

**CITY OF MILWAUKIE
CITY COUNCIL AGENDA
JUNE 5, 2001**

MILWAUKIE CITY HALL
10722 SE Main Street

1863rd MEETING

REGULAR SESSION - 6:00 p.m.

- I. CALL TO ORDER**
Pledge of Allegiance
- II. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
- III. CONSENT AGENDA** *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*
 - A. City Council Minutes of May 14 & 15, 2001**
 - B. Authorize Renewal of Intergovernmental Agreement with Metropolitan Area Communications Commission (MACC) -- Resolution (Herrigel)**
 - C. Authorize Contract for City Manager Services (DuVal)**
 - D. Authorize Contract for Auditing Services for Fiscal Year Ending June 30, 2001 (DuVal)**
 - E. Authorize Extension of Municipal Court Judge Contract (DuVal)**
 - F. Authorize 2001 Purchase Order with Crandall Arambula, P.C., for Downtown Design Guideline Project (Rouyer)**
 - G. Bid Award for FY 2000 - 2001 Waterline Phase 2 Construction (Roeger)**
- IV. AUDIENCE PARTICIPATION** *(The Mayor will call for statements from citizens regarding issues relating to the City. It is the intention that this portion of the agenda shall be limited to items of City business which are properly the object of Council consideration. Persons wishing to speak shall be allowed to do so only after registering on the comment card provided. The Council may limit the time allowed for presentation.)*
- V. PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*

Revisions to Sanitary Sewer Rate Structure (Ed Cebron, Financial Consulting Solutions Group)
- VI. OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

Urban Forestry Ad Hoc Committee Charge and Membership (Mayor Bernard)

VII. INFORMATION

A. Advisory Board Minutes

- 1. Traffic Safety Board, April 11, 2001**
- 2. Center/Community Advisory Board, April 13, 2001**
- 3. Ledding Library Board, April 23, 2001**
- 3. Riverfront Board, May 21, 2001**

VIII. ADJOURNMENT

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

For assistance/service per the Americans with Disabilities Act (ADA), dial TDD 786-7555.

The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

**MILWAUKIE CITY COUNCIL
WORK SESSION
MAY 14, 2001**

The work session came to order at 5:30 p.m. in the City Hall Conference Room.

City Council present: Mayor Bernard and Councilors King, Lancaster, and Marshall.

Staff present: City Manager Pro Tem Swanson, Assistant City Manager Bennett, Planning Director Rouyer, Associate Planner Gessner, and Associate Engineer Barnett.

Information Sharing

Swanson reviewed plans for the upcoming Council retreat on May 19 and 20.

Open Public Forum

No participants.

Transportation System Plan Implementation Update

Gessner updated the Council on the Transportation System Plan (TSP) implementation and sought direction on 6 issues.

1. *Balancing projects creating little traffic with neighborhood desire for traffic impact studies.*

Staff developed a threshold scoring method and ran several actual Milwaukie projects through the model. The reasons for triggering a study can vary. For example, studies can be triggered by conditional use (CU) and community service overlay (CSO) applications as well as development applications in areas with associated traffic plans and projects. In the downtown area, the trigger would be trip generation. The traffic engineering consultant recommends a 200 trip threshold for study.

Councilor Marshall urged developing a method for dealing with cumulative neighborhood impacts caused by development.

Council directed staff to continue its current course on this issue.

2. *Is the proposed mitigation approach acceptable?*

Staff is investigating several options. The City currently uses its public facilities ordinance to require needed improvements to adequately serve the project. The Council may wish to target mitigation funds to specific projects when a direct relationship is identified. Developers could be required to pay a proportionate amount into a fund earmarked for development impacts as well

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as improving existing conditions. Finally, the City may wish to reward incentive programs and facility improvements which encourage employee use of mass transit or alternate modes of transportation.

There was consensus these were good options and to proceed with developing more.

3. *Should the City accept developer agreements rather than requiring improvements at development?*

The Planning Commission does not feel developer agreements meet improvement needs, and, at this time, most agreements are related to residential development. The Council may wish to consider options other than developer agreements and, instead, require improvements at the time of development.

Barnett added developer agreements have been done over a fairly long period of time, so standards and requirements vary.

Councilor Newman was concerned with patchwork improvements and liked the idea of putting money into a fund for the comprehensive development of a designated street.

Councilor Marshall suggested developers might willingly install their own sidewalks if they thought it would cost less than putting money into a future improvement fund. He asked if there was any way to collect on the existing developer agreements, and staff responded there is no way to do it efficiently. Some of the agreements have been satisfied, while others have not. The group generally discussed saving funds for larger projects in specific areas.

4. *Increasing the notification area for administrative decisions.*

The group agreed the notification area needs to expand and suggested increasing fees to cover additional administrative costs.

5. *Should the number of curb cuts be restricted or pedestrian friendly designs be adopted?*

The Council agreed staff should pursue pedestrian-friendly curb cut designs.

6. *What are the appropriate levels of service (LOS) for Milwaukie intersections?*

Gessner reported staff continues to work on this issue because of associated legal concerns. At this point, staff recommends adopting LOS D to prevent degraded intersections. The Metro LOS standard is applied to regional

facilities, such as Lake Road, for long-range planning purposes and relates to sections of road between intersections. LOS E and F may not result in failing intersections. **Rouyer** suggested adopting levels of service appropriate to Milwaukie. **Bennett** cautioned against setting volume and capacity standards that would result in the need to add more vehicle lanes.

The Council advised staff to continue working in the current direction.

McLoughlin Boulevard Project Update

Barnett provided information on the McLoughlin Boulevard Improvement Project and adopted downtown plan. Proposed improvements are enhancing pedestrian access, mitigating through-traffic impacts, planting street trees, installing a landscaped median, and making the riverfront more accessible. The project team is made up of representatives from the City of Milwaukie, Oregon Department of Transportation (ODOT), and DKS Associates, a transportation consulting firm.

Metro's Transportation Improvement Plan (MTIP) and the State Transportation Improvement Plan (STIP) provide \$1.9 million, and the City secured an ODOT Transportation and Growth Management (TGM) grant in the amount of \$50,000. Initial contacts have been made with affected property owners, and the City recently hosted an open house for interested parties. The most significant constraint identified by the project team is funding.

The key project goals at this point are determining the feasibility of a pedestrian underpass between Jefferson and Monroe Streets, establishing the operational feasibility of a three-signal system between Harrison and Washington Streets, and developing a master concept for the boulevard treatment within the \$2.2 million budget. **Barnett** described the street cross section.

Bennett said funds are allocated for 2003, and these improvements will facilitate future funding.

The group discussed the feasibility of concentrating the improvements over a 2 block area or on the west side only.

Urban Forestry Ad Hoc Committee Charge Statement

Rouyer reviewed the charge statement approved by Council on February 5, 2001.

Mayor Bernard suggested adding education programming that includes a list of recommended trees for planting, safety tips for spacing and root trimming, and tree planting promotions. He discussed 2002 budget requests related to tree planting.

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Councilor King recommended the Committee develop a way to track tree planting activities and regularly analyze the tree canopy.

Councilor Marshall and **Mayor Bernard** will discuss the applications.

Accessory Retail/Service Uses in Business Industrial Zone

Rouyer reported several International Way business owners wish to open small accessory retail outlets. The BI zone does not currently allow this activity. She sought direction on adding a provision allowing limited retail outlet-type stores. The concern is to avoid "commercial creep" which takes away industrial land and related jobs.

The group discussed the percentage of allowable off-site manufacturing, enforcement issues, traffic impacts related to retail, and language to the effect retail must be accessory to manufacturing.

The Council directed staff to continue with the amendment and be mindful of protecting manufacturing in the industrial areas.

Johnson Creek Boulevard Improvement Project Update

Bennett and **Brett Kesterson**, City of Portland, reviewed the history of the Johnson Creek Boulevard project that began in 1989 with a Metro-led South Corridor Study of east/west traffic. During the past few years, the Tacoma overpass and I-205 interchange have made significant impacts.

Bennett explained the 2 intergovernmental agreements (IGA) recommended for signature. The agreement with the Oregon Department of Transportation (ODOT) is a follow up to the June 2000 IGA and gives access to \$1.076 million for the project. The second agreement requires Clackamas County to assist in resolving right-of-way issues, provide \$80,000 in-kind services to compensate Milwaukie for the match, and, upon satisfactory completion of the project, turn road jurisdiction over to the City. About 60% of the project is in the City of Milwaukie.

Bennett outlined what she understood to be the 6 major neighborhood issues:

1. 40-foot v. 44 foot roadway design.
2. Are 2 bike lanes required? Could there be just one?
3. Can the curves be smoothed?
4. Can the trees be saved?
5. Plat and survey discrepancies.
6. Indemnification clause language in the County agreement.

Kesterson discussed the planned improvements which include travel lanes, bike lanes, and curb and sidewalk. The total project width is 44 feet. Only one sidewalk will be constructed, but there will be an allowance for the second sidewalk in the future.

Councilor Marshall understood there would be no federal funding if there were bike lanes on one side only

Kesterson said that is correct. The reason for this is the desire to develop a usable system which encourages that mode of transportation. Johnson Creek Boulevard has a special attraction because of its connection with the Springwater Corridor.

Kesterson said such things as fencing and landscaping would not be impacted until the second sidewalk is constructed. He discussed design limitations related to the environmental zone on the north side and feasibility of giving unused property back to the owners.

Councilor King referred to 4 trees in Portland section of the project and asked if the sidewalk could go around them.

Kesterson said building the sidewalk around the trees would impact the environmental zone, so the only solution is to remove the trees and compensate the owner. There are trees at the other end of the project which are above the curb and will not be impacted.

