

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
DECEMBER 3, 2002**

CALL TO ORDER

The 1899th meeting of the Milwaukie City Council was called to order by Mayor Bernard at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Mary King	Brian Newman
Larry Lancaster	Jeff Marshall

Staff present:

Gary Firestone, City Attorney	Brion Barnett, Civil Engineer
Alice Rouyer, Director of Community Development and Public Works	

PLEDGE OF ALLEGIANCE

Mayor Bernard said there was a request to consider the Audience Participation portion of the agenda prior to the Consent Agenda and asked if there was a motion to do so.

It was moved by Councilor Lancaster to consider Audience Participation before the Consent Agenda. The motion died for lack of a second.

PROCLAMATIONS, COMMENDATIONS, AND SPECIAL REPORTS

Councilor King read a proclamation honoring off-going Council member Brian Newman and wishing him the best in his new position as Metro Councilor.

CONSENT AGENDA

It was moved by Councilor King and seconded by Councilor Newman to adopt the consent agenda that included:

- A. City Council Minutes of November 19, 2002;**
- B. Resolution 28-2002: A Resolution of the City Council of the City of Milwaukie, Oregon, Adopting the 2003–07 Capital Improvement Plan; and**
- C. Resolution 29-2002: A Resolution of the City Council of the City of Milwaukie, Oregon, Declaring the Need to Acquire Property for Right-of-Way.**

The motion to adopt the consent agenda passed 4 – 1 with the following vote: Mayor Bernard, Councilor King, Councilor Marshall, and Councilor Newman aye; Councilor Lancaster nay.

AUDIENCE PARTICIPATION

Linda Hatlelid, 8617 SE 36th Avenue, Milwaukie, urged the City Council not to sign amendments to the intergovernmental agreements with the City of Portland necessary to proceed with the Johnson Creek Boulevard Phase 3 Improvement Project. This is

not a joint effort with the neighborhoods. The improvements can be done in the 40-foot right-of-way, which is supported by a majority of property owners. Keeping within the 40-foot right-of-way would reduce acquisition costs. She questioned why Milwaukie would want to assume the financial burden of future road maintenance from Clackamas County. The environmental zone is really a non-issue, and the road does not need to be shifted to the south. The recitals in the agreement changed, but there were no explanations given for those changes. Milwaukie should rewrite the agreement to protect its residents and to ensure Portland keeps its commitments. The Portland City Council voted unanimously in support of the neighborhood issues including traffic calming. She urged the City Council not sign the agreement.

Gene Hatlelid, 4277 SE Johnson Creek Boulevard, Milwaukie, believes the IGA is full of mistakes and outright errors. Recitals were removed or changed for no apparent reason.

Councilor Lancaster said the reason he voted against signing the agreement is because if one single individual is damaged the whole community is harmed. This is a travesty of justice, and the City Council must help residents get treated as fairly as possible.

Mayor Bernard felt there was little Milwaukie could do once the I-205 and Tacoma Street overpasses were built. The City does not have the money to pay for the much-needed repairs to Johnson Creek Boulevard or to repay Portland for the sewer construction done in an earlier phase of the project. He regretfully believes Milwaukie simply has no other choice but to sign the agreement.

Councilor King felt the government agencies involved honestly considered the many options presented to them.

Councilor Marshall feels it is not right for government to change the environment people have made for themselves over the years; however, the decision on this project was made 15 years ago. The City cannot afford to rebuild the street or repay Portland for the sewer construction.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

North Main Street Developer Selection Committee

Mayor Bernard, with consensus of Council, appointed Jeff Reaves, Gill Williams, Sue Trotter, Michael Davis, Peter Koonce, Ed Zumwalt, and Jeff Marshall to the North Main Street Developer Selection Committee.

City Attorney Firestone said this would probably be his last meeting with 2 or 3 City Councilors. He wanted to express the fact that he has appreciated working with them and noted each has labored well on behalf of the City.

EXECUTIVE SESSION

Mayor Bernard announced an executive session pursuant to ORS 192.660(h) to discuss real property.

ADJOURNMENT

It was moved by Councilor Marshall and seconded by Councilor King to adjourn the meeting. Motion passed unanimously.

Mayor Bernard adjourned the meeting at 6:30 p.m.



Pat DuVal, Recorder

**CITY OF MILWAUKIE
CITY COUNCIL AGENDA
DECEMBER 3, 2002**

MILWAUKIE CITY HALL
10722 SE Main Street

1899TH MEETING

REGULAR SESSION - 6:00 p.m.

- I. **CALL TO ORDER**
Pledge of Allegiance

- II. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**

- III. **CONSENT AGENDA** *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*
 - A. **City Council Minutes of November 19, 2002**
 - B. **Resolution Adopting 2003 – 2007 Capital Improvement Plan (Shirey)**
 - C. **Johnson Creek Boulevard Improvement Project Phase III Amendments Intergovernmental Agreements and Authorization to Allow All Phases of Project to Proceed – Resolution (Shirey/Barnett)**

- IV. **AUDIENCE PARTICIPATION** *(The Mayor will call for statements from citizens regarding issues relating to the City. It is the intention that this portion of the agenda shall be limited to items of City business which are properly the object of Council consideration. Persons wishing to speak shall be allowed to do so only after registering on the comment card provided. The Council may limit the time allowed for presentation.)*

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

None scheduled

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

None scheduled

- VII. **INFORMATION**
Ledding Library Board Minutes, September 23, 2002

VIII. ADJOURNMENT

EXECUTIVE SESSION -- *At the end of the regular meeting, the Council may hold an Executive Session under the authority of Oregon Revised Statutes 192.660 as needed.*

For assistance/service per the Americans with Disabilities Act (ADA), 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.

Date 12-3-02

Public Participation

I wish to address City Council on Agenda Item # ~~411C~~

Name Linda Hatfield

Organization _____

Address 8617 SE 36th

Phone _____

Speaking in Support

Speaking in Opposition

Raising Questions

Providing Information

Comments _____

Date Dec 3, 2002

I wish to address City Council on Agenda Item # Item 3C IF POSSIBLE

Name GENO HATFIELD

Organization _____

Address 4277 SE JOB

Phone 503-659-4205

Speaking in Support

Speaking in Opposition

Raising Questions

Providing Information

Comments _____

Item C is part of consent - would like to speak anyway.



TO: Mayor and City Council

FROM: Mike Swanson, City Manager

DATE: November 25, 2002

RE: FYI Memo for the Weeks of December 2, 2002 through
December 13, 2002

DECEMBER 2, 2002 COUNCIL WORK SESSION

The work session will commence promptly at 5:30 P.M. with a light dinner. Inasmuch as the agenda is crowded, the first item will be heard at 5:45 P.M.

(1) Trolley Trail MTIP Support Letter: Council is being asked to authorize the Mayor to sign a letter of support for MTIP funding for the Trolley Trail, a multi-use trail running from Jefferson Street in Milwaukie south to Gladstone. The project funding request is \$844,275, and the North Clackamas Parks District is providing the match.

(2) North Main Developer Selection Committee Interviews: Staff has scheduled 11 interviews. Alice and Jeff will prepare draft interview questions.

(3) Downtown Parking and Traffic Plan Updates: Preliminary findings for the Downtown Parking and Traffic Management Plan will be presented by the City and consultant project team to Council and Planning Commission members for discussion and feedback. The presentation will include discussion of the draft "Guiding Principles" created as the foundation upon which the City will make decisions related to how to deal with parking and traffic impacts in the future. Because many project assumptions are made based on the Principles, it is necessary to obtain "buy in" from the Commission and City policy makers early in the project to provide focus for future work.

(4) South Corridor Update: The process leading toward the locally preferred alternative has begun in earnest. The SDEIS has been submitted, and the public study and comment period will commence shortly, followed by action at the local level. This agenda item will outline the process that is proposed to be followed.

(5) City Wastewater Treatment Payments to Clackamas County: At the September 16, 2002 work session, staff requested that Council consider entering into a 10 year agreement with CCSD1 to repay \$1,134,178 that the City owes for wastewater treatment and capital improvements at the Kellogg Plant over the past two years. The Council had numerous questions, and the matter was postponed for further action. Staff has invited CCSD1 staff members Doug Waugh and Ted Kyle to present information to Council and to answer questions about the current agreement.

DECEMBER 3, 2002 REGULAR SESSION

The Regular Session will commence at 6:00 P.M. in the City Hall Hearing Room.

(1) Resolution Adopting 2003-2007 Capital Improvement Plan: Because we were having such a great time with the budget we inadvertently forgot to adopt the CIP. Therefore, this action is being requested to remedy that oversight. The action will be to adopt the CIP with the changes as made by the Budget Committee.

(2) Johnson Creek Boulevard III IGA: Phase III of the Johnson Creek Boulevard Improvements Project will reconstruct the roadway on JCB from 36th to 45th Avenue, including bike lanes, curbs, and sidewalks. Final design of the roadway section and acquisition of additional right-of-way are necessary prior to construction to complete Phase III. Due to changes in federal funding for the project, an increase in the number of land parcels impacted, and the passage of time since the original ROW estimate was made, two amendments to existing agreements, and a resolution are needed to allow all phases of the project to proceed without delay.

ADDITIONAL ITEMS OF INTEREST

(1) All City facilities are closed November 28 and 29 for the Thanksgiving holiday. There is no truth to the rumor that credit card limits are temporarily suspended on the 29th.

(2) The Planning Commission adoption hearing for protection of water resources is scheduled for November 26, 2002. The hearing on the proposed Lake Road Centex Subdivision has been rescheduled to January.

(3) An offer has been extended and accepted, and our new Building Official, Tom Larson, will be starting in December. We will officially be bringing the position back "in house."

(4) We continue to work on the transfer of the Dispatch function to Lake Oswego and hope to be able to present an IGA to this Council for action at its last meeting in December. The first draft has been sent back with revisions.

(5) The management information system project continues forward. The business license and accounts receivable modules were implemented last week, and staff plans to send out 2003 renewal forms by December 1 on the new system. Payroll will be implemented during the weeks of December 30 and January 6. There will only be two modules to complete in 2003—human resources and permitting. The integrated system will then be complete.

(6) I have attached the preliminary results of the recent poll that was commissioned by the "Burton Task Force" on transportation issues. This was a task force created by Metro Exec Mike Burton that was charged to look at transportation funding. I expect that we will see more about this as more is released. Milwaukie light rail did as well as any issue. (In case you are wondering, the project in question 6 that received the most delete votes was the Lake Oswego streetcar.) It is probably too early to say much about this, but I thought that you might find it interesting in any event.

(7) We have confirmed the Budget Committee for December 16, but the time will be 6:30 P.M.

(8)FYI, in my never-ending quest to seek out new and exciting places and more exotic destinations, I will absent myself from work from December 19 through December 26. We will be in northwest Iowa. No, that is not a misspelling—that's Iowa, as in Field of Dreams Iowa. It is a great time to be there. (Hey, I just spent this last weekend in Poulsbo, WA and discovered that you can actually buy a Lutefisk TV Dinner!)

E	A streetcar line connecting downtown Portland, OMSI, the Rose Garden arena and Lloyd Center	9%	36%	40%	14%	1%	2.6
F	High quality bus service with special lanes, stations, and shelters, along Barbur Boulevard and 99W from Portland to Tigard	5%	25%	49%	16%	4%	2.8
G	Extension of the Interstate MAX light rail being built in North Portland to downtown Vancouver	10%	21%	45%	22%	2%	2.8
H	A streetcar line in Gresham connecting Troutdale, Mt. Hood Community College, and downtown Gresham	9%	33%	40%	11%	6%	2.6

Q5 Considering this package of transit-related projects as a whole, do you strongly oppose, oppose, support, or strongly support it?

Strongly oppose	8%
Oppose	17%
Support	53%
Strongly support	21%
DK/NR	1%
Mean	2.9

Q6 What additions or deletions, if any, would you make to this package of transit-related projects?

- Delete: light rail to Milwaukie
- Delete: pedestrian and auto connection from a station on the proposed Wilsonville to Beaverton commuter rail line across Highway 217 to Washington Square
- ✓ Delete: streetcar from Portland to Lake Oswego
- Delete: light rail from Clackamas Town Center to existing MAX line
- Delete: streetcar from downtown to Eastside/Lloyd Center area
- Delete: special bus service along Barbur and 99W from Portland to Tigard
- Delete: extension of North Portland MAX to downtown Vancouver
- Delete: streetcar line in Gresham
- Additions: (SPECIFY)
- DK/NR
- No changes

Q7 What is the best way to fund this package of transit-related projects, or a package very similar to it: a bond measure paid for with property taxes, a general sales tax with groceries and prescription drugs exempt, or a tax on all businesses based on the number of parking spaces they own?

Bond measure/property tax	24%
General sales tax	25%
Tax on parking spaces	39%
Don't know	11%

Q8 Now, I would like to read to you some specific options for funding the package of transit projects you rated, or a package very similar to it. Tell me if you strongly oppose, oppose, support or strongly support each option.

ROTATE		1. Strongly Oppose		2. Oppose		3. Support		4. Strongly Support		DK	Mean
		1	2	3	4	1	2	3	4		
A	A bond measure paid for with property taxes at a cost of 35 cents per thousand, or about sixty dollars a year for an average house	24%	35%	34%	5%	1%					2.2
B	A general sales tax of 1/2%, with groceries and prescription drugs exempt	34%	29%	27%	9%	1%					2.1
C	A tax of \$3 per month per parking space for all businesses owning parking Spaces	15%	37%	38%	9%	1%					2.4

Q9 Considering the additional information about the funding options, which is the best?

Bond measure	31%
Sales tax	26%
Tax on parking spaces	35%
DK/NR	8%

III. FREEWAY/HIGHWAY PROJECTS RATING AND FUNDING

Q10 I'd like to ask you about the freeway/highway projects included in the Citizens Task Force package. Regardless of the cost of the project and how area residents would pay for it, tell me if you strongly oppose, oppose, support, or strongly support each project. I'm now going to read to you.

