

MINUTES**MILWAUKIE CITY COUNCIL WORK SESSION
JUNE 9, 2003**

Mayor Bernard called the work session to order at 5:30 p.m. in the City Hall conference room.

Councilors present: Barnes, Lancaster, and Stone.

Staff present: City Manager Mike Swanson, City Attorney Gary Firestone, Community Development/Public Works Director Alice Rouyer, Program Administrator JoAnn Herrigel, and Project Manager Jeff King.

Centennial Event Update

Ed Zumwalt and **Kelly Howell**, Centennial Committee members, updated the Council on the July 26 Riverfront Event that includes music, dragon boat exhibition, and evening fireworks show. Zumwalt expressed his appreciation to Howell for taking on extra responsibilities during his illness.

Margaret Usher, Dragon Sports USA Board member, said she could bring at least 8 teams to the Milwaukie event and suggested intermingling various City Council and staff with experienced rowers.

Mayor Bernard thanked Kelly Howell for all the work he has done on the Centennial Project.

Public Comments

Patty Wisner, Lake Road neighborhood resident and Design and Landmarks Commission (DLC) member. Interested citizens contacted her after they read *The Oregonian* article about moving the Sam G. Marinos house. The article was hopeful the house could be moved. She has been in contact with City Manager Swanson and Planning Director John Gessner who have been courteous enough to contact her from time to time to keep her updated on the situation with the house. Swanson and Gessner have provided documentation of the history of their contact with Emmert International. Swanson called her the previous Friday to let her know it looked like the house would not be moved and that within 5 to 10 days, the house could be demolished. Demolition seemed to be the choice over deconstruction based on costs. Swanson contacted her to let her know demolition could be as early as Tuesday. This was quite shocking for her since the public now believes there is a chance this house could be saved. To move ahead so quickly with the demolition seems to be alarming because it is happening so close to the Milwaukie Centennial Celebration and as a community

we have been trying to save this house. To actually go forward and demolish a landmark house seems to be quite a bad public relations move on the part of the City. She understands Mayor Bernard does not agree with her on this. If we were looking at Portland, Albany, Gresham, or any community that was having a centennial.... To demolish it right before the celebration starts seems to her a very foolish PR move and a foolish move for actually trying to do something good for the community. She does not think the City needs to rush into this. She knows the history, the disappointment, and frustration of not seeing this move forward as it should. To tell the truth, since she is the DLC commissioner who is talking to both Emmert International and the City of Milwaukie, she gets two completely different accounts as to what has gone down. She is trying to find out where the story is. Each party is passionately defending its position in what has taken place to make this move happen. It looks like this new lot on Jackson is available and legal, and the application is in planning right now. Why do we need to rush and demolish the house this week or even next week when we have not confirmed with planning that this house can be sited here? If Emmert International can give credible proof that it can move that house quickly to that lot and if the City can consider even imposing fines if that deadline is not met, she believes it is in the City's best interest that it can show it can successfully preserve its architecture. It will happen again, and architecture is the only thing left in this. The people die off and go away. All that is left is our architecture. The DLC is trying hard with the design standards just adopted by Council to make sure that beautiful future buildings are built in Milwaukie. Houses that are structurally sound should be saved and recycled as living quarters. It is very irresponsible not to try and recycle our substantial housing stock in this town. There is a lot of stock that is not valuable, but this particular house and other older houses like it are valuable in Milwaukie and have a long life span yet to come. She asked the City Council to try and work with the planning department and Emmert to determine for sure if the City needs to rush ahead with this demolition. She knows there is a contract involved, but Swanson said on Friday there are 5 to 10 days to work with. She has spoken with some City Council members already and knows it has been very supportive of trying to allow enough time for this to get done. She is very dismayed it has not been done in a timely fashion as much as Council is. She does not want to see that house sit up there forever. She wants to see it on a permanent site. She wants the City to be able to do these things successfully as they come up in our community. She appreciated the time to speak before Council. Time could be found to save this house and set a precedent for the future to save homes in Milwaukie.

Mayor Bernard heard Wisner use the terms "quickly" and "rush." Emmert has had the opportunity since October 2002 to move house. Those words do not fit. The truth is it was neither quickly nor rushed. The City is documenting its activities, and he has not seen a lot from Emmert to indicate he has made any effort.

Councilor Barnes understands Wisner's family has been very involved. If it was this important, why did the family not move it?

Wisner said the family does not have the financial resources to do it. The family has not owned the house since 1978. That is why she started a public awareness campaign in January 2001 to try and find a party that would move the house.

Councilor Barnes noted that Wisner mentioned public relations. She asked Wisner if she considered public relations a very important tool for the City right now.

Wisner said she did in many aspects.

Councilor Barnes asked Wisner if she had been on the air today with Lars Larsen.

Wisner responded that she was.

Councilor Barnes asked if that was good public relations for the City of Milwaukie?

Wisner said it was public awareness for a situation that needs to be addressed in the City of Milwaukie.

Councilor Barnes asked if that was good public relations for the City of Milwaukie?

Wisner thought it showed what was going on in Milwaukie from a citizen's point of view and a Design and Landmarks Commission that is trying to preserve historic architecture in Milwaukie.

George Van Bergen, 12366 SE Guilford Drive, Milwaukie. He believes the purpose of this work session is that options have run out, and there is a strong possibility of demolition of the house on 21st Avenue will be coming about in a short time. He purchased that house and adjacent property in the 1970's from Helen Wisner. He remodeled the house and garage, and Van Bergen believed his retirement would be secure with the income from that property. About four years ago, he was approached by the School District to help it pass a bond issue. He gave his time to that effort not realizing it would have an effect on his property. Initially, the District thought it might have to take a few feet of his property. Later the District discovered it would have to take Van Bergen's property, which required another review by the Planning Commission because the school building was designated as an historical site. He did not want to lose his retirement income, and he was personally frustrated. The District sold the house to Peterson for \$1, but his big plans all fell through. The house was then

moved to 21st Avenue, and the frustration became an outright debacle. The next step was that Peterson sold the house, the personal property, and it has been sitting there for 2 years since the District condemned it. This rouses his frustration to a civic frustration for the City of Milwaukie. He complimented staff and administration for putting up with this situation and spending countless hours talking about it. At some time reality must be defined, and something has to be done. He assumes there is no longer an option on the table but that the full force of effect of a zoning violation has been conducted for all this period of time. Staff can only do one thing, and that is to proceed with abatement and some type of removal, which he assumes, is destruction. He has never wanted the house destroyed and was hoping some solution could be found and implemented. No one has come forward with a solution or time and energy to do something about it. This problem has been left squarely with the City administration to do something about a zoning violation. That is his definition of reality.

Terry Emmert started with the history. Emmert International got involved in October when the City came to the company and asked if he could help save the house along with relatives and so forth. He took on the challenge of trying to save the home. The first thing was to go back to the customer who originally wanted the home right down the street, and Emmert International would have dropped it off with the other home in the same move. He did not have the opportunity because someone else was granted the house. Emmert went back to the customer to find out if he was still interested in the house, and he indicated he was. He told the City no problem; the house would be taken care of and moved to the site. Little did he know his customer would get horsed around for a long period of time because he was told he needed a lot line adjustment, and then he was told he needed a variance. He was also told they would not accept an application because Gessner did to believe in allowing two variances or two changes on one lot, only one. He thought it should have been turned in, accepted, and left up to the Planning Commission to accept or deny the request for the variance. It should not be up to staff or the Planning Director to make up his own mind. Since that was unacceptable, Emmert went to phase two which was to move onto a lot on Balfour Street that he has owned for 36 years. Emmert International started all of that and was almost there when Mr. Gessner informed him he did not have a legal lot. Emmert International checked all the records and found not only did it have a legal lot, but also it was in the City's records that it was a legal lot. But he did not have water or sewer access to hook up to and had to go through HUD to get it. Dealing with the government in that area, he never got an answer. Then Emmert spent \$200,000 and bought a lot on Malcolm Street that was to be divided and already approved by the City of Milwaukie for a subdivision. Unfortunately, it was approved by the City of Milwaukie about two years and two months ago at the time it was purchased. The realtor went to the City, and Mr. Gessner informed her the rules had changed, and a 6-inch variance was needed to pull off a subdivision because it was 6-inches short of road frontage to do what he wanted to do. He went ahead and put earnest money on a piece of property on Jackson Street. On this one,

he decided to go over it with Mike Swanson. Emmert went ahead and found at one time 5 feet were given to a neighbor, so it was only 45 feet. It required no variances, but it did not have the required 50-foot road frontage. So it went down the drain. In the mean time, when Emmert met with the City Commissioners, he mentioned that Mr. Gessner would not accept the plot plans and foundation plans until he had a legal description. Katie Daniel attempted, after Council direction, to submit it and have it pre-approved with a foundation plan. She attempted on six occasions to turn it in and was denied every time. Now we have a lot, which Mr. Gessner said was not a legal lot, but it is a legal lot. The City knows it is a legal lot, so Emmert turned in the plot plan and foundation plan. Gessner has now told us it will take three weeks to approve it. It is legal. It has the proper setbacks. It has sewer and water. All you have to do is look at an eight by sixteen inch footing and an eight inch wall that takes about five minutes to get an approval, then Emmert International would be on its way. He is quite amazed how these things are happening. Then he gets feedback that Mr. Gessner is telling other people that he really does not want to work with Emmert International because the home moved to Jefferson Street is used as group housing. Gessner does not like that even though it is completely within the code. At this particular time, there are all these stories that Emmert International is not attempting. Spending \$400,000 and eight months' of time, Emmert International is attempting to do it in good faith. The lot is there, and if someone would hand carry Emmert the moving permit as fast as he hand carried the demolition permit, the company would appreciate that. Since his time was up, Emmert said he would accept questions.

Councilor Stone asked for an update. She has heard things about what is true and what is not true.

Mayor Bernard said it is no longer in his hands; it is in the hands of the city manager.

Councilor Stone wanted to know what the Mayor and Emmert knew. What is the truth of the matter here in terms of this lot Emmert is looking at. Is it a viable lot, and can the house be moved?