Councilor Marshall asked how many blocks of improvements are actually in Milwaukie and what drives Milwaukie to want road jurisdiction.

Bennett responded 6 blocks are in the Milwaukie city limits. At this time, Clackamas County does not spend any money on Johnson Creek Boulevard. Potholes are not being filled, and there are problems at the intersections. Once this project is completed, the road will be in good condition and not need any cuts for 8 to 10 years. In the long-term, Milwaukie will have financial responsibility for maintenance, but, if the City is not willing to take jurisdiction, the County will not make the \$80,000 in-kind service match.

Kesterson explained this is a 20-year road design which encourages use of mass transit and alternate transportation modes. Cities can generally work more effectively with neighborhoods and meet community goals when they take over jurisdiction of county roads.

Bennett added the intent is to downgrade the street designation making Johnson Creek Boulevard eligible for traffic calming. Portland has not designated it as an emergency route. Clackamas County would like to make Johnson Creek Boulevard a 5-lane road in the industrial area.

Bernard said people are reporting cracks in their home and asked if reconstructing the road would reduce the problem.

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Kesterson said an adequate road base would make a big difference. He outlined the acquisition process ODOT will undertake in about 6 months. He discussed the curve near Brookside Drive which is currently designed for 25 mph. He discussed the discrepancies between the 1917 plat of the north side of Johnson Creek Boulevard and the one done for the south side in 1924.

Bennett said plat issues will be resolved during the ODOT acquisition process. The intent of the City is to vacate excess right-of-way when the project is complete.

Linda Hatlelid asked if federal funds would be available if only one sidewalk is constructed.

Kesterson said space can be reserved, but a sidewalk does not have to be built at this time.

Rebecca Lillie asked why the 1914 map was not being discussed, and **Kesterson** said he was not aware of the 1914 map. She understands from Clackamas County that the Surveyor's Office accepts plats based on meeting certain regulatory requirements, but it does not validate their accuracy.

Councilor Newman understood this Council cannot re-plat land, and **Kesterson** said that was correct. **Councilor Newman** further understood the neighbors can seek legal counsel and that the road is now under county jurisdiction.

Councilor Marshall asked when the project began, and **Kesterson** answered it started in 1984. **Bennett** will research completion dates for the I-205 interchange and Tacoma overpass. **Kesterson** added this is a lengthy project. Both neighbors and project staff have come and gone over the years, so people forget what has taken place.

Bennett said the City Attorney reviewed the indemnification language in the County agreement, and it is standard.

L. Hatlelid discussed offsetting the road and bringing it into the right-of-way to comply with the environmental zone.

Councilor Lancaster understood the plats were submitted to Clackamas County, so the City is not responsible in that area.

Bennett said the recommendation will be to vacate the unused right-of-way.

Adjournment

It was moved by Councilor Newman seconded by Councilor King to adjourn the work session. Motion passed unanimously.

Mayor Bernard adjourned the meeting at 8:15 p.m.

Pat DuVal, Recorder

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**CITY OF MILWAUKIE
CITY COUNCIL MEETING
MAY 15, 2001**

Call to Order

The 1862nd meeting of the Milwaukie City Council was called to order by Mayor Bernard at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Mary King
Larry Lancaster

Jeff Marshall

Staff present:

Mike Swanson,
City Manager Pro Tem
Gary Firestone,
City Attorney
Martha Bennett,
Assistant City Manager
Alice Rouyer,
Planning Director

JoAnn Herrigel,
Program Specialist
John Gessner,
Associate Planner
Kenneth Kent,
Associate Planner

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

Mayor Bernard read the list of consent agenda items:

- A. City Council Minutes of April 30 and May 1 & 2, 2001**
- B. Amendment to an Intergovernmental Agreement with Clackamas County for Electrical and Plumbing Services**
- C. Resolution 13-2001: A Resolution of the City Council of the City of Milwaukie, Oregon, Electing Application to Join Oregon Public Employees Retirement System (OPERS) Local Government Rate Pool**

It was moved by Councilor King and seconded by Councilor Marshall to adopt the consent agenda. Motion passed unanimously among the members present.

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

Appeal of Planning Commission Decision, File AP-00-01; Appellant Sara Weagant, 12005 SE 19th Avenue

Mayor Bernard called the public hearing on the appeal of the Planning Commission's approval of applications WG-00-01 and NR-00-06 which require replacement of trees

located along the Willamette River for the property located at 12005 SE 19th Avenue to order at 6:05 p.m.

The purpose of the hearing was to consider the appeal of the Milwaukie Planning Commission's approval of applications WG-00-01 and NR-00-06. This appeal was made by Ken Sandblast on behalf of Sara M. Weagant. The appellant requests the Council weighs if the Planning Commission erred in its application of the Willamette Greenway Zone regulations.

The applicable standards to be considered are Zoning Ordinance Section 1002 (Appeal from Ruling of Planning Commission); Zoning Ordinance Sections 322 -- Natural Resource Overlay Zone, 320 -- Willamette Greenway, and 600 -- Conditional Uses for replacement of unauthorized removal of trees; and 1011.3 -- Minor Quasi-Judicial Review.

Mayor Bernard reviewed the order of business. The applicant has the burden of proving the application complies with all relevant criteria of the Comprehensive Plan and Zoning Ordinance. The appellant must demonstrate the Planning Commission erred in its decision in the alleged particulars identified in the appeal.

All testimony and evidence must be directed toward the applicable substantive criteria. Failure to address a criterion precludes an appeal based on that criterion. Failure to raise constitutional or other issues related to proposed conditions of approval with sufficient specificity to allow a response precludes an action for damages in circuit court. Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by the Board. Persons with standing are those who testify or sign the City Council Attendance sheet at the information table in the hall.

Mayor Bernard reviewed the conduct of the hearing. Any continuance or extension is subject to the limitations of the 120 day rule, unless the continuance or extension is requested or agreed to by the applicant.

Conflicts of Interest and Site Visits: **Councilor King** visited to subject site.

Ex parte Contracts or Conflicts of Interest: None.

Challenges to Impartiality or Ability to Participate: None.

Jurisdictional Issues: None.

Staff Presentation

Gessner presented the staff report in which the City Council was requested to deny the appeal, adopt the findings in support of the applications NR-00-06 and WG-00-01, and approve the applications with the recommended findings and conditions as amended.

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The property owner was cited for removing trees in the Willamette Greenway and Natural Resource Overlay Zones without approval. The Municipal Court accepted a signed agreement in lieu of prosecution in July 2000. The Planning Commission held a public hearing on February 14, 2001, and approved the applications WG-00-01 and NR-00-06 with conditions which resulted in an appeal being filed. The appellant was scheduled for a Council hearing on April 3, 2001, but was given additional time to prepare a landscape plan. The City did not receive the plan by May 2, so the issue is before Council at this meeting. **Gessner** provided a diagram and photographs of the site. Several of the photos taken in January 2001 showed an arborist measuring the tree stumps.

Councilor Lancaster noted the appellant said the tenant cut the trees against her instruction.

Gessner said, according to Weagant, she instructed her tenant not to cut the trees, but the City has no documentation that would elaborate on the point.

Correspondence: None.

Appellant Testimony

Daniel Kearns, 610 SW Alder, Suite 803, Portland, Oregon, 97205, and **Fred Small** Pacific Habitat, 9450 SW Commerce Circle, Wilsonville, Oregon, spoke on behalf of the appellant.

Kearns indicated his client did not have a problem with the Planning Commission's decision but with the ambiguity of the condition related to the number of trees that have to be re-planted. The renter acted against the property owner's wishes in order to open up the view of the river.

The appellant understands some planting will have to occur and that staff is allowing some flexibility so as not to require an unreasonable number of trees. The area in question is approximately 100 square feet, and **Kearns** showed photos of how cut trees were already sprouting. A re-vegetation plan has been prepared for the site.

Small understands a certain amount of habitat and structural diversity was lost; however, he noted the existing root structure is healthy. On a river this size, vegetation provides bank stability, wildlife habitat, and, to some extent, water quality protection. The plan is to help provide a variety of trees and shrubs along the riverbank and allow the cottonwoods to sprout. Terrence Flannagan, arborist, submitted his comments in January 2001, and Jim Grimes, Oregon Department of Fish and Wildlife (ODFW), reviewed the buffer widths and non-urban riparian goals. Wind throw concerns can be addressed by selecting the strongest sprouts which can, with the proper treatment, recover successfully. He further suggested planting other trees and shrubs around the established root system.

Councilor King asked if Weagant agrees to provide a professional arborist when it is time to prune the sprouts.

Kearns understands this would be done for a period of time. He explained it will be difficult to plant the specified number of trees around the existing stumps. The sprouts could grow to be vigorous trees that serve riparian value and meet the City's requirements. He suggested adding language to condition #2 allowing the appellant to plant a sufficient number of trees to adequately meet riparian functions.

Gessner responded staff will make its recommendation based on its review of submitted materials. The Planning Commission specifically delegates a certain amount of authority to the Planning Director, although it is not clearly defined. Based on testimony before the Planning Commission, there is concern with the proposal to let the stumps sprout because they would not be as secure as native plants. Additionally, the violation resulted in an immediate loss of tree cover. If the stumps are allowed to regenerate, there is an unacceptable risk of loss as well as ongoing maintenance issues. The Commission decision also includes native under story plants to continue riparian values and functions lost through cutting.

Councilor Marshall asked how this act came to the City's attention, and **Gessner** said it was first noticed by public works staff during field work.