ROTATE		1. Strongly Oppose	2. Oppose	3. Support	4. Strongly Support	DK	Mean
		1	2	3	4		
A	Widening I-5 near Delta Park in North Portland where it narrows from three lanes down to two	3%	15%	53%	24%	4%	3.0
B	Widening Highway 217 and improving its interchanges	5%	26%	43%	20%	6%	2.8
C	Widening Highway 26 (Sunset Highway) in Washington County to 185 th Avenue, from two lanes each way to three lanes each way	4%	14%	45%	35%	3%	3.1
D	Adding a lane to I-205 in each direction from Oregon City south to where it merges with I-5 near Tualatin	5%	31%	41%	18%	6%	2.7
E	Improving the I-205 interchanges at the airport and at Columbia Boulevard	4%	37%	43%	8%	7%	2.6
F	Building a new roadway from I-205 east toward Mt Hood bypassing Sunnyside Road and Highway 224	6%	32%	40%	11%	9%	2.7
G	Building a connector road between I-5 and Highway 99W near Tualatin	5%	26%	46%	12%	10%	2.7

Q11. Considering this package of freeway/highway projects as a whole, do you strongly oppose, oppose, support or strongly support it?

Strongly oppose	-----4%
Oppose	-----15%
Support	-----60%
Strongly support	-----20%
Don't know	-----1%
Mean	-----3.0

Q12. What additions or deletions, if any, would you make to this package of freeway/highway-related projects?

- ✓ 11 Delete: Widening I-5 near Delta Park
- ✓ 12 Delete: Widening I-217 and improving interchanges
- 13 Delete: Widening Hwy 26 in Washington County
- 14 Delete: Adding a lane to I-205 in each direction from Oregon City south to where it merges with I-5 near Tualatin
- 15 Delete: Improving I-205 at airport and Columbia Blvd
- ✓ 16 Delete: New Roadway from I205 East to Mt Hood
- 17 Delete: Connector road between I-5 and 99W near Tualatin
- 99 Additions: (SPECIFY)
- 97 DK/NR
- 96 No changes

Q13. What is the best way to fund this package of freeway/highway projects, or a package very similar to it: an increase in the vehicle registration fee, a increase in the gas tax, or a fee on the purchase price of new and used cars?

Vehicle registration fee-----33%
 Gas tax-----37%
 Fee on purchase price of cars-----24%
 Don't know-----6%

Q 14. Now, I would like to read to you some specific options for funding the package of freeway/highway projects you rated, or a package very similar to it. Tell me if you strongly oppose, oppose, support or strongly support each option.

ROTATE	Strongly Oppose	2. Oppose	Support	Strongly Support			
					1	2	3
A	An increase in the vehicle registration fee by \$15 per year	9%	29%	50%	11%	0%	2.6
B	An increase in the gas tax of 3 cents per gallon	16%	32%	39%	12%	0%	2.5
C	A 1% fee on the purchase price of new and used cars	12%	36%	45%	7%	1%	2.5

Q15. Considering the additional information about the funding options, which is the best?

Vehicle registration increase 35%
 Gas tax increase 37%
 Fee on purchase price of cars 25%
 DK/NR 4%

Q16. The third part of the Citizens Task Force package is community transportation projects. I'm now going to read to you descriptions of some general categories of projects. Tell me if you strongly oppose, oppose, support, or strongly support each one.

ROTATE	1. Strongly Oppose	2. Oppose	3. Support	4. Strongly Support			
					1	2	3
A	Creating neighborhood boulevards by improving the design of major neighborhood streets to make them easier to travel, safer, better places to walk and bicycle, and more attractive	4%	30%	50%	15%	2%	2.8
B	Widening major streets and intersections to allow them to carry more vehicles	6%	39%	45%	9%	2%	2.6
C	Adding sidewalks where they are now missing along streets and roads	3%	23%	54%	18%	1%	2.9
D	Building projects intended to reduce speeds on neighborhood streets such as traffic circles, speed bumps, and curb extensions at intersections	12%	34%	40%	12%	1%	2.5
E	Building new trails for hikers and bicycles where they don't exist	11%	33%	43%	13%	1%	2.6

Q17. Considering this package of community transportation projects as a whole, do you strongly oppose, oppose, support or strongly support it?

Strongly oppose-----3%
 Oppose-----21%
 Support-----62%
 Strongly support-----14%
 Don't know-----1%
 Mean-----2.9

Q18. What additions or deletions, if any, would you make to this package of community transportation projects?

- 11 Delete: Creating neighborhood boulevards
- 12 Delete: Widening major streets and intersections
- 13 Delete: Adding missing sidewalks
- 14 Delete: Project intended to reduce speeds on neighborhood streets
- 15 Delete: New trails for hikers and bicycles
- 99 Additions: (SPECIFY)
- 97 DK/NR
- 96 No changes

Q19. What is the best way to fund this package of community transportation projects, or a package very similar to it: an increase in the vehicle registration fee, a increase in the gas tax, or a fee on the purchase price of new and used cars?

Vehicle registration fee-----30%
 Gas tax-----33%
 Fee on purchase price of cars-----30%
 Don't know-----8%

Q20. Now, I would like to read to you some specific options for funding the package of community transportation projects you rated, or a package very similar to it. Tell me if you strongly oppose, oppose, support or strongly support each option.

- 1. Strongly Oppose
- 2. Oppose
- 3. Support
- 4. Strongly Support

ROTATE

		1	2	3	4	DK	Mean
A.	An increase in the vehicle registration fee by \$15 per year	10%	33%	48%	9%	0%	2.6
B.	An increase in the gas tax of 3 cents per gallon	17%	36%	37%	9%	1%	2.4
C.	A 1% fee on the purchase price of new and used cars	14%	35%	45%	6%	0%	2.4

Q21. Considering the additional information about the funding options, which is the best?

Vehicle registration increase 34%
 Gas tax increase 33%
 Fee on purchase of cars 27%
 DK/NR 6%

Q22. You've now considered some specific transit, freeway/highway, and community transportation projects identified by the Citizens Task Force to improve transportation in the Portland metropolitan area. Now, considering this package of projects as a whole: do you strongly oppose, oppose, support or strongly support it?

Strongly oppose-----4%
 Oppose-----15%
 Support-----64%
 Strongly support-----14%
 Don't know-----3%
 Mean-----2.9

Q23. (IF OPPOSE TO Q22) Why are you opposed? (PROBE AND CLARIFY UP TO 5 RESPONSES)

Q24. (IF SUPPORT TO Q22) Why do you support it? (PROBE AND CLARIFY UP TO 5 RESPONSES)

Q25. Now, thinking about the Citizens Task Force package as a whole, would including the addition of bicycle lanes on major streets make you feel more positive about the full package of transit, freeway/highway and community transportation improvements, less positive, or about the same?

More positive	26%
Less positive	33%
About the same	41%
DK/NR	0%

Q26. And what about expanding the system of trails for hikers and bicycles in the region-- would it make you feel more positive about the package, less positive, or about the same?

More positive	28%
Less positive	31%
About the same	40%
DK/NR	1%

Q27. What is the best way to fund an entire package of transit, freeway/highway, and community transportation projects similar to the one developed by the Citizens Task force: a general sales tax with groceries and prescription drugs exempt, a bond measure paid for with property taxes, or a combination of an increase in the vehicle registration fee and a bond measure?

General sales tax-----	23%
Bond measure/property tax-----	11%
Combination vehicle registration fee and bond-----	56%
Don't know-----	10%

Q28. I would like to read you some specific options for funding an entire package of transit, freeway/highway, and community transportation projects similar to the one developed by the Citizens Task force. Tell me if you strongly oppose, oppose, support or strongly support each option.

		1. Strongly Oppose	2. Oppose	3. Support	4. Strongly Support	DK	Mean
ROTAIE							
A	A general sales tax of 1%, with groceries and prescription drugs exempt	35%	30%	25%	10%	0%	2.1
B	A bond measure paid for with property taxes at a cost of 80 cents per thousand, or about 138 dollars a year for an average house	26%	45%	25%	3%	0%	2.0
C	A combination increase in the vehicle registration fee by \$30 per year and a bond measure paid for with property taxes at a cost of 35 cents per thousand, or about \$60 a year for an average house	19%	36%	36%	8%	1%	2.3

Q29. Considering the additional information about the funding options, which is the best?

General sales tax-----	28%
Bond measure/property tax-----	12%
Combination vehicle registration fee and bond-----	47%
Don't know-----	13%

Q30 And just for classification purposes, what is your age?

18-34	9%
35-54	45%
55 and over	46%
NR	0%

Q31 Are there any children under the age of 18 residing in your household?

Yes	28%
No	71%
NR	1%

Q32 In the last month, how many trips have you taken on a Tri-Met bus or MAX? Please count each direction as one trip.

13 or more (Frequent user)	9%
2-12 (Infrequent user)	24%
Less than 2 (Non-user)	66%
NR	2%

CITY OF MILWAUKIE
CITY COUNCIL MEETING
NOVEMBER 19, 2002

III. A. 1

CALL TO ORDER

The 1898th meeting of the Milwaukie City Council was called to order by Mayor James Bernard at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Mary King
Larry Lancaster

Jeff Marshall

Staff present:

Mike Swanson,
City Manager
Gary Firestone,
City Attorney
Michelle Gregory,
Neighborhood Services
Manager
Esther Gartner,
IST Manager
Grady Wheeler,
Information Specialist
John Gessner,
Planning Director
Lindsey Nesbitt,
Assistant Planner

JoAnn Herrigel,
Program Administrator
Brion Barnett,
Civil Engineer
Alice Rouyer,
Director of Community
Development and Public Works
Jason Wachs,
Program Specialist
Linda Noren,
Information Systems Analyst
Jeff King,
Project Manager

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Public Safety Appreciation Week

Mayor Bernard read a proclamation recognizing November 25 – 30, 2002 as *Public Safety Appreciation Week*. Representatives of the Milwaukie Police Department and Clackamas County Fire District #1 were present.

Centennial Event Update

Gregory and Centennial Committee Chair **Wilda Parks** updated the City Council and public on the upcoming events for the 2003 celebration. Parks noted the enthusiasm and dedication of the Committee members and positive involvement by local businesses and organizations.

III. A. 2

Pilot Centennial Quiz Winners

Each winner of the Centennial Quiz in the September and October editions of *The Pilot* were awarded a young dogwood tree to commemorate the event. Allan DeLay was recognized as the first resident to respond to the quiz, and he, in turn, gave the City Council a 1951 photograph of what was considered to be the largest dogwood tree in the world at the time. The tree did not recover from damage sustained in the 1962 Columbus Day Storm, and it eventually died. It was located on Harrison Street near 32nd Avenue. Other quiz winners were John Siefer, Phil Korten, Jim Redmond, Betty Farr, Gene Pisaneschi, Bill Kerry, Norma Paelser, John Sciarra, Mike Hardy, David Lambert, Fred Behrman, Jim Mishler, Margaret Parsons, Sharon Phillips, Shirley Faust, Melanie Phillips, Betty Stewart, Linda Palmer, Wanda Reily, Daryl Miller, Carolyn Matson, Peter Drake, Mary Jarman, and George Cordy.

Redesigned City Website

Wheeler and **Gartner** demonstrated the redesigned city website and discussed future enhancements including electronic Council packets.

Councilor Lancaster suggested using an easier to read font and recommended implementing an on-line payment system.

CONSENT AGENDA

It was moved by **Councilor King** and seconded by **Councilor Lancaster** to adopt the consent agenda that included:

- A. **City Council Minutes of November 4 & 5, 2002;**
- B. **Metro Local Share Intergovernmental Agreement Extension;**
- C. **Metropolitan Implementation Program (MTIP) Grant Application;**
- D. **Resolution 26-2002: A Resolution of the City Council of the City of Milwaukie, Oregon, Establishing a North Main Developer Selection Committee, Setting Criteria for Selection of Members and Setting a Timeframe for Reporting**
- E. **Community Development Block Grant Application**

The motion to adopt the consent agenda passed unanimously among the members present.

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

Code Amendment for Cell Towers and Other Wireless Communication Facilities (Application ZA-02-04) and Fee for Third Party Review

Mayor Bernard called the public hearing on the legislative zoning ordinance amendment to order at 6:50 p.m.

Mayor Bernard announced this would be a legislative decision by the Council based on the following standards: statewide planning goals; applicable federal or state laws or rules; any applicable plans and rules adopted by Metro; and applicable provisions of implementing ordinances. He reviewed the order of business.

Mayor Bernard explained the City Council decision would be the final decision of the City. All testimony and evidence must be directed toward the applicable substantive criteria. Failure to address a criterion or raise any issue with sufficient detail would preclude an appeal based on that criterion or issue. Any party with standing may appeal the decision to the State Land Use Board of Appeals according to the rules adopted by that Board. Persons with standing are those who submitted written comments or testified and signed the City Council Attendance sheet.

Conflicts of Interest: No member of Council declared a potential or actual conflict of interest as defined in ORS 244.

No member of the audience challenged any Council member's ability to participate in the decision.

Initial Staff Presentation: **Nesbitt** presented the staff report in which the City Council was requested to adopt an ordinance amending the zoning ordinance improving Milwaukie regulations for wireless communication facilities.

Pursuant to FCC regulations, the City may adopt standards regulating cell towers, but it may not prohibit construction of new towers or discriminate in such a way that certain carriers cannot provide service to the area because of technological costs. Nesbitt reviewed the key issues related to the proposed action: prohibit construction of new towers in residential, commercial, and downtown zones; limit construction of new towers to the business industrial and manufacturing zones; establish a minimum separation requirement of 1500 feet for new towers; permit the placement of antennas on utility poles in all zones; and establish setback and landscape buffering requirements.

Nesbitt also proposed a resolution that would establish a fee for a third party review of wireless communication land use applications, a monthly fee for placing antennas on utility poles located within the right-of-way, and an administrative review fee for land use applications.

Correspondence: None.

Testimony in Support: None.

Neutral Testimony: None.

Testimony in Opposition: None.

