

**MINUTES**  
**MILWAUKIE CITY COUNCIL WORK SESSION**  
**OCTOBER 15, 2013**

**Mayor Ferguson** called the work session to order at 5:00 p.m. in the City Hall Conference Room.

**Council Present:** Council President Hedges and Councilors Scott Churchill, Mark Gamba, and Mike Miller

**Staff Present:** City Manager Bill Monahan, Assistant to the City Manager Teri Bankhead, City Recorder Pat DuVal, Community Development Director Steve Butler, Parks and Sustainability Director JoAnn Herrigel, Public Affairs Coordinator Grady Wheeler, Public Works Director Gary Parkin, Engineering Director Jason Rice

**Media:** Michael Bamesberger, *The Oregonian*

**City Manager's Report**

**Mr. Monahan** briefly reviewed the agreement with Clackamas Fire District #1 (CFD1) for use of the Public Safety Building. CFD1 rents 39% of the building for \$2,000 per month plus it pays for capital improvements. Some confusion and long-term inaction has created a large list of improvements to be done, and despite a good faith effort neither the City nor CFD1 came up with a list of improvements upon which all could agree. CFD1 wants to continue being a tenant and asked for help in forecasting future capital improvements; they would also like to review utility costs and Information System Technology (IST) issues. Mr. Monahan proposed new negotiations by suggesting a five-year plan to continue the 39% contribution level. Historically, the City asked for \$2,000 plus a negotiated amount, but based on the amount for the first five years of agreement he suggested that the total capital amount be divided by five years, and then divided by 12 months in order to bring the building up to standard. Mr. Monahan proposed that no change in rate of rent be made so the City can make the needed building improvements. He noted that these ideas were in the early concept stage, but it is clear the \$2,000 a month arrangement did not work. He added that the City can offer a reduced obligation for electric utilities by deducting the IST amount. The final cost would be in the \$7,500 range and he believes there could be additional energy savings.

**Councilor Churchill** asked about the date of the lease agreement and if there have been any amendments.

**Mr. Monahan** reported that the lease agreement date was June 2005 and had expired in 2010. CFD1 is interested in a longer lease.

**Councilor Churchill** said it would be useful to understand any other agreements.

**Mr. Monahan** asked the City Council to review the negotiated Portland General Electric (PGE) franchise, adding that there are term issues with the model agreement. PGE offered a franchise agreement of 20 years but he recommended 10 years and suggested the City Council and City Attorney consider the Lake Oswego agreement. Mr. Monahan has a negotiation session with PGE scheduled for October 28.

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**Approved Minutes**

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**Mayor Ferguson** announced the City Council would recess the work session to meet in executive session pursuant to ORS 192.660(2) (e) to deliberate with persons designated by the governing body to negotiate real property transactions.

Recess work session at 5:24 p.m., reconvened at 6:30 p.m.

**Ms. Bankhead** distributed a memo that answered audience participation questions.

### **Community Development Department Projects**

#### **Parks and Sustainability**

**Ms. Herrigel** provided a Neighborhood Parks update, noting action on the Wichita Park Community Service Use Application and the request to North Clackamas Parks District for use of funds in their budget for the four undeveloped neighborhood parks. Ms. Herrigel and Councilor Gamba successfully conducted a ride-along with the garbage haulers, looking at the contents of 60 and 90 gallon carts. She then discussed the new Bertman House lease with the North Clackamas Urban Watersheds Council (NCUWC) that mirrors the New Century Players (NCP) terms, noting that the terms will lapse at the same time; the space was smaller but the cost per square foot was the same. Insurance coverage is the same in both leases and is adequate.

**Councilor Churchill** suggested looking into coverage with a risk advisor.

**Mr. Monahan** stated that the new NCUWC arrangement is the same as the one approved with NCP a year ago. The reason for the shorter NCP lease is to sync the two leases to end together, so the City would be free to do something else with the building at a future time. He noted that if Council found reasons to modify the agreement, they would go back and work with the tenants.

Council thanked Ms. Herrigel for her years of service to the City.

#### **Community Development**

**Mr. Butler** updated Council on planning matters including the incoming veterinary clinic on Main Street; appeal of Director Determination before the Planning Commission; Transportation System Plan Update (TSP) is before the City Council in a public hearing this evening; the successful Moving Forward Milwaukie Project Kickoff Event on October 3 with visual preference survey and Council participation; and he reviewed upcoming involvement meetings. Mr. Butler announced that the City has been awarded a Transportation and Growth Management (TGM) grant from the Oregon Department of Transportation (ODOT) to look at Monroe Street as a Neighborhood Greenway, a project that is in the conceptual stage.

**Mr. Rice** provided an Engineering report on the quiet zone implementation notice to proceed, and staff was in talks with the contractor regarding street flagging. He noted, in response to previous Council discussions, that it is reasonable to have approval in 30 days. Mr. Rice reported that the downtown streetscape group has been doing a lot of talking via email and has details for a planting standard. He anticipated bringing documents to Council at the November 5 City Council meeting.

**Mr. Rice** reported on the Clackamas County TSP and proposed improvements to the Lake/Linwood/Railroad/Harmony intersection. The City has an opportunity to provide testimony to the County on the proposed intersection plan.

**Council President Hedges** discussed the negative reaction of the Neighborhood District Associations (NDAs) to the proposed intersection plan.

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**Councilor Gamba** stressed the importance of articulating the objections of the City and NDAs and agreed with Council President Hedges that Zac Perry would be a good representative; Councilor Gamba may also attend a public hearing on the intersection.

**Council President Hedges** thought the height of the overpass was the main sticking point and believes there ought to be an alternative to suggest when objections were voiced.

**Mr. Butler** noted that the Council can either object to the Plan outright or ask for more discussion on the Plan and details.

**Mayor Ferguson** agreed the City had to have a compelling argument that a new design was as safe as an elevated crossing.

**Councilor Gamba** noted that there is also the possibility that high-speed rail, a third track, may one day be part of that intersection too.

**Councilor Churchill** noted the drawing put out by Clackamas County was conceptual at best.

**Mr. Rice** suggested the City look into alternatives and counteroffer to work together.

**Mayor Ferguson** stated it was important to work with the County and community, and he did not feel the Council should outright oppose the project.

#### Goals Update

**Ms. Bankhead** provided an update on the City Council goals.

#### Preliminary Survey Results and Summary of Stakeholder Conversations

**Mr. Wheeler** provided an update on the 19 stakeholder interviews to gauge community knowledge about the costs of various proposed projects and what tools should be used to communicate with the public. There will be a formal report issued on the public opinion survey and discussion of the bond measure language. The information will assist the Council in deciding whether or not to go out for a bond measure, and if so, which projects to include. It will also help shape any education efforts undertaken by the City.

**Mayor Ferguson** agreed with Mr. Monahan's suggestion to change the regular session agenda by moving the landscaping contract item to before the public hearing. He then announced that he will be setting up the community booth at the Milwaukie High School football game this Friday.

**Mayor Ferguson** adjourned the work session at 7:03 p.m.

Respectfully submitted,



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Pat DuVal, Recorder

# WORK SESSION



MEMORANDUM

October 10, 2013

TO: Milwaukie City Council

We, the undersigned citizens and community leaders of Milwaukie, wish to register in the strongest possible terms our objection to the actions of City Manager Bill Monahan which have led to the abrupt retirement of Chief Bob Jordan. He has insisted on sustaining budget cuts to the police department that have already strained the department's ability to respond fully to public safety needs. Equipment and training that will literally protect the lives of our police officers as well as citizens have had to be curtailed, delayed or eliminated all together. [We would remind Council that appropriate training in the use of non-lethal weapons likely saved the City from a lawsuit over the shooting that involved Officer Strait and Sgt. Broomfield because they followed their training and they had the non-lethal equipment to use.] Captain Rash has been doing some of the work of administrative staff because that position has not been filled. This is a colossal waste of his time and the city's money.

Mr. Monahan was agreeable to hiring a consultant to investigate whether the department under Bob Jordan's leadership was being managed as well as other departments. This was fortunately stopped and a less costly analysis was obtained. It is still difficult to understand, though, why Mr. Monahan could not trust an analysis made by a man with a law degree, 40 years of law enforcement and judicial professional work and thousands of hours of professional executive-level training provided by the FBI. Is there a local consultant with better credentials?

In the past 25 or more years Milwaukie has had no other Chief who has so committed himself to our community as has Bob Jordan. From mentoring an elementary school child at lunch to attending all monthly NDA meetings to sitting in a dunk tank to raise money for a local PTA, he has made himself a part of this community. He has understood and responded in the best way that he could how to provide community policing at the very basic level while upgrading the department to the point where it could be accredited, a professional standard previously not obtainable.

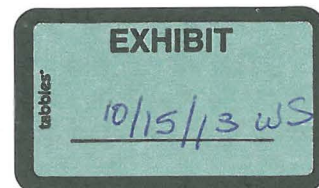
It is not hard to understand why the Chief would feel that despite his best efforts to defend his department from truly damaging budget cuts he has been overridden by a person who believes yet another planner or a library aide has a higher priority than a fully trained and credentialed police officer.

We are extremely concerned at the City Manager's staffing priorities that ignore concerns expressed by so many neighborhood leaders and PSAC over potential crime arriving by Light Rail. Chief Jordan does have a plan to police the transit zone around Lake Road Station but it will require more staffing. We know that a newly hired police officer takes 18 months to train and prepare for solo duty. The time is ticking down until PMLR arrives. Is this going to be one of those "too little too late" incidents when something is finally done when an elderly man is beaten and left for dead as he walks home from Lake Road Light Rail Station? We can and should learn from terrible lessons learned from Rockwood and Gresham, and the only way to do that is to make sure our police department is fully staffed, equipped and trained. This means filling the current 3 vacancies and adding at least 5 more officers.

It's too late now to retain the best Police Chief this City has ever seen, probably the best Police Chief in Oregon. There is no doubt in our minds that the best successor to him would be one of the two Captains he appointed, mentored and trained. And to make sure that the department he takes charge of has the budget to do what it needs to do the job right. We would be happy to make do without yet another planner or library aide or fewer library hours or shorter hours at JCB if it meant that we had a full complement of police officers - enough to handle the city's needs now and into the future when PMLR arrives.