Councilor Marshall asked the approximate cost of replacing each tree, and **Small** responded \$20 - \$30 each for 1-1/2" caliper trees.

Councilor Marshall asked if the City Council could override a Municipal Court decision, and **Firestone** said it cannot.

Other Testimony in Support of Appeal None.

Testimony of those Opposed to the Appeal: None.

Neutral Testimony

Carl Jacob, 10450 SE 44th Avenue, Milwaukie. He is concerned people are losing more and more control over their property. Property owners should be able to find out what does and does not belong to them.

Rebuttal Testimony - Appellant

Kearns feels a lot of time is being spent on a minor infraction. The appellant made the effort to hire experts in order to develop a good landscape plan.

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Small discussed tree size. Typically a 1-1/2" caliper tree does not have a high survival rate without maintenance. Restoration projects have a greater success rate by planting smaller material and more of it.

Kearns noted condition #3 requires the appellant to ensure compliance with the findings for 2 years.

Staff Recommendation

Deny the appeal based on the staff report analysis and authorize the Planning Director to work with the property owner.

Closure of Public Hearing

It was moved by Councilor Lancaster and seconded by Councilor Marshall to close the public testimony portion of the hearing on the appeal of the Planning Commission Decision, File AP-00-01. Motion passed unanimously among the members present.

Mayor Bernard closed the public testimony portion of the hearing at 6:55 p.m.

Council Discussion

Councilor Lancaster was in favor of denying the appeal and giving the Planning Director responsibility for working with the property owner.

Councilor King said there was clearly a violation of city ordinances and felt it was important to uphold the Planning Commission decision to ensure others will be careful in similar situations.

Councilor Marshall supported the Planning Commission's decision and the role of staff as mediator.

Firestone said the Council should consider adding the language to condition #2 requested by the appellant. Language would refer to replacement of riparian functions and values which existed prior to the tree removal but no additions related to reducing the number of trees to be planted.

Kearns understood this would give the Planning Director some discretion when reviewing the plan.

Mayor Bernard supported the Planning Commission's decision.

Councilor King suggested plantings outside the subject site if it became overcrowded.

Firestone explained property owners are responsible for what happens on their property including landlord/tenant relationships. The City Council must consider this appeal based upon Willamette Greenway and Natural Resource regulations.

Councilor Lancaster believed Kearns' language was appropriate based on the Planning Commission's decision, but he did not support reparations beyond the specific area.

Gessner believed Kearns' request was already a condition since the Planning Director has the authority to negotiate the number of trees to be re-planted.

Kearns was satisfied.

Decision by Council

It was moved by Councilor Marshall and seconded by Councilor Lancaster to deny the appeal of the Planning Commission's decision on applications NR-00-06 and WG-00-01; adopt the recommended findings in support of the applications, and approve the applications with the recommended findings and conditions as amended. Motion passed unanimously among the members present.

Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. The written decision will contain an explanation of the appeal rights.

Lewelling Community Park Master Plan and Comprehensive Plan Land Use Designation Amendment -- File CPA-01-01 -- Ordinances

Mayor Bernard called the public hearing on the Lewelling Community Park Master Plan and Comprehensive Plan Land Use Designation Amendment filed by the City of Milwaukie to order at 7:05 p.m.

This amendment was considered by the Planning Commission at its April 10, 2001, public hearing, and the Commission recommended approval of the application. The Council hearing is de novo.

The purpose of the hearing was to consider the Milwaukie Planning Commission's recommendation to approve the request for a Comprehensive Plan Amendment incorporating the Lewelling Community Park Master Plan as an ancillary document and amending the Comprehensive Plan Land Use Map to change the land use designation from "low density residential" to "public" for the property located at the northwest corner of Stanley Avenue and Willow Street.

The applicable standards to be considered include Zoning Ordinance Section 905.I (Amendments), and Comprehensive Plan Chapter 2, Objective 1, Policy 7, and 1011.4 Major Quasi-Judicial Review.

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Mayor Bernard reviewed the order of business. The applicant has the burden of proving the proposal conforms with all applicable criteria of the City's Comprehensive Plan and Zoning Ordinance. He reviewed the conduct of the hearing.

Conflicts of Interest and Site Visits: **Councilors King and Marshall** visited the site.

Ex parte Contracts or Conflicts of Interest: None.

Challenges to Impartiality or Ability to Participate: None.

Jurisdictional Issues: None.

Staff Presentation

Kent presented the staff report in which the City Council was requested to adopt an ordinance incorporating the Lewelling Community Park Plan as an ancillary document to the Comprehensive Plan and to change the land use designation from low density residential to public on the park site.

The property, approximately 1 acre in size, was annexed into the City by Council action on March 6, 2001, and retains the County's low density residential designation. The first ordinance adopts a master plan to guide future park improvements, and the second changes the land use designation to "public." Any future park development will be reviewed by the Planning Commission. The Commission held a public hearing on April 10, 2001, and recommends Council adoption.

Applicant Testimony

Herrigel provided details on the master plan and described the Lewelling neighborhood efforts, particularly those of Art Ball and Jean Michel, to acquire and improve the property for a community park. There was a drug house on the property which was demolished after the City purchased it through the City's Parks, Open Space, and Trails (POST) Acquisition Program. The NDA was able to get a volunteer to prepare the master plan. There has been no neighborhood opposition to the development.

Councilor Lancaster noted the 2 wetland sites on Stanley Avenue and asked if these would be negatively impacted.

Herrigel said these are fabricated wetlands which will be buffered from the street and adjacent homes.

Correspondence: None.

Testimony in Support of the Application: None.

Testimony of those Opposed to the Application: None.

Neutral Testimony: None.

Staff Recommendation: None.

Questions from City Council to Staff: None.

Closure of Public Hearing

It was moved by Councilor King and seconded by Councilor Marshall to close the testimony portion of the public hearing on the Lewelling Community Park Master Plan and land use designation amendment. Motion passed unanimously among the members present.

Mayor Bernard closed the public testimony of the hearing at 7:20 p.m.

Council Discussion: No further discussion.

Decision by Council

It was moved by Councilor Marshall and seconded by Councilor King to read the ordinance adopting the Lewelling Community Park Master Plan (CPA-01-01) as an ancillary document to the Comprehensive Plan and the ordinance amending the Comprehensive Plan Land Use Map to change the land use designation from low density residential to public on the park site for the first time by title only and provide \$5,000 for master plan work to encourage neighborhood participation.

It was agreed the funding proposal should be a separate motion.

Motion passed unanimously among the members present. Both ordinances were read the first time by title only.

It was moved by Councilor Lancaster and seconded by Councilor King to read the ordinance adopting the Lewelling Community Park Master Plan (CPA-01-01) as an ancillary document to the Comprehensive Plan and the ordinance amending the Comprehensive Plan Land Use Map to change the land use designation from low density residential to public on the park site for the second time by title only. Motion passed unanimously among the members present. Both ordinances were read for the second time by title only.

It was moved by Councilor Lancaster and seconded by Councilor Marshall to adopt the ordinance adopting the Lewelling Community Park Master Plan (CPA-01-01) as an ancillary document to the Comprehensive Plan and the ordinance amending the Comprehensive Plan Land Use Map to change the land use

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designation from low density residential to public on the park site. Motion passed unanimously among the members present.

ORDINANCE NO. 1888:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING ORDINANCE NUMBER 1437, THE COMPREHENSIVE PLAN, BY ADOPTING THE LEWELLING COMMUNITY PARK MASTER PLAN (CPA-01-01) AS AN ANCILLARY DOCUMENT.

ORDINANCE NO. 1889:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING ORDINANCE NUMBER 1437, THE COMPREHENSIVE PLAN, BY CHANGING THE LAND USE DESIGNATION FROM LOW DENSITY RESIDENTIAL TO PUBLIC.

LUBA Appeal Information

Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. The written decision will contain an explanation of the appeal rights.

It was moved by Councilor Marshall and seconded by Councilor Lancaster to allocate \$5,000 from the current year's budget to the Lewelling Neighborhood District Association (NDA) for park design work.

Councilor Lancaster was concerned about setting a precedent although he supported the intent. The Lewelling Community Park is a model project.

Councilor Marshall felt this project exemplifies what the City wants to encourage.

Councilor King was concerned about equity since the Hector Campbell NDA has done so much with Homewood Park.

Councilor Lancaster asked the monetary value of the volunteer services.

Ball responded the pro bono master plan works was about \$7,100, and, additionally, there has been neighborhood volunteer work.

Swanson recommended reducing the \$362,000 transfer from the riverfront fund to the general fund by \$5,000 to make the proposed expenditure in the current fiscal year.

Councilor King requested time to talk to other NDAs before making this decision.

Herrigel believed there would be at least 1 NDA requesting similar treatment in the near future.

Councilor Marshall arrived at the figure because he felt it was an acceptable amount to really make a difference and show the City support for positive community activity.

Councilor Lancaster did not disagree with the philosophy, but, realistically, it should be seen as a \$35,000 decision to reward neighborhoods equally as park development occurs.

Swanson agreed this is a \$35,000 decision, so it carries some budget implications. The Lewelling Community Park allocation can be made this year, and he will recommend an amendment when the Council adopts the 2001 – 2002 budget.

Motion passed 3 – 1 with the following vote: Mayor Bernard, Councilor Lancaster, and Councilor Marshall aye; Councilor King nay; no abstentions.

OTHER BUSINESS

North Industrial Area State Transportation and Growth Management Grant Application

Rouyer presented the staff report in which the City Council was requested to authorize staff to apply for a \$60,000 - \$70,000 grant from the State of Oregon to evaluate transportation and zoning in the northern industrial area, north of Hwy. 224. Labor will be the City's 10.5% match. This study will address a long-term Planning Commission goal.