Emmert replied it is a viable lot, and he has an accepted earnest money. He talked to his staff and Swanson about getting an answer and got an extension on the earnest money. All he needs is a building permit, and he will close on it and save the house. He heard back from other people that there were comments from individuals whose names he would not mention saying Emmert International is not being truthful and that the City is doing everything. He would be more than happy to provide transcripts of the conversations between him and Mr. Gessner and him and Mr. Swanson. You can read them and see who is telling the truth about what is being said. If someone wants to question his integrity, have the backbone to do it to his face. Emmert International did this in good faith – it has

the right place to save the house now. He can move it there. It can be accomplished. Is it profitable? Absolutely not. It is a matter of principle.

Councilor Stone asked Swanson the status. Is it possible to allow Mr. Emmert to move the house to this lot?

Swanson said currently there is a valid contract with a demolition company to abate the nuisance. He does not know how the City would get out of that particular contract. To put things in perspective, on January 21 this matter came before the City Council on a protest to question whether or not there was a nuisance. It was determined at that point that there was, but the decision on whether to impose that as a final judgment was held in abeyance until April 27. If the house could be moved by that point in time, then that decision would be vacated, and the problem would be resolved. At that point in time, the house was still at the site. According to the municipal code, at the point in time at which a nuisance is found, there is a ten day waiting period which the City observed. After the ten-day waiting period, it becomes the responsibility of the city manager to abate. He actually dragged his feet for about a month doing a request for proposal (RFP) to get the demolition expert.

Councilor Stone asked if this was something he had to go forward with to get bids for demolition.

Swanson believed after two years of the house being on that site, it became the choice he felt he had to make.

Councilor Stone asked even though Emmert has only been involved with this house since last October, less than a year.

Swanson said that was correct. The agreement signed specified the house was to be promptly removed. At the time that was happening, there was already a great deal of feeling the issue had gone on long enough. When that agreement was signed it was specifically required that the house be moved, and the word that was used was "promptly." Here we were into May, so he felt a lot of time had passed. It was the City's responsibility at that point in time to do something.

Councilor Stone asked if that was because the ball was in motion for the abatement process. What is the legal stance in terms of being able to reverse the abatement process? She thinks the goal is to save the house, and she thinks it is a travesty that Milwaukie is in its Centennial year and is about ready to put the sledgehammer to this structure that is of architectural significance. She does not think that speaks very well for PR for the City to see something like that happen. What kind of legal recourse does the City have?

Firestone said the City Council made the decision that became final when the house was still in the same place on the deadline of April 27. That decision is

final. Under the code, it is a nuisance. Ten days after it became a nuisance, the City obtained the right to abate the nuisance. This is standard nuisance procedure. Typically after a decision is final, there is nothing to be done about it. There is a general rule that on a legislative matter, a matter can be reconsidered on motion of someone who voted with the matter. One of the persons who voted in favor of the decision to declare it a nuisance, which he believes was the second time it was declared a nuisance, can move for reconsideration. He believes the decision could be withdrawn on that consideration. This case is a little different because it is essentially a quasi-judicial, but he believes that may be a possibility for this situation.

Emmert said in the meeting with the Commission that graciously gave the time, it was also said by one of the members, "what happens if they are ready to go but need a little bit more time?" That was said in the meeting, which he was sure was recorded, that the City could address it at that time. Emmert International is only being held up by one entity, and that is by getting approval. The thing that is such a travesty, his realtor found another lot, so he went out to look at the lot, which is very close to the house. Emmert said, "This will work; I can get it here." He told the realtor to go to the City and tell them what she needed. She went down and called back saying all she needed to do was a lot line adjustment because it runs the wrong direction. That sounded just like the place he was going to take the house before. The realtor had spoken with John Gessner, and he said "no problem." Emmert told the realtor to write it up. He wrote up an earnest money agreement, and when he looked at the house, he realized it was the same house his customer owned and that he had applied for. The realtor indicated that Mr. Gessner had told her she could split the lot that way. Emmert told her he would not give two variances. He looked at the house, and saw the little back porch could be cut off without affecting the house at all. That other lot really never needed the second variance. Nevertheless, someone else came in with a higher offer, and Emmert International did not get the lot. That is why the company did backup after backup. Also, the City put out an RFP, and Emmert specifically had requested a chance to bid on it. If someone is going to bill him for it, he might as well do it himself. Swanson told Emmert he had been sent an RFP. Emmert said he was blindsided; he was never sent one. He has the same lady opening the mail for the last 20 years, and no RFP ever came to his office. Emmert International was not even on the bid list.

Swanson said Emmert did have a representative call him the Thursday before who indicated she had seen the ad for the RFP in the newspaper. The caller indicated Emmert International wanted to bid on demolishing the house and asked if that could be done. Swanson and the caller discussed the issue, and Swanson told her to call him if Emmert International did not receive the RFP.

Emmert wanted to make the point Swanson told him he would receive an RFP.

Swanson said there was a specific discussion with the Emmert International representative who saw the legal notice in the newspaper. He had a 15-minute discussion with that person. He informed that person if she did not have it, because he sent it, to please call him so he could get her either an e-mail or hard copy of the RFP.

Emmert said the point is, his company has not been on this job for two years, and he was not mailed an RFP. He thinks that is the main point. In his conversations he did not believe there was a rush to do it. When he talked to the demolition contractor, he told Emmert normally a contract is sent in, the City approves it, and then they sign it. This one was hand carried to the contractor to get it quickly expedited. Real strange because if it is tore down, then there is no issue. Except he does have an issue because Emmert International has made a good faith effort, and two projects are being held up in the City. Both have a tremendous aroma of prejudicial treatment. It is a major issue with Emmert. All he can say is that, since Emmert International has a legal lot, and it will only take a matter of a few minutes to look at a foundation plan because that is all there is in the house move. Most agencies approve these over the counter when they are brought in. To have someone tell him it will take three weeks to tell him if his foundation is okay, how about if we pay an engineer \$500 to stamp the thing and bring it in stamped. If your staff cannot approve he has the proper setbacks within a matter of two or three minutes he would questions why they would be there. All the setbacks are there, and there is not an issue with this lot. He really believes the time should be taken to process it. Emmert thinks somebody should do a little checking, and, as he said, he would be happy to provide his transcripts where he was specifically told by John Gessner the City would not let him turn in a variance; he did not want him to. After he was at a Planning Commission meeting and saw how they handled things, he thinks fairly with his other customer, he had the right to be represented and to have it turned in and accepted. He does not believe someone has the right because he works for an agency to say "no, I'm not going to accept your application." There was no due process.

Councilor Stone felt like she was a judge in a divorce proceeding. Instead of a child being held hostage, the house is being held hostage. She is feeling a lot of tension from Emmert, Swanson, Bernard, Barnes, and maybe a little bit from Lancaster. What is the goal here? Is it not to save the house? At some point everyone is frustrated with how things have gone and how long it has gone on. She is too. She would tell the group something. This house is not a nuisance. If you want to see a nuisance, go walk up 32nd Avenue and start looking at some of those homes, and start looking at some of those apartment complexes up there. Those are what we call chronic nuisances, and those are the sites that need to be abated. Not this place. She would like everyone to take a deep breath, and look across the table at one another and say, "let's try to work this out and try and save this house." This is Milwaukie's Centennial year. The City hardly has any really fine historical structures left. We really do need to be preserving it and

really think about that long and hard before we tear something down that can never be replaced.

Emmert said another thing to remember is that there is an unfair process. All the years he has dealt with the City of Milwaukie, he has been able to get a temporary permit to move a home to a lot before he got a building permit. Because of the unhappy experience with Peterson and the company he chose to hire, he was told he could not ever do that again in the City of Milwaukie. That is like if someone commits a traffic violation with a car, does that mean nobody else will ever be allowed to drive? Emmert International has never failed to follow through and do its projects ever. He really believes this home is very similar to the Simon Benson house in the City of Portland. It is significant, and it is important. It should be saved. We have the land. If he could not come up with site, then he agrees 100% with the City.

Councilor Lancaster wanted to make a point of order. He would like to hear any other public testimony since it is open, and then close it for Council discussion.

Michele Matesi, legal administrator for Terry Emmert. She had two comments. One would be that she senses sincerity from Councilor Stone, and she wished she could see it flow to others in the room. However, she does not really see that. Nobody here wants to argue, and she thinks there is a really good point. What has happened has happened; let's move forward. She did have an important point she felt she had to make. Mr. Swanson and she had several conversations, and there was a very productive meeting at Terry's office. Mr. Swanson made it obvious that he was trying to assist Emmert in keeping the structure. What she is really concerned about and asked Swanson to answer is three days before he signed the contract with the demolition company, she begged him not to sign it. She told him he had actual notice that a legal lot had been found. There were not all the roadblocks from the planning department. There was no need to sign the contract; Swanson was under no legal obligation whatsoever to sign that contract. He had the discretion, and Matesi did not question his authority. She questioned how he exercised it in this situation because when he knew, because she basically pleaded with him, that Emmert International had finally found a lot and could do this. Emmert International was really excited because it was just one door slam after another. She was wondering why, after she basically did that, Swanson turned around as if he were mad at her because she wrote she did not believe it would be prudent for him to sign that contract. She quoted, "I did not believe it would be in the City's best interest." Monday morning, the contract was hand delivered to the demolition contractor, and now he has himself locked into a contract. The only other point she wanted to make was that she read the code, and he did not have the responsibility to abate the nuisance. Swanson "may" in his discretion abate the nuisance. It does not say he "must" abate the nuisance. While she completely understands the frustration as a group and as a community with the length of

time the house has sat there, and to some people it probably is a eyesore. The bottom line is Emmert International finally found a solution. It is unbelievable to her when the code, which in her opinion should not be an absolutely rigid document anyway, caused him to turn and run the other way. Especially when, talk about public relations, the press is calling, which he would not talk to. People were in an uproar. She thought there was good communication going on a business level. She was like, please don't sign this contract. Then he signed it. That was really all she had to say, but she hoped it was somewhat relevant to the discussion. If Swanson wishes to respond, she would be happy.

Swanson replied Matesi said the code handed him a solution on a silver platter. The code does not hand him a solution on a silver platter. Performance hands him a solution, and he had seen no performance over a period of two years in general on the issue, and over a period from October in this specific instance. At that point in time, he had gone out with an RFP, not three days beforehand. He had gone out with the RFP ten days after April 27. A submittal had been made; someone invested time and effort in doing that. There have been a lot of statements made about "why rush into this?" If anything, he dragged his feet. He dragged his feet from April 27 and where we are today. He made the decision at that point in time that this has simply gone on enough. He had no assurance whatsoever that this piece of property any more than any other piece was going to be a solution or that there was going to any performance to make it a solution.