III. A. 4

Council Clarifications: **Councilor Lancaster** referred to staff report page 3, item 5.F, a proposed regulation to surround equipment cabinets and the tower base with a 6-foot security fence and landscape screening. He was concerned this somewhat vague language would be subject to interpretation.

Nesbitt explained the surrounding fence could be cyclone or wood, and standards would depend on the zoning of the site. There are no provisions for the type of wood used for fencing. The vegetative screening standards could be a condition of approval.

Councilor Lancaster asked how the collected fees would be used.

Nesbitt responded fees would be general fund revenue.

Councilor Marshall asked how staff arrived at a \$250 per month fee for each wireless antenna attached to a utility pole located in the right-of-way. He considered the fee low and suggested the rental be based on a percentage of revenue collected.

Nesbitt responded the fee is comparable to that charged by the City of Portland and Portland General Electric (PGE). Based on the Telecommunications Act of 1996, the City is prohibited from creating a regulation that would be too costly for some carriers.

Councilor Marshall was concerned about the poles being engineered to determine if they are able to withstand the stress of adding an antenna, and, thereby, potentially reducing their useful lives.

Nesbitt said applicants must have permission from PGE to attach an antenna before making application to the City. Essentially, the wireless communication provider is renting the right-of-way from the City rather than the pole itself.

Gessner encouraged the City Council to adopt the fee at this time and amend it later if need be. He will provide a supplemental fee report in December.

Close Public Hearing: **Mayor Bernard** closed the public testimony portion of the hearing at 7:10 p.m.

It was moved by **Councilor King** and seconded by **Mayor Bernard** to read the ordinance amending Title 19, the Milwaukie zoning ordinance, adopting new regulations governing siting and design of wireless communication facilities for the first time by title only. Motion passed unanimously among the members present. The ordinance was read for the first time by title only.

It was moved by **Councilor Lancaster** and seconded by **Councilor Marshall** to read the ordinance amending Title 19, the Milwaukie zoning ordinance, adopting new regulations governing siting and design of wireless communication facilities for the second time by title only. Motion passed unanimously among the members present. The ordinance was read for the second time by title only.

It was moved by Councilor Lancaster and seconded by Councilor King to adopt the ordinance amending Title 19, the Milwaukie zoning ordinance, adopting new regulations governing siting and design of wireless communication facilities. Motion passed unanimously among the members present.

ORDINANCE NO. 1910:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 19, THE MILWAUKIE ZONING ORDINANCE, ADOPTING NEW REGULATIONS GOVERNING SITING AND DESIGN OF WIRELESS COMMUNICATION FACILITIES.

LUBA Appeal Information: Mayor Bernard announced any party with standing might appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. The written decision will contain an explanation of the appeal rights.

It was moved by Councilor Marshall and seconded by Mayor Bernard to adopt the resolution establishing a fee for third party review for wireless communication land use applications, a monthly fee for placing antennas on utility poles in the right-of-way, and a fee for administrative review of wireless communication facility land use applications. Motion passed unanimously among the members present.

RESOLUTION NO. 27-2020:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE FEES AND CHARGES ESTABLISHING A FEE FOR THIRD PARTY REVIEW FOR WIRELESS COMMUNICATION LAND USE APPLICATIONS, A MONTHLY FEE FOR THE PLACEMENT OF WIRELESS COMMUNICATION ANTENNAS ON UTILITY POLES LOCATED IN THE RIGHT-OF-WAY, AND A FEE FOR ADMINISTRATIVE REVIEW OF WIRELESS COMMUNICATION FACILITY LAND USE APPLICATIONS AND CLASSIFYING THE FEES IMPOSED BY THIS RESOLUTION AS NOT SUBJECT TO ARTICLE XI, SECTION 11B OF THE OREGON CONSTITUTION.

OTHER BUSINESS

Franchise with Northwest Natural Gas Company

Herrigel presented the staff report in which the City Council was requested to approve a nonexclusive franchise to Northwest Natural Gas (NW Natural) to operate a natural gas utility system serving Milwaukie residents. The existing franchise will expire January 31, 2003. The terms of the proposed agreement are substantially unchanged

III. A. 6

with the exception of the franchise fee. The utility agrees to increase the franchise fee to the City from 3% to 5%, so, if approved by Council, the City will realize an additional \$100,000 revenue in the general fund annually.

Herrigel referred to a letter from The Grove Homeowners' Association, which cited 3 issues. First, the Association has concerns about streets being returned to acceptable standards after utilities make street cuts. Herrigel believes this is an internal issue that should be addressed outside the action before City Council at this meeting. Second, the Association believes NW Natural should provide customers with a list of local contractors when conversions are being made. Herrigel recommended this be handled outside the franchise. Third, the Association suggests stubbing off lines at the curb to minimize right-of-way disruptions.

Sandra Hart, NW Natural representative, addressed the proposal to stub out the lines. Because stubs would be in sidewalks or residents' front yards, NW Natural is concerned about safety. The likelihood of third-party damages also increases. Hart believes the Public Utilities Commission (PUC) and the insurance carrier would support this position.

Councilor Lancaster said, from his perspective, the bigger issue is utility cuts, which can dramatically reduce a street's useful life.

Hart responded that NW Natural is conscientious in its street repairs. The company tries to carry out conversions in an area rather than on an individual customer basis. Unless the ground is too rocky, NW Natural crews use directional bores to reduce right-of-way disruptions.

Herrigel added there is language in the agreement that, if NW Natural's street restorations are not completed to City standards within a given period of time, the City may carry out that restoration and charge the expense back to the franchisee.

Councilor Lancaster asked if it was to the City's best advantage to enter into a 10-year franchise agreement.

Herrigel said the term and fee is comparable to what other cities in the state are doing. Milwaukie has had a good relationship with NW Natural, and there are no technological changes, such as one might see with a cable provider, which would make a shorter-term agreement more desirable.

Councilor Lancaster was concerned about all of the franchise fee programs' having more of an economic basis and recommended looking at the impacts of the City's franchise agreements.

Hart referred to the Grove Homeowners' Association's concerns about the contractor list. Contractors must go through a screening process to be included in the company's participation program. When NW Natural goes into a conversion area, it takes a

contractor along to discuss the process; however, the participation program is not limited to that one contractor.

Councilor Lancaster noted the common complaint about cuts being made to streets just recently improved. He asked if there is an outreach program to improve project coordination.

Hart replied NW Natural tries to work with cities and developers.

Mayor Bernard discussed the feasibility of placing a moratorium on street cuts.

Swanson commented that public works departments and utility companies working together is a fairly recent development. Regarding the franchise term, he noted franchise fees have recently come under attack and have been subject to challenges by companies such as Qwest. PGE and NW Natural have not taken that course and have continued to be supportive of local governments. If the City does annex additional land in the future, franchise revenues will increase proportionately. Swanson thanked Herrigel for taking on the responsibility of negotiating the franchise agreements and doing it very well.

It was moved by Councilor King and seconded by Councilor Marshall to read the ordinance granting a nonexclusive franchise to Northwest Natural Gas for the first time by title only. Motion passed unanimously among the members present. The ordinance was read for the first time by title only.

It was moved by Councilor Lancaster and seconded by Councilor Marshall to read the ordinance granting a nonexclusive franchise to Northwest Natural Gas for the second time by title only. Motion passed unanimously among the members present. The ordinance was read for the second time by title only.

It was moved by Councilor Lancaster and seconded by Councilor King to adopt the ordinance granting a nonexclusive franchise to Northwest Natural Gas. Motion passed unanimously among the members present.

ORDINANC NO. 1911:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, GRANTING A NONEXCLUSIVE FRANCHISE TO NORTHWEST NATURAL GAS TO OPERATE A NATURAL GAS UTILITY SYSTEM PROVIDING NATURAL GAS SERVICES TO RESIDENTS WITHIN THE CITY AND TO INSTALL, MAINTAIN AND OPERATE FACILITIES FOR THE TRANSMISSION OF NATURAL GAS WITHIN RIGHTS OF WAY AS WELL AS RELATED COMMUNICATIONS SYSTEM FOR THE DISTRIBUTION OF NATURAL GAS.

III. A. 8

Other Items

Rouyer announced that the City received a \$200,000 grant from the State to construct sidewalks on 42nd Avenue between Olsen Street and Johnson Creek Boulevard.

Board and Commission Appointments

Mayor Bernard, with the consent of Council, appointed Ray Harris to the Park and Recreation Board and Rick Bantz (Lake Road Neighborhood) and Karen Martin (Hector Campbell Neighborhood) to the Public Safety Advisory Committee.

Levy Failure

Swanson said the current 2002 – 2003 budget is balanced, but during the budget process last spring, a \$1.2 million shortfall was predicted for fiscal year 2003 – 2004. With the defeat of the local option tax measure in November, the City finds itself in the situation of having to respond as early as possible and making some decisions in order to approach the budget process in a good position. He suggested engaging in a process and making some decisions that might lead to adjustments in the current year's budget. He and Finance Director Smith recently projected about a \$973,000 shortfall in 2003 – 2004. PERS recently notified entities of a 5% increase, which translates into about \$80,000 for Milwaukie. Given this scenario, the target is about \$1.1 million reduction to balance the FY 2003 - 2004 budget.

Swanson discussed the need to balance speed with a quality decision-making process. The process must be speedy and fair and carry with it a high level of integrity. He recommended that the Budget Committee begin hearings in January 2003 and the changes, including staff notices, be implemented at the end of January. The intent is to balance the budget and provide services – not to hurt the taxpayers. He advocated for maintaining a healthy contingency to fulfill the City's fiduciary responsibilities.

Councilor Lancaster suggested starting the Budget Committee meetings in December.

Councilor King wished to have some input into the process before going off Council.

Councilor Marshall agreed he would like to provide input as well. There is a history, and to a certain degree it could be said he and King are a part of it. He encouraged scheduling a Budget Committee meeting in December with Councilors elect attending. He advocated making final decisions by the end of January and implementing plans by February 1st.

Councilor Lancaster encouraged public outreach to gather input on what services residents wish to receive.

It was the consensus of Council to direct the Budget Committee to call a meeting on December 16 in lieu of the regularly scheduled Council work session.

Executive Session

Mayor Bernard announced the City Council would meet in executive session immediately following adjournment to discuss real property transactions pursuant to ORS 192.660(h).

ADJOURNMENT

It was moved by **Councilor King** and seconded by **Councilor Marshall** to adjourn the meeting. Motion passed unanimously among the members present.

Mayor Bernard adjourned the meeting at 7:55 p.m.

Pat DuVal, Recorder



To: Mayor and City Council

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

From: Paul Shirey, Interim Engineering Director

Subject: Adoption of the 2003-07 Capital Improvement Plan

Date: December 2, 2002

Action Requested

Approve the attached resolution to formally adopt the current 2003-07 Capital Improvement Plan (CIP) for the City of Milwaukie as approved by the Budget Committee.

Background

As a housekeeping matter staff is requesting that the Council formally adopt the 2003-2007 CIP. The 2003-07 version of the Capital Improvement Plan was developed during last year's budget cycle (January- June 2002). Although the CIP was reviewed and approved by the Budget Committee and reviewed by the Council at that time, it was inadvertently not included in the Resolution adopting the Budget for FY 2003. The 2003-07 CIP is being implemented and no projects have been delayed as a result of this oversight.

III. B. 2

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING THE 2003-07 CAPITAL IMPROVEMENT PLAN.

WHEREAS, the City of Milwaukie did not formally adopt the Capital Improvement Plan (CIP) for 2003-07 (attached hereto) when the Budget was adopted in June 2002; and

WHEREAS, although no projects have been delayed as a result of this oversight and a new CIP for next fiscal year will be proposed during the budget process in 2003; and

WHEREAS, several capital projects that are included in the City of Milwaukie adopted Budget for 2002-2003 are currently in design or under construction, but were inadvertently excluded from the 2003-07 CIP; and

WHEREAS, as part of last year's budget process the Budget Committee and Council reviewed and approved the 2003-07 CIP during in April and May 2002;

NOW, THEREFORE, BE IT RESOLVED that the City Council adopts the document entitled 2003-07 Capital Improvement Plan for the City of Milwaukie as the City's official Capital Improvement Plan.

Introduced and adopted by the City Council on December 3, 2002.

This resolution is effective on December 3, 2002.

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew, Corrigan & Bachrach, LLP

Pat DuVal, City Recorder

City Attorney

Document3 (Last revised November 14, 2002)



To: Mayor and City Council

Through: Mike Swanson, City Manager
Alice Rouyer, Community Development/Public Works Director *AR*

From: Paul Shirey, Interim Engineering Director
Brion Barnett, Civil Engineer

Subject: Johnson Creek Boulevard Improvements Project Phase III, two amendments to existing Intergovernmental Agreements (IGAs), and a resolution to allow all phases of the project to proceed

Date: November 18, 2002 for the December 3 meeting

Action Requested

Authorize the Mayor to sign documents associated with the Johnson Creek Boulevard Improvements Project Phase III (JCB III), from SE 32nd Avenue to SE 45th Avenue, as follows:

- An amendment to the existing Intergovernmental Agreement (IGA) with the City of Portland updating provisions for cost-sharing and completion of the project (see Attachment A).
- An amendment to the existing IGA with the Oregon Department of Transportation (ODOT) and the City of Portland to provide \$75,000 dollars in additional funding for right-of-way (ROW) acquisitions (see Attachment B).
- A resolution authorizing the City of Milwaukie and its ROW agent (ODOT) to use condemnation, if necessary, to acquire property for the project (see Attachment C).

Background

Two major construction projects have been completed on Johnson Creek Boulevard (JCB) in the last several years. In November 1996, the City of Portland completed street and storm improvements to the portion between 32nd and 36th Avenues (Phase 1). In January and February of 2000, a new storm system was installed between 36th and 45th Avenues (Phase II).

III. C. 2

Phase III of the project will reconstruct the roadway on JCB from 36th to 45th Avenue, including bike lanes, curbs, and sidewalks. Final design of the roadway section and acquisition of additional right-of-way (ROW) are necessary to complete Phase III of the project.

