	<u>Time</u>	<u>Topic</u>	<u>Presenter</u>
1.	5:30 p.m.	Discussion of the intergovernmental agreement between the City and Metro regarding the Texaco/City Hall Parking Lot site	Mike Swanson
2.	6:00 p.m.	Citizen Advisory Council (CAC) Recommendation	Mike Swanson
3.	6:45 p.m.	Adjourn	

**Public Notice**

- The Council may vote in work session on non-legislative issues.
- The time listed for each discussion item is approximate. The actual time at which each item is considered may change due to the length of time devoted to the one previous to it.
- Executive Session: The Milwaukie City Council may go into 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.
- For assistance/service per the Americans with Disabilities Act (ADA) please dial TDD (503) 786-7555.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

# The Future of the Texaco Parking Lot

## *Questions and Answers regarding the Milwaukie-Metro Downtown Development project.*

*Compiled and written by City Manager Mike Swanson*

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**Q. Will the City close the Farmers' Market?**

**A.** Not a chance. The City *has not made nor will it be making* plans to close the Market. Past and present Mayors, Councilors, and staff believe that the Market is a proven, invaluable, and vibrant contributor to Milwaukie's past, present, and future. As the Market has grown it has significantly contributed to the growth of community in the City. The only change that has been discussed is location of the Market. Any decision to relocate it will include opportunities for input from Market stakeholders, including vendors and customers. Moreover, it will be made with the goal of ensuring the Market's future success. In fact, a committee is already organizing to look into alternative locations, and current vendors will have a strong voice on that committee.

**Q. Does the Inter Governmental Agreement (IGA) between the City and Metro require the City provide indemnification with regard to contamination of the Texaco site?**

**A.** This comment suggests that potential liability was accepted without consideration of the risks. The site was a filling station for years. Old tanks were removed and new ones recently installed. A major issue considered by Metro when deciding whether to commit \$750,000 for the purchase of the Texaco site was the possibility of contamination that would limit use of the site. Metro spent \$39,750 for environmental consultants to analyze contamination issues, including migration of any contamination. It also spent \$9,545 to demolish the existing building and \$19,050 to decommission and remove the underground tanks.

At each step of that process Metro coordinated with and informed the City of the findings. In recent discussions with Metro representatives, they informed the City that they would remove contaminated soil before the property is redeveloped. It appears that most, if not all, of the contamination occurred at the pumps, probably from gasoline spilling from nozzles as they were inserted into cars or into the pumps. DEQ was consulted, and they determined that the level of contamination would not prohibit a mixed-use commercial-residential development. Paragraph (1)(L) of DEQ's Prospective Purchaser Agreement states that "DEQ has further determined that the proposed development activities at the Property will not contribute to or exacerbate existing contamination, increase health risks, or interfere with remedial measures necessary at the property." Paragraph (2)(C) of DEQ's Prospective Purchase Agreement outlines possible remedial action, including the requirement of a separate HVAC system for the residential units.

Metro policy is not to accept liability resulting from environmental contamination. Rather, they will purchase property only when another party assumes that responsibility. In the purchase before us Metro was spending \$750,000 for the Texaco site, and the City was not required to contribute anything toward the purchase price. We undertook an analysis of the risk involved. Gary Firestone, City Attorney, who has worked on similar transactions, participated. It was determined that the risk of future action was low, taking into account (1)that the risk of contamination appears to be limited to on-site and City-owned property; and (2)the Prospective Purchase Agreement. If remediation was in fact required it would be in the form of soil removal, and that cost was estimated at approximately \$40,000. When compared to Metro's investment of \$750,000, this was deemed an acceptable proposition.

- Q. Does the IGA stipulate the City must support a building height of more than five stories?**
- A. Paragraph 3.6 of the IGA states that the “City will exert its *best efforts* to amend its zoning and development ordinance and regulations to permit a project to be developed on Block 14 consisting of residential over ground floor retail, a minimum of 5 stories . . .” (Emphasis mine.) The IGA does not require a 5-story building. Rather, it requires that the City “exert its best efforts” to modify its Code. The IGA does not (nor could it) require a unilateral Code change. Rather, any proposed change in height requirements must be considered pursuant to the amendment process, which includes notice, public hearings, and public input. This will be one of the most prominent issues the citizen committee will consider.

- Q. Was this IGA considered and approved in a non-public process?**
- A. The IGA was discussed at two regular meetings of the City Council—August 16, 2005 and September 20, 2005. Both meetings were regular public meetings of the City Council, and consideration and possible action on the IGA was included on both of the published agendas, which are made available ahead of time on the City’s website.