Matesi asked if that was so after talking to John Gessner about the situation.

Swanson responded it is not up to John Gessner to perform.

Matesi understood Swanson said there was no performance. She asked, even though Emmert International has documented evidence that it has been attempting, in fact bending over backwards, spending hundreds of hours and lots of money, to perform, if Swanson would stand by his statement that he has seen no performance?

Swanson said what has been typical of this particular situation is that we approach a deadline, and as we approach that deadline, nothing much has occurred, and then all of a sudden as we approach the deadline there is a great flurry of activity.

Matesi thought that made sense.

Swanson continued. Those great flurries of activity with a very little time do not often leave time to accomplish anything.

Matesi said fortunately Emmert International is not in that situation as documents show. There was not one little flurry of activity. Emmert International can show it

constantly has been working. Five properties have been selected. When you are talking about an 18-inch variance that never was really even required because all it really needed was a simple lot line adjustment. The planning department, in her opinion, really held up Emmert International on this project. She believes the documents will speak for themselves. She wanted the City Council to be aware that she was e-mailed personally that Swanson did not have to sign the contract or make a decision until he gets in the office on Monday and there is a contract on his desk to execute. Swanson did not have to make that decision, and Matesi wanted to make it clear on the record that in his discretion, which she understands he will stand by, that is what he decided to do. He decided to because the code clearly states that the city manager "may" abate the nuisance, not that he must. Swanson decided at the 11th hour to abate it.

Firestone said there is something he must point out. Matesi said she believed there were five, by his count there are either four or five, properties. With the possible exception of the last one, about which he knows nothing at this time, the previous ones required either a land use approval from the City or some type of easement, consent, or other documents from a neighboring property. In one or two of the situations, the neighboring property owners did not provide their agreement. In the other situations in which a City land use approval was required, either a variance or a lot line adjustment, it is his understanding no application for a variance or a lot line adjustment was submitted.

Matesi said that was true because Emmert International was told it could not submit one.

Firestone said there are clearly two different points of view on this. He has heard two different discussions or versions of what was said. We all just heard what was said by Mr. Emmert. He has also heard that there was never any instruction that they could not submit, but they were given the opinion that if submitted, and this is his understanding but was not party to, they were told an application might not have much chance because variance standards could not be met. There were several deadlines in this case, which were extended and extended by the City. It is his understanding, and based on contemporaneous conversations, Mr. Emmert or someone from his organization was told that an application could be submitted but there would not be time to get a decision by the deadline. No application was submitted.

Matesi said the question then becomes so the City controls the deadline and timing, the City controls the timing on the application. Gee, that's kind of interesting. If someone from the outside looked at that they would probably laugh. They'd go, "well here is the City on one hand saying you can have until this date, but, guess what, we know over here you're not going to have time." So, they won't get it done anyway. That is what is basically being said – in a nutshell.

Firestone said "no" and asked Matesi not to put words in his mouth. There were pre-established deadlines set in two different cases by the Council. When the Council declared a nuisance there was a deadline. The owner or applicant, first Peterson and later Emmert International, had a certain amount of time to fix the situation. Several days, weeks, months into that time, after a lot of time had passed, something comes to the City. The City's position is it has been waiting for months and nothing happens. At the last minute, here is a lot that might work. It might work if it goes through a land use approval, which takes as least five to six weeks or maybe longer. At which time there was already a pre-established deadline. That is the situation that occurred in at least one instance. He wanted to clarify it was his understanding all the previous ones either required a land use approval that was never applied for or required something from a neighbor that was never obtained. In none of the previous ones could there have been a move without further action by somebody else. The City staff has a responsibility to enforce the City code. If the code says we need forty feet or we need fifty feet and if less than that the City would require a lot line adjustment or a variance. That is all staff was saying.

Julie Wisner said, as she watches the whole process, the thing we need to keep in mind is the goal to move the house. The goal is to save the house. One good reason is this is the City's Centennial year. It also backs up the City of Milwaukie's Mission Statement that addresses preserving historic structures and structures of significance. If she lived in Ladd's Addition or Laurelhurst this discussion would probably not be happening. They see the significance of the architecture we are talking about. We are surrounded in Milwaukie by HUD houses and post World War 2 houses that truly have no significance. We have the chance to save an architecturally significant building. We have the man who moves most buildings around this region and all over the world. He has moved the Spruce Goose, the Simon Benson House, and the list goes on and on. Six story or more hotels in Texas, and we are arguing tit-for-tat. It's like he did this, he did that, this person did this, and this person did that. Everybody is pointing fingers when the goal is to save the house. She would like to see everyone take a deep breath and remember what the goal is. She would hate to see this particular structure go the way of so many other structures in Milwaukie. The Luelling House was knocked down for the Texaco station. Now, that's an aesthetic improvement. The Irwin Adams House was knocked down for the health spa. The other Adams House was moved out to Webster Road. We lost our little pioneer church. We floated it down the river to Sellwood. We are stuck with a lot of post World War housing that needs to be demolished. We need not to think about property values that were brought up in one meeting and that everybody's property value was going down around the site where the house is. She went to the tax assessor's office and got the assessments for the last three years. Patty Wisner presented them to Council in an exhaustive report. The property values have, guess what, gone up. There was also concern about crime and that a nuisance usually attracts crime. The Milwaukie Marketplace has one of the highest crime rates in the City along with the transit center. She called

the police department and requested a crime print out on the house on the present site. They had nothing. It does not seem like such a big, bad nuisance when you look at those kinds of things. We have drug houses, meth houses, and all these things. It is a house sitting up on blocks that is in transit. It would not be a good PR move to destroy it. Everyone is watching. The media is watching. We need to save significant structures. We do have a lack of available lots in the near vicinity, but we have one. Emmert has a lot on Jackson Street, and it will work. Emmert moves things. To think he will not move it is ridiculous. That's what he does; there are many examples. She feels the Council needs to give him one more chance to move it. Quit arguing about who did this and who did that. That does not look good for the City either. She thinks the goal here, and the goal of any town interested in saving its structures of integrity, should take another look and say this does not fit the previous molds of all the other things we have done in the City. Let's make some new rules; let's blaze some trails. Say we take pride in our architecture, we will protect it, and we will give a longer timeframe if necessary. Or the Council could go by the book and say it is a nuisance and knock it down. That lot will still be on Jackson and the house could be located there, but you have destroyed it because everybody says it is a nuisance and get rid of it. Then it's gone. You know what? A house like that will never be built again in Milwaukie. They are not building those kinds of houses. You see them all over Laurelhurst, Ladd's Addition, and Eastmoreland, but you don't see them in Milwaukie. What you see is post World War houses that should be bulldozed. But you are going to bulldoze a house that is significant. Frankly, as someone who has volunteered hundreds of hours in the City and spent the last ten years working tirelessly on safety issues in the City of Milwaukie, she would hope the Council would be farsighted enough to see what this house could bring to generations in the future and the pride of our City. To knock it down in the Centennial year frankly flies in the face of everything we should be standing for in the City of Milwaukie. We have let enough things go in the past. Let's let Terry Emmert and Emmert International pick the house up and move it. Just give him the time that he needs, a little more time, and quit fighting over technicalities. Back and forth like tit-for-tat, tit-for-tat. We want to save the house; that is the goal. He can do it. He has a lot. He is ready to move it.

David Mealy has a chiropractic clinic across the street from the house. He is addressing Council as someone who has had to look at the house for two years and is there to encourage the City Council to stick with its decision as hard as it has been and as much as it has bent over backwards. He has heard a lot of accusations, but sometimes you have to make the hard decisions, and not everybody is happy. It seems to him, just from sitting in this meeting for the last twenty minutes that the Council has done everything possible to make it happen, but it just hasn't happened. It is time to do something. He encouraged the Council to stay with the process and do what is right. It is sad a nice house like that might have to be destroyed. If the Council does decide once again to give another chance, he would strongly encourage a set deadline. If it cannot be done in three weeks, it cannot be done. It has been too long, and it is a nuisance

in the sense it is across the street from the high school. It is an accident waiting to happen. We are in downtown Milwaukie and is a blight on the City character.

Jeff Horton said his family owns most of the buildings in that general area including Horton Electric and the mental health building at the end of the street. From a business standpoint, he has heard a lot of discussion from people as to why the house is there. He has had issues with the lot he owns next to it. He cannot keep the grass under control because no one can get in there to cut it because of the fences. It is a big nuisance. He does not care one way or another if the house is moved or demolished. The main thing is he wants to say he would like to see it gone because it has been in the neighborhood for two and one-half years. It is time for it to go.

Mayor Bernard had suggested doing a performance bond, which he would have accepted and would still today. He has not seen any performance. He has not seen any performance since October. He did not see any performance before. He would like to see the designs for the house because surely on Jefferson Street it would not be historic preservation of a house. The one on Jefferson is the height of a three-story building in a neighborhood. It is not the house it was. That was a nice house too and would have been great to preserve. It is now three-stories tall on a hillside on Jefferson. It is out of place and is not the same home it was. He questioned what this home would look like once it was moved. We have certainly not rushed. We have not been quick. We have documented and tried everything. No one is being blamed. The law is the law. We agreed at a Council meeting to try and save the house by giving as much time as possible. There does come a time when it ends. How long would that house be at the other site before it was set, or would there be a nuisance there the City would have to fight? That is his concern. He would like to preserve the house too, but we are at a point where we have a contract to demolish it. What do we do about that? What is our legal obligation?

Councilor Stone wanted to know the legal obligation.

Swanson said the City would probably have to talk to the contractor, and he probably has a reliance claim since he has a valid contract. At this point, he probably has a valid contract. He cannot do anything until Swanson signs a notice to proceed, but he cannot withhold that notice unreasonably. The value of the contract is about \$9,000 for the demolition option. The deconstruction option was about \$17,000.

Firestone added the city manager has the authority to issue a notice to proceed, and then work can start. If the notice is held off too long, at some point the contractor has a claim. The amount of time would not be know until we fight about it, but there can be discussions with the contractor. The deadline is to get a notice to proceed.

Councilor Stone said so the contract as signed when?

Swanson said it was signed on Tuesday.

Councilor Stone asked if there was a clause in the contract that says it may be cancelled within so many days after signing it?