Kathryn A. Lyle  
Sue J. Richardson  
L. Patton  
D. M. Humberight

Linda M. Hedger  
Jean Baker  
J. J. Sand PSAC



# MILWAUKIE

*Dogwood City of the West*

## Memorandum

To: City Council

From: Steve Butler, Community Development Director  
JoAnn Herrigel, Parks and Sustainability Director  
Jason Rice, Engineering Director  
Ryan Marquardt, Senior Planner  
Tom Larsen, Building Official

CC: Bill Monahan, City Manager

Date: October 15, 2013

Re: Community Development Department Projects - City Council Update for 10/15/13 Work Session

### Parks & Sustainability

- Neighborhood Park Completion
- Park District Cost Allocation
- City Swale/Median Maintenance Contracts
- Sustainability Plan
- Tree City USA
- Public/Government Access
- Milwaukie Riverfront Park
- Garbage rates

### Engineering

- Quiet Zone Implementation
- Downtown Streetscape
- Adams Street Connector
- 17<sup>th</sup> Avenue Bike/Ped. Path
- Clackamas County TSP Update
- ADA Ramp Grant - CDBG

### Planning

- Annexations
- Land Use and Development Review
- Transportation System Plan Update
- Light Rail Permitting
- Zoning Code Enforcement
- Moving Forward Milwaukie: Enhancing Our Commercial Districts
- Code Amendments

### Community Development

- Kellogg Ped/Bike Bridge
- ODOT TGM Grant
- Adams Street Lanterns

### Building

- Updates

### Parks & Sustainability

#### **Neighborhood Park Completion**

- Wichita Park Community Service Use application has been drafted; will be submitted for Planning Review soon.
- Staff is reviewing a draft RFP for a landscape design/architecture firm to work on City's four remaining undeveloped parks. District to issue and manage the RFP.

#### **Garbage Rates**

- Staff and Councilor Gamba participated in a field trip to look in 60 and 90 gallon garbage carts today. Informal survey data will be collated and shared with Council at a future study session.

### Planning

#### **Land Use and Development Review**

- The Design and Landmarks Committee is scheduled to hear a design review application on Wednesday, October 23rd at 6 PM. The application is for an addition at the former Clackamas Federal Credit Union building at 10400 SE Main St for a veterinary clinic that wishes to move into the building.

- The Planning Commission will hear an appeal of a Director Determination for the Pendleton Woolen Mills property at 2516 SE Mailwell St at their meeting on Tuesday, October 22<sup>nd</sup> at 6:30 PM. The appeal concerns the status of parking spaces along the northern edge of the property and whether they count as required off-street parking spaces. This hearing was rescheduled from October 8<sup>th</sup>.

#### **Transportation System Plan Update**

- Council will have its first hearing on the TSP Update tonight (Tuesday, October 15<sup>th</sup>). Associate Planner Brett Kelder will make a staff presentation and can answer Council questions. Council will hear public testimony from anyone wishing to present comments and then will have an opportunity to discuss the proposed amendments and suggest additional changes before making a decision about adoption (which is hoped to occur at the 11/5/13 Regular Session).
- Two small corrections identified by a City Councilor (one is an employment number correction in a table and the second is a minor grammatical correction) will be handed out at the Regular Session.

#### **Moving Forward Milwaukie: Enhancing Our Commercial Districts**

- Over 30 people attended a successful Project Kickoff event on October 3<sup>rd</sup>. Attendees participated in instant polling about key issues for downtown and a visual preference survey to gauge the community's receptiveness to various styles of buildings. The results of the workshop (polling and visual preferences) will be online as soon as they are ready, and staff is working to make the poll and preference survey available as online activities.
- The second Project Advisory Committee (PAC) will be held on Monday, October 21<sup>st</sup> to discuss the results of the project kickoff event and the Market Study report. The meeting will begin at 6:30 PM at the Public Safety Building (3200 SE Harrison St) and is open to the public.
- Public events will occur on **Monday, October 28<sup>th</sup>**, and **Tuesday, October 29<sup>th</sup>** to discuss the opportunity sites being studied in the MFM project. The event on Monday October 28<sup>th</sup> will be from 6-8 PM at the Milwaukie High School Commons, and will focus on the 5 opportunity sites downtown (Town Center site across from City Hall, Cash Spot site, and the "triangle" site adjacent to the light rail station in downtown Milwaukie, Graham Building on Main St. and Dark Horse property on 21<sup>st</sup> Ave). The event on Tuesday, October 29<sup>th</sup> will be from 6-8 PM at the Public Safety Building, and will focus on the Murphy and MacFarland sites in Central Milwaukie. These will be a forum for the public to express the types of development they'd like to see on these sites through interactive group activities and discussion.

#### **Community Development**

##### **ODOT TGM Grant**

- ODOT's Transportation and Growth Management (TGM) program has awarded the City a grant for \$93,785 to develop a concept for making Monroe St into a "neighborhood greenway." The project will bring together local stakeholders with technical experts to study the different sections of Monroe St between downtown and Linwood Ave. The goal is to identify improvements that could be built in the future to calm traffic, make Monroe St a safe east-west route for bicyclists, and improve pedestrian safety.
- The project will have a large public involvement component, since the idea is to come up with concepts that are technically effective and soundly supported by the neighborhoods and residents along the route.
- Concepts from this project could potentially be applied to Milwaukie's other neighborhood greenway routes, making it easier to move ahead on future improvements to Stanley Ave, 29<sup>th</sup> Ave, etc.
- The City will be working with ODOT to further develop the scope of the project between now and the end of the year, in order to begin the project in the summer of 2014.

#### **Engineering**

##### **Quiet Zone Implementation**

- Staff has issued a Notice to Proceed with our contractor and is coordinating flagging services with Union Pacific.
- Once construction begins, Staff expects that all of the improvements under this contract will be completed within 30 days.
- After all the work is complete, Staff will apply for the "Quiet Zone".
  - Staff has spoken with ODOT Rail and has been told there is a 30 day process for gaining approval. All of which should happen before December 31, 2013.

##### **Downtown Streetscape**

- The working group now has a draft Tree Planting Standard Detail sheet as well as good sized list of potential tree species for Milwaukie's downtown.
- The group plans to meet on (or near) October 30<sup>th</sup> in order to gain consensus on both of these items.
- At the November 5<sup>th</sup> Work Session Staff will forward the groups final recommendations regarding the downtown street trees.



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## LEGAL MEMORANDUM

TO: William A. Monahan

FROM: Timothy Ramis

DATE: October 11, 2013

RE: **Street Tree Maintenance**  
 File No. 49979-36738

### INTRODUCTION

You have asked us to examine how the Milwaukie Municipal Code (“Code”) describes the ownership of street trees in the context of maintaining a tree.

### SHORT ANSWER

The Code does not focus on tree ownership. The Code does, however, regulate tree maintenance, regardless of ownership. The Code attaches duties to the owner of the property where a tree exists. Ownership of the tree itself is irrelevant.

Persons who own real property adjacent to a street or sidewalk right of way must maintain trees planted in that right-of-way. Though such property owners may often “own” the tree, the Code does not premise maintenance duties on tree “ownership.”

### DISCUSSION

#### A. **Ownership status of trees is not the basis of tree regulations under the city’s Code.**

In Milwaukie, the ownership status of a tree in the right-of-way is not a factor in the regulation of trees in the city. As set forth in more detail below, the Code imposes several duties to maintain trees as expression of community standards. These duties apply to persons who own property on which a tree grows, or who own property adjacent to right-of-way.

#### B. **The City Code establishes a maintenance obligation on the adjacent property owner.**

Of the several ways the Code regulates trees, you have inquired about street tree maintenance. The Code provides three features that express the maintenance obligations.

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The first feature is that the Code creates a duty of care<sup>1</sup>, and the Code places this duty on the owner of the abutting property. In Milwaukie, it is the “duty and routine obligation of all owners or occupants of land adjoining any improved right-of-way” to trim growth that overhangs a right-of-way, or that creates an unreasonable risk of harm. MMC 12.12.010(A). The Code does not limit this duty to trees that are planted on the property owner’s land, and it does not require affected trees to be the personal property of the landowner. Rather, this section appears to establish a legal policy that owners of property next to a street have a duty to keep the passageway clear. The duty stems from adjacency; ownership of the tree does not matter.

The second feature is that the Code allows civil punishments for overgrowth violations, and again such violation applies to property owners near or adjacent to a street. Under MMC 12.12.015 it is unlawful for such an owner to permit any tree “on the real property *or the abutting improved right-of-way*” to obstruct visibility of traffic control devices, such as signs or lights. MMC 12.12.015, *emphasis added*. As above, the duty applies to the property owner because of adjacency to the street tree; it does not matter who owns the tree.

Finally, the Code empowers City officials to abate “dead, decaying, or unsafe trees or tree limbs,” as a nuisance under MMC 8.04.110. The City can abate such situations only when the responsible party fails to avoid creating a nuisance. The party responsible is the landowner. The premises he or she must maintain consist if his or her own real property plus “any portion of right-of-way adjacent to the real property.” Once again, the Code assigns street tree maintenance to the adjacent landowner because of the owner’s adjacency. It does not matter who claims to own the tree as personal property.

**C. The Code contains specific rules for cutting street trees, but does not apply those rules on the basis of tree ownership**

In addition to creating a maintenance obligation, the code regulates the manner in which a person may cut or prune a street tree. These rules operate similarly to the duties. The rules create a permit requirement for any person wishing to “conduct major pruning or removal” of a street tree. MMC 16.32.020. Of critical significance, the rules do not require a person to cut only the trees that he or she owns. Neither do the rules bar any specific person from cutting any particular tree. Rather, the rules are triggered when any person wishes to operate a cutting tool upon a street tree, and the rules operate upon the person doing the cutting. Again, tree ownership does not matter.

**D. Milwaukie’s Code reflects the policies in most codes around the country, and also resembles the duty to maintain sidewalks.**

According to a national municipal law treatise, a majority of jurisdictions assign street tree maintenance duties to abutting owners. *See, McQuillin on Municipal Corporations*, Section 30.66 (3d ed. 1999) (“Usually the trees between the sidewalk and the curb are set out and maintained by the abutting owner . . .”). The right of an abutting owner to plant a shade tree is said to be a right

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<sup>1</sup> For all practical purposes this describes a tort standard, or a statutory duty to live responsibly towards others.

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“frequently recognized as inhering in abutting owners.” Id. There is an approach in a minority of jurisdictions under which a municipality “may contract for planting and maintaining shade trees on the streets, and make appropriate assessments in the same manner as for sidewalks. Id. But even this approach does not require an owner to disclaim all ownership rights in a street tree.