At the August 16, 2005 Council meeting the City Manager presented the draft IGA for Council consideration, but he recommended adoption only after two matters were further discussed with Metro. Given deadlines that were approaching, it appeared that it would be necessary to execute the IGA before the next scheduled Council meeting. Therefore, the Council delegated authority to the City Manager to “negotiate and execute” the IGA. The outstanding issues were resolved, and a new draft was prepared. Even though the August 15, 2006 action permitted execution of the IGA without further Council consideration, because the timing issues that had given rise to the delegation of authority to the City Manager were no longer an issue, the new draft was submitted to the Council for consideration, discussion, and action at its September 20, 2006 regular business meeting.

Technically, the IGA could have been executed at the staff level. However, owing to the importance of the agreement as well as the public interest in the transaction, it was brought before the Council for final action in a public forum.

- Q. Why does the IGA permit the City and Metro to select a developer without public notice and without a public process?**
- A. Paragraph 3.2 of the IGA provides that a “Joint Offering may be made either through an open competitive process or an unsolicited proposal process, upon mutual written agreement of the Parties.” During the past year the City was presented with an unsolicited proposal that it rejected because of its commitment to an open, competitive process. A competitive, open RFP has always been the City of Milwaukie’s preferred process, and it will be used for this project.
- Q. Is the City’s primary motivation for this project to increase tax revenues?**
- A. The motivation for any project of this magnitude is more complex than simply increased tax revenue. Revenue growth without new revenues from additional development will not allow the City to keep up with increasing costs, and General Fund departments like the Library and Police Department are placed in jeopardy. New development and the additional taxes they provide enable us to continue to operate

those functions at the level demanded by the community. (Moreover, the new resources provide services throughout the community. For example, the Police Department does not limit its patrol function to only the area that generated the new revenue. The City 's easternmost NDA—Linwood—benefits as much from Downtown development as Historic Milwaukie.)

However, there are additional reasons for a project on this site. For example, if the Downtown is to recapture its vitality and potential it needs people willing to support Downtown businesses. The addition of new housing adds people who can easily access those businesses. They also contribute to the creation of a vibrant space. Much has been said about retaining Milwaukie's small town character, and new development and the new residents are seen as threatening it. People define the character of a place. For example, the Lower East Side of New York remained a "small" community for decades amidst the towering buildings and traffic of New York City. It lost that character when the old population moved to the suburbs and others moved in. Individuals create a community by engaging in the hard work of relating to others as valued community members with whom they share common goals and interests. Attributing alienation to new buildings and traffic plans misses the fact that community flows from human interaction.

- Q. The City began with ownership of half of the block (the parking lot), but now it has ownership of only five percent because of the IGA?**
- A.** This is not accurate. As a matter of fact, the opposite is true. The City now owns 52.5% of the block. Before Metro purchased the Texaco site the City owned the parking lot—one half of the block. The Texaco transaction did not affect the City's ownership of the lot. The IGA grants the City a 5% interest in the Texaco site. Paragraph 2.2 states: "At closing, the City shall take an undivided 5% interest in title to the Property, and Metro shall take an undivided 95% interest in title to the Property as tenants-in-common." Paragraph C of the IGA defines "Property" as the "Texaco filling station site located at 10700 SE McLoughlin Boulevard." The IGA resulted in a net gain of the City's ownership in the block.
- Q. This is the only successful space for the Farmer's Market, and a decision to move it places the Market in a compromised position that will not be supported by the people. Why wasn't the Market consulted before anything happened?**
- A.** There is no proof to a claim that this is the "only successful space for the Farmer's Market." (I suspect that similar arguments were made when the Portland Farmer's Market moved from the Albers Mills site to the PSU Parks Blocks.) Using the Metro purchase of the Texaco site as a rough guide, the block is valued at between \$1,250,000 and \$1,500,00, an expensive investment for a use that occupies twenty-five days a year. The Market is an important piece of life in Milwaukie. It is an important part of the definition of the City. But the success of the past few years can be repeated at other sites like the Riverfront or Main Street.
- Q. What was the process of developing the downtown plan, and how much public process was involved? Why is it not strictly followed? Why not change the plans for this site?**
- A.** The Plan, at page 5, states: "[t]his Land Use Framework represents the leadership of a skilled volunteer Riverfront Board and the input of the more than 2000 community members who have attended meetings, returned surveys, provided focus and ideas, and directed the plan." At page 1 the Plan states: "This document serves as an

ancillary document to the Milwaukie Comprehensive Plan. On its own, this Framework is not a regulatory document. Any part of the Framework that is intended to have a binding effect will have to be adopted as part of, or pursuant to, a code to have regulatory effect. . . . This Framework establishes and guides the development of publicly and privately owned parcels of land, and outlines specific land uses."