Firestone said it does not contain that type of clause. He has not seen the final executed contract, so he would hate to say what it says without it in front of him. There may be some flexibility around the notice to proceed, but it is limited. At some point the contractor may say the City has waited too long and ask for the profit he would have made.

Councilor Stone asked if that was generally how it would work if the contract were cancelled. Would the City be liable for the \$9,000 the contract is worth, or would it be liable for a certain percentage? Is it worded in the contract in any way?

Firestone said typically in a case like this, the contractor would ask for the full amount plus attorney fees, etc. The City would respond by saying the only thing the contractor is entitled to is the profit the contractor would have made because some costs were saved. All he would get is the profit. He does not know if there would be other fees. Attorney fees can make the amount of damages seem insignificant if the fight goes on long enough.

Councilor Stone asked if that were to happen would the liability pass to Emmert. Could that be negotiated if the contract was cancelled to save the City the cost of the contract or whatever the amount would be? Could that be negotiated?

Swanson said anything could be negotiated.

Councilor Lancaster thought a condition of extension could be negotiated.

Firestone added it is always possible to negotiate something. The only time one cannot negotiate, as in this circumstance, an executed contract. One might be able to negotiate something in the context of the contract.

Councilor Lancaster commented on the City's land use ordinances. The City spent many, many years reforming, improving, and correcting them in their virtual entirety. He thought a very good job was done. Some specific community goals were met, and as Mr. Emmert elucidated, that has in a number of cases made it more difficult for some citizens to do some things. On the whole, those changes address all the livability issues in the community very well. He will defend those rules that are in place right now. He has a problem with some of the testimony he heard in that there were a lot of allegations made. On the face of it, he heard allegations of obstruction by staff. John Gessner is not here to defend himself,

and we heard no testimony from his department. In the five years he has been with the City, Lancaster has found John Gessner to be a totally credible man with high integrity. It has also been his experience there are two sides to every story, and the truth is usually somewhere in the middle. Balancing what everyone has had to say, he assumes Mr. Emmert acted in a timely and expeditious manner within each of these failures. If he makes that assumption, then it simply is what it is based on the City's land use rules. He would probably have expected, though, after the first failure that Emmert's legal staff or others would have learned or determined what the key issues were regarding any property where the house might go rather than making a learning curve with each additional attempt. When this agreement was made in January, we all sat in the Council Chambers and talked about these issues in great detail. As he recalled, he was against a performance bond because he did not believe it was fair. What all agreed to was that 90 days was fair. In fact, Mr. Emmert characterized it as generous, and he felt confident he could get it done by April 27. That time has come and gone, and now we are in June. He cannot speak to the veracity of this latest property and that is ready to go because he has not seen any evidence that it is and does not know that for a fact. He has to say, when he voted at that time, he voted for the City to stick to the agreement. There was a comment by Mr. Emmert regarding the project being a done deal but just needing a little more time. He believed the Council did come to a consensus that if it were absolutely certain that the placement was going to occur and meet all the codes and a small extension was needed, that would be fine. He has to say that is the only condition under which he would remotely consider an extension to the current situation. That has not been presented to him with any level of confidence. Unless there is that possibility and the City Council wants to decide whether some discovery needs to be made to determine that, Lancaster thought the City should proceed with the road it is on.

Councilor Barnes commended Lancaster's comments and agreed with almost everything he mentioned. She wanted to reiterate she felt like staff tonight has been slammed. She talked with Mr. Gessner and Mr. Swanson, and she did not appreciate it. Both have kept Council up to date via e-mail and otherwise on a regular basis. She is concerned when someone testifies that post World War 2 houses in Milwaukie should be bulldozed, since that would take up most of Milwaukie. As for this being a Centennial year, she does not think downtown Milwaukie should have that building. There will be many people at the end of the month in downtown Milwaukie. What kind of a statement does it make when people come into our City for our parade and other activities this month with that house still up on stilts? That is not the public relations she wants the City to have. When people come in and see us for the first time because we are doing a great deal of advertising and public relations to get people from outside the City to come in and spend money. She thinks the deadline has come and gone. The City Council voted and does not have a choice. She understands from counsel that only she or the Mayor may ask for reconsideration. She does not intend to ask for reconsideration. The City has given Mr. Emmert and his company more

than enough time. It is time to move on. We have set boundaries as we do for children, and if they are not met we do not keep slapping their hands and saying "no." We put our foot down and say enough is enough.

Mayor Bernard said Council cannot vote on this issue in a work session. Steve Campbell, John Gessner, and Mike Swanson have kept him apprised of the timelines and good faith efforts each has made to try to save this house. He believes the City has bent over backwards to do this over and over again for two different individuals. He does not blame Emmert at all for this except that every time we seem close to the deadline, something comes up. He would like to see the house saved. Generally, he feels if Emmert can move the Spruce Goose, why can't this house be moved? Why can't it be moved off our streets to a storage facility? He understands there is one on Lake Road right now sitting on someone else's property waiting to be moved. Emmert does have storage facilities. Put a helicopter on it and fly it out of there. The City has certainly put in a lot of time and effort, and he does not intend changing his mind. The city manager is the professional making the decision at this time because the law is the law.

Councilor Stone said this has stood in Milwaukie for over 80 years, and it has been on this lot for about 18 months. It has been under two different owners. The first owner, Mr. Peterson, had a year or better to try to do something with the house. The City has not given Mr. Emmert nearly that amount of time. Everyone is frustrated; they want to see it moved. She certainly does too. Julie Wisner brought up the comment that the house is in transit. It is not a nuisance that is chronic; it is an acute nuisance if you will. It is going to go away, and it is going to go away soon. Preferably it will go away as a result of being moved and salvaged. She thinks it sends a bad message about the community that it is willing to just pick up and destroy this home. Society in general is very impatient. We are a very impatient people, and we are very prone to dispose of things. We are very much a throw away society in all aspects of our lives. She thinks the City needs to put the brakes on and think about what we are going to be throwing away. It is part of Milwaukie's heritage. It is a piece of that. She thinks the City needs to at least look at a way to extend this by maybe negotiating with Mr. Emmert if the City has to cancel the contract and how to recoup that money if indeed the City is liable. Maybe even look at some conditions to be met or a performance bond. It sounds to her like this is a viable lot, and although we did not ask this of Mr. Emmert, she assumes he is thinking the house could be moved in the next few weeks. She does not see that this house will sit there for months and months and months on end. Our Centennial and Festival Daze is right around the corner. What are we going to have – a structure or a heap of rubble for people to look at? She thinks the City really needs to pause and give saving the structure great consideration. Also, put down any ill feelings that might have been occurring between staff and Mr. Emmert. She felt a lot of tension. Councilor Lancaster put it very succinctly when he said you hear one side, you hear the other side, and the truth lies somewhere in between. She

thinks the City needs to be very cognizant of that. She would be in favor of looking at withdrawing, or at least not having Swanson proceed, with the demolition and really clarifying if this is a viable lot. She asked Swanson to comment on the viability of the lot.

Swanson understands from Gessner that a building permit is probably obtainable. The house is a bit oversized and would probably have to have the sunroom removed in order to get it on the proposed lot. It would have to undergo that change.

Councilor Stone would be willing look at that with conditions to be met and a timeframe. Maybe the City should look at imposing fines if this drags on and on and on.

Mayor Bernard understands legal counsel says this structure has been declared a nuisance by Council vote, and unless two Councilors change that, it is still a nuisance. It is the city manager's responsibility to resolve that nuisance. As far as he is concerned it is no longer Council's responsibility; it is the city manager's. It is up to him.

Councilor Stone said the city manager works for the Council.

Mayor Bernard said the City Council voted that the city manager take care of the nuisance. It was a unanimous vote.

Councilor Lancaster added the Council voted on an agreed upon solution.

Mayor Bernard said there were only four Councilors who voted, so three would have to change.

Councilor Lancaster asked if removal of the sun porch would significantly alter the structure. The idea is to preserve the building, and now we are talking about removing a section.

Swanson understands removal of the sun porch would architecturally alter the structure.

Councilor Stone asked if it was part of the original structure.

Swanson said he did not know.

P. Wisner said it was a later addition to the house. The structural wall would be intact if the sun porch was removed.

Councilor Stone understands the City Council could not vote at this meeting but could carry it over to the regular session.

Councilor Lancaster said, in his opinion, it is appropriate for Councilor Loomis to be present if any decision might alter the previously made decision. The only way he would consider reconsidering was if there was an absolute guarantee that nothing further could possibly cause this not to be a good placement, a good fit into the neighborhood, and all those things that go along with land use laws. It would happen by an exact date. A performance bond, or an instrument of that fashion, would be required this time. The day after failure to comply, demolition would occur. Those are the only conditions under which he would reconsider. Plus, now that the City has a contractual obligation, that increased cost should not be borne by the City. Is it fair for Mr. Emmert to pick that up? That would be for him to decide. Perhaps there could be a community fundraiser to save the building. From his point of view, the City has performed exactly the way it said it would. We had a business agreement; we had a deadline, which has come and gone. Regardless of good efforts or bad efforts, we have reached the end line. If we want to save it, it has to be under extraordinarily strict provisions. Otherwise, we move forward.

Emmert wanted to set the record straight. He does have an idea of how maybe to make it work. He will not let lie what Emmert International has been put through and wants to set the record straight. He will transcribe the conversations. He was told definitely an application would not be accepted for a double variance. He was told the house could not be put on the lot that had 5 feet taken off. It would not be approved; he was not given the opportunity to turn it in. That is why, since time was bad, he switched to another lot. With the Centennial coming up, and he understands the damn thing is right down the street from his building. He understands the chiropractor's and other's hassles. He agrees and understands the 4-plex that is sitting on a piece of property waiting to be moved. He will tell the Council, they will both go to Milwaukie. He has been held up on both. He is sorry, but the buck has to stop someplace. As the Council noticed on his application, he put in \$700 to apply for this building permit last week, and that is good faith. The City took his money. It is not that hard to approve this plan. It is nothing. Everything is done and turned in.

Mayor Bernard asked how long it would take to get the PGE clearance, etc.