Moreover, the abutting owner’s duty to maintain trees regardless of ownership is very similar to the owner’s duty respecting sidewalks. In Milwaukie, a property owner must “maintain in good repair and safe condition the sidewalks in front of the land.” MMC 12.04.010. Just as the street tree maintenance duty does not require the property owner to own the affected tree, the sidewalk maintenance duty does not require the property owner to also own the concrete comprising the sidewalk.

Filename: Memorandum (Legal) re\_ street tree issues.DOCX  
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Title: TRANSMITTAL  
Subject:  
Author: Jordan Schrader PC  
Keywords:  
Comments: Document Automation by Advanced Legal Systems, Inc.  
www.advancedlegal.com  
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Change Number: 2  
Last Saved On: 10/11/2013 3:09:00 PM  
Last Saved By: Ted Naemura  
Total Editing Time: 1 Minute  
Last Printed On: 10/11/2013 3:10:00 PM  
As of Last Complete Printing  
Number of Pages: 3  
Number of Words: 956  
Number of Characters: 4,847 (approx.)




# MILWAUKIE

*Dogwood City of the West*

## Memorandum

**To:** Mayor Ferguson and Councilors

**From:** Teri Bankhead, Assistant to the City Manager 

**CC:** Bill Monahan, City Manager

**Date:** October 15, 2013

**Re:** Follow-up to Questions Raised During Audience Participation

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On September 17 and October 1, 2013, Mr. Ed Parecki spoke at City Council regular session audience participation. During the September 17<sup>th</sup> meeting, Mr. Parecki asked Council and Staff to research the first four items listed below. He also submitted an invoice for sidewalk repair on Scott Street. Mr. Monahan reported back to Council on October 1 that staff was recommending denial of the reimbursement for sidewalk work. That letter was mailed to Mr. Parecki on October 4.

On October 1, Mr. Parecki added the fifth point during his audience participation. Staff has researched these and provides the following responses.

1. Who owns the trees?
2. When will the curb cracking along Scott Street be repaired?
3. When will the pot holes on Scott Street be fixed?
4. The sidewalk slope on 99E/McLoughlin approaching the corner of Scott Street does not meet the Code. ODOT replaced it about 6 or 7 years ago. There was approximately 15' of old sidewalk and ODOT poured to it, leaving an angle and slope toward McLoughlin. He requests the City review this with ODOT and for it to be fixed.
5. He requested Council consider changing the City charter to allow anyone who is a stakeholder but not a citizen to be allowed to run for City Council or any other office. He defined stakeholder as someone who is not a citizen but who is a business or property owner in the City and who pays primarily real estate tax.

### Who owns the trees?

The Municipal Code does not focus on tree ownership. The City Attorney has opined that the Code does regulate tree maintenance, however, regardless of ownership.

### **When will the curb cracking along Scott Street be repaired?**

Gary Parkin, PW Director, visited the site and reports that no hazards have been identified in this area. Curbs are patched to take care of a hazardous condition.

### **When will the pot holes on Scott Street be fixed?**

Gary Parkin, PW Director, visited the site and looked at the pot holes. He reports that the Street surface is in poor condition but there are only a couple of depressions that can be patched. The City will patch those areas the week of October 14th.

Potholes are patched by priority when they are identified, either by the public or by the City. The priority for repairing the pothole considers whether the pothole can be patched, the condition of the surrounding pavement and the extent of the damage. If a pothole is fixable and in an area where patching it makes sense, it is normally patched within a week. Badly damaged areas are placed on a repair list and fixed during the summer months. Repair of large sections of pavement may be deferred for years until funding is available.

### **The City should review the sidewalk along 99E with ODOT to fix the illegal slope.**

Jason Rice, Engineering Director, spoke with ODOT. He reports that ODOT stated that the panel was used as a transition panel to tie-in to existing non-compliant ADA sidewalk, because otherwise the project wouldn't be able to end. "At some point, there has to be a non-compliant panel." The Engineering Director agrees with this statement as the City often has to do the same when retro-fitting against non-compliant sidewalk. The expectation is that these transition panels will be removed when the abutting sidewalk is replaced in the future. ODOT replaced the previous sections with a grant and City funds. It is the responsibility of the abutting property owner to maintain the sidewalk. The portion installed by ODOT meets ADA. The transition to the adjoining sidewalk and the adjoining sidewalk do not meet ADA (similar to many existing sidewalks/ramps elsewhere in the City).

**Will the City Council consider changing the Charter to say that anyone who is a stakeholder but not a citizen be allowed to run for City Council or any other office. He defined stakeholder as someone who is not a citizen but who is a business or property owner in the City and who pays primarily real estate tax.**

The City Charter states:

Section 9. QUALIFICATIONS OF ELECTIVE OFFICERS.

No person is eligible for an elective office in the city unless at the time of the election, the person is a qualified elector of the state and has resided in the city during the six months immediately preceding the election. If during the term of office, the officer ceases to reside in the city, the office shall be deemed vacant.

If the City Council wishes to consider revising this section of the Charter, modification of the Charter is regulated by ORS 221.210, which states:

**221.210 Charter amendments and other municipal measures; initiative and referendum.** The city council may refer and the people may initiate municipal measures or amendments to the charter of a city as provided in ORS 250.265 to 250.346, unless ORS 250.255 makes ORS 250.265 to 250.346 inapplicable to the city. [Amended by 1955 c.18 §1; 1983 c.350 §24]

A charter amendment must go before the voters, wherein the citizens often bear the cost of the special election if it is not held during a regularly scheduled election. The last Charter revision was in the early 1990's when Civil Service was removed. At that time there was a Charter Review Committee that looked at all the sections prior to sending it to the voters. This can be a fairly lengthy and involved process, opening the Charter for multiple revisions.



## MILWAUKIE CITY COUNCIL WORK SESSION

City Hall Conference Room  
10722 SE Main Street  
[www.milwaukieoregon.gov](http://www.milwaukieoregon.gov)

**AGENDA**  
**October 15, 2013**

A light dinner will be served.

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**5:00 p.m. Executive Session – The City Council will meet in executive session pursuant to ORS 192.660(2)(e) to deliberate with persons designated by the governing body to negotiate real property transactions.**

- |    |           |   |                |           |
|----|-----------|---|----------------|-----------|
| 1. | 5:30 p.m. | City Manager's Report   | Bill Monahan   |           |
|    |           | A. Goals Update   | Teri Bankhead  |           |
|    |           | B. Bertman House Lease  | JoAnn Herrigel | <b>1</b>  |
| 2. | 6:00 p.m. | Preliminary Survey Results and Summary of Stakeholder Conversations | Grady Wheeler  | <b>31</b> |
| 3. | 6:45 p.m. | Adjourn Work Session  |                |           |

### Information

Executive Session: The City Council may meet in executive session pursuant to ORS 192.660(2). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

### Public Notice

- The Council may vote in work session on non-legislative issues.
- The time listed for each discussion item is approximate. The actual time at which each item is considered may change due to the length of time devoted to the one previous to it.
- The Council requests that mobile devices be set on silent or turned off during the meeting.
- The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities Act. For special accommodations, please call 503-786-7502 or email [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov) at least 48 hours prior to the meeting.



MILWAUKIE CITY COUNCIL  
AGENDA ITEM SUMMARY

Agenda Item: WS 1. B.

Meeting Date: 10/15/13

Title: Bertman House Lease - NCUWC

**Prepared By:** JoAnn Herrigel, Parks and Sustainability Director

**Department Approval:** Steve Butler, Community Development Director

**City Manager Approval:** Bill Monahan

**Approval Date:**

**ISSUES BEFORE COUNCIL**

Approval of a resolution authorizing the City Manager to sign a lease with the North Clackamas Urban Watersheds Council for use of a portion of the City-owned Bertman House, located at 11022 SE 37<sup>th</sup> Ave.

**STAFF RECOMMENDATION**

Approve the proposed resolution.

**KEY FACTS & INFORMATION SUMMARY**

The Bertman House, owned by the City of Milwaukie, was historically used by the City's Fire Department and later, from 1992 to 2006, as an office by the North Clackamas Parks and Recreation District. In 2007, after the District relocated to the County offices, the City Manager signed a 5-year lease with the New Century Players, a local theater group, for use of the Bertman House as office and prop storage space. In 2012, the City signed a new 5-year lease with the New Century Players. Council is now being asked to approve a 4-year lease with the North Clackamas Urban Watersheds Council for use of a small portion of the Bertman House.

**OTHER ALTERNATIVES CONSIDERED**

None.

**CITY COUNCIL GOALS**

None.

**FISCAL NOTES**

Rent of less than \$195.30 a year will be paid to the City as part of this lease agreement.

**ATTACHMENTS**

1. Resolution
2. Draft Commercial Lease
3. NCUWC Flyer
4. Commercial Lease



MILWAUKIE CITY COUNCIL  
STAFF REPORT

**To:** Mayor and City Council  
**Through:** Bill Monahan, City Manager  
**Subject:** Bertman House Lease for North Clackamas Urban Watersheds Council  
**From:** JoAnn Herrigel, Parks and Sustainability Director  
**Date:** October 15, 2013

**ACTION REQUESTED**

Approve a resolution authorizing the City Manager to sign a lease with the North Clackamas Urban Watersheds Council for use of a portion of the City-owned Bertman House, located at 11022 SE 37<sup>th</sup> Ave.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

**Spring 2012:** Council authorized the City Manager to sign a 4-year lease agreement with the New Century Players for use of the Bertman House at 11022 SE 37<sup>th</sup> Ave.

**BACKGROUND**

The Bertman House, owned by the City of Milwaukie, was historically used by the City's Fire Department and later, from 1992 to 2006, as an office by the North Clackamas Parks and Recreation District. In 2007, after the District relocated to the County offices, the City Manager signed a 5-year lease with the New Century Players, a local theater group, for use of the Bertman House as office and prop storage space.

In 2012, staff met with Council to review the use of the Bertman House and to discuss the potential of renewing a lease with the New Century Players. During this discussion, Council noted the benefits of having tenants in otherwise unused City-owned buildings to ensure building safety and upkeep and expressed an interest in supporting local non-profit organizations by providing affordable office space. Council further requested that the NCP lease stipulate that the theater group perform at least three of their annual productions in the City of Milwaukie. Finally, Council encouraged staff to welcome the use of the Bertman House by other local non-profit organizations.