At page 7 of the Plan two major guiding principles are stated: (1)"Creating a livable community;" and (2)"Ensuring economic success." "Priority Projects" are listed at page 22 and include a "Bus Transit Center" on the old Safeway site. When a transit center was further considered the site was found to be too small, as projections showed buses staging on Main and Harrison. The Plan's designation of a transit center at the old Safeway site was abandoned, and alternative uses that would meet the twin goals identified above were sought.

**Q. The North Main project was changed after approval. How can anyone be assured that this project will not also be changed once approved?**

**A.** Elements of the North Main project were changed to meet challenges posed by increasing costs stemming from both Hurricane Katrina and the demand for building materials from China. No one anticipated the impacts on construction costs arising from these two events. Any changes that were made were done so in order to bring the costs in line with available funds, but changes were not made to items required by the Code. Many changes were made to tenant finish items that do not affect external appearance.

The major change in North Main was elimination of the basement. The basement was to be used for tenant and owner storage, and its elimination represented a loss of a major marketing tool. At no point was the basement area designated for parking. Other design changes were focused on the area facing the courtyard (e.g. window "eyebrows") so as not to impact the external appearance of the buildings.

**Q. Are efforts being made to protect the site's trees?**

**A.** It remains to be seen how designs submitted through an RFP process will propose to affect the existing trees. If it is necessary to eliminate some or all of trees, the developer could be required to plant trees elsewhere in the City as mitigation.

**Q. Why has the 2000 traffic study not been finished, and how will parking problems from, for example, North Main be addressed?**

**A.** The City required the developers of North Main Village to submit a traffic study as part of the land use application. This was completed in 2004 and demonstrated that the project would not create more than 25 trips per day on surrounding residential streets. Neither the City nor ODOT required mitigation of traffic impacts as a result of that study. The City is fully aware, however, of the concerns expressed by the Historic Milwaukie NDA and others about increased traffic in Milwaukie generally and specifically on residential streets.

The City secured a \$138,000 grant in 2006 to update its Transportation System Plan. The work will begin this fall and will allow us to study the situation carefully and make any necessary or desired policy changes, based on what we learn.

A Downtown Parking and Traffic Management Plan was completed in 2003. Staff has been and will continue to implement the suggestions from this Plan, both through

traffic calming measures and the management of downtown parking.

Because the North Main project is building angled parking where parallel parking existed before, it will add 16 short-term Main Street parking spaces. On-street parking time limits will be enforced, so the parking spaces will be available to patrons of downtown offices and businesses.

The City is selling permits to employees of downtown businesses for the temporary parking lot on the Texaco site. We can conclude that for now based on the fact that eighty percent of the available spaces have been sold, that there is more supply than demand for permitted parking spaces downtown. Over time the City will stop selling parking permits to people park-and-riding from downtown Milwaukie to Portland.

On-street parking in the downtown will be prioritized for shoppers and visitors. Downtown employees and residents will park in designated lots or in areas where the on-street parking is less used. Though parking areas between Scott Street and Monroe Street are well-used, only approximately fifty percent of all downtown spaces are currently used on a regular basis. Parking demands from new development projects will be managed using all of these principles, and location-specific issues will be tackled if and when they arise.

## **INTERGOVERNMENTAL AGREEMENT MAIN STREET VILLAGE PHASE II**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into by and between Metro, a municipal corporation established pursuant to Oregon law and the Metro Charter ("Metro") and the City of Milwaukie (the "City"), a municipal corporation (collectively, "the Parties"). This Agreement is effective as of the last date of execution set forth below (the "Effective Date").

### **RECITALS**

A. Metro Council Resolution No. 98-2619 ("For the Purpose of Authorizing Start-Up Activities for the Transit-Oriented Development (TOD) Implementation Program at Metro") adopted on April 9, 1998, as amended by Metro Council Resolution No. 04-3479 ("For the Purpose of Amending the Transit-Oriented Development (TOD) Program to Expand the TOD Program Area and Initiate an Urban Centers Program") adopted on July 15, 2004, authorizes the acquisition and "Joint Development" of real property satisfying certain criteria and identified as "Opportunity Sites." Metro's TOD Program utilizes joint development tools such as land acquisition and development agreements to encourage the development of projects located in close proximity to rail transit stations, "Frequent Bus Stops" and in Urban Centers throughout the region.

B. On March 17, 2005, the Metro Council authorized Metro to purchase the Property for the Transit-Oriented Development/Urban Centers Program, via Metro Council Resolution No. 05-3555A ("For the Purpose of Authorizing the Chief Operating Officer to Purchase Property in the Milwaukie Town Center for a Transit-Oriented Development/Centers Project"). The Metro Council approved the acquisition of the Property subject to specific preconditions, including the entry into this Agreement by the Parties on terms set forth in the Letter of Intent set forth below.