The City's original IGA with Portland (see Attachment A, Portland IGA No. 51139) outlines the roles and responsibilities of each jurisdiction, including management of the project, project funding, and required local match. In the past two years and the current fiscal year (2002-2003) additional federal funding has become available. Therefore, the original IGA needs to be amended to update provisions needed for cost sharing so that Phase III of the project can be completed.

Similarly, the City currently has an IGA with the Oregon Department of Transportation (ODOT) and City of Portland for ROW acquisition (see Attachment B, ODOT IGA No. 19723). Under this IGA, ODOT can expend up to \$390,000 dollars towards ROW acquisition for the project. However, due to an increase in the number of land parcels impacted and the passage of time since the original estimate was calculated, ODOT now estimates that ROW acquisition will cost \$465,000. Therefore, the original IGA must be amended to allow for the additional \$75,000 in ROW costs. The City's share of this will be \$36,300. Funding is available for this expenditure in the 2002/2003 budget.

Finally, as a normal part of the ROW acquisition process, ODOT will act as the City's agent and attempt to agree with respective property owners as to the compensation to be paid for the acquisition of each property. In the event that no satisfactory agreement can be reached, ODOT will use condemnation (legal proceedings) to reach an agreement so that the project can move forward. The City Attorney has drafted a resolution (see Attachment C) outlining the process used for ROW acquisitions, including condemnation if necessary.

Concurrence

Staff in Community Development, Engineering, the City Attorney's Office, and the City Manager's office have reviewed the proposed Intergovernmental Agreements and resolution and support signing all to proceed with Phase III of the Johnson Creek Boulevard Improvements Project.

Fiscal Impact

Previously, under Portland IGA No. 51139 (see Attachment A), \$800,000 in federal funding was available for the project. An additional \$1,912,000 in federal funding was secured for the project for a total amount of \$2,712,000. Federal funds provide up to approximately ninety-percent (89.73%) of the project, while the City is required to provide a local match of approximately ten-percent (10.27%). The City's local match requirement for this increased federal funding has already been accounted for

during the last three years since the IGA was originally signed (February 1999). Because all of the federal dollars have been allocated for the project, the additional \$75,000 needed for the right-of-way (ROW) is entirely the responsibility of the Cities. Milwaukie and Portland each pay a proportionate share of the \$75,000 based on the number of ROW parcels in each jurisdiction. Based on this information, Milwaukie must pay for approximately forty-eight percent (48.4%) of \$75,000, or \$36,300. The additional \$36,300 needed for the ROW acquisition is available in the approved 2002/2003 City Street Fund.

Work Load Impacts

The City of Portland continues to manage overall project functions. A staff team from the Engineering and Community Development Departments will assist and/or coordinate with the City of Portland and local Milwaukie residents and representatives as necessary. The project is part of the work program for both departments.

Alternatives

The Council has the following alternatives:

- Suggest amendments to the attached documents.
- Do not authorize the Mayor to sign the attached amended Intergovernmental Agreements and resolution to allow for condemnation.

Attachments

Attachment A – Amendment #1 to Portland IGA #51139

Attachment B – Amendment #1 to ODOT IGA#19723

Attachment C – Resolution for ROW acquisition

ATTACHMENT A

**AMENDMENT NO. 1 TO
INTERGOVERNMENTAL AGREEMENT
(Portland No. 51139)**

THIS AMENDMENT to Intergovernmental Agreement entered into by and between the CITY OF PORTLAND, Oregon a municipal corporation (Portland) and the CITY OF MILWAUKIE, a municipal corporation (Milwaukie).

RECITALS

1. Since 1993, Portland and Milwaukie have been working closely with affected residents on the intercity SE Johnson Creek Blvd (JCB), 32nd Ave to 45th Ave Project being completed in three phases as funds have become available. About 60% of the Project is located in Portland with the remaining 40% in Milwaukie as shown on the Project Map (Exhibit A).

2. Portland Transportation Engineering and Development has been responsible for design, right of way acquisition, and construction on the Project. The Project is being funded with federal funds through ODOT with the proportional required local match share paid by each city. Phase I improvements located entirely in Portland from SE 32nd Ave to SE 36th Ave were completed in 1996.

3. Agreement No. 51139 covers Phase 2 and 3 funding, improvements, and responsibilities of the parties on JCB from SE 36th to Johnson Creek as also shown on Project Map. Phase 2 work East Section Storm Sewer System was completed in Fall 2000 but at higher than estimated costs. Remaining Phase 3 right of way and street construction work has been on hold waiting for additional funding.

4. In the past two years and the current fiscal year (2002-03) an additional \$1,912,000 in federal funding has become available for a total amount of \$2,712,000 with the required local match funds sufficient to proceed with completion of the project.

5. Portland and Milwaukie therefore wish to amend the Agreement (Portland No. 51139) to update provisions needed for cost sharing and to complete the Project.

AMENDMENT TO INTERGOVERNMENTAL AGREEMENT:

Recital Paragraph 3 on Page 1 is deleted and replaced as follows:

3. During the previous and current fiscal years (2002-03) subsequent amendments to ODOT Agreement No. 15,626 will now provide a total of \$2,712,000 in federal STP Funds (89.73%) with \$310,401 in matching local funds (10.27%) for a total of \$3,022,401 for payment of Phase 2 work and to substantially complete remaining Phase 3 work according to current cost estimates.

Recital Paragraph 6 on Page 2 is deleted and replaced as follows:

6. The current total available budgeted funds for completed Phase 2 work and remaining Phase 3 work to complete the Project including required local match is summarized as follows:

<u>Item</u>	<u>Total Budget & Available Funds</u>
1. Preliminary Engineering -Ph. 2 & 3	\$ 450,000
2. Storm Sewer System -Ph 2	608,000
3. Right of Way Acquisition -Ph. 3	390,000
4. Street Construction - Ph 3	\$ <u>1,574,401</u>
	\$ 3,022,401

Recital Paragraph 7a shall be added to the Agreement to read:

The approximate length of street construction on JCB -from EL of SE 36th Ave to WL of the Springwater Corridor is 2,935 feet. The Portland and Milwaukie city boundary lines are near 3900 JCB at Station 23+35, with approximately 37% (1,085ft) within Portland and 63% (1,850ft) within Milwaukie.

Recital Paragraph 8 on Page 2 is deleted and replaced as follows:

Currently there are 20 designated acquisition parcels in Portland requiring 51.6% of the total right of way estimate and 25 designated acquisition parcels in Milwaukie requiring the remaining 48.4 % of the total acquisition cost estimate.

Section A shall be deleted and replaced as follows:

A. Portland Transportation Engineering and Development Office shall be responsible for management and completion of work with the available Federal and local match funds in the following order of priority: (1) Remaining Preliminary Engineering for Phase 2 & 3 work including: plans & bid documents for Phase 3 Street Construction, (2) construction of the East Section Storm Sewer Line and the connecting Storm Water Treatment Facility, (3) Phase 3 Right of Way Acquisition, and (4) Phase 3 Street Construction in accordance with provisions in the ODOT Agreement No. 15626 and Amendments to that Agreement.

Section B shall be deleted from the Agreement

Section C shall be deleted from the Agreement

Section D shall be deleted and replaced as follows:

D. Portland shall be responsible to ODOT for required deposits and accounting of all matching Local Funds (currently \$310,401) as stipulated by ODOT Agreement No.15,626 and subsequent Amendments to that agreement.

III. C. 6

Section E shall be deleted and replaced as follows:

E. Portland will pay the required matching Local Funds for all Phase 2 and 3 Preliminary Engineering, and the proportional share of storm sewer, right of way work, and street construction within the city limits or deemed to be a direct benefit to Portland using current estimated costs and benefit percentages in Recital Paragraphs 7 and 8. The current total Phase 2 & 3 Local Fund Share payment for Portland is as follows:

<i>Remaining Preliminary Engineering (Ph. 2 & 3) - Est. Cost \$450,000</i>	
$\$450,000 \times (10.27\%) \times (100\%) =$	\$ 46,215
<i>Right of Way Acquisition - Est. Cost: \$390,000</i>	
$\$390,000 \times (10.27) \times (51.6\%) =$	20,667
<i>Construction of Storm Sewer Line and Storm Water Treatment Facility- Est. Cost: \$608,000</i>	
$\$608,000 \times (10.27\%) \times (10.2\%) =$	6,369
<i>Street Construction -SE 36th Ave to Springwater Corridor (Ph 3)</i>	
$\$1,574,401 \times (10.27\%) \times (37.0\%) =$	<u>59,826</u>
Total Local Fund Share -Ph 2 & 3 (Portland)	\$133,037

Section F shall be deleted and replaced as follows:

F. Upon execution of this Amendment, Milwaukie shall complete payment to Portland for the required share of matching Local Funds (10.27%) adjusted to current available funds for Phase 2 and 3 work. The total share amount is based on the proportional share of storm sewer, right of way work, and street construction within or of direct benefit to Milwaukie using estimated costs and benefit percentages in Recital Paragraphs 7 & 8. The current total Phase 2 & 3 Local Fund Share payment for Milwaukie is as follows:

<i>Remaining Preliminary Engineering (Ph. 2 & 3) - Est. Cost \$450,000</i>	
$\$450,000 \times (10.27\%) \times (0\%) =$	\$ -0-
<i>Right of Way Acquisition -Est. Cost: \$390,000</i>	
$\$390,000 \times (10.27\%) \times (48.4\%) =$	19,386
<i>Construction of Storm Sewer Line and Storm Water Treatment Facility- Est. Cost: \$608,000</i>	
$\$608,000 \times (10.27\%) \times (89.8\%) =$	56,073
<i>Street Construction-SE 36th Ave to Springwater Corridor (Ph 3)</i>	
$\$1,574,401 \times (10.27\%) \times (63.0\%) =$	<u>101,865</u>
Total Local Fund Share Amount - Ph 2 & 3 (Milwaukie)	\$177,324

Section G shall be deleted and replaced as follows:

G. After completion of the above work, Milwaukie shall complete paying its proportionate matching (10.27%) Local Fund balance that may be due or will be refunded by Portland based on the (1) actual construction cost of storm sewer line and treatment facility work using the above basis in Section F and (3) the actual cost of right of way acquisition within Milwaukie up to the established budgeted amount at time of completion, (4) actual cost of street construction performed within Milwaukie up to the established budgeted at amount at time of completion.

Section G-1 shall be added to read:

G-1 One acquisition parcel of land in the 4300 block of JCB bounded by City of Milwaukie on either side is currently in Clackamas County. Another acquisition parcel located in the same vicinity has been annexed and is now located within the City of Milwaukie. These right of way parcels will be included with the Milwaukie right of way acquisition budget.

Section G-2 shall be added to read:

G-2 Should there be a surplus in the Project funding allocation to either city for right of way or street construction work, by mutual agreement the parties may transfer part or all of the available surplus balance to the other city, with proper adjustment of the local share requirement, to help complete the project.

Section G-3 shall be added to read:

G-3. The current available funds and budget for Phase 3 Right of Way Acquisition is \$390,000 with the present proportional budgeted share to each city as covered in the above Paragraphs 8, E, and F. When this activity is completed final proportional costs will be adjusted for both cities up to the current total budgeted amount of \$390,000 plus any additional funds that may become available for this activity. Costs incurred by either city that exceed its proportionate budgeted share at that time for this activity shall be paid from that city's local funding resources.

Section G-4 Shall be added to read:

G-4. The current available funds and budget for Phase 3 Street Construction is \$1,574,401 with the present proportional budgeted share to each city as covered in the above Paragraphs 8, E, and F. When this activity is completed final proportional costs will be adjusted for both cities up to the current total budgeted amount of \$1,574,401 plus any additional funds that may become available for this activity. Costs incurred by either city, above its proportional budgeted share at that time for this activity shall be paid from that city's local funding resources.

Section I shall be deleted and replaced as follows:

Milwaukie shall obtain any construction permits required from Clackamas County for Phase 3 Street Construction within City of Milwaukie on SE Johnson Creek Blvd.

Section K-2 shall be added to read

K-2 As set forth in the current ODOT agreements with the parties and the 1995 Memorandum of Understanding (MOU), condemnation proceedings may be partially or wholly performed by ODOT staff or by the respective city legal representatives and paid from Project funds or from local funds as mutually agreed upon by the parties. Nothing in this section affects the responsibilities for condemnation set out in the 1995 MOU or the current ODOT agreements with the parties.

III. C. 8

Section L shall be deleted and replaced as follows:

L. Milwaukie shall assign a staff person (s) for necessary coordination and monitoring of the storm sewer construction (Ph 2), right of way work (Ph 3), and street construction (Ph3) within Milwaukie and act as liaison with Portland Project staff on all matters of mutual interest concerning this work including items covered in Sections G through K-2

All other recitals and provisions of the Intergovernmental Agreement remain unchanged and in effect.

CITY OF PORTLAND

By: _____
Commissioner of Public Works

Date: _____

By: _____
Auditor

Approved as to Form:

Deputy City Attorney

CITY OF MILWAUKIE

By: _____

Title: _____

Date: _____

Approved as to Form:

City Counsel

51139

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT, made and entered into by and between the CITY OF PORTLAND, Oregon a municipal corporation (Portland) and the CITY OF MILWAUKIE, a municipal corporation (Milwaukie).

RECITALS

1. Beginning in 1993, Portland and Milwaukie working cooperatively with the affected residents, developed and endorsed the SE Johnson Creek Blvd (JCB), 32nd Ave to 45th Ave Street Improvement Project to be completed in Phases as funds become available.

2. Portland Transportation Engineering and Development has been responsible for and completed basic street and storm sewer design for the entire Project and completed Phase I improvements, SE JCB, from 32nd Ave to 36th Ave, one block on SE 32nd Ave and the Springwater Trail Crossing at JCB in November 1996 with an initial \$1.0 million in Federal Funds (85% share) with Local Funds (15% share) by Portland under an initial Oregon Department of Transportation Agreement (ODOT No. 11,113) dated 2-23-93.