The group discussed the need for Council to approve this type of request. If the grant is approved, an agreement will have to be signed with the State of Oregon. Some grants also require a demonstration the governing body supports the application. The policy makers need to understand there will likely be code amendments at the end of the project.

Councilor Lancaster said his ongoing question will be how to streamline processes. The group agreed to look at the purchasing procedures and signature authority.

It was moved by Councilor King and seconded by Councilor Marshall to authorize staff to apply for a \$60,000 - \$70,000 grant from the State of Oregon to evaluate transportation and zoning in the northern industrial area, north of Hwy. 224. Motion passed unanimously among the members present.

Amend Surface Transportation Program Agreement SE 32nd Avenue to SE 45th

Mayor Bernard announced there would be public comment after the staff report.

Bennett outlined the 2 intergovernmental agreements before the Council. The agreement with Portland authorizes the \$1.076 million expenditure for Phase 3 of the

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Johnson Creek Project and agrees to an \$80,000 local match. In the second agreement, Clackamas County agrees to pay the city \$80,000 in the form of in-kind services for the local match, assist in resolving the map dispute, and turn over road jurisdiction to Milwaukie at the satisfactory conclusion of the reconstruction project.

Councilor Lancaster asked the name of the federal representative working with the City of Portland, and **Bennett** responded it is an ODOT federal aid specialist.

Councilor Marshall asked the sidewalk width, and **Bennett** said one sidewalk is 6 feet and the other is 5 feet.

Rebecca Lillie and **Brad Inman**, SE Johnson Creek Boulevard residents. They expressed concern with the information Council received at its May 14 work session. When the County accepts surveys, it agrees they meet statutory requirement but does not verify the content. Lillie acquired a copy of a 1914 plat from the City of Portland Traffic Engineering Department which puts the road in the same location as the 1924 map. The 1917 map puts the road through her house. She urged the Council to investigate all information related to this project since there are discrepancies in road width and plats.

Gene Hatlelid, 4277 SE Johnson Creek Boulevard, Milwaukie. He did not believe the City Council had enough accurate information to represent the citizens of Milwaukie. He submitted his written comments on the proposed agreements identifying errors and misleading information. He noted the staff report did not contain the sidewalk widths. Other issues and questions were: explain why the improvements cannot be made in the existing 40-foot right-of-way; define "future phases" in ODOT agreement related to right-of-way acquisition; explain the funding change from \$800,000 to \$1.9 million in ODOT agreement; clarify the matching amount for Milwaukie and Portland; describe implication of County agreement item #6 and impact of downgrading the road; clarify the County's \$80,000 in kind-payment in section 2.a; supply all interested parties with maps as outlined in 2.d; define City's obligations for permits, design, etc.; and describe length of project consistently.

Hatlelid did not feel the Council could make a decision until these issues are resolved.

Linda Hatlelid, 8617 SE 36th Avenue, Milwaukie. She felt the Council had not received all of the background material it needed to make a decision. These include petitions and other correspondence supporting the 40-foot right-of-way, meeting minutes, videos, and letter of support from the Traffic Safety Board. If the Milwaukie City Council votes "no" on phase 3 of the project, Portland and Clackamas County will do the needed repairs. Staff information on the environmental zone and tree removal is incomplete. Staff updated the Council in a way that encouraged a vote in favor of phase 3. She urged the City Council to vote "no" and support the majority of citizens. A 40-foot right-of-way is acceptable.

Bennett responded to citizen comments and questions. Lillie's comment about the map discrepancies is accurate, and there is language in the County agreement requiring it to help resolve right-of-way disputes arising from these discrepancies. ODOT will begin meeting with property owners in June. When the project is finished, the intent is to vacate unused property.

Hatlelid was correct in saying the sidewalk widths were omitted in the staff report. The sidewalks are designed to be 1 5-foot and 1 6-foot.

The proposed ODOT amendment should resolve the dollar amount issue. She agreed to provide a total breakdown of prior and future costs. The amendment accounts for an influx of federal funds and new local match. Milwaukie is obligated to pay 60% of the match based on the number of properties in the City.

Recitals 3 & 4 of the County agreement recognize Johnson Creek Boulevard is a county road and justify spending money in the Milwaukie city limits. In Milwaukie's street classification plan, Johnson Creek Boulevard is designated as a minor arterial, and the Regional Transportation Plan (RTP) it shows as a collector. Because of the RTP and implementation of the Transportation System Plan (TSP), staff is discussing the feasibility of asking the City Council to downgrade the road to collector status. Traffic calming efforts will be limited by the street classification. The County further agrees to meet with affected property owners to discuss issues related to right-of-way alignments as well as provide technical assistant to the City and ODOT. The only financial part of the agreement is in-kind payment of \$80,000 to help cover the local match. In terms of the federal funds, the \$800,000 was for the phase 2 stormwater improvements.

Addressing L. Hatlelid's comments, **Bennett** reported the documents she referred to are on file including the Traffic Safety Board's recommendation for a 40-foot right-of-way. The City of Portland agreed to mark to 40- and 44-foot rights-of-way on those properties which would be impacted. On May 1, 2000, Council directed City staff to go no further on the staking project.

Councilor Lancaster asked what would happen if Milwaukie voted against going forward with the project.

Bennett said Milwaukie has an existing agreement with Portland, but one Council cannot bind future Councils. This is a Council choice, and if the first agreement is not approved, the Council will have decided not to go forward. The \$800,000 completed stormwater improvement will not function if curbs are not installed, and Milwaukie does not have the \$2 million to complete the project on its own. If the agreements are not signed by July 1st, the funds go back into the regional pool.

Councilor Marshall asked if there could be some mechanism requiring completed traffic calming during the street construction phase.

III. A. 20

Bennett responded Milwaukie could request a concurrent, city funded project on those 6 blocks in the city limits.

Firestone added this would be up to the entity letting the construction contract; however, he would not anticipate a problem if the City agrees to pay.

Councilor Lancaster commented this is considered a regionally significant project because of the decisions to build the I-205 interchange and Tacoma overpass. Milwaukie is ultimately paying the price for these earlier projects. The state and federal government are pedantic and inflexible on bike paths and widths. He was not comfortable making a decision or moving forward until all citizens' questions are answered. This seems to be a classic example of chasing the dollar. At some point, citizens will have to endure a tax increase to make streets usable. Until all questions answered, **Councilor Lancaster** could not support moving forward.

Councilor King suggested tabling the decision for a short period of time until property owners' questions are answered. Milwaukie is a regional link, and it is important to plan for future generations. For these reasons, she will likely vote in favor of the agreements. If one sidewalk is delayed, the improvements will actually be in the 40-foot right-of-way. She felt 2 bike lanes were necessary for safety.

Councilor Marshall said the road is deteriorating, and there are no funds to repair it. He will also probably vote to move forward on the project after getting the final questions answered.

Mayor Bernard wants to speak with a federal official to get the final word on funding requirements.

Bennett explained ODOT signed off on the agreement in 1991. Federal regulations require jurisdictions to comply with own design standards which, in Milwaukie's case, is a 60-foot wide road. Milwaukie is waiving its own standards in this instance.

Councilor Lancaster added there are unanswered questions creating confusion about what can or cannot be done. He believes the Hatlelid's are a fair representation of the group opposed to the project and asked for a copy of their questions.

Swanson suggested the questions be submitted to him in writing by the end of the week.

Councilor Lancaster understands a 40-foot right-of-way is acceptable to property owners. Why this cannot be done is, he believed, the defining question. He wants it demonstrated there are no other options.

Bennett explained the future sidewalk is a compromise. Travel lanes, bike lanes and one sidewalk would be a 39-foot project. The group discussed safe bike lane widths and the significance of a multi-modal project.

Other Items

The group discussed pending electric rate increases, and **Councilor Marshall** suggested turning off half the city street lights. **Bennett** reported staff is looking at getting loans to purchase more efficient pumps, replacing windows at City Hall, and options for cutting street lighting costs.

Councilor King discussed water conservation and pesticides.

ADJOURNMENT

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

Mayor Bernard adjourned the meeting at 9:05 p.m.

Pat DuVal, Recorder



To: Mayor and City Council
Through: Mike Swanson, City Manager Pro Tem
From: JoAnn Herrigel, Program Services Coordinator *JH*
Subject: Renewal of IGA with Metropolitan Area Communications Commission
Date: May 24, 2001

Action Requested

Adopt the attached resolution authorizing the City Manager to sign the attached Amendment No.1, to an Intergovernmental Agreement (IGA) with the Metropolitan Area Communications Commission (MACC). The IGA allows MACC to administer the day to day operational and regulatory aspects of Milwaukie's cable television franchise with AT+T and assist the City with any future negotiations with other cable service providers.

Background

In June of 2000, Council passed a resolution authorizing the City Manager to enter into a one year IGA with MACC. At the end of the one-year term MACC and the City were to review costs and benefits of this arrangement and determine whether a more formal, long-term agreement was prudent. The term of this IGA ends on June 30, 2001. Staff from Milwaukie and MACC have conferred and agree that the arrangement has been beneficial to both organizations. MACC's Governance Committee is in the process of reviewing the integral operations of the organization, including issues related to membership. Until that review is completed, it is most appropriate for MACC and Milwaukie to sign another one-year agreement.