C. Metro and the City have entered into a Letter of Intent expressing the mutual intent of the Parties to provide for the acquisition of a Texaco filling station site located at 10700 SE McLoughlin Boulevard, Milwaukie, Oregon, and described and depicted in the attached Exhibit A (the "Property") as TOD Program Urban Centers Opportunity Site. The Letter of Intent attached as Exhibit B sets forth the general terms of acquisition and co-ownership of the Property by Metro and the City, and provides for a joint offering of the Property with the adjacent City property at 10721 SE Main Street ("City Property"), also described and depicted in the attached Exhibit A, so that the entire block may be developed by a future purchaser. The development called for in the Letter of Intent is a landmark signature mixed-use project of 4-5 stories, with retail uses on the ground floor and residential uses on higher floors.

D. Soil and water contamination have been discovered on the Property in concentrations that exceed permissible levels if the Property is to be developed for residential use. The Oregon Department of Environmental Quality ("DEQ") has agreed

to issue Metro a Prospective Purchaser Agreement (“PPA”). The PPA requires that the existing underground gasoline storage tanks be decommissioned and that measures be taken to reduce the risk from vapor intrusion into buildings to levels acceptable to DEQ.

E. Metro has entered into an Agreement of Purchase and Sale with Olson Brothers Enterprises, L.L.C., to purchase the Property, has performed due diligence in accord with Metro standard real estate acquisition guidelines, and is prepared to close the acquisition of the Property upon execution of this Agreement.

F. On August 16, 2005, the Milwaukie City Council approved Resolution No. 39-2005, authorizing the City to enter into this Agreement with Metro.

**NOW, THEREFORE**, in reliance on the above recitals and in consideration of the mutual promises described below, the Parties agree as follows:

1. **General Objective.** To provide for the acquisition of the Property as a TOD Program Urban Centers Opportunity Site, setting forth the terms of co-ownership of the Property by Metro and the City, and providing for a joint offering of the Property with the City Property for the development of Main Street Village, Phase II, a landmark signature mixed-use project of 4-5 stories with housing above ground floor retail.

2. **Property Acquisition**

2.1 Metro shall close escrow and acquire the Property upon the execution of this Agreement by both Parties.

2.2 At closing, the City shall take an undivided 5% interest in title to the Property, and Metro shall take an undivided 95% interest in title to the Property as tenants-in-common.

3. **Project Management/Joint Offering**

3.1 The Parties will cooperate jointly to offer the entire city block, consisting of the Property, the City Property, and the ROW Parcels (defined below) for development (“Block 14”). The initial development concept is for a landmark signature mixed-use development of 4-5 stories of housing above ground floor retail, with the building footprint covering most of Block 14, to be called Main Street Village, Phase II (the “Joint Offering”). The terms of the Joint Offering shall be established by mutual agreement, but shall conform to the parameters set forth in the TOD/Urban Centers Workplan.

3.2 Metro and the City agree to establish a project management committee to manage parcel consolidation, craft and market a public Joint Offering document, determine the appropriate land value write-down, solicit proposals and select a developer. The Joint Offering may be made either through an open competitive process or an unsolicited proposal process, upon the mutual written agreement of the Parties. The Parties shall

share equally in the cost of conducting the Joint Offering, and shall exert best efforts to complete the Joint Offering within 18 months from the Effective Date.

3.3 Metro agrees to write down the land value of the Property to an amount that will ensure the desired development as set forth in Section 3.1 above, subject to TOD/Centers Steering Committee and Metro Council approval. The City agrees to market the City Property at an equivalent value per square foot as Metro markets the Property. The proceeds of any sale of Block 14 shall be allocated pro rata between the Parties based on the square footage of their respective properties.

3.4 Metro and the City agree that the Joint Offering will include a requirement that the purchaser implement such measures as are needed to satisfy the terms of the DEQ PPA as part of any residential development and before any residential occupancy is permitted. Metro and the City acknowledge that requiring the purchaser to take such actions will affect the price a developer will pay for Block 14.

3.5 The City staff agrees to support and recommend to the Milwaukie City Council the vacation of certain portions of the right-of-way of SE Harrison Street and SE Jackson Street (the "ROW Parcels"), as depicted on Exhibit A, and the incorporation of said ROW Parcels into the Joint Offering.

3.6 City will exert its best efforts to amend its zoning and development ordinance and regulations to permit a project to be developed on Block 14 consisting of residential over ground floor retail, a minimum of 5 stories with a floor area ratio ("FAR") of 1 to 1, a housing/parking ratio not to exceed one space per housing unit and a building type that is economically feasible.

3.7 Metro agrees to demolish the existing buildings on the Property, close and stub all utilities and remove all demolition materials in accord with all state and local regulations, such that the Property is in a reasonably safe condition after closing.