3. An ODOT Local Agency Agreement (ODOT No. 15, 626) dated 3-31-98 between Portland and Milwaukie was executed by the parties in March 1998 providing \$800,000 in Federal Surface Transportation Program (STP) Funds (89.73%) with \$91,563 in matching Local Funds (10.27%) for a current total of \$891,563 to be expended on the Project.

4. Under terms in the ODOT Agreement No. 15, 626, Portland is responsible for the required deposit of matching Local Funds and performing the following work subsequently split in Phase 2 and 3 by ODOT for accounting purposes with no change to terms of ODOT Agreement No. 15,626. See Project Map shown as Exhibit A.

Phase 2. East Section Storm Sewer System: Remaining preliminary engineering to complete environmental reviews, contract plans/bid documents, and construct the Storm Sewer Line from approximately 3800 SE JCB to Springwater Trail Crossing at 4400 SE JCB and the connecting Storm Water Treatment Facility located in Portland adjacent to Johnson Creek.

Phase 3. Right of Way Acquisition: Right of way maps & descriptions. Acquisition of mostly a 4 foot wide strip on JCB beginning at SE 36th Ave to Springwater Trail Crossing utilizing Portland and ODOT right of way staff.

Phase 3. Remaining Preliminary Engineering to complete right of way maps, Phase 3 Street Construction contract plans - from SE 36th Ave to Springwater Trail Crossing for bidding when additional funds become available for Phase 3 Street Construction completing the Project.

5. Under terms of this agreement Milwaukie will reimburse Portland for its share of Local Funds based on the portion of storm sewer construction work and right of way acquisition within or directly benefiting Milwaukie.

III. C. 10

6. A current cost estimate for the above work prepared by Portland with the available funds is listed and prioritized in the following order:

1. Remaining Preliminary Engineering (Ph. 2 & 3)	\$ 90,000
2. Storm Sewer Line & Treatment Facility const. (Ph. 2)	430,000.
3. Right of Way Acquisition (Ph. 3)	300,000
4. Contingencies	<u>71,563</u>
Total (available funds)	\$ 891,563

7. East Section Storm Sewer Line is approximately 2,060 LF: Approximately 10.2% (210 LF) is within Portland and 89.8% (1,850 LF) is within Milwaukie.

8. Approximate length (mostly 4 ft wide strip) of right of way acquisition is 2,735 LF: Approximately 39.7% is within Portland and 60.3% is within Milwaukie.

9. A Memorandum of Understanding (MOU) between Milwaukie and Portland signed and dated June 6, 1995 authorizes Portland to act on behalf of Milwaukie as local agent in performing needed right of way acquisition services within Milwaukie on the SE Johnson Creek Blvd Project. This MOU will be further referenced as needed by this Agreement.

10. Under terms of the above ODOT Agreement, Portland has deposited the required Local Funds with ODOT.

NOW, THEREFORE, the parties agree as follows:

A. Portland Transportation Engineering and Development Office shall be responsible for management and completion of work with available funds in the following order: (1) Remaining Preliminary Engineering for Phase 2 & 3 work including: plans & bid documents for Phase 3 Street Construction (to be bid later with additional funds), (2) construction of the East Section Storm Sewer Line and the connecting Storm Water Treatment Facility, and (3) Phase 3 Right of Way Acquisition (or until available funds are expended) in accordance with provisions in the ODOT Agreement No. 15,626 and outlined in Paragraph 4 above.

B. Contingency funds (Paragraph 6) shall be utilized for activities in the following order, if needed: (1) East Section Storm Sewer Line and Treatment Facility construction, (2) Right of Way Acquisition, and (3) Phase 2 and 3 Preliminary Engineering.

C. All work using the Federal Funds under this agreement shall be under way or obligated for construction not later March 31, 2000 as stipulated in the ODOT Agreement No. 15,626.

D. Portland shall be responsible to ODOT for required deposits and accounting of all matching Local Funds (approximately \$91,653) required by ODOT Agreement No. 15,626.

E. Portland will pay the matching Local Funds for all remaining Phase 2 and 3 Preliminary Engineering, and the proportional share of storm sewer and right of way work within or of direct benefit to Portland using current estimated costs and benefit percentages in Paragraphs 7 and 8, the initial matching Local Fund Share for Portland is:

<i>Remaining Preliminary Engineering (Ph. 2 & 3) - Est. Cost \$90,000</i>	
$\$90,000 \times (10.27\%) \times (100\%) =$	\$ 9,243
<i>Right of Way Acquisition - Est. Cost: \$300,000</i>	
$\$300,000 \times (10.27) \times (39.7\%) =$	12,232
<i>Construction of Storm Sewer Line and Storm Water Treatment Facility- Est. Cost: \$430,000</i>	
$\$430,000 \times (10.27\%) \times (10.2\%) =$	<u>4,504</u>
Total Initial Local Fund Share (Portland)	\$25,979

F. Upon execution of this Agreement, Milwaukie shall make the following initial payment to Portland for its share of matching Local Funds (10.27%) for the proportional share of storm sewer and right of way work within or of direct benefit to Milwaukie using estimated costs and benefit percentages in Paragraphs 7 and 8:

<i>Remaining Preliminary Engineering (Ph. 2 & 3) - Est. Cost \$90,000</i>	
$\$90,000 \times (10.27\%) \times (0\%) =$	\$ -0-
<i>Right of Way Acquisition -Est Cost: \$300,000</i>	
$\$300,000 \times (10.27\%) \times (60.3\%) =$	18,578
<i>Construction of Storm Sewer Line and Storm Water Treatment Facility- Est Cost: \$430,000</i>	
$\$430,000 \times (10.27\%) \times (89.8\%) =$	<u>39,657</u>
Total Initial Local Fund Share Amount. (Milwaukie)	\$ 58,235

G. After completion of the above work, Milwaukie shall pay any matching Local Fund balance due or be refunded by Portland based on the (1) actual construction cost of storm sewer line work done within Milwaukie and (2) actual cost of the treatment facility work using the above basis in Paragraph F and (3)10.27% of the actual cost of the acquired parcels for right of way within Milwaukie.

H. Portland will work closely with Milwaukie Public Works staff and shall provide Milwaukie and Clackamas County with latest versions of the Phase 2 Storm Sewer System and the Phase 3 Street Construction plans and specifications for review prior to bidding and for proper coordination of this work in Milwaukie and during construction as covered under this agreement.

I. Milwaukie shall obtain any construction permits required from Clackamas County for the new storm sewer line within Milwaukie on SE Johnson Cr Blvd.

J. When the Phase 2 Storm Sewer Line is substantially complete, the parties shall agree on a date when this new storm sewer line may be activated for service.

K. As covered in Paragraph 9 above, Portland shall act as local agent in performing right of way acquisition activities with ODOT Right of Way staff for Project in Milwaukie as outlined in the Memorandum of Understanding (MOU) between Milwaukie and Portland dated June 6, 1995 and following any subsequent new Local, State, or Federal right of way policies or guidelines since that time including any involved with hazardous materials or other environmental concerns.

L. Milwaukie shall assign a staff person (s) for necessary coordination and monitoring of the storm sewer and right of way work within Milwaukie and act as liaison with Portland Project staff on matters of mutual interest concerning this work including items covered above in Paragraphs H through K.

M. Upon final completion of the East Section Storm Sewer System each party shall be responsible for ownership, operation, storm flow quality, and maintenance of that portion of the System that lies within its own boundary in accordance with established local, state and federal permits and guidelines for storm water discharge.

III. C. 12

N. After completion of the Storm Sewer System, and if deemed necessary by either or both parties: Any sharing of the annual cost of maintaining the Storm Water Treatment Facility by Portland and responsibilities for any storm water pollution violations within the system shall be addressed by a separate negotiated storm sewer maintenance agreement between the parties similar to existing agreements between the parties for shared maintenance costs of sanitary sewers.

O. This Agreement becomes effective upon execution of the Agreement by both parties and shall terminate upon final completion of all Phase 2 and 3 construction work covered by this Agreement with exception of items after completion of this work covered in above Paragraphs M and N. If bids are rejected for a final time, or if the Contract is terminated, any unused portion of Milwaukie's local match payment to Portland will be reimbursed to Milwaukie within 45 days of rejection or termination notice.

P. By mutual agreement, this Agreement may be amended by a written document signed by the authorized representatives of each party

Q. Each party shall be solely responsible for its own activities under this Agreement. Portland and Milwaukie, to the extent permitted by law, agree to hold harmless, defend and indemnify the other, its officers, agents and employees, against any claims, demands, actions or suits (including attorney fees and costs) brought against them arising out of or relating to that party's responsibilities under this Agreement

R. Neither party shall assign any part of its rights and duties under this Agreement without the written consent of the other.

S. The parties have caused this Agreement to be executed by their duly appointed officers.

T. If suit or action is instituted in connection with any controversy arising out this agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.

U. The parties shall comply with all applicable provisions of ORS Chapters 279 and 656 in performing their obligations under this agreement.

CITY OF PORTLAND

CITY OF MILWAUKIE

By: [Signature]
Commissioner of Public

By: [Signature]

Date: 2/17/99

Title: City Manager

By: [Signature]
Auditor

Date: 1/5/99

Approved as to Form:
APPROVED AS TO FORM
[Signature]
Deputy City Attorney
CITY ATTORNEY

Approved as to Form:
[Signature]
City Counsel

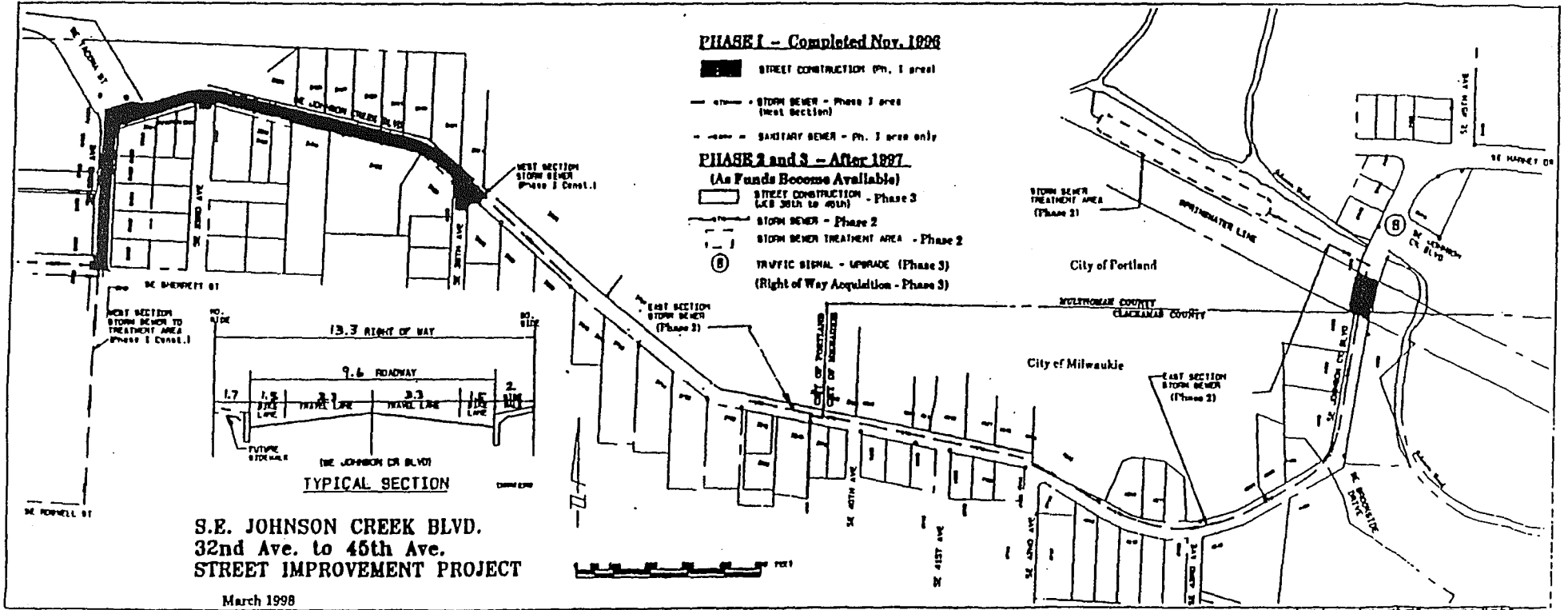


Exhibit A

III. C. 14

No. 173086

- * Agreement with the City of Milwaukie to provide for Phase 2 and 3 engineering, storm sewer, and right-of-way acquisition work on the SE Johnson Creek Boulevard, 32nd to 45th Avenues Project. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The SE Johnson Creek Boulevard (JCB), 32nd Avenue to 45th Avenue Project (1.0 mile) is a key Southeast Corridor street improvement with about 60% of the project in Portland and the remainder located in Milwaukie. The Project is being completed in phases as funds become available.
2. Portland and ODOT executed Agreement No. 50016 dated January 20, 1993 providing funding (\$1.176 million) for planning, design, and Phase 1 right of way acquisition, storm sewer, and street construction.
3. Project planning, design, and Phase 1 construction was completed in Fall of 1996. This included sewer and street construction on SE Johnson Creek Boulevard from 32nd Avenue to 36th Avenue and one block south on 32nd Avenue from Johnson Creek Boulevard in Portland
4. On April 22, 1998, Portland, Milwaukie, and ODOT executed Agreement No. 51030 providing \$800,000 in Federal Surface Transportation (STP) Funds for Phase 2 and 3 work on the Project. This will include final engineering, storm sewer construction, and right-of-way acquisition on SE Johnson Creek Boulevard, from SE 36th Avenue to Johnson Creek near SE 45th Avenue, of which approximately 80% is in Milwaukie and the remaining 20% in Portland.
5. The above parties have agreed that Portland Transportation Engineering and Development shall perform the above Phase 2 and 3 work and that Portland and Milwaukie shall pay their proportional share of the approximate 10% local match requirement for the STP funds as covered in terms of this Agreement.

NOW, THEREFORE, the Council Directs:

- a. The Commissioner of Public Works and the Auditor are hereby authorized to enter into an agreement similar in form to the agreement attached to the original of this ordinance, and by this reference made a part hereof.