Shortly after the 2012 lease was signed with the New Century Players, the City began discussions with the North Clackamas Urban Watersheds Council (NCUWC), a newly formed Watershed Council focusing on protection and enhancement of the Kellogg Creek Watershed, regarding a potential lease for a small portion of the upper floor of the Bertman House. Due to staffing changes at the City and the Watershed Council, the lease negotiations with NCUWC have taken almost a year to complete. However, in August 2013, the NCUWC Board voted in favor of moving forward with a lease with the City.

The elements of the proposed lease with NCUWC generally mirror those in the lease for the New Century Players. The two leases vary only in the following ways:

- The same charge per square foot is applied in both leases, however, the annual rent payment for NCUWC is lower due to the smaller space used.
- The length of the term for the NCUWC lease is one year shorter in order to synchronize the term ends of the two leases.
- Section 1.3, Renewal Option, has been modified to allow the City more discretion in considering renewal of the NCUWC lease.

Important lease elements that are in both agreements include:

- The City agrees to pay for water, storm and sewer utilities costs and weekly garbage collection and NCUWC splits the cost of the remaining utilities such as electric and gas, with New Century Players.
- NCUWC is required to obtain and maintain a stated amount of insurance.
- NCUWC is required to file appropriate paperwork with the County Tax Assessor's office, declaring their non-profit status and allowing the City to maintain its exemption from taxes on the Bertman House.
- NCUWC may not assign or sublet any portion of the space without the City's consent.

Tricia Sears, NCUWC's Coordinator, has obtained the required liability insurance and has delivered a certificate of insurance to the City. In addition, Ms. Sears has obtained the appropriate forms from the County Tax office and will file them at the appropriate time of year. City staff has facilitated communication between the two non-profits to ensure amicable division of utility costs.

#### **CONCURRENCE**

The City Attorney and the Finance Director concur with the lease elements.

#### **FISCAL IMPACTS**

Rent of \$195.30 a year will be paid to the City as part of this lease agreement.

#### **WORK LOAD IMPACTS**

Facilities Department staff will be responsible for any significant building repairs, not caused by the tenants, which are required during the term of the lease.

#### **ALTERNATIVES**

Deny approval of the resolution.

Approve the resolution conditioned on specific amendments of the proposed lease.

#### **ATTACHMENTS**

- 1.NCUWC Flier
- 2.Resolution
- 3.Proposed lease
- 4.New Century Players' Lease



CITY OF MILWAUKIE  
*"Dogwood City of the West"*

# Attachment 1

## Resolution No.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN A 4 YEAR LEASE WITH THE NORTH CLACKAMAS URBAN WATERSHEDS COUNCIL (NCUWC) FOR USE OF A PORTION OF THE CITY-OWNED BERTMAN HOUSE, LOCATED AT 11022 SE 37<sup>TH</sup> AVE.**

**WHEREAS**, the City of Milwaukie owns a building located at 11022 SE 37<sup>th</sup> Ave, called the Bertman House; and

**WHEREAS**, the Bertman House is currently leased by the New Century Players, a non-profit theater group; and

**WHEREAS**, there is adequate space in the Bertman House to accommodate another non-profit organization; and

**Now, therefore, be it resolved** that the City Manager is authorized to sign a 4 year lease, beginning November 1, 2013 and continuing through April 30, 2017, with the North Clackamas Urban Watersheds Council (NCUWC) for use of a portion of the City-owned Bertman House, located at 11022 SE 37<sup>th</sup> Ave .

Introduced and adopted by the City Council on October 15, 2013.

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

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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

## Attachment 2

### DRAFT COMMERCIAL LEASE

Date: October\_\_\_\_\_, 2013 (“Effective Date”)

Between: THE CITY OF MILWAUKIE, an Oregon municipal corporation (“Landlord”)  
10722 SE Main Street  
Milwaukie, OR 97222

And: North Clackamas Urban Watersheds Council, an Oregon  
nonprofit corporation (“Tenant”)  
1900 SE Milport Rd., Ste. C  
Milwaukie, OR 97222

Landlord leases to Tenant and Tenant leases from Landlord the following described property (the "Premises") on a non-exclusive basis, on the terms and conditions stated below:

Approximately 271 square feet consisting of a room, a bathroom, and a hallway connecting the two, which are part of the top floor of the building (“Building”) located on the property located at 11022 SE 37<sup>th</sup> Ave, Milwaukie, Oregon, tax lot 1S1E36ADO2500 (“Property”), along with 2 parking spaces on the Property and access to the Building ,including the entryway and stairway as necessary to access the top floor of the Building.

#### **Section 1. Occupancy.**

**1.1 Original Term.** The term of this Commercial Lease (“Lease”) shall commence November 1, 2013, and continue through April 30, 2017, unless sooner terminated as hereinafter provided (“Original Term”).

**1.2 Possession.** Tenant's right to possession and obligations under the Lease shall commence on November 1, 2013.

**1.3 Renewal.** If this Lease is not in default, Tenant shall have the right to request renewal of this Lease for one (1) five (5) year term (“Renewal Term”) as follows:

(1) Renewal of the lease is discretionary, requiring approval of both Tenant and Landlord.

(2) If both parties decide to renew the lease, the renewal term shall commence on the day following expiration of the Original Term.

(3) Tenant shall request renewal by giving written notice to Landlord given not less than six (6) months prior to the last day of the Original Term. The giving of such notice

only invites the parties to discuss terms of a new agreement. One or more terms, including rent, may be negotiated once the notice of election to renew is received by Landlord.

## **Section 2. Rent**

**2.1** Tenant shall make an annual base rent payment in advance to the Landlord of \$195.30 due and payable to the Landlord by November 1 of each year of the Lease, beginning November 1, 2013. Subsequent base rent payments will be for the full annual amount and will be due on November 1 of 2014 and 2015. Rent paid on November 1, 2016 shall encompass a prorated payment of 4 months' rent

**2.2 Maintenance.** As specified in Section 4.2, Tenant agrees to maintain the Premises in the same condition as it was on the Effective Date of this Lease, except for ordinary wear and tear.

### **2.3 Utilities.**

**2.3.1** Landlord shall be responsible for paying the following utilities: water, sewer, storm drainage, routine weekly solid waste collection (not the cost of collection and disposal of materials by special request), general site security services and transportation fees. Original Tenant (defined below) has setup and maintained telephone, cable, data, internet, electrical and heating. Tenant shall be responsible for electrical and heating expenses, plus the cost of telephone, cable, data and/or internet, if Tenant uses such utilities. Tenant shall make separate contractual arrangements with Original Tenant to pay for tenant's proportional share of the electrical costs, the heating costs, and any other utilities Tenant wishes to share with Original Tenant. For these or any other utilities Tenant desires to have in the Premises, Tenant shall make separate contractual arrangements directly with the providers of those services and utilities.

**2.3.2** Tenant must use all utilities in a commercially reasonable manner, so as not to negatively impact Original Tenant.

## **Section 3. Use of the Premises**

**3.1 Permitted Use.** The Premises shall be used for office space and for no other purpose without the consent of Landlord, which consent shall not be withheld unreasonably. For the purposes of this Lease, "office space" is intended to include use of the facility for meeting rooms and conducting administrative work.

**3.2 Restrictions on Use.** In connection with the use of the Premises, Tenant shall:

(1) Conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use.

(2) Refrain from any activity that would make it impossible to insure the

Premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Landlord to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional cost of the insurance.

(3) Refrain from any use that would be reasonably offensive to owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the Premises.

(4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Landlord.

(5) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the premises without the written consent of Landlord. Tenant is permitted to hang artwork for display purposes on interior walls. Care should be taken to repair marks and nail holes on an ongoing basis to maintain a neat and clean appearance. Tenant is permitted to hang a temporary (e.g. "New Home of...") banner or sign for up to ninety (90) days from occupancy, provided the banner or sign is no larger than 16 square feet. Tenant is also permitted to display a permanent sign provided it is no larger than four square feet.

### **3.3 Protective Restrictions.**

(1) Tenant shall not cause or permit use of herbicides or pesticides on the Premises without permission of Landlord. A written request for such use must be presented to Landlord at least forty-five (45) days in advance and reviewed by the City's Water Quality Control Coordinator and the Oregon Drinking Water Program Hydrologist. The request must contain the following information:

- a. Purpose of chemical use.
- b. Label name of product and copy of label and Material Safety Data Sheet (MSDS).
- c. Graphic depiction of area of use.
- d. Application rate and total use.

(2) Storage of Hazardous Substances (other than routine office cleaning supplies in less than one gallon containers) is prohibited. The term "Hazardous Substance" shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material organic or synthetic as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions. The term "Environmental Law" means any federal, state, or local laws, ordinances, codes, statutes, regulations, administrative rules, policies and orders, and other authority existing now or in the future that classify, regulate, list, or define Hazardous Substances.

(3) Parking. Vehicle parking is limited to paved areas only. There is no parking allowed in the first position next to north side of the water facilities located within the separate building located on the Property. All Tenant vehicles must be able to be moved on short notice to facilitate emergency repair to the water facilities or emergency operations.

**3.4 Non-exclusivity; Co-Tenancy or Leasing of Portion of Premises by Landlord to Another Party.** Landlord and Tenant acknowledge that Landlord leases the remainder of the Building and Property to New Century Players (“Original Tenant”).

#### **Section 4. Obligations**

**4.1 Landlord’s Obligations.** Landlord shall be responsible for all repairs and replacement except for those items of repair and maintenance set forth in Section 4.2 as Tenant’s obligations.

**4.2 Tenant’s Obligations.** The following shall be the responsibility of Tenant:

(1) Maintenance of interior walls, ceilings, doors, windows, and related hardware, light fixtures, switches, and wiring and plumbing in the Premises and bathroom in the northeast portion of the Building top floor.

(2) Any repairs to any part of the Property necessitated by the negligence of Tenant, its agents, employees, and invitees, except as provided in Section 5.2 dealing with waiver of subrogation.

(3) As set forth in Section 3.2 (1), any repairs or alterations required under Tenant’s obligation to comply with laws and regulations as set forth in Section 3.2.

**4.3 Landlord’s Interference with Tenant.** In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall not cause unreasonable interference with use of the Premises by Tenant.