3.8 Metro agrees to decommission the Underground Storage Tanks ("UST") located in the tank nest on the Property after closing, in compliance with all DEQ UST decommissioning rules and regulations, either by removal or in place, such that they may be used as stormwater storage vessels for future development.

3.9 Metro agrees to exert its best efforts to obtain a No-Further-Action Letter from DEQ, stating that no further investigation, remediation or cleanup is required to be performed upon the Property in connection with commercial use.

#### **4. Environmental Assessment and Indemnity**

4.1 Environmental Assessment. Metro's Phase I and Phase II Environmental Assessments revealed that petroleum contamination exists in the Property's soil and groundwater, in concentrations that are acceptable for commercial development but exceed permissible levels if the Property is to be developed for residential use, and that

petroleum contamination originating on the Property has migrated from the Property in a southwesterly direction, into the soil and groundwater underlying SE Jackson Street and SE McLoughlin Boulevard. In accord with the Letter of Intent, and in consideration for Metro's agreement to acquire the Property for purposes of mixed-use development, the City has agreed to indemnify Metro as set forth below.

4.2 Environmental Indemnity. The City hereby covenants to indemnify and defend (with legal counsel reasonably acceptable to Metro) Metro and hold Metro, its officers and employees, successors and assigns, harmless from and against all claims, demands, causes of action, or any other action or proceeding, meritorious or not, and all liabilities, losses, damages, costs and expenses relating to or arising, in whole or in part, directly or indirectly, from: (a) the past, present or future Environmental Condition of the Property; (b) past, present or future Adverse Environmental Activity occurring on or related to the Property; (c) any and all Government Action related to the Property or past, present or future activities thereon; (d) the past, present or future Environmental Condition of real property surrounding the Property, relating to or resulting from the Environmental Condition of the Property or Adverse Environmental Activity on the Property; and (d) City or City's agents failure to comply with any and all future Environmental Requirements relating to the Property.

Metro hereby covenants to indemnify and defend (with legal counsel reasonably acceptable to the City) the City, and hold the City, its officers and employees, successors and assigns, harmless from and against all claims, demands, causes of action, or any other action or proceeding, meritorious or not, and all liabilities, losses, damages, costs and expenses relating to or arising, in whole or in part, directly or indirectly, from Metro's activities under Sections 3.7 and 3.8 above.

4.2.1 For purposes of this Section, "Environmental Condition" shall be interpreted to include, but not be limited to, the release of or contamination by any Hazardous Substance(s), pollutant or contaminant, as those terms are defined in CERCLA, TOSCA, ORS Chapters 465 and 466, and all other applicable federal and state environmental statutes, rules and regulations now or hereafter in effect, but shall not include conditions directly resulting from the acts of Metro, its officers and employees, agents and contractors.

4.2.2 For purposes of this Section, "Government Action" shall be interpreted to include any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency which results directly or indirectly from the Environmental Condition of the Property or Environmental Activity related on or related to the Property.

4.2.3 For purposes of this Section, "Adverse Environmental Activity" shall be interpreted to include any past or current, actual, proposed or threatened surface or subsurface, storage, holding, existing, release, emission, discharge, generation, processing, abatement, removal, remediation, disposition, handling or transportation of any Hazardous Substance(s), pollutant or contaminant (as though they are defined in CERCLA, TOSCA, ORS Chapters 465 and 466, and other applicable federal and state

environmental statutes, rules and regulations hereinafter in effect), from, under, into or on, the Property, or otherwise relating to the Property or the use of the Property or neighboring properties, or any other activity or occurrence, cause or causes that would cause any such event to exist, but shall not include activity by Metro, or on behalf of Metro by its officers and employees, agents and contractors

4.2.4 For purposes of this Section, "Environmental Requirements" shall be interpreted to include past, present and future state and federal local laws and ordinances, including CERCLA, TOSCA, and ORS Chapters 465 and 466, as amended from time to time, including any administrative court order, judgment or decree arising therefrom.

4.2.5 The City and Metro hereby agree that the Environmental Indemnity contained herein shall survive the sale of the Property to a third party. Metro may, at its option, tender any defense of any claim, action or suit covered under this Environmental Indemnity to the City.

**5. Property Management.** Upon acquisition of the Property by Metro and the City, the City shall manage the Property until it is conveyed to a developer pursuant to the Joint Offering. The City shall maintain security of the Property, and shall provide additional fencing, gates, signage, and other measures necessary to maintain public safety on the Property, and to deter public nuisance use of the Property. Access to the Property shall be controlled by the City, and the City shall respond to neighborhood or citizen complaints regarding nuisance uses or noise on the Property. Any permits granted to third parties by the City to use the Property shall comply with the terms and limitations set forth in this Agreement. The City shall be responsible for obtaining all necessary permits and for complying with all state and local rules and regulations in managing and maintaining the Property. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance or operation issues that may arise with respect to the Property. Funding for the management and maintenance of the Property and the payment of taxes or assessments applying to the Property, if any, shall be provided from the City's own resources.