Emmert said first of all he has to pay PGE to go out and give him the bid. He has already done that twice, but then his lots were turned down. As soon as his lot is determined legal and buildable and not some magic switch why it cannot be used, he is not questioning the City's zoning ordinance whatsoever. He is questioning not getting an 18-inch variance or a 6-inch because he believes one can, and that is why there are variances. If he gets his building permit, and it is okay, he turns it into the utility companies. All are fairly responsible, and he just had a big drag out with PGE at the Public Utility Commissioner. He believes PGE will become very cooperative from now on. He cannot tell Council which day they will coordinate to all be there at the same time. It depends on crew

availability. As soon as he is told it is a legal lot and he has a building permit, he will put wheels on it and have it all ready to go. It could be dressed up with signs saying, "being moved for the Centennial" or "historic preservation to cooperate with the Centennial." We could make it a dang event. It would be Milwaukie streets, so the City would issue the moving permit. When the City says to do something, he would have to break the law; he would have to move it without a permit. He has never done that; he will not do it. He would also like the city attorney to check into why he could not have gotten the storage permit which could have been issued instantly unless there was a new ruling.

Firestone said the code does not provide for temporary storage of buildings. When the building was moved originally, the City essentially stretched things to do what it did. It was without a basis in the code. The Council could consider at some point if it wishes to adopt something like this. The City stretched to come up with a solution to allow it to be stored temporarily.

Emmert asked if everyone thought that was the only time that was done.

Firestone believes historical precedent had something to do with the decision to go ahead and do this.

Emmert said the City has done this on numerous occasions in the past.

Firestone pointed out there were a lot of things that were historically done in Milwaukie without reference to whether or not it complied with code. About 4 – 5 years ago, the City realized that when somebody comes in to ask for something the code should be checked first. That has been a change in the way the City is approaching things.

Emmert said the last time he did one was about two years ago. He understands.

Councilor Stone asked the general timeframe to lift wires for the move in terms of getting permits.

Emmert said once he has his permits, it usually takes about two to three weeks to coordinate the wires. Here again, he is strictly at their mercy. He has no control. Just as he has no control over when the City will give him his building permit. His proposal would be to set it to look attractive, because it does not now. The site should be cleaned up. He would truly prefer to secure the house in a different manner rather than having a fence around it so the grass can be cut and not looking unattractive. To have it on wheels ready to go. If the City tells him he has a legal lot, because he really wants to make sure since he is batting not real good for timing, Emmert International could do that. Something else to consider is the lead paint in the house. Nowadays, it is a different story than it used to be. He knows the house was checked for asbestos but not for lead paint in the environmental report. When a house is moved, that is a moot point since

that problem is not caused. He does not have a problem because it is only fair because the Council talked about instances that caused it not to happen, that a performance bond be requested. He thinks this could be a winning project; this is not a battle. He still needs to City's permission for a permit because he cannot get a moving permit until he gets a building permit. He was surprised staff did not provide Council a copy of the plot pan. He has a receipt for \$682 for plan review. Council must remember all he is asking for is a foundation permit. A foundation for this kind of home costs about \$2,800, but he is paying \$682 just to get a plan approved. He thinks they are charging the plan as a building permit. The home has already been built, and they should not be recharging that. In Clackamas County, we only charge for the cost of the foundation permit. They do not charge for the SDCs because the house was already grandfathered and hooked to the sewer. There is no additional traffic or sewer impact.

Councilor Stone understands Emmert would have no problem with the performance bond.

Emmert said he would not.

Councilor Stone said the City has a contract written up for demolition. The concern would be the liability to the City, and she asked Emmert what he would be prepared to do in terms of negotiation.

Emmert said saving the house is a matter of principle. The demolition contractor called Emmert and asked if the house could be out by Friday, but the City shortened the timeline. He told the contractor there was no way he could get his permit that quickly. Mr. Obrist is a good contractor and a fair person. Emmert could call him, and he would probably want some kind of return. He has known the guy for many years, and he is honorable. Emmert does not think there would be an issue. Maybe that is something the Council could throw on his back. He would take care of it.

Van Bergen said the Emmert group spoke for almost an hour so is hesitant to speak again. He practiced law for over 30 years, and during that time he has become street wise. The only option he saw to what the administration is doing through abatement is a veiled threat of litigation. The validity of a threat is the ability to perform. With an action there is reaction. There is such a thing as mandamus, which is a way for a citizen to force a city to proceed where there has been a declared nuisance. If those things concern the Council, the members should talk to the city attorney. Otherwise the City could be in for a struggle. There was no question in his mind the City has done the right thing. This is a nuisance and should be taken care of without any further delay.

P Wisner believed enough has been said that there looks like there could be a reasonable option discussed at the regular session with a conclusion that does not include demolition of the house. There is some leeway where parties could

work together. She addressed Van Bergen's comments. Both have been in this community for a long time and having such a vindictive attitude toward persecuting or prosecuting this house situation is not helping this community at all. Van Bergen was paid a very handsome sum for the property by the School District. He was rewarded for owning that property. That house is part of our history and community, and we need to preserve it.

Mayor Bernard asked Wisner to address these issues with Van Bergen directly.

P. Wisner said she was simply speaking in the interest of preserving the community's heritage. Some of the comments have gone un-addressed, and that is why she is here to address them. She believes there is an option. Enough pressure could be applied officially to set a consequence if an extension is allowed. The City Council has every right to set a final consequence and has room to preserve this house, get it moved quickly, and put the whole issue to rest without being destroyers. She asked the City Council to go forward with that.

Mayor Bernard would be happy to see the house at the front of the parade leaving town.

Questions and Comments on June 10 Agenda Items

None.

Transportation Maintenance Fee

Mayor Bernard said he and **Councilor Barnes** would be at the Clackamas County Timothy Lake Retreat where this topic will be discussed.

King provided an update on the Transportation Maintenance Fee Study as the Milwaukie contemplates on how to proceed in the future. In the last couple of weeks, the draft final report on the reason and methodology for the fee has been produced. The proposed ordinance will contain a sunset clause that retires the fee after five years from the effective date of the ordinance. Another key item was to increase the number of average daily trip bins from 7 to 14 to more accurately reflect trips and establish fees. A process improvement will be to actually allow a business, at its own cost, to do a study if it believes its daily trips are less than identified in the *IT Manual*.

The Clackamas County Board of Commissioners has decided to put a transportation fee on the ballot, so this opens up other possibilities to the participating jurisdictions. He discussed the timetable for community outreach that will include an open house in Milwaukie and a prioritized list of projects in Milwaukie that would be done with transportation maintenance fees collected. The final issue was the split between business and residential users, which in Milwaukie is 68% business and 32% residential. The issue is that a fee must

reflect usage, so it does not become a tax. The consultant may be able to look at that in the future.

Mayor Bernard commented if a jurisdiction were able to raise funds in another way, transportation maintenance fee charges per unit could be reduced across the board.

King said under the proposed method each average daily trip would be 23 cents so a household would be \$2.17 per household. Multi-family is a little less. He discussed the business range. The Mill End Store and Providence Milwaukie Hospital would pay about \$500 per month and Albertson's about \$303 per month.

Mayor Bernard said if the per trip fee for single family residential were lowered from 23 cents to 11 cents, the monthly cost per household would be about \$1. Albertson's would be about \$150 per month. These charges seemed more reasonable to him.

King said between lowering the rate for average daily trips and looking at different bin structures, the overall costs could be adjusted.

Mayor Bernard said the City invested money in this study and participated actively. He asked King if it was worth the money. Now the County does not have the political will to implement the transportation fee on its own and may throw it out. What does Milwaukie get out of it?

Rouyer said Milwaukie gets the consultant's deliverable – the data on Milwaukie. The City spent about \$7,000 by working with the County and other jurisdictions. She thinks the collective belief on the part of the County staff was that the cities should pull out at this point. There is not a lot of confidence the transportation maintenance fee would pass if put on the ballot.

Councilor Lancaster said there is probably not a lot of public will to approve something that will cause people to pay more money. He asked if there any discussion or consideration to a phasing in of the fee.

King said the material is valuable in that there is a draft ordinance. The fee could be phased in now that all the work has been done on the methodology and further modified by the jurisdiction.

Councilor Lancaster said this does establish a rate that he felt could be phased in over a period of, for example, three years. Hopefully by that time the economy would be moving, and the relative value of that contribution would be significantly less for the business owner.

King said that would certainly work under this methodology. The formulae are there and can be set anywhere.

Rouyer explained the rate was based on the lowest estimated need, which was 23 cents. If Milwaukie went on its own without participation in the group, staff would probably have to make some adjustment, but the rate would not be too different. As **Bernard** suggested, using funds from another source would decrease the total need. There are options, and staff is happy to take direction.

Mayor Bernard commented the City is so far behind in street maintenance it will take many years to catch up. Implementing a 10 cent per trip fee would take a long time to meet current needs, and roads will continue to deteriorate.

Councilor Lancaster said if Milwaukie goes on its own, it might be helpful to explain the road problem to citizen and the estimated costs to make needed repair. In addition, identify the two or three options for paying for maintenance, and then ask people which one they prefer. At least people could make a choice. He would do this through a public education process.

King added there is a lot of information from other communities like Tualatin and Eugene on how they designed their public outreach processes.

Other

Mayor Bernard announced a community open house at the Hi-School Pharmacy on June 11 to view plans for the King Road Safeway.

Clackamas River Water

Rouyer briefly reviewed a memorandum of understanding (MOU) between Clackamas River Water and other water providers including the City of Milwaukie. She discussed a September 2001 intergovernmental agreement (IGA) in support of water quality enhancement projects in the Clackamas River Basin. This is an MOU that defines participants' roles. There are no additional costs beyond those agreed upon in the IGA. Staff requested the City Council authorize the city manager to sign the MOU on behalf of the City of Milwaukie, and Council did so.

PGE Privilege Tax

Mayor Bernard thought this tax might be used in conjunction with the transportation utility fee to reduce the trip rate.

Swanson said at the end of 2002 JoAnn Herrigel negotiated an extension of the franchise fee with PGE; however, the company made it clear it did not wish to increase its existing franchise fee of 3.5% of gross revenues. PGE did agree to permit the City to impose a 1.5% privilege tax to come to a 5% total. The Citizens Utility Advisory Board (CUAB) and staff have been looking at the

possibility of the City's enacting the privilege tax and using the revenues to offset the annual street lighting costs. The City pays about \$300,000 annually out of the street fund. The privilege tax, if enacted, would raise about \$312,000 and would be a one-for-one trade. Basically, the effect would be to release that amount in the street fund for use on projects.