Section 2. The Council declares that an emergency exists because delay in executing this agreement delay construction and the related safety benefits to be derived from completion of project; therefore, this ordinance shall be in force and effect from and after its passage by City Council.

Passed by the Council, FEB 10 1999

Commissioner Charlie Hales
Brett Kesterson/Mulvey Johnson
January 29, 1999

WAPROJECTS\MARGMTS\GA-1111

BY

GARY BLACKMER
AUDITOR OF THE CITY OF PORTLAND

Britta Olson

DEPUTY

AMENDMENT NO. 1 TO
INTERGOVERNMENTAL AGREEMENT
(Portland No. 51139)

THIS AGREEMENT AMENDMENT to Intergovernmental Agreement, made and entered into by and between the CITY OF PORTLAND, Oregon, a municipal corporation (Portland) and the CITY OF MILWAUKIE, a municipal corporation (Milwaukie).

RECITALS

1. Beginning in 1993, Portland and Milwaukie, ~~working cooperatively have been working closely with the affected residents developed and endorsed the~~ on the intercity SE Johnson Creek Blvd (JCB), 32nd Ave to 45th Ave Street Improvement Project to be being completed in three phases Phases as funds become available. About 60% of the Project is located in Portland with the remaining 40% in Milwaukie as shown on the Project Map (Exhibit A).

2. Portland Transportation Engineering and Development has been responsible for ~~and completed basic street and storm sewer design for the entire Project and completed Phase I improvements, SE JCB, from 32nd Ave to 36th Ave, one block on SE 32nd Ave and the Springwater Trail Crossing at JCB in November 1996 with an initial \$1.0 million in Federal Funds (85% share) with Local Funds (15% share) by Portland under an initial Oregon Department of Transportation Agreement (ODOT No. 11, 113) dated 2/23/93. design, right-of-way acquisition, and construction on the Project. The Project is being funded with federal funds through ODOT with the proportional required local match share paid by each city. Phase I improvements located entirely in Portland from SE 32nd Ave to SE 36th Ave were completed in 1996.~~

~~3. An ODOT Local Agency Agreement (ODOT No. 15, 626) dated 3/31/98 between Portland and Milwaukie was executed by the parties in March 1998 providing \$800,000 in Federal Surface Transportation Program (STP) Funds (89.73%) with \$91,563 in matching Local Funds (10.27%) for a current total of \$891,563 to be expended on the Project.~~

~~3. During the previous and current fiscal years (2002-03) subsequent amendments to ODOT Agreement No. 15, 626 will now provide a total of \$2,712,000 in federal STP Funds (89.73%) with \$310,401 in matching local funds (10.27%) for a total of \$3,022,401 for payment of Phase 2 work and to substantially complete remaining Phase 3 work according to current cost estimates.~~

~~4. Under terms in the ODOT Agreement No. 15, 626, Portland is responsible for the required deposit of matching Local Funds and performing the following work subsequently split in Phase 2 and 3 by ODOT for accounting purposes with no change to terms of ODOT Agreement No. 15, 626. See Project Map shown as Exhibit A.~~

~~Phase 2. East Section Storm Sewer System: Remaining preliminary engineering to complete environmental reviews, contract plans/bid documents, and construct the Storm Sewer Line from approximately 3800 SE JCB to Springwater Trail Crossing at 4400 SE JCB and the connecting Storm Water Treatment Facility located in Portland adjacent to Johnson Creek.~~

~~Phase 3. Right of way Acquisition: Right of way maps and descriptions. Acquisition of mostly a 4 foot wide strip on JCB beginning at SE 36th Ave to Springwater Trail Crossing utilizing Portland and ODOT right of way staff.~~

~~Phase 3. Remaining Preliminary Engineering to complete right of way maps, Phase 3 Street Construction contract plans from SE 36th Ave to Springwater Trail Crossing for bidding when additional funds become available for Phase 3 Street Construction completing the Project.~~

III. C. 16

4. Agreement No. 51139 covers Phase 2 and 3 funding, improvements, and responsibilities of the parties on JCB from SE 36th to Johnson Creek as also shown on Project Map. Phase 2 work on East Section Storm Sewer System was completed in Fall 2000 but at higher than estimated costs. Remaining Phase 3 right-of-way and street construction work has been on hold waiting for additional funding.

5. In the past two years and the current fiscal year (2002-03) an additional \$1,912,000 in federal funding has become available for a total amount of \$2,712,000 with the required local match funds sufficient to proceed with completion of the project.

6. Portland and Milwaukie therefore wish to amend the Agreement (Portland No. 51139) to update provisions needed for cost sharing and to complete the Project.

6. A current cost estimate for the above work prepared by Portland with the available funds is listed and prioritized in the following order:

1.	Remaining Preliminary Engineering (Ph. 2 and 3)	\$ 90,000
2.	Storm Sewer Line and Treatment Facility const. (Ph. 2)	430,000
3.	Right of way Acquisition (Ph. 3)	300,000
4.	Contingencies	71,563
	Total (available funds)	\$891,563

7. The current total available budgeted funds for completed Phase 2 work and remaining Phase 3 work to complete the Project including required local match is summarized as follows:

	<u>Total Budget and Available Funds</u>
1. Preliminary Engineering (Ph. 2 and 3)	\$ 450,000
2. Storm Sewer System (Ph. 2)	608,000
3. Right-of-way Acquisition (Ph. 3)	390,000
4. Street Construction (Ph. 3)	<u>\$1,574,401</u>
	<u>\$3,022,401</u>

7. East Section Storm Sewer Line is approximately 2,060 LF: Approximately 10.2% (210 LF) is within Portland and 89.8% (1,850 LF) is within Milwaukie.

8. Approximate length (mostly 4 foot wide strip) of right of way acquisition is 2,735 LF: Approximately 39.7% is within Portland and 60.3% is within Milwaukie.

8. The approximate length of street construction on JCB—from EL of SE 36th Ave to WL of the Springwater Corridor is 2,935 feet. The Portland and Milwaukie city boundary lines are near 3900 JCB at Station 23+35, with approximately 37% (1,085 feet) within Portland and 63% (1,850 feet) within Milwaukie.

9. Currently there are 20 designated acquisition parcels in Portland requiring 51.6% of the total right-of-way estimate and 25 designated acquisition parcels in Milwaukie requiring the remaining 48.4 % of the total acquisition cost estimate.

5.10. Under terms of this agreement, Milwaukie will reimburse Portland for its share of Local Funds based on the portion of storm sewer construction work and right-of-way acquisition within or directly benefiting Milwaukie.

9.11. A Memorandum of Understanding (MOU) between Milwaukie and Portland signed and dated June 6, 1995, authorizes Portland to act on behalf of Milwaukie as local agent in performing needed right-of-way acquisition services within Milwaukie on the SE Johnson Creek Blvd Project. This MOU will be further referenced as needed by this Agreement.

10.12. Under terms of the above ODOT Agreement, Portland has deposited the required Local Funds with ODOT.

NOW, THEREFORE, the parties agree as follows:

~~A. Portland Transportation Engineering and Development Office shall be responsible for management and completion of work with available funds in the following order: (1) Remaining Preliminary Engineering for Phase 2 and 3 work including: plans and bid documents for Phase 3 Street Construction (to be bid later with additional funds), (2) construction of the East Section Storm Sewer Line and the connecting Storm Water Treatment Facility, and (3) Phase 3 Right-of-way Acquisition (or until available funds are expended) in accordance with provisions in the ODOT Agreement No. 15, 626 and outlined in Paragraph 4 above.~~

A. Portland Transportation Engineering and Development Office shall be responsible for management and completion of work with the available Federal and local match funds in the following order of priority: (1) Remaining Preliminary Engineering for Phase 2 and 3 work including: plans and bid documents for Phase 3 Street Construction, (2) construction of the East Section Storm Sewer Line and the connecting Storm Water Treatment Facility, (3) Phase 3 Right-of-Way Acquisition, and (4) Phase 3 Street Construction in accordance with provisions in the ODOT Agreement No. 15, 626 and Amendments to that Agreement.

~~B. Contingency funds (Paragraph 6) shall be utilized for activities in the following order, if needed: (1) East Section Storm Sewer Line and Treatment Facility construction, (2) Right-of-way Acquisition, and (3) Phase 2 and 3 Preliminary Engineering.~~

~~C. All work using the Federal Funds under this agreement shall be under way or obligated for construction not later than March 31, 2000, as stipulated in the ODOT Agreement No. 15, 626.~~

~~D. Portland shall be responsible to ODOT for required deposits and accounting of all matching Local Funds (approximately \$91,653) required by ODOT Agreement No. 15, 626.~~

B. Portland shall be responsible to ODOT for required deposits and accounting of all matching Local Funds (currently \$310,401) as stipulated by ODOT Agreement No. 15, 626 and subsequent Amendments to that agreement.

E.C. Portland will pay the required matching Local Funds for all remaining Phase 2 and 3 Preliminary Engineering, and the proportional share of storm sewer, and right-of-way work, and street construction within the city limits or deemed to be a of direct benefit to Portland using current estimated costs and benefit percentages in Recital Paragraphs 7 and 8-9. The current total Phase 2 and 3, the initial matching Local Fund Share payment for Portland is as follows:

<i>Remaining Preliminary Engineering (Ph. 2 and 3)</i> — Est. Cost: \$90,000	
\$90,000 x (10.27%) x (100%) =	\$ 9,243
<i>Right of way Acquisition</i> — Est. Cost: \$300,000	
\$300,000 x (10.27%) x (39.7%) =	12,232
<i>Construction of Storm Sewer Line and Storm Water Treatment Facility</i> — Est. Cost: \$430,000	
\$430,000 x (10.27%) x (10.2%) =	4,504
Total Initial Local Fund Share (Portland)	\$ 25,979

<i>Remaining Preliminary Engineering (Ph. 2 and 3)</i> — Est. Cost: \$450,000	
\$450,000 x (10.27%) x (100%) =	\$ 46,215
<i>Right-of-way Acquisition</i> — Est. Cost: \$390,000	
\$390,000 x (10.27%) x (51.6%) =	20,667
<i>Construction of Storm Sewer Line and Storm Water Treatment Facility</i> — Est. Cost: \$608,000	
\$608,000 x (10.27%) x (10.2%) =	6,369
<i>Street Construction — SE 36th Ave to Springwater Corridor (Ph. 3)</i> — Est. Cost: \$1,574,401	
\$1,574,401 x (10.27%) x (37.0%) =	59,826
<u>Total Local Fund Share — Ph. 2 and 3 (Portland)</u>	<u>\$133,037</u>

III. C. 19

F. Upon execution of this Agreement, Milwaukie shall make the following initial payment to Portland for its share of matching Local Funds (10.27%) for the proportional share of storm sewer and right of way work within or of direct benefit to Milwaukie using estimated costs and benefit percentages in Paragraphs 7 and 8:

<i>Remaining Preliminary Engineering (Ph. 2 and 3)</i> — Est. Cost: \$90,000	
$\$90,000 \times (10.27\%) \times (0\%) =$	\$ 0
<i>Right of way Acquisition</i> — Est. Cost: \$300,000	
$\$300,000 \times (10.27\%) \times (60.3\%) =$	18,578
<i>Construction of Storm Sewer Line and Storm Water Treatment Facility</i> — Est. Cost: \$430,000	
$\$430,000 \times (10.27\%) \times (89.8\%) =$	39,657
Total Initial Local Fund Share Amount (Milwaukie)	\$ 58,235

D. Upon execution of this Amendment, Milwaukie shall complete payment to Portland for the required share of matching Local Funds (10.27%) adjusted to current available funds for Phase 2 and 3 work. The total share amount is based on the proportional share of storm sewer, right-of-way work, and street construction within or of direct benefit to Milwaukie using estimated costs and benefit percentages in Recital Paragraph 9. The current total Phase 2 and 3 Local Fund Share payment for Milwaukie is as follows:

<i>Remaining Preliminary Engineering (Ph. 2 and 3)</i> — Est. Cost: \$450,000	
$\$450,000 \times (10.27\%) \times (0\%) =$	\$ -0-
<i>Right-of-way Acquisition</i> — Est. Cost: \$300,000	
$\$390,000 \times (10.27\%) \times (48.4\%) =$	19,386
<i>Construction of Storm Sewer Line and Storm Water Treatment Facility</i> — Est. Cost: \$608,000	
$\$608,000 \times (10.27\%) \times (89.8\%) =$	56,073
<i>Street Construction — SE 36th Ave to Springwater Corridor (Ph. 3)</i> — Est. Cost: \$1,574,401	
$\$1,574,401 \times (10.27\%) \times (63.0\%) =$	101,865
Total Local Fund Share Amount — Ph. 2 and 3 (Milwaukie)	\$177,324

G. After completion of the above work, Milwaukie shall pay any matching Local Fund balance due or be refunded by Portland based on the (1) actual construction cost of storm sewer line work done within Milwaukie and (2) actual cost of the treatment facility work using the above basis in Paragraph F and (3) 10.27% of the actual cost of the acquired parcels for right of way within Milwaukie.

E. After completion of the above work, Milwaukie shall complete paying its proportionate matching (10.27%) Local Fund balance that may be due or will be refunded by Portland based on the (1) actual construction cost of storm sewer line and treatment facility work using the above basis in Section F and (3) the actual cost of right-of-way acquisition within Milwaukie up to the established budgeted amount at time of completion, (4) actual cost of street construction performed within Milwaukie up to the established budgeted at amount at time of completion.

1. One acquisition parcel of land in the 4300 block of JCB bounded by City of Milwaukie on either side is currently in Clackamas County. Another acquisition parcel located in the same vicinity has been annexed and is now located within the City of Milwaukie. These right-of-way parcels will be included with the Milwaukie right-of-way acquisition budget.

2. Should there be a surplus in the Project funding allocation to either city for right-of-way or street construction work, by mutual agreement the parties may transfer part or all of the available surplus balance to the other city, with proper adjustment of the local share requirement, to help complete the project.