## **6. General Provisions**

6.1 General Indemnification. The City shall indemnify and defend Metro, and hold Metro harmless from and against any claim, loss, liability or cost suffered directly or from a third-party claim arising out of or related to the City's management of the Property or any condition on the Property in the possession or under the control of the City. Metro shall have no liability to the City for any injury, loss, or damage caused by third parties, except to the extent caused by Metro's negligence or breach of duty under this Agreement. The indemnity obligations of the City under this clause shall survive any expiration or termination of this Agreement.

Metro shall indemnify and defend the City, and hold the City harmless from and against any claim, loss, liability or cost suffered directly or from a third-party claim arising out of or related to Metro's activities under Sections 3.7 and 3.8, above. The indemnity

obligations of Metro under this clause shall survive any expiration or termination of this Agreement.

6.2 Liens. Except with respect to activities for which Metro is responsible, the City shall pay as due all claims for work done on and for services rendered or material furnished to the Property, and shall keep the Property free from any liens. If the City fails to pay any such claims or to discharge any lien, Metro may do so and collect the cost from the City. Such action by Metro shall not constitute a waiver of any right or remedy that Metro may have on account of the City's default. The City may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, as long as Metro's property interests are not jeopardized. If a lien is filed as a result of nonpayment, the City shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Metro cash or sufficient surety bond or other surety satisfactory to Metro in an amount sufficient to discharge the lien plus any costs or attorney fees.

6.3 Signage. The City may provide on-site signage informing the public that the City is managing the site, but said signage shall state that funding for the acquisition came from Metro's Transit-Oriented Development/Urban Centers Program. The City shall also document in any publication, media presentation or other presentations on the Property that funding was provided by Metro's Transit-Oriented Development/Urban Centers Program.

6.4 Term. The term of this Agreement shall be five (5) years from the Effective Date of this Agreement, renewable by mutual written agreement for additional five (5) year periods. The indemnities set forth herein shall survive and shall not be affected by the expiration or termination of this Agreement.

6.5 Joint Termination for Convenience. Metro and the City may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective upon 10 days' written notice of termination issued by Metro, subject to the mutual written agreement of the Parties.

6.6 Termination for Cause. Either party may terminate this Agreement before the date of expiration, if that party determines, in its sole discretion, that the other party has failed to comply with the terms and conditions of this Agreement and is therefore in default. The terminating party shall promptly notify the defaulting party in writing of that determination and document said default with reasonable particularity. Thereafter, the defaulting party shall have 30 days to cure the default. If the default is of such a nature that it cannot be completely remedied within the 30-day period, this provision shall be complied with if the defaulting party begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to cure the default as soon as practicable. If this Agreement is terminated under this provision, the City shall quitclaim its interest in the Property to Metro.

6.7 Metro Termination for Failure to Vacate Right of Way and/or Obtain Necessary Zone Change. If the City's best efforts do not result in the incorporation of the ROW

Parcels and/or the amendment of its zoning ordinance as set forth in Section 3 above, then Metro may at its sole option terminate this Agreement, and the City shall quitclaim its interest in the Property to Metro.

6.8 City Termination for Failure to Obtain No Further Action Letter. If Metro's best efforts do not result in the receipt of a No-Further-Action Letter from DEQ as set forth in Section 3.9 above, then the City may at its sole option terminate this Agreement, and the City shall quitclaim its interest in the Property to Metro.

6.9 Laws of Oregon. This Agreement shall be governed by the laws of the State of Oregon, and the Parties agree to submit to the jurisdiction of the courts of the State of Oregon. All applicable provisions of ORS Chapter 279, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provisions were a part of this Agreement, including but not limited to ORS 279.015 to 279.320.

6.10 Assignment. No party may sell its undivided interest in the Property, or assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the Parties may subcontract for performance of any of their responsibilities under this Agreement.

6.11 Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro: Metro  
Phil Whitmore, TOD Program Manager  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

To City: City of Milwaukie  
Mike Swanson, City Manager  
10722 SE Main Street  
Milwaukie, OR 97222

6.12 Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform to the terms and requirements of applicable law and the intent of this Agreement.

6.13 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreements or representations relating to this Property. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties.

IN WITNESS WHEREOF, the Parties hereto have set their hands on the day and year set forth below.