Major components of the IGA are as follows:

- 1) **Term** – the term is for one year, but is renewable.
- 2) **Scope of Work** – includes the following for the AT+T franchise:
 - Respond to cable-related complaints
 - Perform or cause to be performed technical tests as required by the franchises
 - Perform or cause to be performed financial review/audit of franchise payments

MILWAUKIE CITY HALL
10722 SE MAIN STREET
MILWAUKIE, OREGON 97222
PHONE: (503) 786-7555 • FAX: (503) 652-4433

III. B. 2

- Provide the City with a written Franchise Administration Report
(Please see the attached Franchise Administration Report for details on scope compliance)

Please note: The City has its own I-Net and PEG Access program, which will continue to be managed by the City and is not a part of this IGA.

- 3) **Compensation** – Compensation for MACC's work on the City's AT&T Franchise is 28% of AT+Ts franchise fee revenues. Over this past year, compensation to MACC has amounted to \$37,000.

Fiscal Impact

The recently approved Budget for Fiscal Year 01-02 has \$38,000 allocated to cover this renewed IGA with MACC.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN AMENMENT #1 TO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE METROPOLITAN AREA COMMUNICATIONS COMMISSION (MACC). THE IGA ALLOWS MACC TO ADMINISTER THE DAY TO DAY OPERATIONAL AND REGULATORY ASPECTS OF MILWAUKIE'S CABLE TELEVISION FRANCHISE WITH AT+T AND ASSIST WITH NEGOTIATIONS AND ADMINISTRATION OF ANY FUTURE FRANCHISE THE CITY MAY ENTER INTO WITH OTHER CABLE SERVICE PROVIDERS.

WHEREAS, the City understands that thorough monitoring of their current and future cable franchises is an important public function;

WHEREAS, the Metropolitan Area Communications Commission is able and willing to perform such ministerial and regulatory services and functions for the City ;

WHEREAS, the first year of this IGA has been beneficial to both MACC and the City;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE to authorize the City Manager to sign Amendment #1 to an intergovernmental agreement (IGA) with the Metropolitan Area Communications Commission (MACC). The amended IGA would allow MACC to administer the day to day operational and regulatory aspects of Milwaukie's cable television franchise with AT+T and any future franchises the city may enter into with cable service providers.

Introduced and adopted by the City Council of the City of Milwaukie , Oregon on June 5, 2001.

James Bernard, Mayor

Attest:

Pat DuVal, City Recorder

Approved as to Form:
Ramis, Crew, Corrigan and Bacrach

City Attorney

III. B. 4

AMENDMENT NO.1
IGA with Metropolitan Area Communications Commission

This agreement hereby amends the above titled contract between the City of Milwaukie and the Metropolitan Area Communications Commission, the original term of which was July 1, 2000 to June 30, 2001.

This amendment is a change to IGA as follows:

- To extend the term to June 30, 2002, inclusive.

Except for the above, all other conditions remain in full force and effect.

In Witness to the above, the following duly authorized representatives of the parties referenced have executed this agreement:

City of Milwaukie

Metropolitan Area Communications
Commission

SIGNATURE DATE

SIGNATURE DATE

Mike Swanson

NAME

NAME

City Manager Pro Tem

TITLE

TITLE

MACC Franchise Administration Report for City of Milwaukie

July 2000 – June 2001

Per Exhibit A – Scope of Services of the Intergovernmental Agreement between City of Milwaukie and Metropolitan Area Communications Commission (MACC), the following is a summary report of the administration and enforcement activities of the AT&T Franchise performed on behalf of the City:

1. Customer Service

a) Call Center

Late February 2001, AT&T disconnected the Milwaukie call center phone system when they had been intending to transfer calls to their regional call center in Beaverton. AT&T said that they hadn't planned for Milwaukie subscribers to reach the disconnected number and held Qwest accountable for the error. AT&T had been unaware of the problem with the phone systems until contacted by MACC. The phone connections were corrected and calls were correctly transferred within an hour of this contact. The City and MACC received a letter from AT&T apologizing for the "oversight" of no advance notice of the closure, noting that closure information had been provided on subscribers' bills (though some of these were issued after the closure), and that the AT&T channel (#26) would carry a special notice about the issue in the weeks after the closure.

b) Customer Complaints

Contact information for staff at the City is provided on Milwaukie subscribers' cable bills. City staff, therefore, receives subscriber complaints and refers them to MACC for resolution. MACC assisted AT&T subscribers in resolving complaints concerning service reception and interruption problems, long hold times when calling AT&T after hours or on weekends, @Home service problems, and the unplanned disconnection of the Milwaukie call center phones.

2. Financial

a) Recoveries

After investigation of past reporting and negotiation with AT&T, MACC determined that the City had been underpaid for @Home franchise fees, advertising revenues, and advertising commissions by more than \$5,000. AT&T had not paid the City @Home franchise fees from the beginning of the service (November 1999) through July 2000, and had not attributed any of the metro area system's advertising revenues or commissions to the Milwaukie franchise area.

Since AT&T will now incorporate these corrections into its future franchise fee calculations, the City can also expect to receive, at a minimum, an additional \$23,000 each year from these franchise related revenues.

b) Franchise Fee Review

MACC and the City will need to discuss the possibility of including the City in the franchise fee review for MACC jurisdictions that is to be performed in Spring 2002. Although there are substantial differences in the reporting requirements of the two franchises, a separate review of the Milwaukie Franchise is unlikely to be cost-effective. In addition, MACC has already compelled AT&T to make several corrections to its reporting and franchise fee payments to the city. Due to these corrective actions, a franchise fee review will most likely yield much less than it would have previously.

c) @Home Franchise Fees

in December 2000, AT&T advised regulators that they should waive all franchise fees on @Home Internet services. AT&T said their advice was prompted by several issues: 1) the 9th Circuit decision (*AT&T v. City of Portland*) hadn't clarified that cable modem services were cable services (vs. telecommunications or other type of service); 2) the FCC had begun a study of the issue; and 3) the company expected a class action suit in California challenging their right to collect these fees. MACC responded on behalf of the MACC, Washington County, and City of Milwaukie franchises, stating that: 1) the Portland decision characterized @Home as a 'hybrid' – neither telecommunications nor cable; 2) action prior to the results of an FCC study would be premature; and 3) a class action suit was unlikely since these fees are an external cost to AT&T that it chooses to pass through to subscribers. On behalf of the three franchises, MACC also rejected an offer from AT&T in March 2001 to sign agreements to waive franchise fees or to agree to an offset to franchise fees in the event AT&T would someday be required to refund @Home franchise fees.

3. Reporting

MACC has had to notify AT&T of potential violations of quarterly reporting requirements. In addition, the Proof of Performance Test was not provided by the franchise-specified deadline. The Franchise allows a 30-day period for AT&T to "cure" these violations; AT&T has consistently provided reports after the deadline, but during the cure periods provided by the franchise. No fines, therefore, have been imposed.

MACC's Board of Commissioners and staff appreciate the opportunity to assist the City of Milwaukie in administration of the AT&T Franchise. We have made substantial efforts to use the provisions of your franchise to improve: customer service standards for Milwaukie subscribers, accuracy and timeliness of AT&T's reporting, and payment of appropriate franchise revenue. With a long history of enforcement and regulation of AT&T's performance for the MACC jurisdictions, we plan to continue apply these same skills and resources to the Milwaukie - AT&T Franchise.



To: Mayor and City Council
Through: Mike Swanson, City Manager Pro Tem
From: Pat DuVal, City Recorder
Subject: Contract for City Manager Services
Date: May 24, 2001

Action Requested

Authorize the Mayor to sign a contract with Michael F. Swanson & Associates for City Manager services.

Background

The contractor has provided interim City Manager services, and the City Council has determined Mike Swanson, and employee of the contractor, is capable and qualified to continue performing the required professional services. The agreement will be effective May 31, 2001, and the contractor will provide permanent City Manager services on an as needed basis as set forth in Milwaukie Charter Section 27 -- *Manager*.

III. C. 2

CITY OF MILWAUKIE, OREGON
CITY MANAGER CONTRACT

THIS AGREEMENT made and entered into this ___ day of _____ 2001, by and between the CITY OF MILWAUKIE, a municipal corporation of the State of Oregon, hereinafter called CITY, and Michael F Swanson & Associates, hereinafter called CONTRACTOR.

RECITALS

- A. The CITY has need for a City Manager with the particular training, ability, knowledge, and experience possessed by CONTRACTOR and its employees,
- B. CONTRACTOR has provided interim City Manager services,
- C. Mayor and City Council have determined that Mike Swanson, an employee of Contractor is qualified and capable of performing the professional services the CITY requires, and
- D. Contractor is willing to provide permanent City Manager services on an ongoing basis on the terms specified in this agreement and the CITY wishes to retain Contractor on those terms.

1. SERVICES TO BE PROVIDED:

The term of this agreement will begin May 31, 2001. CONTRACTOR will provide professional City Manager services as set forth in Section 27 of the Milwaukie Charter on an as needed basis. CONTRACTOR will be available to respond to emergencies 24 hours a day via electronic device. CONTRACTOR and CITY agree that the amount of time required to provide the City Manager services will vary.

2. COMPENSATION:

A. The CITY agrees to pay the CONTRACTOR at the rate of \$7,500 per month. CONTRACTOR and CITY agree to renegotiate the amount of compensation every six months or at any time when the need for City Manager services changes substantially.

1. Payment will be made monthly based on CONTRACTOR's invoice, subject to the acceptance of the Mayor.

2. Payment by the CITY shall release the CITY from any further obligation for payment to CONTRACTOR. The services are services performed or expenses incurred as of the date of the statement of services. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

3. The CITY certifies that sufficient funds are available and authorized for expenditure to pay the costs of this contract.