3. The current available funds and budget for Phase 3 Right-of-Way Acquisition is \$390,000 with the present proportional budgeted share to each city as covered in the above Paragraphs C and D. When this activity is completed final proportional costs will be adjusted for both cities up to the current total budgeted amount of \$465,000 plus any additional funds that may become available for this activity. Costs incurred by either city that exceed its proportionate budgeted share at that time for this activity shall be paid from that city's local funding resources.

4. The current available funds and budget for Phase 3 Street Construction is \$1,574,401 with the present proportional budgeted share to each city as covered in the above Paragraphs C and D. When this activity is completed final proportional costs will be adjusted for both cities up to the current total budgeted amount of \$1,574,401 plus any additional funds that may become available for this activity. Costs incurred by either city, above its proportional budgeted share at that time for this activity shall be paid from that city's local funding resources.

~~H.F.~~ Portland will work closely with Milwaukie Public Works staff and shall provide Milwaukie and Clackamas County with latest versions of the Phase 2 Storm Sewer System and the Phase 3 Street Construction plans and specifications for review prior to bidding and for proper coordination of this work in Milwaukie and during construction as covered under this agreement.

~~I.~~ Milwaukie shall obtain any construction permits required from Clackamas County for the new storm sewer line within Milwaukie on SE Johnson Creek Blvd.

G. Milwaukie shall obtain any construction permits required from Clackamas County for Phase 3 Street Construction within City of Milwaukie on SE Johnson Creek Blvd.

~~J.H.~~ When the Phase 2 Storm Sewer Line is substantially complete, the parties shall agree on a date when this new storm sewer line may be activated for service.

~~K.I.~~ As covered in Paragraph 11 above, Portland shall act as local agent in performing right-of-way acquisition activities with ODOT Right-of-way staff for Project in Milwaukie as outlined in the Memorandum of Understanding (MOU) between Milwaukie and Portland dated June 6, 1995, and following any subsequent new Local, State, or Federal right-of-way policies or guidelines since that time including any involved with hazardous materials or other environmental concerns.

J. As set forth in the current ODOT agreements with the parties and the 1995 Memorandum of Understanding (MOU), condemnation proceedings may be partially or wholly performed by ODOT staff or by the respective city legal representatives and paid from Project funds or from local funds as mutually agreed upon by the parties. Nothing in this section affects the responsibilities for condemnation set out in the 1995 MOU or the current ODOT agreements with the parties.

~~L.~~ Milwaukie shall assign a staff person(s) for necessary coordination and monitoring of the storm sewer and right of way work within Milwaukie and act as liaison with Portland Project staff on matters of mutual interest concerning this work including items covered above in Paragraphs H through K.

K. Milwaukie shall assign a staff person (s) for necessary coordination and monitoring of the storm sewer construction (Ph. 2), right-of-way work (Ph. 3), and street construction (Ph. 3) within Milwaukie and act as liaison with Portland Project staff on all matters of mutual interest concerning this work including items covered in Sections G through K-2

III. C. 20

M.L. Upon final completion of the East Section Storm Sewer System, each party shall be responsible for ownership, operation, storm flow quality, and maintenance of that portion of the System that lies within its own boundary in accordance with established Local, State, and Federal permits and guidelines for storm water discharge.

CITY OF PORTLAND

By: _____
Commissioner of Public Works

Date: _____

By: _____
Auditor

Approved as to Form:

Deputy City Attorney

CITY OF MILWAUKIE

By: _____

Title: _____

Date: _____

Approved as to Form:

City Counsel

ATTACHMENT B

III. C. 21

AMENDMENT #1 To INTERGOVERNMENTAL AGREEMENT # 19723

1. This is Amendment #1 ("Amendment") to Intergovernmental Agreement between The State of Oregon, by and through its Department of Transportation (ODOT), the City of Portland (Portland), and the City of Milwaukie (Milwaukie) effective June 24, 2002.

2. The Agreement shall be amended as follows:
 - 2.1 The purpose of this amendment is to provide additional funding for right of way acquisitions. The costs associated with this agreement are now anticipated to rise beyond original expectations due to an increased number of parcels impacted, and the passage of time since the original estimate was calculated. Therefore, the total cost of right of way services shall be increased in the amount of \$75,000 to a new maximum of \$465,000. Paragraph 1 under Terms of Agreement shall be amended to read: "The amount to be paid for the services shall not exceed \$465,000".

3. Except as expressly amended above, all other terms and conditions of the original Agreement are still in effect. ODOT, Portland, and Milwaukie certify that the representations and certifications contained in the original Agreement and Amendment are true and correct as of the effective date of the Amendment, with the same effect as though made at the time of this Amendment.

III. C. 22

THE PARTIES to the Agreement acknowledge that they have read and understand this Amendment, and agree to be bound by its terms and conditions effective as noted below.

STATE OF OREGON,
BY AND THROUGH ITS
DEPARTMENT OF TRANSPORTATION

CITY OF MILWAUKIE
BY AND THROUGH ITS
CITY COUNCIL

DEOLINDA JONES
RIGHT OF WAY MANAGER

MAYOR

DATE _____

DATE _____

CITY RECORDER

DATE _____

CITY OF PORTLAND,
BY AND THROUGH ITS
CITY COUNCIL

Mayor

DATE _____

CITY AUDITOR

DATE _____

**INTERGOVERNMENTAL AGREEMENT
FOR RIGHT OF WAY SERVICES**

III. C. 23

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT and the City of Portland, acting by and through its Council, hereinafter referred to as "Portland", and the City of Milwaukie, acting by and through its Council, hereinafter referred to as "Milwaukie." When Portland and Milwaukie are referred to in common they will be hereinafter referred to as "Cities"

RECITALS:

1. By the authority granted in ORS 190.110, 283.110, 366.770 and 366.775, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. SE Johnson Creek Boulevard is a public road that passes through Multnomah County, Clackamas County, the City of Portland, and the City of Milwaukie. Improvements have been planned for the road, including improvements within Portland and Milwaukie. Additional right of way is needed to construct the planned improvements. Milwaukie and Portland have previously entered into an intergovernmental agreement that transferred Milwaukie's authority and responsibility for acquisition of the needed additional right of way to Portland and established the price Milwaukie is to pay Portland for the services. Portland, Milwaukie, and ODOT have agreed in principle to transfer to ODOT the authority and responsibility for acquiring additional right of way for Johnson Creek Boulevard within Portland and Milwaukie. The parties enter into this intergovernmental agreement to implement the transfer of rights and responsibilities and detail the rights and obligations of each party. The right of way acquisition services to be provided by Agency are referred to in this agreement as the "project."

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

TERMS OF AGREEMENT:

1. Portland wishes to retain the services of ODOT to perform right of way acquisition services for the portions of Johnson Creek Boulevard that are within the city limits of the City of Portland and the City of Milwaukie. Milwaukie agrees to the transfer by Portland to ODOT of the authority Milwaukie has previously transferred to Portland. The project shall be performed as detailed in special Provisions Exhibit A attached hereto and incorporated by this reference. The amount to be paid for the services shall not exceed \$390,000.
2. The work shall begin on the date all required signatures are obtained and shall be completed no later than June 30, 2004 on which date this Agreement automatically terminates unless extended by a fully executed amendment.
3. The process to be followed by the parties in carrying out this Agreement is set out in the Special Provisions Exhibit A, attached hereto and made a part of this Agreement.

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4. It is further agreed both parties will strictly follow the rules, policies and procedures of the "Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970" as amended, ORS 281.060, ORS 35.346, State of Oregon Right of Way Manual, and Federal Highway Administration Federal Aid Policy Guide.

ODOT OBLIGATIONS:

1. ODOT shall perform the work described for it in Special Provisions Exhibit A.
2. With the exception of work related to appraisals, ODOT shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Portland and, for work related to properties in Milwaukie, from Milwaukie.
3. ODOT agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, ODOT expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
4. ODOT shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
5. ODOT, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers, unless such employers are exempt under ORS 656.126. ODOT shall ensure that each of its contractors complies with these requirements.

PORTLAND/MILWAUKIE OBLIGATIONS:

1. Portland shall perform the work described for Portland in Special Provisions Exhibit A. Milwaukie shall perform the work described for Milwaukie in Special Provisions Exhibit A.
2. Portland certifies that sufficient funds are available or receivable from Milwaukie and authorized for expenditure to match federal funds to finance the costs of this agreement.
3. Milwaukie certifies that sufficient funds are available and authorized for expenditure to finance its obligations under the Portland/Milwaukie Intergovernmental Agreement.
4. Agency's right of way contact person for this Agreement is Jeanne Troeh Gibson 503 731-8434.

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PAYMENT FOR SERVICES and EXPENDITURES:

1. In consideration for the services performed by ODOT, Portland agrees to pay or reimburse ODOT a maximum amount of \$390,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to ODOT in accordance with the current State Department of Administrative Services' rates. Any expenditures beyond federal participation will be from, Portland funds, or from those funds Portland receives from Milwaukie under the agreement between Portland and Milwaukie. Milwaukie shall pay Portland under the terms of the Intergovernmental Agreement between the two cities signed by Milwaukie on January 5, 1999 and by Portland on February 17, 1999.
2. FOR PROJECTS IN ODOT STIP (STATE TRANSPORTATION IMPROVEMENT PROGRAM): Agency agrees to reimburse salaries and payroll reserves of State employees working on project, direct costs, costs of rental equipment used, and per-diem expenditures.

GENERAL PROVISIONS:

1. This Agreement may be terminated by either party upon 30 days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
 - a. If either party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If either party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within 10 days or such longer period as may be authorized.
 - c. If Portland or Milwaukie fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the Agreement.
 - d. If Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if Agency is prohibited from paying for such work from the planned funding source.Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
2. The parties agree and acknowledge that each of them and the Secretary of State's Office of the State of Oregon, along with the federal government, shall have access to the books, documents, papers and records of each which are directly pertinent to this specific agreement for the purpose of making audit, examination, excerpts and transcripts for a period of three years after final payments. Each party shall make copies of such records available upon request. The requesting party is responsible for payment.
3. Since federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Portland and Milwaukie.

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4. Since federal funds are involved in this Agreement, Cities as recipients of grant funds, pursuant to this Agreement with ODOT, shall assume sole liability for cities breach of the conditions of the grant, and shall, upon cities breach of grant conditions that requires ODOT to return funds to the federal agency, the grantor, hold harmless and indemnify ODOT for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of cities the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this agreement.

5. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

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IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

The Oregon Transportation Commission approved on March 18, 1999, Subdelegation Order No. 4 in which the Director and Executive Deputy Director/Chief Engineer grants authority to the Technical Services Manager to approve and execute all Department real property deeds, contracts, agreements, and other documents pertaining to real property transactions. The Technical Services Manager, by way of Letter of Authority dated January 28, 1999, under its item 6, authorizes the Right of Way Manager to approve and execute agreements with other governmental jurisdictions to employ Right of Way Section staff.

Department of Justice approval as to legal sufficiency required when amount of funds paid to or from state Portland >\$100,000. Amounts paid between State agencies are not subject to this requirement.

STATE OF OREGON,
BY AND THROUGH ITS
DEPARTMENT OF TRANSPORTATION

APPROVED AS TO LEGAL
SUFFICIENCY (req'd as noted above)

[Signature]
Assistant Attorney General

Date 6/24/02

By [Signature]
Deolinda/G. Jones
Right of Way Manager

Date 6/24/02

CITY OF PORTLAND, BY AND THROUGH ITS
CITY COUNCIL

By [Signature]
MAYOR

Date 6/10/02

APPROVED AS TO FORM:
APPROVED AS TO FORM

[Signature]
CITY OF PORTLAND

Date 5/24/02
CITY ATTORNEY

By [Signature]
CITY AUDITOR

CITY OF MILWAUKIE, BY AND THROUGH ITS
CITY COUNCIL

By [Signature]
MAYOR

Date 6/04/02

APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY

CITY OF MILWAUKIE

Date 6/04/02

By [Signature]
CITY RECORDER

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**SPECIAL PROVISIONS EXHIBIT A
THINGS TO BE DONE BY STATE OR PORTLAND/MILWAUKIE
(ACCORDING TO CITY WHERE SUBJECT PROPERTIES ARE LOCATED)**

A. Preliminary Phase

1. ODOT will provide preliminary cost estimates.
2. Portland will make preliminary contacts with property owners.
3. Portland will gather and provide data for environmental documents.
4. Portland will develop access and approach road list.
5. Portland will help provide field location and project data.

B. Acquisition Phase

1. General:

- a. When performing acquisition work, ODOT will, upon request, provide Portland and Milwaukie a current status report of this work itemized by parcel within each city and will be on the form provided by the respective City.
- b. Dedications acquired shall be in the name of the city in which they are located (Portland or Milwaukie).
- c. Prior to the initiation of acquisitions, Portland and Milwaukie will adopt a resolution of intention and determination of necessity in accord with ORS 281.520, authorizing acquisition and condemnation. Since the State Department of Justice is to handle condemnation work, that information needs to be included in the resolution adopted by the Portland and Milwaukie. Prior approval by Department of Justice is required.
- d. ODOT will bill Portland for all acquisition work performed in accordance with terms of this agreement. ODOT billings will show expenses allocated and itemized on a parcel by parcel basis within each city.
- e. Milwaukie shall pay Portland under the terms of the Intergovernmental Agreement between those two cities. ODOT will itemize expenses for each city, dependent upon the city where the property is located.

2. Legal Descriptions:

- a. Portland will provide sufficient surveys, vesting deeds, maps and other data so that legal descriptions can be written.
- b. Portland will write legal descriptions, prepare right of way maps; provide construction plans and cross-section information for the project.
- c. The city where the property is located will specify the degree of title to be acquired and the form for acquisition.