CITY OF MILWAUKIE

METRO

By:   
Title: Mayor of City of Milwaukie

By:   
Title: Chief Operating Officer

**Exhibits:**

Exhibit A – Legal Description and Depiction of Property and City Property

Exhibit B – Signed Letter of Intent

## EXHIBIT A

### Legal Description of Property and City Property

#### Property:

**Lots 5, 6, 7 and 8, Block 14, MILWAUKIE, in the County of Clackamas, and State of Oregon. The Easterly boundary of said lots to be a line more particularly described:**

**Beginning at a brass screw set in the South sidewalk of Harrison Street in the Town of Milwaukie, at a point which is South 80° West 5 feet and North 9° 20' West 4 feet from the Northeast corner of said Lot 5, Block 14, MILWAUKIE, thence South 9° 20' East, along the center line of the vacated alley in said Block 14, as vacated by Milwaukie City Ordinance 35 recorded in Book 516, Page 124 Deed Records, a distance of 204 feet to an iron pipe set in the South line of said Block 14, said iron pipe being the point of terminus of said boundary as shown by Survey 2615 in the office of the Clackamas County Surveyor.**

#### City Property:

**Lots 1, 2, 3 and 4, Block 14, MILWAUKIE, according to the duly recorded plat thereof, said western boundary of said lots to be a line described particularly as follows:**

**Beginning at a brass screw set in the South sidewalk of Harrison Street in the Town of Milwaukie, at a point which is South 80° West 5 feet and North 9° 20' West 4 feet from the Northeast corner of said Lot 5, Block 14, MILWAUKIE; thence South 9° 20' East, along the center line of the vacated alley in said Block 14, as vacated by Milwaukie City Ordinance 35, recorded in Book 516, page 124 Deed Records, a distance of 204 feet to an iron pipe set in the South line of said Block 14; said iron pipe being the point of terminus of said boundary, as shown by Survey 2615 in the Office of the Clackamas County Surveyor.**

**EXHIBIT B**

**Signed Letter of Intent**

## LETTER OF INTENT

The purpose of this Letter of Intent is to set forth the terms for discussion by Metro, a Metropolitan Service District ("Metro"), and the City of Milwaukie ("City") for the purpose of entering into an agreement to provide a joint offering ("TOD/Centers Joint Offerings") of the Olson Bros service station ("Olson Property") site and the adjacent city-owned surface parking lot ("City Parking Lot") depicted in Exhibit A, subject to the legislative approval of each party's governing body. The TOD/Centers Joint Offering will provide for the development of an Urban Centers Project of 4-5 stories, containing housing above retail, in downtown Milwaukie, Oregon hereafter referred to as "Main Street Village, Phase II." Unless and until such time as a definitive written agreement has been approved and properly executed by all parties, no party shall have any legal obligation to the other with respect to the potential transactions discussed in this Letter. This Letter of Intent shall in no way be construed as a binding agreement between the parties. Subject to the foregoing, the following is a statement of potential deal points and actions by the parties that are intended to provide a framework for negotiation of a definitive written agreement.

### Metro Participation

1. Metro will obtain an appraisal and appraisal review for the Olson Property at 10700 SE McLoughlin, Milwaukie, Oregon.
2. Metro will seek the approval of the TOD/Centers Steering Committee and the Metro Council for the acquisition of the Olson Property.
3. Metro will complete said acquisition and become the record owner of the Olson Property.
4. Metro will cooperate with the City to jointly offer the Olson Property and the adjacent City parking lot for development as a signature mixed-use project of 4-5 stories with housing above retail to be called the Main Street Village, Phase II.
5. Metro will write down the land value of the Olson Property to an amount that will ensure the construction of a mixed-use development, subject to TOD/Centers Steering Committee and Metro Council approval.

### City of Milwaukie Participation

1. City will offer the City Parking Lot at 10721 SE Main Street in a joint offering with the Olson Property, at an equivalent value per square foot as Metro offers the Olson Property. By writing down the land value of the City Parking Lot Property, the City will share in the financial burden of ensuring the construction of a mixed use project. However, it is understood that because Metro is purchasing land supporting a service station and converting it to commercial-residential use, Metro's total land value write down for the Olson Property will likely exceed the City's, despite equivalent sale values.

2. City will complete the necessary process to have the right-of-way parcels at SE Harrison Street and SE Jackson Street ("ROW Parcels"), depicted on Exhibit B, become part of the TOD/Centers Joint Offering.
3. City will use its best efforts to modify its planning and development regulations to permit a project composed of a minimum of five stories with a floor area ratio ("FAR") of 1 to 1, housing/parking ratio not to exceed one space per housing unit and a building type that is economically feasible
4. City will execute an environmental indemnity prior to Metro's acquisition of the Olson Property, agreeing to indemnify, defend and hold harmless Metro against all liability relating to the environmental condition of the Olson Property.