**4.4 Reimbursement for Repairs Assumed.** If Tenant either fails or refuses to perform maintenance or make repairs that are required by this Lease, after Landlord gives ten (10) days notice to commence such repairs or maintenance, Landlord may make the repairs and charge the actual cost of repairs or maintenance to Tenant. Such expenditures shall be reimbursed by Tenant within ten (10) days after demand by Landlord.

**4.5 Inspection of Premises.** Landlord shall have the right to inspect the Premises at any reasonable time with twenty-four (24) hour written notice to Tenant or upon shorter notice if necessitated by an emergency.

**4.6 Limitation on Tenant Obligation to Make Repairs.** If while performing maintenance or repairs, Tenant encounters unforeseen latent conditions in the Building that cause it to be unable to perform the requirements of Sections 2.2 and 4.2, Tenant shall inform Landlord to discuss the concern and Landlord and Tenant will need a mutual agreement as to how such obligation will be carried out.

## **Section 5. Insurance**

**5.1 Insurance Required.** Landlord shall keep the Premises insured at Landlord's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Tenant shall carry similar insurance insuring the personal property of Tenant on the Premises against such risks.

**5.2 Waiver of Subrogation.** Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

**5.3 Liability Insurance.** Before taking possession of the Premises, Tenant shall procure, and thereafter during the term of the Lease shall continue to carry, the following insurance at Tenant's cost: Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<b>Coverage</b>	<b>Limit</b>
General Aggregate	1,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one fire)	50,000
Medical Expense (Any one person)	5,000

Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the premises. Such insurance shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant, and shall name Landlord as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring a 10-day written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant's taking possession of the Premises.

## **Section 6. Taxes**

**6.1 Personal Property Taxes.** Tenant shall pay as due all taxes on its personal property located on the Premises.

**6.2 Real Property Taxes.** Landlord is exempt from paying real property taxes levied against the Premises for property that is in public use. It is the intent of the parties that the entire property continue to be exempt from taxation; provided, however, Tenant must establish and maintain tax-exempt status. The parties recognize that tax-exempt status will be determined by Clackamas County or the State of Oregon. Tenant shall be responsible for filing with Clackamas County an Application For Real and Personal Property Tax Exemption for the portion of the property under its control. If Tenant fails to qualify for tax exemption, Tenant shall pay, as due, the full tax obligation. As used herein, real property taxes includes any fee or charge relating to the ownership, use, or rental of the Premises, other than taxes on the net income of Landlord or Tenant or personal property.

## **Section 7. Liability and Indemnity**

### **7.1 Liens.**

(1) Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent which shall be payable within thirty (30) days of demand. Such action by Landlord shall not constitute a waiver of any right or remedy that Landlord may have on account of Tenant's default.

(2) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien, bond around the lien as provided under Oregon law, or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

**7.2 Indemnification by Tenant.** Indemnification By Tenant: Tenant agrees to indemnify, defend (with counsel reasonably acceptable to Landlord), and hold Landlord and its directors, officers, representatives, agents, property managers, and employees harmless from and against all liabilities, damages, claims, losses, judgments, charges, and expenses (including reasonable attorneys' fees and court costs) arising from or in any way related, directly or indirectly, to (i) Tenant's or its directors, officers, members, managers, agents, employees, subtenants, or

invitees (“Tenant Parties”) use of the Premises or the Building, (ii) the conduct of Tenant's business, (iii) from any activity, work or thing done or permitted by Tenant or a Tenant Party in or about the Premises or Building, (iv) in any way connected with the Premises or with the improvements or personal property therein, including, but not limited to, any liability for injury to person or property of Tenant, Tenant Parties, or third party persons, and/or (v) Tenant's failure to perform any covenant or obligation of Tenant under this Lease. Tenant's agreement to indemnify Landlord pursuant to this Section 7.2 is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease. Tenant agrees that the obligations of Tenant herein shall survive the expiration or earlier termination of this Lease.

### **Section 8. Quiet Enjoyment; Mortgage Priority**

Landlord’s Warranty. Landlord warrants that it is the owner of the Premises and has the right to lease the Premises free of all encumbrances. Landlord will defend Tenant’s right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term, subject to the provisions of Section 3.4.

### **Section 9. Assignment and Subletting**

Tenant may not assign, mortgage, or sublease the whole or any part of the Premises, nor may Tenant grant a right of use of any portion of the Premises to any third person by any other means, without the prior written consent of Landlord which Landlord may withhold in its sole and absolute discretion. This provision shall apply to all transfers by operation of law. Landlord may withhold or condition such consent in its sole and arbitrary discretion.

**Section 10. Tenant Termination.** Notwithstanding any other provision of this Lease, Tenant may terminate this Lease, prior to the Expiration Date, by providing thirty (30) days prior written Notice to Landlord.

### **Section 11. Default**

The following shall be events of default:

**11.1. Default in Rent.** Failure of Tenant to perform its obligations as stated in Section 2.

**11.2. Default in Other Covenants.** Failure of Tenant to comply with any term or condition or fulfill any obligation of the Lease (other than Section 2) within fifteen (15) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the fifteen (15-) day period, this provision shall be complied with if Tenant begins correction of the default within

the fifteen (15-) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

**11.3. Insolvency.** Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within ten (10) days shall constitute a default. If Tenant consists of two or more individuals or business entities, the events of default specified in this Section 10.3 shall apply to each individual unless within ten (10) days after an event of default occurs, the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the Lease.

**11.4. Abandonment.** Failure of Tenant for thirty (30) days or more to occupy the Premises for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease.

## **Section 12. Remedies of Default**

**12.1. Termination.** In the event of a default, the Lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the Lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant of the default, and Landlord may reenter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

**12.2. Reletting.** Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purpose other than that specified in the Lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant that Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

## **Section 13. Surrender at Expiration**

**13.1. Condition of Premises.** Upon expiration of the lease term or earlier termination

of the Lease on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises broom clean and in the same condition as at the commencement of the Lease. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Tenant is responsible shall be completed to the latest practical date prior to such surrender.

### **13. 2. Fixtures.**

(1) All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.

(2) Prior to expiration or other termination of the lease term Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within ten (10) days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Landlord.

### **13. 3. Holdover.**

(1) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month-to-month, subject to all of the provisions of this Lease except the provisions for base rent, term and renewal, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Base rent during every holdover period shall be 125% of the base rent in effect at the time the applicable Lease term expires or is terminated. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this Lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

(2) If a month-to-month tenancy results from a holdover by Tenant under this Section 12.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than sixty (60) days prior to the termination date that shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law

with respect to a month-to-month tenancy.

#### **Section 14. Miscellaneous.**

**14.1. Nonwaiver.** Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

**14.2. Attorney Fees.** If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

**14.3. Notices.** Any notice required or permitted under this Lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this Lease or to such other address as may be specified from time to time by either of the parties in writing.

**14.4. Succession.** Subject to the above-stated limitations on transfer of Tenant's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

**14.5. Recordation.** This Lease shall not be recorded without the written consent of Landlord.

**14.6. Time of Essence.** Time is of the essence of the performance of each of Tenants obligations under this Lease.

**14.7. No Third Party Rights.** This Lease shall not create any rights in or inure to the benefit of any parties other than Landlord and Tenant.

**14.8. Modification.** Any modification of the provisions of this Lease shall be reduced to writing and signed by the parties.

**14.9. Governing Laws; Venue.** This Lease shall be governed by the laws of the State of Oregon. Venue shall be in the Circuit Court for Clackamas County, Oregon.

**14.10. Entire Agreement.** This Lease contains the entire agreement between the parties and supersedes all prior written or oral discussions, leases, or agreements regarding the premises described herein.

**14. 11. Severance.** If any provision of this Lease is held to be invalid, it will not affect the validity of any other provision. This Lease will be construed as if the invalid provision had never been included.

**14. 12. Counterparts.** This Lease may be executed in counterparts, each of which, when taken together, shall constitute fully executed originals.

## **Section 15. Arbitration**

**Dispute Resolution.** Except as set forth in Section 15, the Parties agree that it is in their respective best interests to attempt to resolve disputes that arise under this Lease in a quick and inexpensive manner. To that end, the Parties commit to use their best efforts to resolve disputes informally. For all disputes that arise pursuant to this Lease, the Parties shall negotiate with one another in good faith in an effort to reach resolution of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) days after the commencement of negotiations, the Parties shall submit the issue to a qualified mediator in good faith to attempt to resolve the dispute and the cost of the mediator shall be shared equally by the Parties. If the dispute cannot be resolved through mediation within ninety (90) days, then the dispute shall be submitted to and resolved by binding arbitration. The arbitration shall be held in the Portland, Oregon metropolitan area, consistent with the rules of the Arbitration Services of Portland, Inc. Cost of the arbitrator will be shared equally by the Parties. Except as otherwise required by law, the arbitrator's final award shall be final, binding, and non-appealable; and no Party may seek any amendment to or reconsideration of the arbitrator's final award except for correction of non-substantive scrivener's or administrative errors. Judgment upon the arbitration award may be entered in any court having jurisdiction. Notwithstanding the foregoing, the Parties may resort to a court of competent jurisdiction for any matter in which injunctive relief is an appropriate remedy.

## **Section 16 Rent Arbitration.**

**16. 1. Disputes to Be Arbitrated.** If any dispute arises between the parties regarding the base rent to be paid during any Renewal Term under the Lease, either party may request arbitration and appointment as an arbitrator an independent commercial real estate appraiser having knowledge of valuation of rental properties comparable to the Premises. The other party shall also choose an arbitrator with such qualifications, and the two arbitrators shall choose a third. If the choice of the second or third arbitrator is not made within ten (10) days of choosing the prior arbitrator, then either party may apply to the presiding judge of the county where the Premises are located to appoint the required arbitrator.

**16. 2. Procedure for Arbitration.** The arbitrators shall proceed according to the Oregon statutes governing arbitration, and the award of the arbitrators shall have the effect therein provided. The arbitration shall take place in Clackamas County. The parties shall share costs of the arbitration equally, but each party shall pay its own attorney fees incurred in connection with the arbitration.