The CUAB would strongly recommend that Council enact the privilege tax. When he looked at it, however, privilege tax revenues would not be dedicated money. It would be new revenue. The City is facing a number of budget challenges including streets as well as the general fund. His point is to consider these general fund challenges as well as the street fund. Swanson wanted to ensure the City Council understands this is a tax, and the effect would be that it would appear on the monthly PGE bill as "City of Milwaukie privilege tax." It is not a great deal of money, probably less than a dollar, but the customer would be reminded 12 times a year. He said his comment is intended to neither persuade nor dissuade. It is something the Council needs to consider before it enacts this type of tax.

When Swanson brought this to the Budget Review Board, it looked like a tennis match. It occurred to him that in trying to get something done, he lost his focus on the whole system. Board members Aschenbrenner, Ball, Michel, and Hubbard discussed the need to look at the full City picture and try to identify where we are in the sense of the whole City, project that out a few years, and then look at potential revenue streams. Going to the well even one time will be difficult with the horrid economy. Milwaukie has a lot of seniors on fixed incomes, and a privilege tax could mean a lot to them. Swanson recommends concentrating on other issues including the North Main Redevelopment Project and the Centennial. He believes the City Council should discuss its priorities and fit the revenue to the bigger picture. He suggested taking a breather and approach issues in a more organized, big picture fashion.

Non-represented Cost of Living Adjustment

Swanson said he put this item on the June 16 Council agenda for consideration. Typically, the Council takes action on the non-represented employee salary schedule. These employees are not members of AFSCME or MPEA. Swanson will recommend a 3% cost of living increase which is the same as represented employees. He realizes it is not easy to discuss cost of living increases during difficult times. The City has reduced its number of employees resulting from the failure of the November 2002 local option tax measure. Many employees in the non-represented group are working a lot longer and a lot harder because the system no longer has the kind of support they used to have. While he knows the times are difficult, he also knows the organization is getting a lot out of these people. For example, it took Lake Oswego eight years to put together a public/private partnership like Milwaukie's North Main Street Project. People are working diligently to make things happen.

Other

Mayor Bernard is talking to commercial real estate organizations and property owners about doing an advertising campaign. He would like to organize businesses to put this together and perhaps to manage the campaign. Bernard will keep the Council updated and made it clear no City funds would be used.

Councilor Lancaster added businesses are interested in moving out of Multnomah County because of the taxes.

The work session ended at 8:25 p.m.

Pat DuVal

Pat DuVal, City Recorder

AGENDA

MILWAUKIE CITY COUNCIL WORK SESSION JUNE 9, 2003

WORK SESSION – 5:30 p.m.
Second Floor Conference Room

MILWAUKIE CITY HALL
10722 SE Main Street

Discussion Items

	<u>Time</u>	<u>Topic</u>	<u>Presenter</u>
1.	5:30 p.m.	Dinner and Information Sharing	Group
2.	6:00 p.m.	Questions/Comments on June 10 Agenda Items – these questions and/or comments can only be on those items that are legislative and not on those that are quasi-judicial, like land use or liquor license hearings	Group
3.	6:30 p.m.	Transportation Utility Fee Update	Jeff King/ Alice Rouyer
4.	6:45 p.m.	Amendment to Memorandum of Understanding with Clackamas River Water	Alice Rouyer
5.	7:00 p.m.	PGE Privilege Tax	Mike Swanson
6.	7:30 p.m.	Non-represented Employee Cost of Living Adjustment	Mike Swanson
7.	7:45 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 preceding items.

- Executive Session: The Milwaukie City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. 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 786-7555.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.



To: Mayor and City Council

Through: Mike Swanson, City Manager
Alice Rouyer, Director of Community Development & Public Works

From: Jeffrey King, Project Manager *SK*

Subject: Update On Transportation Maintenance Fee Project

Date: May 23, 2003 for June 9, 2003 meeting

AKS for ACK

Action Requested

1. Review and update on the Transportation Maintenance Fee project (TMF). 2. Prepare City Council for TMF discussion at the Clackamas County Coordinating Committee (4-C) leadership group retreat at Timothy Lake on June 12th, 2003.

Background

The purpose of this memo is to give Council an update of the status of this project since our last presentation to Council on April 14th, 2003. City and County staff have been working with consultants and the business community to refine a proposal for consideration by the Board of County Commissioners and participating City Councils. This issue will be discussed at the Clackamas County Coordinating Committee (4-C) leadership group retreat at Timothy Lake on June 12th.

A Transportation Maintenance Fee Advisory Committee was created in March, 2003 to provide a business and citizen perspective and to advise the 4-C group. The Committee gave input and made recommendations on the transportation maintenance draft ordinance and fee structure. The Committee included large retailers and nonprofits such as supermarkets and hospitals. The group has met four times. The final meeting was May 22, 2003.

At the June 10 work session, staff will present to Council additional information provided in a final consultant report on the TMF fee concept, methodology and fee structure proposal. Staff will also present a schedule of next steps for Council to consider.



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Alice Rouyer, Director of Community Development & Public Works

Subject: Memorandum of Understanding (MOU) between Clackamas Water Providers and Clackamas River Basin Council

Date: May 23, 2003 for the June 10, 2003 meeting

Action Requested

Provide comments to City Manager on a proposed MOU to implement an existing IGA between Clackamas Water Providers and Clackamas River Basin Council relating to water quality enhancement projects in the Clackamas River basin.

Background

The City of Milwaukie purchases 500,000 gallons per day of surface water from Clackamas River Water (CRW) to supplement the City's domestic well-water supply (approx. 5.8 million gallons per day). The City began purchasing supplemental water from CRW in 1997 primarily to meet peak demand in the summer months and to provide for emergency water needs. Therefore, the City cooperates with CRW and other Clackamas River water providers in monitoring and protecting the river and its watershed.

In September 2001, the City Council authorized the City Manager to sign an Intergovernmental Agreement (IGA) for joint funding of Clackamas River watershed enhancement activities. At that time, the City agreed to participate in funding these projects along with Clackamas River Water, City of Lake Oswego, City of Estacada, South Fork Water Board, Sunrise Water Authority and North

WS. 4 2

Clackamas County Water Commission. The IGA stipulates a maximum annual payment toward the projects ranging from \$1,610 to \$2,481.

The attached MOU further refines watershed enhancement project management roles and responsibilities. The MOU is a standard tool to clarify roles and responsibilities. Specifically, Milwaukie's roles are to:

- A. Make quarterly payments to CRW as paying agent for the projects.
- B. Provide two representatives to serve on a Technical Advisory Committee for the projects and assist with project management.
- C. Provide input to the Project Managers to review project deliverables and contribute to data gathering.

Since these responsibilities were already defined in the IGA approved by the Council in September 2001, signing the MOU is a formality in moving forward with the project and ensuring that roles and responsibilities are reasonably assigned. This level of refinement is appropriate and expected as the projects move forward. It is within the authority of the City Manager to sign the agreement, but Council comment is requested, particularly if any Council member has concerns with the MOU.

Concurrence

Staff reviewed the MOU with the City Attorney's Office, the Water Operations Supervisor and the Engineering Director.

Fiscal Impact

No new fiscal impact is proposed in the MOU. The IGA approved in 2001 indicates that the annual payments through FY 2004/2005 will range from \$1,610 and \$2,481. These payments will continue to be covered by the Water Fund.

Work Load Impacts

The MOU indicates that each water provider will participate in the Technical Advisory Committee, assigning two staff members to participate in the project. Since CRW is a supplemental water provider to Milwaukie, the City will not be a leading participant in the water enhancement projects. However, a staff member from Engineering and/or Water Operations will be assigned to attend meetings and review project work, as needed.

Alternatives

- a. Sign the MOU as recommended.
- b. Amend the MOU.
- c. Take no action.

Attachments

Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING
BETWEEN
Clackamas River Water Providers
AND
Clackamas River Basin Council

PREAMBLE

This Memorandum Of Understanding (MOU) is entered into by and between the Clackamas River Water Providers to wit: North Clackamas County Water Commission South Fork Water Board, Sunrise Water Authority, Clackamas River Water and the Cities of Milwaukie, Lake Oswego and Estacada (herein further referred to as the Water Providers) acting by and through their managers and the Clackamas River Basin Council (herein further referred to as the CRBC), acting by and through the Council Chair or a designated elected Council representative and the Council Coordinator, respectively.

In May, 2001 the Water Providers, except Lake Oswego, entered into an Intergovernmental Agreement regarding participation and funding of Clackamas River Watershed activities through June 30, 2005. Lake Oswego became a signatory in 2002.

PURPOSE

The purpose of this MOU is to establish a long-term collaboration between the Water Providers and CRBC for the purpose of conducting Water Quality Enhancements (as defined below), and implementing action plans developed within the Clackamas River Basin. Resulting prioritized actions will lead to the overall health of the watershed and improvement, protection and coordinated monitoring of water quality in the Clackamas River Basin.

RECITALS

WHEREAS, the CRBC acting as an advisory body to the Board of County Commissioners (BCC) in Clackamas County acting in the interest of all citizens using the Clackamas River watershed, and acting in accordance with the CRBC Charter and Rules, seeks to provide basic management direction and guidance for the broad range of beneficial uses and activities in the Clackamas River watershed; and

WHEREAS, the Water Providers collect raw surface water from the Clackamas River and tributaries for treatment to Safe Drinking Water Act standards for the purposes of domestic and industrial water uses; and

WHEREAS, the water providers derive their municipal water supplies from the Clackamas River watershed; and

WHEREAS, current practices such as residential and commercial development, roads and logging can affect the quality and quantity of the water of the Clackamas River.

NOW, THEREFORE the CRBC and Water Providers in order to establish basic principles for communicating, coordinating and conducting watershed activities and sub-basin planning do enter into this Memorandum of Understanding (MOU).

I. DEFINITIONS:

When referring to the Watershed, the following descriptive terms will be used.

A. **WATERSHED:** This term refers to all lands above the confluence of the Clackamas and Willamette Rivers drained by the Clackamas River and tributaries, the primary source of *water* for the Water Providers.

B. **CHARTER AND RULES:** The detailed requirements that prescribe a framework by which the CRBC carries out its function and responsibilities.

C. **CLACKAMAS RIVER WATER PROVIDERS (WATER PROVIDERS):** Municipal and domestic water providers whose primary water intake and source waters are from the Clackamas River and tributaries. The following are Water Providers under this MOU: Clackamas River Water, a district, City of Lake Oswego, incorporated city; South Fork Water Board, an intergovernmental entity between Oregon City and West Linn; City of Estacada and the city of Milwaukie, both incorporated cities; and North Clackamas County Water Commission, an intergovernmental entity between Sunrise Water Authority and Oak Lodge Water District.