B. OWNERSHIP OF WORK PRODUCT:

The CITY shall be the owner of and shall be entitled to possession of any computations, plans, correspondence or other pertinent data and information gathered by or computed by CONTRACTOR prior to termination of this agreement by CONTRACTOR or upon completion of the work pursuant to this agreement.

C. ASSIGNMENT/DELEGATION:

Except as otherwise provided in this contract, neither party shall assign, sublet or transfer any interest in or duty under this agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If the CITY agrees to assignment of tasks to a subcontractor, CONTRACTOR shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by CITY of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and CITY. Performance of services by CONTRACTOR's employee shall not be considered an assignment or delegation. Assignment of responsibilities to City employees to perform work shall not be considered a violation of this section.

D. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR:

1. CONTRACTOR's services shall be provided by Mike Swanson. CONTRACTOR shall be an independent CONTRACTOR for all purposes and shall be entitled for no compensation other than the compensation provided for under paragraph 2 of this Agreement. Mike Swanson is an employee of CONTRACTOR and not an employee of the CITY. As an independent contractor, CONTRACTOR is available to perform services for others, but agrees not to accept any other work that would interfere with the services provided under this contract.

2. CONTRACTOR agrees to file a joint declaration with the CITY to the effect that CONTRACTOR's services are those of an independent contractor, as provided under Chapter 864 Oregon Laws 1979.

3. CONTRACTOR acknowledges that for all purposes related to this Agreement, CONTRACTOR is and shall be deemed to be an independent CONTRACTOR and not an employee of CITY, shall not be entitled to benefits of any kind to which an employee of the CITY is entitled and shall be solely responsible for all payments and taxes required by law; and, furthermore, in the event that CONTRACTOR is found by a court of law or any administrative agency to be an employee of the CITY for any purpose, the CITY shall be entitled to offset

III. C. 4

compensation due, to demand repayment of any amounts paid to CONTRACTOR under the terms of this Agreement, to the full extent of any benefits or other remuneration CONTRACTOR receives (from CITY or third party) as a result of said finding and to the full extent of any payments that CITY is required to make (to CONTRACTOR or to a third party) as a result of said finding.

4. The undersigned CONTRACTOR hereby represents that no employee of the City of Milwaukie, or any partnership or corporation in which a CITY employee has an interest, has or will receive any remuneration of any description from the CONTRACTOR, either directly or indirectly, in connection with the letting or performance of this contract, except as specifically declared in writing.

If this payment is to be charged against Federal funds, CONTRACTOR certifies that he is not currently employed by the Federal Government and the amount charged does not exceed his normal charge for the type of service provided.

CONTRACTOR certifies that it is not an active member of the Oregon Public Employees Retirement System and is not employed as an employee, for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

3. INDEMNIFICATION:

CITY has relied upon the professional ability and training of CONTRACTOR as a material inducement to enter into this Agreement. CONTRACTOR warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a CONTRACTOR's work by CITY shall not operate as a waiver or release.

CITY shall defend, save harmless and indemnify CONTRACTOR against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of any duty under this contract. For the purposes of this section, actions or omissions that constitute malfeasance in office or willful or wanton neglect of duty shall be considered to be occurring in the performance of duty.

4. INSURANCE:

The CONTRACTOR and its subcontractors shall maintain insurance acceptable to the CITY in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of CONTRACTOR's activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is primary insurance with the respect to the interests of the CITY and that any other insurance maintained by CITY is excess and not contributory insurance with the insurance required hereunder.

The policy or policies of insurance maintained by the CONTRACTOR and its subcontractor shall provide at least the following limits and coverages:

Types of Insurance

Limits of Liability

Automobile Liability

covering any vehicle owned by contractor, used on CITY business.

Combined singular limit \$500,000, or bodily injury, \$200,000 per person and \$500,000 per occurrence

Property damage per occurrence, \$250,000

Worker's Compensation

The Contractor, its subcontractors, if any, and all employers working under this agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

CONTRACTOR's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to CITY. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of CITY, in lieu thereof, a certificate in form satisfactory to CITY certifying to the issuance of such insurance shall be forwarded to:

Finance Director
City of Milwaukie
10722 SE Main
Milwaukie, Oregon 97222

Such policies or certificates must be delivered prior to commencement of the work.

The procuring of such required insurance shall not be construed to limit CONTRACTOR's liability hereunder. Notwithstanding said insurance, CONTRACTOR shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

5. METHOD IN PLACE OF GIVING NOTICE, SUBMITTING BILLS AND MAKING PAYMENTS:

III. C. 6

All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as follows:

THE CITY: Accounts Payable
 City of Milwaukie
 10722 SE Main
 Milwaukie, Oregon 97222

CONTRACTOR: Michael F. Swanson & Associates
 333 South State Street #211
 Lake Oswego, OR 97034
 699-7780

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payment shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving notice pursuant to this paragraph.

6. MERGER:

This writing is intended both as a final expression of the agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the agreement. No modification of this agreement shall be effective unless and until it is made in writing and signed by both parties.

7. TERMINATION:

At any time and without cause, the CITY shall have the right in its sole discretion, to terminate this agreement by giving written notice to CONTRACTOR. If the CITY terminates the contract pursuant to this paragraph, it shall pay CONTRACTOR for services rendered to the date of termination.

8. ACCESS TO RECORDS:

CITY shall have access to such books, documents, papers and records of CONTRACTOR as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

9. FORCE MAJEURE:

Neither CITY nor CONTRACTOR shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, war, natural disaster, volcano, earthquake, fire, flood, epidemic, quarantine, restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the causes of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation.

10. NON-WAIVER:

The failure of the CITY to insist upon or enforce strict performance by CONTRACTOR of any of the terms of this contract or to exercise any rights hereunder, should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

11. NON-DISCRIMINATION:

CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations on nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or handicap.

12. EXTRA (CHANGED) WORK:

Only the Mayor and City Council may authorize extra (and/or changed) work.

13. ATTORNEY'S FEES:

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the Court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

14. APPLICABLE LAW:

This contract will be governed by the laws of the State of Oregon.

15. CONFLICT BETWEEN TERMS:

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

16. AUDIT:

III. C. 8

CONTRACTOR shall maintain records to assure conformance with the terms and conditions of this agreement, and to assure adequate performance and accurate expenditures within the contract period. CONTRACTOR agrees to permit City of Milwaukie, the State of Oregon, the federal government or their duly authorized representatives to audit all records pertaining to this agreement to assure the accurate expenditure of funds. Any independent audit report of CONTRACTOR's activities or finances prepared for CONTRACTOR shall be submitted to the City of Milwaukie's Finance Director.

17. SEVERABILITY:

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected or invalidated thereby.

18. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all federal, state and local laws and ordinances, applicable public contracts, and to the work to be done under this contract.

19. COMPLETE AGREEMENT:

This contract and any referenced attachments constitute the complete agreement between the CITY and CONTRACTOR and supersedes all prior written or oral discussions or agreements.

IN WITNESS WHEREOF the CITY has caused this Agreement to be executed by its duly authorized undersigned officer and the CONTRACTOR has executed this Agreement on the date here in above first written.

CITY OF MILWAUKIE

By: _____

James Bernard, Mayor

DATED: _____

MICHAEL F. SWANSON & ASSOCIATES

By: _____

Michael F. Swanson

DATED: _____

G:\muni\Milwaukie\MswansonK051601



To: Mayor and City Council
Through: Mike Swanson, City Manager Pro Tem
From: Pat DuVal, City Recorder *Pat*
Subject: Contract for Auditing Services
Date: May 17, 2001

Action Requested

Authorize the City Manager Pro Tem to sign a contract with Grove, Mueller & Swank, P.C. to perform an audit of Milwaukie's financial statements for the year ending June 30, 2001.

Background

The firm of Grove, Mueller & Swank, P.C. has provided annual auditing services to the City of Milwaukie since 1994. The cost for this service for fiscal year 2000 - 2001 will be approximately \$27, 500. This amount exceeds the City Manager's signature authority and must be approved by the City Council.

As part of the City's general evaluation of its professional service contracts, the Council may wish to direct staff to prepare a request for proposals (RFP) for future auditing services.

**GROVE, MUELLER & SWANK, P.C.**

CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

April 30, 2001

City Council
City of Milwaukie
10722 S.E. Main Street
Milwaukie, Oregon 97222

This letter and contract dated April 20, 1998 explain our understanding of the arrangements for the services we are to perform for the City of Milwaukie for the year ending June 30, 2001. We ask that you either confirm or amend this understanding.

We will perform an audit of City of Milwaukie's financial statements as of and for the year ending June 30, 2001. We understand that the financial statements will be prepared in accordance with generally accepted accounting principles.

We will conduct the audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit will provide a reasonable basis for our report.

The audit is subject to the inherent risk that material errors, irregularities, or illegal acts, including fraud or defalcation, if they exist, will not be detected. It is also subject to the inherent risk that violations or compliance requirements and other responsibilities imposed by state and federal statutes and regulations or assumed by contracts, if they exist, will not be detected.

If circumstances arise relating to the condition of your records and/or the availability of sufficient, competent evidential matter were to arise during the course of our audit work, which in our professional judgment prevent us from completing the audit, we will notify you immediately.

As you know, the financial statements and compliance matters are the responsibility of City of Milwaukie's management. Management has the primary responsibility for properly recording transactions in the records, for safeguarding assets, for preparing reliable financial statements and for complying with statutory, regulatory and compliance requirements. At the conclusion of our audit, we will request certain written representations from management about the financial statements and matters related thereto.

During the course of our engagement, we may accumulate records containing data which should be reflected in your books and records. You will determine that all such data, if necessary, will be so reflected. Accordingly, you will not expect us to maintain copies of such records in our possession.