THE CITY OF MILWAUKIE, an Oregon  
Municipal Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

NORTH CLACKAMAS URBAN  
WATERSHEDS COUNCIL, an Oregon  
non-profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

# North Clackamas Urban Watersheds Council



## About Our Watersheds

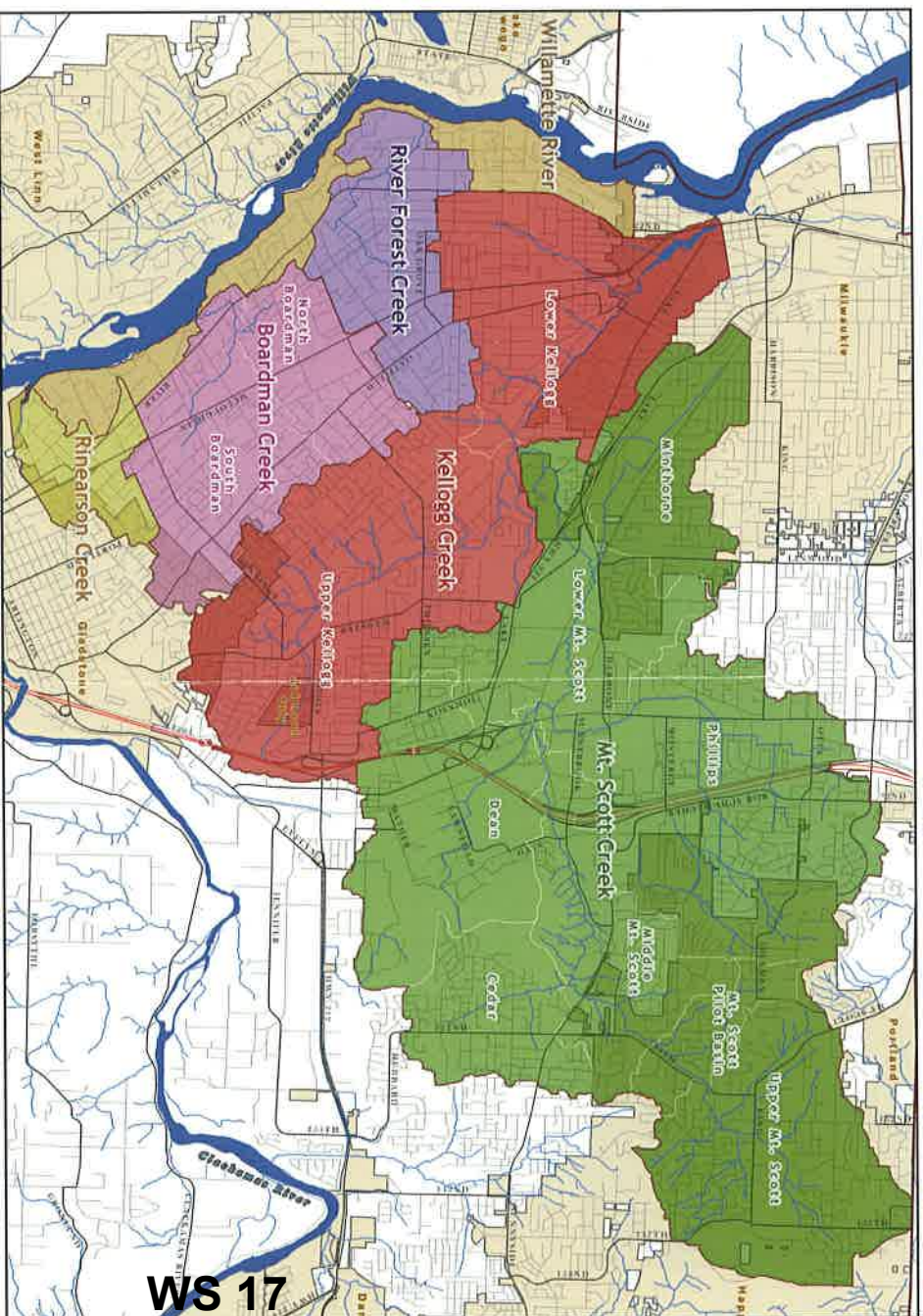
**Kellogg/Mt Scott Watershed (KMS)** encompass about 16 square miles (10,300 acres). It is home to an amazing array of wildlife including salmon, steelhead, cutthroat trout, brook lamprey, great blue heron, coyote, deer, Northwestern salamander, red-legged frogs, pileated woodpecker, wood duck, beaver and more. The basin's headwaters begin in Happy Valley and Johnson City and extend to the Willamette River in downtown Milwaukie.

**River Forest** watershed covers about 800 acres and consists of 10 miles of creek in pipe and about 3 miles of open stream. A small man-made lake marks its confluence with the Willamette. Significant habitat improvements are underway in Risley Park, thanks to North Clackamas Parks & Recreation District and the Oak Lodge Sanitary District.

**Boardman** is the largest of the basins that make up the Oak Lodge area. This basin covers about 1,300 acres and is a tributary to the Willamette River. This basin consists of 21 miles of creek in pipe and 4 miles of open stream. The watershed is impacted by development, but there are great opportunities for restoration partnerships with public and private landowners to continue improving conditions.



**Rinearson** originates in the Boardman Wetland, spends about half of its journey piped underground, but emerges periodically to pass through areas of high habitat potential including the Olson Property and the Meldrum Bar Park Natural Area. This is the smallest tributary in the area, but the 20 acres at the confluence with the Willamette in Meldrum Bar Park is designated as a natural area and is being restored.



WS 17

## Restore your creekside property with NCUWC!

NCUWC is proud to offer, with it's partners, the Streamside Stewards Program! This program helps private landowners reduce long-term soil erosion and improve the ecological health of their streamside property and includes financial assistance with project implementation.

This program is available in select areas of our watersheds.

Please contact [restoration@ncuwc.org](mailto:restoration@ncuwc.org) or 503-550-9282 to get more information.



## Who is NCUWC?



### About the Council

The North Clackamas Urban Watersheds Council (NCUWC) is one of Oregon's newest councils! NCUWC was formally recognized by the Clackamas County Board of Commissioners in June, 2009.

The Council includes representation from multiple citizens, businesses, non-profit organizations, county community planning organizations (CPO), city recognized neighborhood groups and government agencies including: the Friends of North Clackamas Parks, Clackamas County Urban Green, North Clackamas Parks & Recreation District, Clackamas County Service District #1, Water Environment Services, the Rinearson Coalition, the Tsunami Crew, Friends of Kellogg and Mt. Scott Creeks, Oak Lodge Sanitary District, and McFarlane's Bark and the cities of Happy Valley, Milwaukie and Gladstone.

### Our Programs

NCUWC organizes educational exhibits at community events, volunteer work parties, educational tours and community presentations. To find out more about what we do, contact [info@ncuwc.org](mailto:info@ncuwc.org) or 503-550-9282.

## Get Involved!

- Call us to assess your streamside property and help you restore the beauty and function of your streamside area.
- Check out our website and sign up for our quarterly newsletter at [www.ncuwc.org](http://www.ncuwc.org)
- Find us on **facebook**
- Join NCUWC at restoration work parties
- Attend annual events such as Earth Day and the Watershed Wide Tour!
- Inquire about volunteer opportunities for your classroom, youth group, office or family.
- Attend a board or a subcommittee meeting.
- Invite us to participate in your upcoming community event!



Special thanks to WES and Clackamas County Soil and Water Conservation District for providing support for this brochure.  
Photo credit: Steve Berliner



## People and Nature Flourishing in a Healthy Ecosystem

Our mission is to advocate for the protection and enhancement of the watersheds' fish and wildlife habitat and improve water quality through partnerships with public and private entities, habitat restoration projects, community education and outreach, and strategic planning.



North Clackamas Urban Watersheds Council  
1900 SE Milport Rd., Suite C  
Milwaukie, OR 97222  
503-550-9282 [info@ncuwc.org](mailto:info@ncuwc.org) [www.ncuwc.org](http://www.ncuwc.org)

Printed on 100% post-consumer recycled paper.  
Please recycle.

# Attachment 4

## COMMERCIAL LEASE

Date: May 1, 2012 ("Effective Date")

Between: THE CITY OF MILWAUKIE, an Oregon municipal corporation ("Landlord")  
10722 SE Main Street  
Milwaukie, OR 97222

And: NEW CENTURY PLAYERS, an Oregon nonprofit corporation ("Tenant")  
11022 SE 37<sup>th</sup> Ave.  
Milwaukie, OR 97222

Landlord leases to Tenant and Tenant leases from Landlord the following described property (the "Premises") on a non-exclusive basis, on the terms and conditions stated below:

The property located at 11022 SE 37<sup>th</sup> Ave, Milwaukie, Oregon, tax lot 1S1E36ADO2500, including the building Tenant currently occupies ("Building") and excepting the separate building co-located on the property containing Landlord owned water system facilities (the separate building and water system facilities are collectively, the "Water Facilities"). The total square footage leased to Tenant is 3,350 square feet.

### Section 1. Occupancy.

**1.1 Original Term.** The term of this Commercial Lease ("Lease") shall be for five (5) years, commencing May 1, 2012, and continuing through April 30, 2017, unless sooner terminated as hereinafter provided ("Original Term").

**1.2 Possession.** Tenant's right to possession and obligations under the Lease shall commence on May 1, 2012.

**1.3 Renewal Option.** If this Lease is not in default, Tenant shall have the right and option to renew this Lease for one (1) five (5) year term ("Renewal Term") as follows:

(1) The renewal term shall commence on the day following expiration of the Original Term.

(2) If exercised, the renewal option shall be exercised by written notice to Landlord given not less than six (6) months prior to the last day of the Original Term. The giving of such notice shall be sufficient to make the Lease binding for the Renewal Term without further act of the parties, other than that the Landlord and Tenant shall then be bound to negotiate the Renewal Term base rent. The rent will be negotiated once the notice of election to renew is

received by Landlord. The terms and conditions of the Lease for the Renewal Term shall be identical with the Original Term except for rent.

(3) If the parties do not agree on the base rent within sixty (60) days after notice of election to renew, the rent shall be determined by arbitration as provided in Section 15.

## **Section 2. Rent**

**2.1** Tenant shall make an annual base rent payment in arrears to the Landlord of \$3,000 due and payable to the Landlord by April 30 of each year of the Lease, beginning April 30, 2013 for the first year of occupancy (May 1, 2012 through April 30, 2013). Subsequent base rent payments will be due on April 30 of 2014, 2015, 2016 and 2017.