D. **PROJECT MANAGERS:** The Project Manager(s) administer and carry out the joint decisions of the CRBC and the Water Providers. The Project Manager(s) roles and responsibilities are detailed in Attachment #1, attached hereto and incorporated by reference herein.. The Project Manager(s) consist of two representatives from the water providers as designated by the water providers and two from the CRBC (the Coordinator and a designated Representative.) In the event the Council Coordinator is not available to serve as the representative for the CRBC, the CRBC may designate a temporary replacement representative.

E. **TECHNICAL ADVISORY COMMITTEE:** The TAC serves as an advisory body to the Project Manager(s) and their respective Boards. The TAC makes recommendations and suggestions to the Project Managers on the Scope of Work and technical aspects related to the assessments. Members of the TAC may include one or more representative(s) from agencies such as: US Forest Service, Portland General Electric, USGS, Clackamas SWCD, Clackamas WES, and the BLM. Membership may expand by mutual agreement of the CRBC and the Water Providers. A quorum for decisions is defined as 2/3-attendance of all voting members represented on the committee.

The group will strive to make decisions by consensus when possible. If this is not possible a vote by simple majority will be used as the basis for decision-making. Both the opinions of the majority and minority opinions will be forwarded to the Water Providers and the CRBC. As provided for under Oregon's Open Meetings Law, the TAC meetings shall be open to the public. Time will be provided for public comment at the beginning and end of each meeting.

F. ACTION PLAN: Identifies basin-wide goals and objectives, summarizes recommendations and findings from sub-watershed assessments, and involves Clackamas River stakeholders in the identification, review and prioritization of potential and strategic actions.

G. OWEB: Oregon Watershed Enhancement Board

H. WATER QUALITY ENHANCEMENTS: - Project-based improvements providing benefits through restoration, continuous monitoring, further watershed assessments, sub-basin planning, strategic action planning, or citizen notification networks, e.g. Neighborhood Watch, etc., to the quality of the water in the Clackamas River. Projects include but are not limited to the Deep Creek and Goose Creek Watershed Assessments and Basin Action Plan.

II. THE CRBC SHALL:

1. Provide project management, provide contractors and financial support at a minimum of \$71,000.00 for the Deep/Goose Creek and Basin Action Plan pursuant to OWEB grant agreements. The Paying Agent shall invoice the CRBC on or before June 15, 2003, unless grant extensions are approved by OWEB, for the full amount. If such grant extension is approved by OWEB, then the Paying Agent shall invoice CRBC on a fee-for-service basis as services are provided.

2. Contract for services and materials as needed and provide indemnity and insurance coverage for any contract to or for the benefit of the Water Providers. Independently of any contract and to the fullest extent provided by law, CRBC will indemnify and hold harmless the Water Provider's for its activities unless attributable to a Water Providers own negligence.

3. Submit quarterly invoices by October 10th, January 10th, April 10th, and July 10th to the paying agent for progress reports or completed projects, reports or products.

4. Provide two representatives to serve as Project co-Managers with the Water Providers and to the TAC by designating a Council representative and the Coordinator.

5. Provide project management from the CRBC Coordinator for the purpose of meeting facilitation and management, Council input, public involvement, project coordination and planning.

6. Provide input in at least the following ways:
- a. Review and comment on any draft Scope of Work
 - b. Assist in development and implementation of a Strategic Outreach Plan
 - c. Contribute to Data gathering and compilation where possible
 - d. Assist where possible in fieldwork related to the assessment
 - e. Identify and comment on Critical Issues
 - e. Review and comment on the draft and final reports
 - f. Development and implementation of the action plans

III. THE WATER PROVIDERS SHALL:

1. Contribute financial support to the Deep and Goose Creek Watershed Assessments and Basin Plan as indicated in the May, 2001 Intergovernmental Agreement. For the Deep Creek and Goose Creek Watershed Assessments and Basin Action Plan, the amount shall not exceed the share of each Water Provider set forth on Ex. B attached hereto and incorporated by reference unless the Water Providers agree in writing. The amounts budgeted for 2002-2005, set forth on Ex. A, shall not be exceeded unless the Water Providers agree in writing.

2. Make quarterly payments to CRW as paying agent for CRBC project management activities by October 31st, January 31st, April 30th, and July 31st pursuant to progress reports or completed reports, projects or products delivered.

3. Provide two representatives to serve as Project Co-Managers with the CRBC and to the TAC by designating two representatives.

4. Provide professional staff time for the purpose of meeting management and facilitation, Board input, public involvement, project coordination and planning.

5. Provide input to the Project Managers in at least the following ways through a designated staff person:
- a. Review and comment on the draft Scope of Work
 - b. Assist in development and implementation of a Strategic Outreach Plan
 - c. Contribute to Data gathering and compilation where possible
 - d. Assist where possible in fieldwork related to the assessment
 - f. Identify and comment on Critical Issues
 - g. Review and comment on the draft and final reports
 - f. Development and implementation of the action plans

IV. THE CRBC AND THE WATER PROVIDERS EQUALLY AGREE:

1. Commitment. They are committed to the cooperative development, implementation, and management of watershed assessments, strategic outreach planning, recommended action planning and related studies in the Clackamas River basin.

2. Contracts. Contracts, contract amendments or other formal agreements shall be entered into only after the contract is agreed to and signed by the signatories of this MOU or their designates, city council members, board members or their designates of the Water Providers and the CRBC.

3. Dispute Resolution. The parties agree to attempt to resolve informally any dispute regarding either party's performance or decisions under this agreement, or regarding the terms, conditions or meaning of this agreement. Disputes, which are not resolved through this informal process, shall be resolved by participation in mediation according to the rules and processes of United States Arbitrations & Mediations of Portland, Oregon. Either party may request mediation upon ten days prior written notice. If mediation is unsuccessful the matter will be arbitrated under ORS Ch. 36. Any and all costs of mediation or arbitration shall be assessed equally upon the parties.

4. Records. To make all records, reports and studies of all parties pertaining to the assessments and to water quality and quantity available for use by the parties.

5. Authorization of CRW. By execution hereto, all parties hereto authorize CRW to become the paying agent for the parties. The initial term of the agreement is for the life of the studies indicated herein and CRW shall make all payments on behalf of the parties herein. The parties acknowledge and agree that CRW is acting as the agent of this agreement but that all are benefited thereby.

6. Payment to CRW. The CRBC agrees to pay CRW a minimum of \$71,000 as indicated in item # 1 under the "CRBC shall...". CRW will invoice the CRBC before June 15, 2003 unless grant extensions have been allowed by OWEB. If such grant extensions are granted, CRBC agrees to pay CRW on a fee-for-service basis as services are provided.

7. Participation In Similar Activities. This MOU in no way restricts the Water Providers or the CRBC from participating in similar activities with other public or private agencies, organizations, and individuals.

8. Non-discrimination. In carrying out the terms of this agreement there shall be no discrimination against persons of race, gender, national origin, age or creed.

9. Reviews. This MOU shall be reviewed one year from the date of signing by the agencies and the CRBC and every three years thereafter.

10. Modification. Modifications to this MOU shall be made by the issuance of modification executed by all the parties prior to any changes being performed.

11. Termination. Any party may terminate its participation in this MOU upon 90 days written notice and shall pay its proportionate cost incurred up to the date of termination and within the amounts shown on Ex. A and B as applicable.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the last date written below.

CITY OF ESTACADA

- CLACKAMAS RIVER WATER

By: _____
Date: _____

By: Dale L. Juntala
Date: 3/18/03

CITY OF MILWAUKIE

NORTH CLACKAMAS COUNTY
WATER COMMISSION

By: _____
Date: _____

By: _____
Date: _____

CITY OF LAKE OSWEGO

SOUTH FORK WATER BOARD

By: _____
Date: _____

By: _____
Date: _____

CLACKAMAS RIVER BASIN COUNCIL

By: _____
Date: _____

**PROJECT MANAGER'S AND TECHNICAL ADVISORY COMMITTEE
MEMBER ROLES AND RESPONSIBILITIES**

Attachment 1

1. Responsibilities of the Project Managers

The Project Managers will be Gordon McGhee, Michael Carlson and Bruce Hemenway providing direction and oversight for the assessment project, including,

- A. Timely communication of project activities to the consultants, the TAC and partners, and incorporating and communicating input from Boards, TAC and managers.
- B. Developing and disseminating agendas and TAC meeting notices and coordinating events related to the assessments.
- C. Coordination of consultant information requests.
- D. Providing project reports to respective Boards and managers.
- E. Providing guidance to the Water Providers, the CRBC and their project managers.
- F. Developing a detailed Request for Proposals (RFP) and work plan.
- G. Assisting with selection of the project consultants.
- H. Interacting with and providing guidance to the project consultants.

2. Responsibilities of the TAC

The TAC will provide direction and oversight for the assessment project, including,

- A. Making recommendations to and receiving input from their respective managers, Boards and councils.
- B. Reviewing, commenting on, and providing recommendations to the Project managers about the consultants' work plan.
- C. Develop technical basis for the assessment that meets guidelines set forth in the RFP, reviewing public comment, commenting on consultant's work products, and providing recommendations and presentations to Project Managers.

3. Responsibilities of Individual TAC Members

The TAC members will be expected to:

- A. Attend TAC meetings.
- B. Be prepared for the meetings by reviewing materials in advance.
- C. Review and comment on draft work products.
- D. Interact with the project consultants.
- E. Represent their sponsoring agencies.

4. Responsibilities of the EXEC and the CRBC

See #4 in the MOU under *The CRBC shall*:

10. Modification. Modifications to this MOU shall be made by the issuance of modification executed by all the parties prior to any changes being performed.

11. Termination. Any party may terminate its participation in this MOU upon 90 days written notice and shall pay its proportionate cost incurred up to the date of termination and within the amounts shown on Ex. A and B as applicable.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the last date written below.