E-Mail Address • cpas@gmscpa.com

Mailing Address • P.O. Box 2122 • Salem, Oregon 97308-2122

Salem • 475 Cottage Street NE, Suite 200 • Salem, Oregon 97301-3814 • (503) 581-7788 • FAX (503) 581-0152
Albany • P.O. Box 663 • 519 S. Lyon Street • Albany, Oregon 97321-0570 • (541) 967-2315 • FAX (541) 926-5926

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April 30, 2001
Page 2

Our fee for the above described audit service will be a maximum of \$27,500.

The assistance to be supplied by your personnel, including the preparation of schedules and analysis of accounts, will be discussed and coordinated with you. The timely and accurate completion of this work will assist us in performing our work efficiently.

If you intend to publish or otherwise reproduce the financial statements and make reference to our Firm name, you agree to provide us with printer's proofs or masters for our review and approval before printing. You also agree to provide us with a copy of the final reproduced material for our approval before it is distributed.

This letter and contract constitute the complete and exclusive statement of agreement between Grove, Mueller & Swank, P.C. and City of Milwaukie, superseding all proposals, oral or written, and all other communication, with respect to the terms of the engagement between the parties.

If this letter defines the arrangements as you understand them, please sign and date the enclosed copy and return it to us. We appreciate your business.

Grove Mueller & Swank, PC
CERTIFIED PUBLIC ACCOUNTANTS

Confirmed on behalf of the addressee:

_____, 2001



To: Mayor and City Council
Through: Mike Swanson, City Manager Pro Tem
From: Pat DuVal, City Recorder *Pat*
Subject: Contract for Municipal Court Judge Services
Date: May 17, 2001

Action Requested

Authorize the City Manager Pro Tem to sign a contract with Ron Gray extending municipal court judge services for an additional year.

Background

By City Charter, the municipal court judge is the judicial officer of the city and is appointed directly by the City Council. Gray was selected in a competitive process in 1988 and again in 1995. The current three-year contract with Gray for municipal court judge services expires June 30, 2001. Staff recommends extending this contract for an additional year expiring June 30, 2002.

The Milwaukie Municipal Court Judge handles cases involving building code violations; City Ordinance civil infractions such as zoning violations; and all traffic infractions under the State Motor Vehicle Code. The position requires an average of 15 to 20 hours per month on the bench plus several hours per month preparing and reviewing court-related material.

As part of the City's general evaluation of its professional service contracts, the Council may wish to direct staff to prepare a request for proposals (RFP) for this service.

CITY OF MILWAUKIE, OREGON

PERSONAL SERVICES CONTRACT

THIS AGREEMENT made and entered into this 5th day of June, 2001, by and between the CITY OF MILWAUKIE, a municipal corporation of the State of Oregon, hereinafter called CITY, and Ronald L. Gray hereinafter called CONTRACTOR.

WITNESSETH:

WHEREAS, CITY has need for the services of an attorney with the particular training, ability, knowledge, and experience possessed by CONTRACTOR, and

WHEREAS, City Manager has determined that Ronald L. Gray is qualified and capable of performing the professional services as CITY does hereinafter require, under those terms and conditions set forth:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. *SERVICES TO BE PROVIDED:*

CONTRACTOR agrees to perform the services of Municipal Court Judge for the City of Milwaukie, Clackamas County, Oregon.

2. *EFFECTIVE DATE AND DURATION:*

This agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, on June 30, 2002. All work under this agreement shall be completed prior to the expiration of this agreement.

3. *COMPENSATION:*

CITY agrees to pay CONTRACTOR up to \$1,500 per month for performance of those services provided herein. CITY also agrees to reimburse CONTRACTOR for necessary and normal expenses that are incident to performance of the services specified herein.

Payments by CITY to CONTRACTOR shall be based upon the following applicable terms:

- i. Payment will be made in monthly installments of \$1,500 payable on or before the last working day of each calendar month.
- ii. City shall establish an annual budgeted amount of \$500.00 each fiscal year for pro tem judge costs. Any such cost shall be charged against this amount until \$500.00 has been expended in any fiscal year. Any pro tem costs

above this amount shall be charged against the monthly compensation paid to the CONTRACTOR.

- iii. The CITY certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. ASSIGNMENT/DELEGATION:

Neither party shall assign, sublet or transfer any interest in or duty under this agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If CITY agrees to assignment of tasks to a subcontractor, CONTRACTOR shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by CITY of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and CITY.

5. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR:

CONTRACTOR certifies that:

- i. CONTRACTOR acknowledges that for all purposes related to this Agreement, CONTRACTOR is and shall be deemed to be an independent contractor as defined by ORS 670.700, and not an employee of CITY, shall not be entitled to benefits of any kind to which an employee of CITY is entitled and shall be solely responsible for all payments and taxes required by law; and, furthermore, in the event that CONTRACTOR is found by a court of law or any administrative agency to be an employee of CITY for any purpose, CITY shall be entitled to offset compensation due, to demand repayment of any amounts paid to CONTRACTOR under the terms of this Agreement, to the full extent of any benefits or other remuneration CONTRACTOR receives (from CITY or third party) as a result of said finding and to the full extent of any payments that CITY is required to make (to CONTRACTOR or to a third party) as a result of said finding.
- ii. The undersigned CONTRACTOR hereby represents that no employee of the City of Milwaukie, or any partnership or corporation in which a CITY employee has an interest, has or will receive any remuneration of any description from CONTRACTOR, either directly or indirectly, in connection with the letting or performance of this contract, except as specifically declared in writing.

If this payment is to be charged against Federal funds, CONTRACTOR certifies that he is not currently employed by the Federal Government and the amount charged does not exceed his normal charge for the type of service provided.

CONTRACTOR and its employees, if any, are not active members of the Oregon Public Employees Retirement System and is not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

- iii. CONTRACTOR certifies that it currently has a City of Milwaukie Business License or will obtain one prior to delivering any services under this agreement.

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6. **INDEMNIFICATION:**

CITY has relied upon the professional ability and training of CONTRACTOR as a material inducement to enter into this Agreement. CONTRACTOR warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a CONTRACTOR's work by CITY shall not operate as a waiver or release.

CONTRACTOR agrees to indemnify and defend City of Milwaukie, its officers, agents and employees and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except liability arising out of the sole negligence of the CITY and its employees. Such indemnification shall also cover claims brought against the City of Milwaukie under state or federal worker's compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

It is understood by Contractor that in the event Contractor through their action or inaction injures, damages or otherwise diminishes the value of property owned by the City (beyond that incident to normal wear and tear), Contractor agrees to pay City upon written demand by the City, the amount necessary to restore, repair or replace said property. Contractor further agrees that in the event City has monies owing to Contractor on this project or otherwise, Contractor agrees City may retain any amount City reasonably deems necessary to cover any costs associated with the damage, injury or diminished value until Contractor either pays the City or other arrangements satisfactory to the City are made. In the event said arrangements cannot be made within thirty (30) days of the City's written notice, the City may set-off any or all of the disputed amount from any amounts owed.

7. **INSURANCE:**

CONTRACTOR shall maintain Professional Liability Insurance as required by the Oregon State Bar. Proof of insurance shall be provided before work commences to:

City Recorder
City of Milwaukie
3200 SE Harrison
Milwaukie, OR 97222

Ten days cancellation notice shall be provided CITY by Certified Mail to the City Recorder at the address listed above in event of cancellation or non-renewal of the insurance.

8. METHOD OF GIVING NOTICE, SUBMITTING BILLS AND MAKING PAYMENTS:

All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as follows:

CITY:

Accounts Payable
City of Milwaukie
10722 SE Main
Milwaukie, Oregon 97222

CONTRACTOR:

Ronald L. Gray
814 7th Street #6
Oregon City, OR 97045

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payment shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving notice pursuant to this paragraph.

9. MERGER:

This writing is intended both as a final expression of the agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the agreement. No modification of this agreement shall be effective unless and until it is made in writing and signed by both parties.

10. TERMINATION WITHOUT CAUSE:

At any time and without cause, CITY shall have the right in its sole discretion, to terminate this agreement by giving written notice to CONTRACTOR. If CITY terminates the contract pursuant to this paragraph, it shall pay CONTRACTOR for services rendered to the date of termination.

11. TERMINATION WITH CAUSE:

If CONTRACTOR fails to perform any of its obligations under this contract, within the time and in the manner provided, or in the event of any of the following: insolvency of CONTRACTOR; voluntary or involuntary petition in bankruptcy by or against CONTRACTOR; appointment of a receiver or trustee for CONTRACTOR; or an assignment for benefit of creditors of CONTRACTOR, or otherwise violates any of the terms of this Agreement, CITY may terminate the Agreement by giving CONTRACTOR written notice stating the reason for the termination. If CITY terminates pursuant to this paragraph, CONTRACTOR shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees

III. E. 6

specified in the Agreement as the services satisfactorily rendered by CONTRACTOR bear the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damage, if any, sustained by CITY due to the breach of the Agreement by CONTRACTOR. Damages for breach shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

A. CITY may terminate this agreement effective upon delivery of written notice to CONTRACTOR, or at such later date as may be established by CITY, under any of the following conditions:

- I. if CITY funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This agreement may be modified to accommodate a reduction in funds.
- II. if federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this agreement.
- III. if any license or certificate required by law or regulation to be held by CONTRACTOR, its subcontractors, agents and employees to provide the services required by this agreement is for any reason denied, revoked or not renewed.
- IV. if CONTRACTOR becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against CONTRACTOR, if a receiver or trustee is appointed for CONTRACTOR, or if there is an assignment for the benefit of creditors of CONTRACTOR.