**2.2 Additional Rent.** As additional rent, Tenant agrees to stage at least three productions within the City of Milwaukie during the term of the Lease. For these three productions, Landlord will assist Tenant in securing a facility or negotiating terms for facility use that are reasonably acceptable to the Tenant. Tenant understands that Landlord will undertake reasonable efforts to secure a facility or negotiate terms for facility use that are acceptable to Tenant, but the failure of Landlord to succeed in these undertakings will not give rise to a breach of lease claim. As specified in Section 4.2, Tenant also agrees to maintain the Premises in the same condition as it was on the Effective Date of this Lease, except for ordinary wear and tear. The Tenant shall also make available in the Premises, meeting space and wall space for other local artists, arts organizations or city-sponsored events. Availability shall be determined at the sole discretion of the Tenant.

**2.3 Utilities.** Landlord shall be responsible for paying the following utilities: water, sewer, storm drainage, routine weekly solid waste collection (not the cost of collection and disposal of materials by special request), general site security services and transportation fees. Tenant shall be responsible for the cost of telephone, cable, data, internet, electrical, and heating expenses; Tenant shall make separate contractual arrangements with the providers of these services and utilities.

## **Section 3. Use of the Premises**

**3.1 Permitted Use.** The Premises shall be used for office space and for no other purpose without the consent of Landlord, which consent shall not be withheld unreasonably. For the purposes of this Lease, "office space" is intended to include use of the facility for meeting rooms and art display.

**3.2 Restrictions on Use.** In connection with the use of the Premises, Tenant shall:

(1) Conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use.

(2) Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Landlord to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional cost of the insurance.

(3) Refrain from any use that would be reasonably offensive to owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the Premises.

(4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Landlord.

(5) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the premises without the written consent of Landlord. Tenant is permitted to hang artwork for display purposes on interior walls. Care should be taken to repair marks and nail holes on an ongoing basis to maintain a neat and clean appearance. Tenant is permitted to hang a temporary (e.g. "New Home of...") banner or sign for up to ninety (90) days from occupancy, provided the banner or sign is no larger than 16 square feet. Tenant is also permitted to display a permanent sign provided it is no larger than four square feet.

### **3.3 Protective Restrictions.**

(1) Tenant shall not cause or permit use of herbicides or pesticides on the Premises without permission of Landlord. A written request for such use must be presented to Landlord at least forty-five (45) days in advance and reviewed by the City's Water Quality Control Coordinator and the Oregon Drinking Water Program Hydrologist. The request must contain the following information:

- a. Purpose of chemical use.
- b. Label name of product and copy of label and Material Safety Data Sheet (MSDS).
- c. Graphic depiction of area of use.
- d. Application rate and total use.

(2) Tenant may use only small amounts of low nitrate organic fertilizer in landscape areas and only with prior approval of the City's Water Quality Control Coordinator.

(3) Storage of Hazardous Substances (other than routine office cleaning supplies in less than one gallon containers) is prohibited. The term "Hazardous Substance" shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material organic or synthetic as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions. The

term "Environmental Law" means any federal, state, or local laws, ordinances, codes, statutes, regulations, administrative rules, policies and orders, and other authority existing now or in the future that classify, regulate, list, or define Hazardous Substances.

(4) **Parking.** Vehicle parking is limited to paved areas only. There is no parking allowed in the first position next to north side of Water Facilities located on the site. All tenant vehicles must be able to be moved on short notice to facilitate emergency repair to Water Facilities or emergency operations.

**3.4 Non-exclusivity; Co-Tenancy or Leasing of Portion of Premises by Landlord to Another Party.** Landlord and Tenant agree that Landlord may, at any time, enter into a lease with another nonprofit, tax-exempt entity ("New Tenant") to lease a portion of the Premises. In such a case, Landlord will provide Tenant with notice of the new tenancy at least thirty (30) days before the commencement date of New Tenant's lease. Landlord, at its option, may negotiate a co-tenancy agreement with Tenant and New Tenant to share a portion of the Premises, or Landlord may enter into a separate lease with New Tenant, in which case the Premises under this Lease will automatically be reduced by the size of the premises being leased to New Tenant. The repair and maintenance obligations of Sections 2.2 and 4.2 will not apply to the area leased to New Tenant. All other provisions of the Lease with Tenant will remain in full force and effect. Any lease between Landlord and New Tenant will include a provision requiring New Tenant to act in a commercially reasonable manner with regard to utility usage and maintenance, and to require the New Tenant to reimburse Tenant for New Tenant's appropriate share of utility and maintenance expenses. If Tenant finds that some action of New Tenant negatively impacts Tenant, then Tenant may ask the Landlord for assistance in resolving the issue. Landlord agrees to cooperate with Tenant to resolve the situation in an expeditious manner, possibly to include termination of New Tenant's lease; however, Landlord's failure to resolve such situation shall not give rise to any legal claim against Landlord, including, but not limited to, a breach of contract claim. The notice to Tenant required in this section will contain the size and location of the premises under the lease with New Tenant.

#### **Section 4. Obligations**

**4.1 Landlord's Obligations.** Landlord shall be responsible for all repairs and replacement except for those items of repair and maintenance set forth in Section 4.2 as Tenant's obligations.

**4.2 Tenant's Obligations.** The following shall be the responsibility of Tenant:

(1) Maintenance of interior walls, ceilings, doors, windows, and related hardware, light fixtures, switches, and wiring and plumbing from the point of entry to the Premises.

(2) Any repairs necessitated by the negligence of Tenant, its agents, employees, and invitees, except as provided in Section 5.2 dealing with waiver of subrogation.

(3) Ordinary maintenance of the heating and air conditioning system and any repairs necessary because of improper maintenance.

(4) As set forth in Section 3.2 (1), any repairs or alterations required under Tenant's obligation to comply with laws and regulations as set forth in Section 3.2.

**4.3 Landlord's Interference with Tenant.** In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall not cause unreasonable interference with use of the Premises by Tenant.

**4.4 Reimbursement for Repairs Assumed.** If Tenant either fails or refuses to perform maintenance or make repairs that are required by this Lease, after Landlord gives ten (10) days notice to commence such repairs or maintenance, Landlord may make the repairs and charge the actual cost of repairs or maintenance to Tenant. Such expenditures shall be reimbursed by Tenant within ten (10) days after demand by Landlord.

**4.5 Inspection of Premises.** Landlord shall have the right to inspect the Premises at any reasonable time with twenty-four (24) hour written notice to Tenant or upon shorter notice if necessitated by an emergency.

**4.6 Limitation on Tenant Obligation to Make Repairs.** If while performing maintenance or repairs, Tenant encounters unforeseen latent conditions in the Building that cause it to be unable to perform the requirements of Sections 2.2 and 4.2, Tenant shall inform Landlord to discuss the concern and Landlord and Tenant will need a mutual agreement as to how such obligation will be carried out.

## **Section 5. Insurance**

**5.1 Insurance Required.** Landlord shall keep the Premises insured at Landlord's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Tenant shall carry similar insurance insuring the personal property of Tenant on the Premises against such risks.

**5.2 Waiver of Subrogation.** Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

**5.3 Liability Insurance.** Before taking possession of the Premises, Tenant shall procure, and thereafter during the term of the Lease shall continue to carry, the following insurance at Tenant's cost: Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	1,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one fire)	50,000
Medical Expense (Any one person)	5,000

Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the premises. Such insurance shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant, and shall name Landlord as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring a 10-day written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant's taking possession of the Premises.

**Section 6. Taxes**

**6.1 Personal Property Taxes.** Tenant shall pay as due all taxes on its personal property located on the Premises.

**6.2 Real Property Taxes.** Landlord is exempt from paying real property taxes levied against the Premises for property that is in public use. It is the intent of the parties that the entire property continue to be exempt from taxation; provided, however, Tenant must establish and maintain tax-exempt status. The parties recognize that tax-exempt status will be determined by Clackamas County or the State of Oregon. Tenant shall be responsible for filing with Clackamas County an Application For Real and Personal Property Tax Exemption for the portion of the property under its control. If Tenant fails to qualify for tax exemption, Tenant shall pay, as due, the full tax obligation. As used herein, real property taxes includes any fee or charge relating to the ownership, use, or rental of the Premises, other than taxes on the net income of Landlord or Tenant or personal property.

**Section 7. Liability and Indemnity**

**7.1 Liens.**

- (1) Except with respect to activities for which Landlord is responsible, Tenant

shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent which shall be payable within thirty (30) days of demand. Such action by Landlord shall not constitute a waiver of any right or remedy that Landlord may have on account of Tenant's default.

(2) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien, bond around the lien as provided under Oregon law, or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

**7.2 Indemnification by Tenant.** Indemnification By Tenant: Tenant agrees to indemnify, defend (with counsel reasonably acceptable to Landlord), and hold Landlord and its directors, officers, representatives, agents, property managers, and employees harmless from and against all liabilities, damages, claims, losses, judgments, charges, and expenses (including reasonable attorneys' fees and court costs) arising from or in any way related, directly or indirectly, to (i) Tenant's or its directors, officers, members, managers, agents, employees, subtenants, or invitees ("Tenant Parties") use of the Premises or the Building, (ii) the conduct of Tenant's business, (iii) from any activity, work or thing done or permitted by Tenant or a Tenant Party in or about the Premises or Building, (iv) in any way connected with the Premises or with the improvements or personal property therein, including, but not limited to, any liability for injury to person or property of Tenant, Tenant Parties, or third party persons, and/or (v) Tenant's failure to perform any covenant or obligation of Tenant under this Lease. Tenant's agreement to indemnify Landlord pursuant to this Section 7.2 is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease. Tenant agrees that the obligations of Tenant herein shall survive the expiration or earlier termination of this Lease.

#### **Section 8. Quiet Enjoyment; Mortgage Priority**

Landlord's Warranty. Landlord warrants that it is the owner of the Premises and has the right to lease the Premises free of all encumbrances. Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term, subject to the provisions of Section 3.4.

#### **Section 9. Assignment and Subletting**

Tenant may not assign, mortgage, or sublease the whole or any part of the Premises, nor may Tenant grant a right of use of any portion of the Premises to any third person by any other means, without the prior written consent of Landlord which Landlord may withhold in its sole and absolute

discretion. This provision shall apply to all transfers by operation of law. Landlord may withhold or condition such consent in its sole and arbitrary discretion. "Assignment and subletting" shall not be construed to include those times when Tenant, consistent with the requirements stated in Section 2.2 of this Lease, makes space available to other local artists, arts organizations or city-sponsored events for meeting space and wall space for limited duration purposes.