3. Real Property and Title Insurance:

- a. ODOT will provide preliminary title reports before negotiations for acquisition commence, if necessary.
- b. ODOT will determine sufficiency of title (taking subject to).
- c. ODOT will conduct Level 1 testing for presence of hazardous material. ODOT will conduct reasonable testing up to Level 2, if requested. If contamination is found, a recommendation for remediation will be presented by ODOT to Portland or to Milwaukie.
- d. ODOT will not be responsible for any necessary remediation, nor will remediation measures be initiated without the written approval of Milwaukie or Portland.

4. Appraisal:

- a. ODOT will conduct the valuation process for properties to be acquired.

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- b. ODOT will recommend just compensation, based on a review of the valuation by qualified personnel.
- c. Property trades, construction obligations, and zoning or permit concessions are to be evaluated as part of the Just compensation offer.

5. Negotiations:

- a. ODOT will tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Conveyances taken for more than the approved figure will be documented by an Administrative Justification for the increase in compensation. ODOT will provide the cities with all pertinent letters, negotiation records and obligations incurred during the acquisition process.
- b. Portland and ODOT shall jointly determine a date for certification of right of way. ODOT agrees to file all Recommendations for Condemnation at least 70 days prior to that date if negotiations have not been successful on those properties.

6. Relocation:

- a. ODOT will perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the project.
- b. ODOT will make all relocation and moving payments for the project.
- c. Portland or Milwaukie will perform the relocation appeal process.

C. Closing Phase

1. ODOT will close all transactions. This includes drawing deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments.
2. The city where the property is located will record conveyance documents, only upon acceptance by appropriate agency.

D. Property Management

1. ODOT will take possession of all the acquired properties. Dedications acquired shall be in the name of the city in which they are located (Portland or Milwaukie).
2. The city where the property is located will dispose of all improvements and excess land.

E. Condemnation

1. ODOT may offer mediation if parties have reached an impasse.
2. ODOT will handle the entire condemnation process.

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EXHIBIT B (Local Agency or State Agency)

CONTRACTOR CERTIFICATION

Contractor certifies by signing this contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

AGENCY OFFICIAL CERTIFICATION (ODOT)

Department official likewise certifies by signing this contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

EXHIBIT C

Federal Provisions

Oregon Department of Transportation

I. CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

Contractor certifies by signing this contract that to the best of its knowledge and belief, it and its principals:

- 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
- 2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of

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records, making false statements or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this contract, the Contractor is deemed to have signed this certification.

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS-PRIMARY COVERED TRANSACTIONS

1. By signing this contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Oregon Department of Transportation determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was

placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.

4. The Contractor shall provide immediate written notice to the Department to whom this proposal is submitted if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by submitting this proposal that it will include the Addendum to Form FHWA-1273 titled, "Appendix B-Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the

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Nonprocurement List published by the U. S.
General Services Administration.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

* Appendix B of 49 CFR Part 29 -

Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

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4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.
5. The prospective lower tier participant agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions

- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranting, Department shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the contract, any professional or technical personnel who are or have been at any time during the period of this contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be

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entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

During the performance of this contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. **Compliance with Regulations.** Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this contract. Contractor, with regard to the work performed after award and prior to completion of the contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contract covers a program set forth in Appendix B of the Regulations.
2. **Solicitation for Subcontractors, including Procurement of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. **Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act).** During the performance of this contract, Contractor agrees as follows:
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but

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not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
- a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of

Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

DBE POLICY STATEMENT

DBE Policy. It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this contract.

Required Statement For USDOT Financial Assistance Agreement. If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

DBE Obligations. The Oregon Department of Transportation (ODOT) and its contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither ODOT nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as ODOT deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this contract.

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Records and Reports. Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

DBE Definition. Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

CONTRACTOR'S DBE CONTRACT GOALDBE GOAL 0 %

By signing this contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Request for Proposal/Qualification for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to

influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING ODOT'S DBE PROGRAM REQUIREMENT CONTACT OFFICE OF CIVIL RIGHTS AT (503)986-4354.

III. C. 37

ORDINANCE No. 176551

***Authorize Intergovernmental Agreement with Oregon Department of Transportation and City of Milwaukie for the Oregon Department of Transportation to provide right-of-way acquisition services for the Johnson Creek Boulevard Street Improvement Project (Ordinance)**

The City of Portland ordains:

Section 1. The Council finds:

1. Johnson Creek Boulevard is classified as a district collector by the City of Portland Transportation Element.
2. The Southeast Corridor Plan adopted by the City of Portland in 1989 recommended construction of bikelanes and sidewalks on Johnson Creek Boulevard, but did not recommend additional transportation capacity.
3. The City of Portland and the City of Milwaukie are jointly developing a street improvement project on Johnson Creek Boulevard from 32nd to 45th Streets. The City of Portland Bureau of Transportation Engineering and Development is providing project management and design services for the project.
4. The first phase of the project from 32nd to 36th streets was constructed in 1996. The second phase, which constructed stormwater and sanitary sewers, was constructed in 1999. The third phase of the project will be constructed in the summer of 2003.
5. The project is funded by Federal Surface Transportation Program Funds administered by the Oregon Department of Transportation. The total cost of the project is \$2,340,000. The City of Portland and City of Milwaukie are sharing the local match per agreement No. 51139.
6. The project will require the acquisition of right-of-way from the adjacent properties, in order to provide adequate width sidewalks and bike-lanes.
7. This agreement will provide funds for the Oregon Department of Transportation right-of-way division to purchase right-of-way for the project. The total cost of right-of-way acquisition will not exceed \$390,000.

III. C. 38

176551

NOW, THEREFORE, the Council directs:

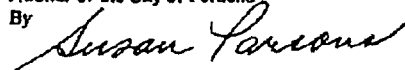
- a. The Mayor and the Auditor are hereby authorized to enter into an intergovernmental agreement with the City of Milwaukie and the Oregon Department of Transportation, similar in form to the agreement attached to the original of this ordinance and by this reference made a part hereof, to provide right-of-way acquisition services for the Johnson Creek Boulevard Improvement Project.

Section 2. The Council declares that an emergency exists because delay in completing this intergovernmental agreement could result in a delay in the construction of the project; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, JUN 05 2002

Mayor Vera Katz
Dan Layden:slg
May 28, 2002

GARY BLACKMER
Auditor of the City of Portland
By



ATTACHMENT C

RESOLUTION NO. _____

III. C. 39

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON DECLARING THE NEED TO ACQUIRE PROPERTY FOR RIGHT- OF-WAY

WHEREAS, the City of Milwaukie has the authority under Charter Section 6 and ORS 223.005 to acquire real property by condemnation; and

WHEREAS, Article I, Section 18 of the Oregon Constitution provides that development of roads is necessary for the development of the state and a public use; and

WHEREAS, Johnson Creek Boulevard, which lies partially within the City of Milwaukie and partially within other jurisdictions, is in need of improvements to adequately serve the traffic it currently carries and is expected to carry in the future; and

WHEREAS, the required improvements for Johnson Creek Boulevard will require additional right-of-way to be acquired as shown in the attached Exhibit 1; and

WHEREAS, the City of Milwaukie retained the City of Portland to serve as the right-of-way agent of the City of Milwaukie in connection with the Johnson Creek Boulevard improvement projects and the City of Milwaukie has consented to the Oregon Department of Transportation's assumption of right-of-way agent responsibilities from the City of Portland;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE THAT:

SECTION 1: The acquisition as right-of-way of the properties listed in the attached Exhibit 1 are needed for the improvement of Johnson Creek Boulevard. It is also necessary to enter upon the remaining lands of the owners contiguous to any buildings or improvements which are bisected by the acquisition for the purpose of moving, dismantling or otherwise disposing of the buildings or improvements, and to enter upon the remaining lands of the owners for the construction of road approaches or other land service facilities being constructed for the use and benefit of the property.

SECTION 2: The Johnson Creek Boulevard improvement project for which property is being acquired is necessary and in the public interest, and the project has been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury or damage.

III. C. 40

SECTION 3: The City' of Milwaukie directs those serving as its right-of-way agents to attempt to agree with the respective owners and other persons in interest as to the compensation to be paid for the acquisition of each property, and in the event that no satisfactory agreement can be reached, then the right-of-way agent is directed and authorized to use legal counsel to commence and prosecute to final determination such proceedings as may be necessary to acquire title to the acquisitions declared herein to be needed and required.

SECTION 4: Upon the trial of any suit or action instituted under the provisions of Section 3 above, the right-of-way agent's legal counsel, after consultation with City staff, is authorized to make any stipulation, agreement or admission that in the counsel's judgment may be for the best interests of the project and the City of Milwaukie.

SECTION 5: This resolution shall be effective immediately upon passage.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon, on _____, 2002.

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM

Pat DuVal, City Recorder

Ramis, Crew, Corrigan & Bachrach, LLP

SE JOHNSON CREEK BLVD. PROJECT
SE 32nd Ave - SE 45th Ave
Clackamas/Multnomah County

File No.	Name	Property Address	Fiscal Responsibility		Acq. Type	COP COMMENT
			City of Milw.	City of Ptld.		
6823001	City of Ptld.	Vacant Land Parcel		x	none	
6823002	Steffen	3606 SE Johnson Creek Blvd. 1S1E24DC 4600		x	RW/TCE	OK
6823003	Kemp	3620 SE Johnson Creek Blvd. 1S1E24DC 4400		x	RW/TCE	OK
6823004	Harvey/Cathey	3630 SE Johnson Creek Blvd. 1S1E24DC 4300		x	RW/TCE	OK
6823005	Kerns	3646 SE Johnson Creek Blvd. 1S1E24DC 4200(MC) 1S1E25AA 1200(CC)		x	RW/TCE	OK
6823006	Huff	3650 SE Johnson Creek Blvd. 1S1E25AA 1201		x	RW/TCE	OK
6823007	Bowman	3700 SE Johnson Creek Blvd. 1S1E25AA 2200		x	RW/TCE	OK
6823008	Schmunk	3714 SE Johnson Creek Blvd. 1S1E25AA 2300		x	RW/TCE	OK
6823009	Ivy	3726 SE Johnson Creek 1S1E25AA 2600		x	RW/TCE	OK
6823010	Demarest	3738 SE Johnson Creek Blvd. 1S1E25AA 2700		x	RW/TCE	OK
6823011	Demarest	Vacant Land Parcel 1S1E25AA 3000		x	RW/TCE	OK

Exhibit 1

M.C. 41

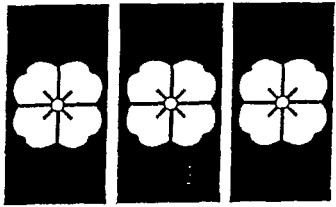
01077

III. C. 42

Exhibit 1

File No.	Name	Property Address	Fiscal Responsibility		Acq. Type	COP COMMENT
			City of Milw.	City of Ptd.		
6823022	Sullivan	8710 SE 42nd Ave. 1S2E30BB 3000 (N1/2 L9, all L10, B1, Derry Ac. # 1	x		RW/TCE	OK
6823023	Peters	4202 SE Johnson Creek Blvd. 1S2E30BB 2900	x		TCE	OK
6823024	Rhyne	4210 SE Johnson Creek Blvd. 1S2E30BB 2800	x		TCE	OK
6823025	Rhyne	4210 SE Johnson Creek Blvd. 1S2E30BB 2700	x		TCE	OK
6823026	Davis	8703 SE 43rd Ave. 1S2E30BB 2600 (L 14 & 15, B 1, Derry Ac. # 1)	x		RW/TCE	OK
6823027	Roush	4340 SE Johnson Creek Blvd. 1S2E30BB 2400	x		RW/TCE	OK
6823028	Lomnicki	4420 SE Johnson Creek Blvd. 1S2E30BB 2300	x		RW/TCE	OK
6823029	City of Milw.	Vacant Land Parcel 1S2E30BB 900	x		RW/TCE	OK
6823030	Assoc. Chemists	4450 SE Johnson Creek Blvd. 1S2E30BB 800	x		TCE	OK
6823031	Cayo	4203 SE Johnson Creek Blvd. 1S2E30BB 1400	x		RW/TCE	OK
6823032	Inman & Little		x		none	OK
6823033	Hatlelid		x		none	OK
6823034	Hatlelid	4277 SE Johnson Creek Blvd. 1S2E30BB 1700	x		RW	OK
6823035	DeVries	4305 SE Johnson Creek Blvd. 1S2E30BB 1901	x		RW	OK

CITY OF



MILWAUKIE

Ledding Library Board

September minutes

Monday, September 23, 2002, 6:30 PM
Ledding Library

Meeting called by:

Pat Healy

Attendees:

Attendees: Mark Docken, Pat Healy, Tom Hogan, Anna O'Guinn, Sue Trotter, and Ed Zumwalt.

Staff: Cynthia Sturgis

Agenda topics

Approval of minutes

Approved as written.

Librarian's report

Cynthia reported that 4 more thin client internet stations have been installed. Two word processing stations will be installed soon. The PAC station will be installed once the network solves a security problem. The Friends are paying for all of these stations for the public to use.

Staff computers will be installed by the city IST department over the next 4 weeks. With this new upgrade, the management team will have access to the city's Management Information System which includes financial reports, payroll information, and automated purchase orders.

Libraries of Tomorrow project

Sue and Cynthia reported on an informational meeting about districts. Jim Sheppke, State Librarian, and Jim Coleman, Clackamas County Counsel, presented background information on how special districts and county service districts work. Network members agreed that these forms of funding will be considered after more information about levies and compression are provided by the County Assessor who will meet library representatives on Thursday, October 3. A funding plan will be presented to the Commissioners early next year.

Facility Planning

Pat Healy worked with a subcommittee on writing a press release about progress on the facility planning process. The release mentioned increased useage, the need for space, and the Council's approval for expansion at the present site if funding can be obtained.

Pat visited the Tigard Library and talked with the director about their successful bond issue campaign and how they organized it. The preliminary costs for architectural plans and funds to hire a public relations person were paid for by the city.

Cynthia has scheduled a meeting with Kathy Thomas from the State Library and representatives from the Friends, the finance committee and staff to discuss capital funding raising campaigns and possible formation of a library foundation. They will meet on Wednesday, September 25 at the library.