CITY OF ESTACADA

CLACKAMAS RIVER WATER

By: _____

By: _____

Date: _____

Date: _____

CITY OF MILWAUKIE

NORTH CLACKAMAS COUNTY
WATER COMMISSION

By: _____

By: _____

Date: _____

Date: _____

- CITY OF LAKE OSWEGO

SOUTH FORK WATER BOARD

By: Judith Hommestad
Date: 3-19-03

By: _____
Date: _____

CLACKAMAS RIVER BASIN COUNCIL

By: _____

Date: _____

APPROVED AS TO FORM

David A. Powell
Attorney
City Attorney's Office

RESOLUTION 03-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE OSWEGO AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF LAKE OSWEGO AS A MEMBER OF THE CLACKAMAS RIVER WATER PROVIDERS AND THE CLACKAMAS RIVER BASIN COUNCIL.

WHEREAS, the Cities of Lake Oswego, Milwaukie and Estacada, incorporated cities, Clackamas River Water, a domestic water supply district, South Fork Water Board, an intergovernmental entity between Oregon City and West Linn, and the North Clackamas County Water Commission, an intergovernmental entity between the Sunrise Water Authority and Oak Lodge Water District, hereinafter "Water Providers" all collect raw water from the Clackamas River for treatment to Safe Drinking Water Act standards; and

WHEREAS; the Clackamas River Basin Council (CRBC) acting as an advisory body to the Clackamas County Board of Commissioners, acting in the interest of all citizens using the Clackamas River watershed, and acting in accordance with the CRBC Charter and Rules, seeks to provide basic management direction and guidance for the broad range of beneficial uses and activities in the Clackamas River watershed and

WHEREAS; the Water Providers each and collectively are members of the CRBC and as such are committed to the improvement, protection and monitoring of water in the Clackamas River and the overall health of the watershed and

WHEREAS; the Water Providers and the CRBC desire to enter into a Memorandum of Understanding (MOU) for the purpose of providing a framework for communicating and coordinating efforts in the conduct of watershed activities and sub-basin planning:

NOW, THEREFORE, BE IT RESOLVED that the Mayor is authorized to execute a Memorandum of Understanding with the Clackamas River Basin Council substantially in the form attached as Exhibit 'A'. This Resolution shall be effective upon passage.

Considered and enacted by the City Council of the City of Lake Oswego at a regular meeting held on the 18th day of March, 2003.

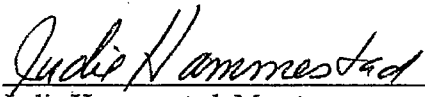
AYES: Mayor Hammerstad, Turchi, Rohde, Hoffman, Graham, Peterson, McPeak

NOES: none

ABSTAIN: none

EXCUSED: none

ATTEST:

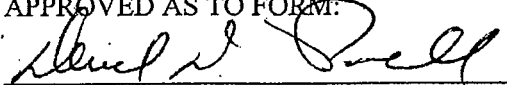


 Judie Hammerstad, Mayor



 Robyn Christie, City Recorder

APPROVED AS TO FORM:



 David Powell
 City Attorney

10. Modification. Modifications to this MOU shall be made by the issuance of modification executed by all the parties prior to any changes being performed.

11. Termination. Any party may terminate its participation in this MOU upon 90 days written notice and shall pay its proportionate cost incurred up to the date of termination and within the amounts shown on Ex. A and B as applicable.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the last date written below.

CITY OF ESTACADA

CLACKAMAS RIVER WATER

By: _____
Date: _____

By: _____
Date: _____

CITY OF MILWAUKIE

NORTH CLACKAMAS COUNTY
WATER COMMISSION

By: _____
Date: _____

By: _____
Date: _____

CITY OF LAKE OSWEGO

- SOUTH FORK WATER BOARD

By: _____
Date: _____

By: *Don Bradley*
Date: 20 March, 2003

CLACKAMAS RIVER BASIN COUNCIL

By: _____
Date: _____

TRANSITION STATEMENT AND SIGNATURES:

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the last date written below.

City of Estacada

Clackamas River Water

By:

By:

Date:

Date:

City of Milwaukie

- North Clackamas County Water Commission

By:

By:  PAUL SAWAS

Date:

Date: 1-30-03

City of Lake Oswego

South Fork Water Board

By:

By:

Date:

Date:

Clackamas River Basin Council Chair,

By:

Date:

10. Modification. Modifications to this MOU shall be made by the issuance of modification executed by all the parties prior to any changes being performed.

11. Termination. Any party may terminate its participation in this MOU upon 90 days written notice and shall pay its proportionate cost incurred up to the date of termination and within the amounts shown on Ex. A and B as applicable.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the last date written below.

CITY OF ESTACADA

- CLACKAMAS RIVER WATER

By: _____
Date: _____

By: Dale L. Jitch
Date: 3/18/03

CITY OF MILWAUKIE

- NORTH CLACKAMAS COUNTY WATER COMMISSION

By: _____
Date: _____

By: Paul Saur
Date: 4-29-03

CITY OF LAKE OSWEGO

SOUTH FORK WATER BOARD

By: _____
Date: _____

By: _____
Date: _____

CLACKAMAS RIVER BASIN COUNCIL

By: _____
Date: _____

10. Modification. Modifications to this MOU shall be made by the issuance of modification executed by all the parties prior to any changes being performed.

11. Termination. Any party may terminate its participation in this MOU upon 90 days written notice and shall pay its proportionate cost incurred up to the date of termination and within the amounts shown on Ex. A and B as applicable.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the last date written below.

— CITY OF ESTACADA

CLACKAMAS RIVER WATER

By: [Signature]
Date: 4-5-03

By: _____
Date: _____

CITY OF MILWAUKIE

NORTH CLACKAMAS COUNTY
WATER COMMISSION

By: _____
Date: _____

By: _____
Date: _____

CITY OF LAKE OSWEGO

SOUTH FORK WATER BOARD

By: _____
Date: _____

By: _____
Date: _____

CLACKAMAS RIVER BASIN COUNCIL

By: _____
Date: _____

INTERGOVERNMENTAL AGREEMENT
JOINT FUNDING
OF
CLACKAMAS RIVER WATERSHED ACTIVITIES

RECEIVED
MAR 5 - 1998
Clackamas River Water

This ORS 190 Intergovernmental Agreement is entered into by and among the following parties: North Clackamas County Water Commission and South Fork Water Board, both quasi-municipal corporations formed under ORS 190 and Clackamas River Water, a domestic water supply district formed under ORS Chapter 264, hereafter known as the Water Providers.

RECITALS

WHEREAS, the need for greater knowledge of the Clackamas River and its tributaries is needed for long-term management of the Basin, and

WHEREAS, the US Geological Survey (USGS) has determined that a study to evaluate the dynamics of nutrients and algae on the Clackamas River would provide meaningful data for the management of the Basin, and

WHEREAS, the Water Providers and others have participated in the development of the scope of work for the USGS study and have determined the benefits of providing matching funds for the study, and

WHEREAS, the parties have agreed to enter into an intergovernmental agreement pursuant to ORS 190.003 – 190.110, which authorizes units of local government to enter into such agreements, to jointly fund a portion of the matching funds needed for the USGS to conduct the study,

NOW, THEREFORE, the parties agree as follows:

SECTION 1. AUTHORIZATION OF CRW

By execution hereto, all parties hereto authorize CRW to become the paying agent for the parties. The initial term of the agreement is for life of the study at an initial cost of thirty thousand dollars (\$30,000). The parties acknowledge and agree that CRW is acting as the agent of this agreement but that all are benefited thereby. CRW shall be responsible for day to day project and contract administration.

SECTION 2. REIMBURSEMENT OF CRW

CRW shall make all payments to the USGS required under a Joint Funding Agreement. Each party hereto agrees to reimburse CRW for its proportionate share totaling \$10,000 each. Each party has committed to additional matching funds at a level yet to be determined, but will not exceed \$10,000 each over the fiscal years 1999-2000. Once determined, this agreement can be amended to account for the flow of dollars between the parities by a letter amendment to this agreement, signed by the General Manager of the respective agency. CRW shall invoice each party at quarterly intervals coinciding with work-in-progress invoicing from the USGS. Payments shall be made to Clackamas River Water at PO Box 2439, Clackamas, OR 97015-2439. Any amount unpaid after thirty (30) days shall accrue interest at the rate of nine percent (9%) per annum until paid.

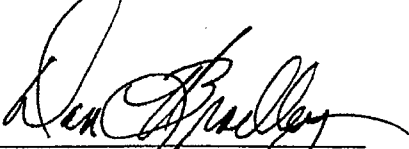
IN WITNESS WHEREOF, the parties have executed this Agreement set forth opposite their names below. This document may be signed in counterparts.

NORTH CLACKAMAS COUNTY WATER COMMISSION

By: 

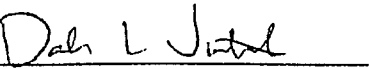
Date: 2-26-98

SOUTH FORK WATER BOARD

By: 
Dan Bradley, General Manager

Date: 25 FEBRUARY, 1998

CLACKAMAS RIVER WATER

By: 
Dale L. Jutila, General Manager

Date: 2/25/98



To: Mayor and City Council

From: Mike Swanson, City Manager

Subject: Non-represented Employees Fiscal Year 2003-2004 Salary Schedule and Negotiated Salary Schedule for Represented Employees

Date: May 20, 2003

ACTION REQUESTED

Adoption of the City of Milwaukie 2003-2004 Pay Table (attached) with salary schedule effective July 1, 2003 for non-represented employees.

BACKGROUND

The City annually adopts an updated salary schedule that reflects adjustments that result both from contracts with its bargaining units and between the City and its non-represented employees. The latter include management, confidential, and seasonal employees.

The 2003-2004 Pay Table reflects a 3% cost of living (COLA) for both of the bargaining units. The agreements that provide for this were finalized during the summer of 2001 and expire on June 30, 2004.

The 2003-2004 Pay Table includes a 3% COLA for non-represented employees.¹ The City's pay plan was established with a 5% differential between ranges. If the COLA granted to the non-represented employees is less than that received by represented employees, the salary differential between supervisors and their employees begins to compress.

¹ I am recommending that the City Manager classification be similarly increased in order to maintain the salary schedule differential between job classifications but that the individual salary not be changed in order that I not benefit from this recommendation.

FISCAL IMPACT

A 3% COLA was calculated into the personnel schedule for all employees. Thus, sufficient funds have been budgeted. The cost of providing a 3% COLA for non-represented employees is \$34,186.

WORK LOAD IMPACTS

There are nominal work load impacts to input salary adjustments.

ALTERNATIVES

Council can choose to grant a COLA that is different from that recommended. The effect is to create compression issues within the salary structure between the non-represented and represented employees.