**Section 10. Tenant Termination.** Notwithstanding any other provision of this Lease, Tenant may terminate this Lease, prior to the Expiration Date, by providing thirty (30) days prior written Notice to Landlord.

**Section 11. Default**

The following shall be events of default:

**11.1. Default in Rent.** Failure of Tenant to perform its obligations as stated in Section 2.

**11.2. Default in Other Covenants.** Failure of Tenant to comply with any term or condition or fulfill any obligation of the Lease (other than Section 2) within fifteen (15) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the fifteen (15-) day period, this provision shall be complied with if Tenant begins correction of the default within the fifteen (15-) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

**11.3. Insolvency.** Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within ten (10) days shall constitute a default. If Tenant consists of two or more individuals or business entities, the events of default specified in this Section 10.3 shall apply to each individual unless within ten (10) days after an event of default occurs, the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the Lease.

**11.4. Abandonment.** Failure of Tenant for thirty (30) days or more to occupy the Premises for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease.

**Section 12. Remedies of Default**

**12. 1. Termination.** In the event of a default, the Lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the Lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant of the default, and Landlord may reenter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

**12. 2. Reletting.** Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purpose other than that specified in the Lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant that Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

### **Section 13. Surrender at Expiration**

**13. 1. Condition of Premises.** Upon expiration of the lease term or earlier termination of the Lease on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises broom clean and in the same condition as at the commencement of the Lease. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Tenant is responsible shall be completed to the latest practical date prior to such surrender.

#### **13. 2. Fixtures.**

(1) All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.

(2) Prior to expiration or other termination of the lease term Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within ten (10) days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal,

transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Landlord.

### **13.3. Holdover.**

(1) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month-to-month, subject to all of the provisions of this Lease except the provisions for base rent, term and renewal, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Base rent during every holdover period shall be 125% of the base rent in effect at the time the applicable Lease term expires or is terminated. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this Lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

(2) If a month-to-month tenancy results from a holdover by Tenant under this Section 12.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than sixty (60) days prior to the termination date that shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

### **Section 14. Miscellaneous.**

**14.1. Nonwaiver.** Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

**14.2. Attorney Fees.** If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

**14.3. Notices.** Any notice required or permitted under this Lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this Lease or to such other address as may be specified from time to time by either of the parties in writing.

**14.4. Succession.** Subject to the above-stated limitations on transfer of Tenant's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

**14.5. Recordation.** This Lease shall not be recorded without the written consent of Landlord.

**14. 6. Time of Essence.** Time is of the essence of the performance of each of Tenants obligations under this Lease.

**14. 7. No Third Party Rights.** This Agreement shall not create any rights in or inure to the benefit of any parties other than City and Consultant.

**14. 8. Modification.** Any modification of the provisions of this Agreement shall be reduced to writing and signed by the parties.

**14. 9. Governing Laws; Venue.** This Agreement shall be governed by the laws of the State of Oregon. Venue shall be in the Circuit Court for Clackamas County, Oregon.

**14. 10. Entire Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the services described herein.

**14. 11. Severance.** If any provision of this Agreement is held to be invalid, it will not affect the validity of any other provision. This Agreement will be construed as if the invalid provision had never been included.

**14. 12. Counterparts.** This Agreement may be executed in counterparts, each of which, when taken together, shall constitute fully executed originals.

## **Section 15. Arbitration**

**Dispute Resolution.** Except as set forth in Section 15, the Parties agree that it is in their respective best interests to attempt to resolve disputes that arise under this Lease in a quick and inexpensive manner. To that end, the Parties commit to use their best efforts to resolve disputes informally. For all disputes that arise pursuant to this Lease, the Parties shall negotiate with one another in good faith in an effort to reach resolution of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) days after the commencement of negotiations, the Parties shall submit the issue to a qualified mediator in good faith to attempt to resolve the dispute and the cost of the mediator shall be shared equally by the Parties. If the dispute cannot be resolved through mediation within ninety (90) days, then the dispute shall be submitted to and resolved by binding arbitration. The arbitration shall be held in the Portland, Oregon metropolitan area, consistent with the rules of the Arbitration Services of Portland, Inc. Cost of the arbitrator will be shared equally by the Parties. Except as otherwise required by law, the arbitrator's final award shall be final, binding, and non-appealable; and no Party may seek any amendment to or reconsideration of the arbitrator's final award except for correction of non-substantive scrivener's or administrative errors. Judgment upon the arbitration award may be entered in any court having jurisdiction. Notwithstanding the foregoing, the Parties may resort to a court of competent jurisdiction for any matter in which injunctive relief is an appropriate remedy.


## **Section 16 Rent Arbitration.**


**16.1. Disputes to Be Arbitrated.** If any dispute arises between the parties regarding the base rent to be paid during any Renewal Term under the Lease, either party may request arbitration and appointment as an arbitrator an independent commercial real estate appraiser having knowledge of valuation of rental properties comparable to the Premises. The other party shall also choose an arbitrator with such qualifications, and the two arbitrators shall choose a third. If the choice of the second or third arbitrator is not made within ten (10) days of choosing the prior arbitrator, then either party may apply to the presiding judge of the county where the Premises are located to appoint the required arbitrator.

**16.2. Procedure for Arbitration.** The arbitrators shall proceed according to the Oregon statutes governing arbitration, and the award of the arbitrators shall have the effect therein provided. The arbitration shall take place in Clackamas County. The parties shall share costs of the arbitration equally, but each party shall pay its own attorney fees incurred in connection with the arbitration.

THE CITY OF MILWAUKIE, an Oregon  
municipal corporation

NEW CENTURY PLAYERS, an  
Oregon nonprofit corporation

By:   
Name: William A. Monahan  
Its: CITY MANAGER

By:   
Name: KEILEY MARCHANT  
Its: ARTISTIC DIRECTOR

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MILWAUKIE CITY COUNCIL  
AGENDA ITEM SUMMARY

Agenda Item: **WS 2.**  
Meeting Date: **10/15/13**

Title: **Bond Measure Update: Preliminary Survey Report and Stakeholder Conversation Summary**

**Prepared By:** Grady Wheeler, Public Affairs Coordinator

**Department Approval:** Teri Bankhead, Assistant to the City Manager

**City Manager Approval:** Bill Monahan, City Manager

**Approval Date:** October 8, 2013

**ISSUES BEFORE COUNCIL**

Council is considering placing a bond measure on the May 2014 ballot that would refinance the City's debt and potentially fund additional capital projects.

**STAFF RECOMMENDATION**

None. Staff will provide City Council an update on the public opinion survey that was conducted Oct. 4 through Oct. 7, 2013, and an update on the stakeholder interviews staff and the City's consultants have conducted.

**KEY FACTS & INFORMATION SUMMARY**

The public opinion poll gauged voters' interest in supporting a bond measure that would refinance the City's debt and other additional capital projects. The poll tested not only voters' appetite to support various projects at different costs, but also various arguments that might be made in support or opposition to the measures.

The subcommittee comprised of Counselors Gamba and Miller and one the Public Affairs Coordinator developed a list of stakeholders for the City's consultant team to contact to have a more detailed conversation about the potential measure and projects.

Both tools are designed to provide information that will help Council decide whether or not to go out for a bond in May 2014, and if so, which projects should be included. The information will also inform any education efforts the City undertakes.

**OTHER ALTERNATIVES CONSIDERED**

n/a

**CITY COUNCIL GOALS**

Goal 1. Funding to prevent loss of services. Options could include:  
a. Bond

**FISCAL NOTES**

n/a



MILWAUKIE CITY COUNCIL  
STAFF REPORT

**To:** Mayor and City Council

**Through:** Bill Monahan, City Manager

**Subject:** **Bond Measure Update: Preliminary Survey Report  
and Summary Stakeholder Conversations**

**From:** Grady Wheeler, Public Affairs Coordinator

**Date:** October 7, 2013

**ACTION REQUESTED**

None. Staff will provide City Council a progress report on the public opinion survey that was conducted Oct. 4 through Oct. 7, 2013 and an update on the stakeholder interviews staff and the City's consultants have conducted in the past several weeks.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

- April 16, 2013, Work Session: City Staff provided Council with an overview of the process that lead to the recommendation of hiring DHM Research Inc. to conduct a public opinion research poll.
- May 23, 2013, Study Session: DHM Research provided Council with a draft of the survey and gained Council's input.
- June 5, 2013, Work Session: City Staff and DHM Research provided City Council with a report of the poll results.
- July 16, 2013, Work Session: Subcommittee (Public Affairs Coordinator, Councilor Mark Gamba, Councilor Mike Miller) delivered recommendation to target May 2014 for any potential bond measure.
- August 6, 2013, Work Session: Staff and Council discussed the potential capital projects, the tax effects, and a revised scope of work for the communications consultant, Barney & Worth.
- August 20, 2013, Work Session: Council finalized the scope of work with Barney & Worth.
- Sept. 3, 2013, Work Session: Staff described the stakeholder interview process and outlined the poll question review process to gain Subcommittee and Council input.
- Sept. 17, Work Session: Staff summarized progress of poll question review process, suggested early November as the point to determine bond composition, and outlined future education efforts.

## **BACKGROUND**

The City's communications consultant has conducted a second public opinion poll and a series of stakeholder interviews to provide Council additional information to inform its decision on whether or not to go out for a bond in May 2014, and if so, which project or projects would garner the most support from voters.

The survey provides quantitative data measuring voters' support for a bond refinancing the City's debt for the light rail project, and a bond that includes other capital projects - the construction of four Neighborhood parks, expanding Ledding Library, and completing Riverfront Park. Key to this poll is associating costs with these projects and bond packages. This poll further evaluates arguments that might be made in support and opposition of the different bond measures and independently tests the support for the different capital projects. Staff will provide Council with an update on public opinion survey.

The stakeholder interviews provide qualitative data from representatives of the City's different stakeholder groups about perceptions of the City and its government, the capital projects, and the level of support for each. Stakeholder groups included:

- Opinion Leaders
- Recognized community leaders
- Longtime / newer residents
- Business leaders
- Former elected officials
- Age diversity
- City Council
- Management
- Boards and Commissions

Twenty conversations were documented, and Staff will provide Council with an update of the stakeholder interview process.

## **CONCURRENCE**

n/a

## **FISCAL IMPACTS**

n/a

## **WORK LOAD IMPACTS**

n/a

## **ALTERNATIVES**

n/a