### **Joint Participation**


1. Metro and the City will establish a project management committee to manage parcel consolidation including the ROW Parcels, craft and market a public offering document, solicit proposals and select a developer. The City and Metro will share decision-making equally for the project.
2. The Joint Offering may be offered through either an open competitive process or an unsolicited proposal process. The initial development concept is for a landmark mixed-use development of four to five stories, with the building footprint covering most of the parcel.

### **Schedule**

The parties' intent is that the Joint Offering will issue within 18 months or less from the date of this Agreement.

Neither Metro nor City shall have any obligation to the other with respect to transactions and matters discussed above until a definitive written agreement encompassing said transactions and matters has been approved by the respective governing bodies of Metro and the City and executed by the parties. Unless and until such a written agreement has been so executed, neither party shall have any obligation to the other with respect to any costs incurred, including but not limited to, legal and consulting fees incurred in connection with the proposed transactions and actions described herein.

**City of Milwaukee**

  
\_\_\_\_\_  
City Manager

**Metro**


  
\_\_\_\_\_  
Chief Operating Officer

EXHIBIT A

LEGAL DESCRIPTION

Lots 5, 6, 7 and 8, Block 14, MILWAUKIE, according to the duly recorded plat thereof, in the City of Milwaukie, County of Clackamas and State of Oregon, the Eastern boundary of said lots to be a line more particularly described as follows:

Beginning at a brass screw set in the South sidewalk of Harrison Street in the Town of Milwaukie, at a point which is South 80° West 5 feet and North 9°20' West, 4 feet from the Northeast corner of said Lot 5, Block 14, MILWAUKIE; thence South 9°20' East, along the center line of the vacated alley in said Block 14, as vacated by Milwaukie City Ordinance 35, recorded in Book 516, Page 124, Deed Records, a distance of 204 feet to an iron pipe set in the South line of said Block 14, said iron pipe being the point of terminus of said boundary, as shown by Survey 2615 in the Office of the Clackamas County Surveyor.

EXCEPTING THEREFROM those portions deeded to the City of Milwaukie by Deeds recorded February 1, 2005, Fee No. 2005-009153 and also Fee No. 2005-009154.

~~Read and Approved~~

**STATUTORY WARRANTY DEED**

METRO, a municipal corporation and political subdivision of the State of Oregon ("Metro), Grantor, conveys and warrants to CITY OF MILWAUKIE, a municipal corporation ("Milwaukie"), Grantee, an undivided 5% interest in the following described real property free of encumbrances except as specifically set forth herein, it being the Grantor's intention to create a tenancy in common between itself and the Grantee, with Metro retaining an undivided 95% interest and Milwaukie holding an undivided 5% interest: the real property described on Exhibit A, attached hereto and made a part hereof.

This property is free of liens and encumbrances, EXCEPT: as described on Exhibit B, attached hereto and made a part hereof.

**THIS INSTRUMENT WILL NOT ALLOW THE USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USED AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.**

The true and actual consideration for this conveyance is -0- dollars, and other property or value given.

**DATED:** \_\_\_\_\_, 2005.

METRO

\_\_\_\_\_  
Michael J. Jordan  
Chief Operating Officer

State of Oregon                    )  
  ) ss.  
County of Multnomah            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared \_\_\_\_\_, in his capacity as Chief Operating Officer of Metro, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.


My commission expires: \_\_\_\_\_

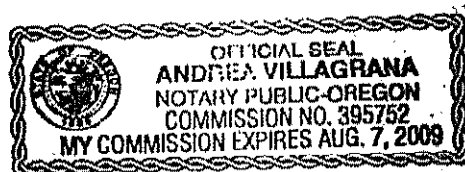
**AFTER RECORDING, RETURN TO:**  
Metro Attorney Office  
600 NE Grand Avenue  
Portland, OR 97232-2736

**Until a change is requested, all tax statements shall be sent to the following address:**  
Metro Transit Oriented Dev. Program  
600 NE Grand  
Portland, OR 97232-2736

This conveyance from Metro is approved as to form and content and accepted by City of Milwaukie.


CITY OF MILWAUKIE, a municipal corporation

By:   
Mike Swanson, City Manager



State of Oregon                    )  
  )ss.  
County of Multnomah            )

On this 29<sup>th</sup> day of September, 2005, before me, the undersigned, Andrea Villagrana, a Notary Public for Oregon, personally appeared Mike Swanson, as City Manager for City of Milwaukie, a municipal corporation, personally known to me (or proved to be on the basis of satisfactory evidence) to be the identical individual whose name is subscribed to this instrument and acknowledged to me that he executed the same freely and voluntarily.

  
Notary Public for Oregon  
My commission expires: August 7, 2009