Any such termination of this agreement under paragraph (A) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. CITY, by written notice of default (including breach of contract) to CONTRACTOR, may terminate the whole or any part of this agreement:

- I. if CONTRACTOR fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- II. if CONTRACTOR fails to perform any of the other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from CITY, fails to correct such failures within ten (10) days or such other period as CITY may authorize.

The rights and remedies of CITY provided in the above clause related to defaults (including breach of contract) by CONTRACTOR shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

If CITY terminates this agreement under paragraph (B), CONTRACTOR shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this agreement as the services satisfactorily rendered by CONTRACTOR bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by CITY due to breach of contract by CONTRACTOR. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

12. FORCE MAJEURE:

Neither CITY nor CONTRACTOR shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine, restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disenabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the causes of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the agreement.

13. NON-WAIVER:

The failure of CITY to insist upon or enforce strict performance by CONTRACTOR of any of the terms of this contract or to exercise any rights hereunder, should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

14. NON-DISCRIMINATION:

CONTRACTOR agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. CONTRACTOR also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to these laws.

15. ERRORS:

CONTRACTOR shall perform such additional work as may be necessary to correct errors in the work required under this agreement without undue delays and without additional cost.

16. ATTORNEY'S FEES:

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the Court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

17. APPLICABLE LAW:

CONTRACTOR shall comply with all federal, state, and local laws and ordinances applicable to the work under this agreement, including those set forth in ORS 279.310 to 279.320.

18. CONFLICT BETWEEN TERMS:

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

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19. SEVERABILITY:

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected or invalidated thereby.

20. COMPLETE AGREEMENT:

This agreement and attached exhibits constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. CONTRACTOR, by the signature of its authorized representative, hereby acknowledges that he has read this agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, CITY has caused this agreement to be executed by its duly authorized undersigned officer and CONTRACTOR has executed this agreement on the date hereinabove first written.

CITY (CITY OF MILWAUKIE)

By: _____ Mike Swanson, City Manager Pro Tem

CONTRACTOR

By: _____ Ronald L. Gray



To: City Council

Through: Mike Swanson, City Manager Pro Tem
Martha Bennett, Assistant City Manager *MSB*

From: Alice Rouyer, Planning Director *ACR*

Subject: Consent Item: Purchase Order for consulting services with Crandall Arambula P.C.

Date: May 25, 2001 for the June 5, 2001 meeting

Action Requested

Authorize the City Manager to sign a purchase order with Crandall Arambula P.C. for consulting services on the Downtown Design Guideline project.

Background

Since early 1999, the City has been working with urban design consultants Crandall Arambula to develop and implement the Downtown Plan. During the 2000 fiscal year, Crandall Arambula worked with staff to develop the downtown plan. This fiscal year, staff has used Crandall Arambula to assist with several ongoing downtown planning efforts such as support for Transit Oriented Development (TOD) Committee, riverfront planning, and assistance with the McLoughlin project. Staff is now requesting that Council give the City Manager authorization to sign a fiscal year 2001 purchase order with Crandall Arambula to assist with the Downtown Design Guideline project. This will increase the total the City will spend with Crandall Arambula this fiscal year to approximately \$45,000.

In fiscal year 2002, staff expects to contract with Crandall Arambula to complete the Downtown Design Guideline project for approximately \$17,000. Staff expects to spend another \$10,000 - \$15,000 with Crandall Arambula throughout the fiscal year in ongoing contractual services in support of downtown projects such as the McLoughlin project, reviewing options for the Safeway site, and evaluating design implications of any proposed South Corridor transit alignment alternatives. Next year's purchase order request will be forwarded to the Council for consideration with other Fiscal Year 2002 blanket purchase orders in June.

III. F. 2.o.

Fiscal Impact

Funding to cover this \$11,717 purchase order is included in the approved fiscal year 2001 budget.

Workload Impacts

The Downtown Design Guideline project is included in work program for this fiscal year and next.



To: Mayor and City Council

Through: Mike Swanson, City Manager Pro Tem
Martha Bennett, Assistant City Manager - CD *MB*
Jerry Baker, City Engineer Pro Tem *JB*

From: Paul Roeger, Civil Engineer *PR*

Subject: 2000/2001 Waterline Improvements – Phase 2
Bid Award

Date: May 25, 2001 for June 5, 2001 City Council Meeting

Action Requested

City Council authorize the City Manager to sign a contract for the 2000/2001 Waterline Improvements – Phase 2 with Wzystan Brown Excavating, Inc., for the bid amount of \$187,500.00, plus a ten percent contingency in case of needed additional work.

Background

Staff has identified waterlines that need to be upgraded to improve fire protection and domestic water flows. The King Road main replacement in this project has been identified in the "Public Facilities Plan, 1988-2008" as moderate priority. It was also identified in the draft of the recently completed Water Master Plan as necessary to improve fire protection flows in the area, but was removed from the final report because it was already in this year's budget.

The Johnson Creek Blvd. portion of this project was a section of the 12-inch loop we were unable to complete in 1969 because we could not get easements on private property on the south side of the Portland Traction Company Railroad due to buildings built on the property line. At that time the City did not want to go out into Johnson Creek Blvd. This section of 12-inch line completes a loop along the north side of the City. This section was also identified in the draft of the recently completed Water Master Plan as necessary to the distribution loop around the

III. G. 2 Report – 2000/2001 Waterline Improvements – Phase 2 – Bid Award

City, but was removed from the final report because it was already in this year's budget.

The proposed 12-inch line on Johnson Creek Blvd. does not replace an old line. It simply completes a loop in the City distribution system. The proposed 8-inch line in King Road replaces an existing 4-inch cast iron waterline that serves single-family residences. Because Johnson Creek Blvd. and King Road are classified as arterials, the new lines will be ductile iron.

Clackamas County recently contacted the City to let us know that they were going to be overlaying Johnson Creek Blvd. with 4-inches of asphalt. We have negotiated with them to not pave the section of Johnson Creek Blvd. where we will be installing the waterline until after we have completed our construction.

In addition, 35 old services on King Road will be replaced with new 1-inch copper services, meter setters, and meters. Six new three-port fire hydrants will be installed to improve fire protection in the area.

A project vicinity map is attached. Advertising was done as required. Thirteen sets of plans went out to contractors for bidding, and seven bids were received for the May 25, 2001, bid opening. One we could not read because they forgot the Bid Bond. The bid summary of all bids is attached, including the engineer's estimate.

The engineer's estimate was considerably higher than the low bidder's price because we used unit prices that most contractors would use any time of the year. That is why we have bid this project during the Spring. Some of the contractors need to keep their workers busy this time of year in order to keep them during the busy time of year, so they bid projects low.

Low bidder was Wystan Brown Excavating, Inc. Public Works has verified the bidder's extensions. Wystan Brown Excavating has done work for the City before and we have been satisfied with their performance.

Fiscal Impact

Funds are budgeted in this year's Water Fund for these improvements.

2000 - 2001 WATERLINE IMPROVEMENTS
PHASE 2

BID SUMMARY

Item #	Item of Work	Estimated Quantity	Unit	Wystan Brown Exc.		3 Dimensional Contr.		Siteworks		Dunn Construction		D.M. Excavating	
				Unit Price	Total Bid Price	Unit Price	Total Bid Price	Unit Price	Total Bid Price	Unit Price	Total Bid Price	Unit Price	Total Bid Price
1	Mobilization	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 17,900.00	\$ 17,900.00	\$ 6,249.00	\$ 6,249.00	\$ 11,500.00	\$ 11,500.00	\$ 8,390.00	\$ 8,390.00
2	Traffic Control	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 10,000.00	\$ 10,000.00	\$ 8,992.00	\$ 8,992.00	\$ 2,500.00	\$ 2,500.00	\$ 17,292.00	\$ 17,292.00
3	12" Class 52 DI	832	LF	\$ 35.00	\$ 29,120.00	\$ 40.75	\$ 33,904.00	\$ 43.00	\$ 35,776.00	\$ 60.00	\$ 49,920.00	\$ 45.00	\$ 37,440.00
4	8" Class 52 DI	1830	LF	\$ 30.00	\$ 54,900.00	\$ 30.50	\$ 55,815.00	\$ 37.00	\$ 67,710.00	\$ 35.00	\$ 64,050.00	\$ 38.00	\$ 69,540.00
5	6" Class 52 DI	35	LF	\$ 30.00	\$ 1,050.00	\$ 45.00	\$ 1,575.00	\$ 32.00	\$ 1,120.00	\$ 28.00	\$ 980.00	\$ 34.00	\$ 1,190.00
6	4" Class 52 DI for Fire Service	30	LF	\$ 30.00	\$ 900.00	\$ 49.00	\$ 1,470.00	\$ 40.00	\$ 1,200.00	\$ 20.00	\$ 600.00	\$ 34.00	\$ 1,020.00
7	Connect to exist. 12" - 55th & JCB	1	LS	\$ 2,000.00	\$ 2,000.00	\$ 1,400.00	\$ 1,400.00	\$ 2,445.00	\$ 2,445.00	\$ 800.00	\$ 800.00	\$ 3,500.00	\$ 3,500.00
8	Connect to exist. 12" - Stanley & JCB	1	LS	\$ 2,000.00	\$ 2,000.00	\$ 1,500.00	\$ 1,500.00	\$ 2,978.00	\$ 2,978.00	\$ 1,000.00	\$ 1,000.00	\$ 3,500.00	\$ 3,500.00
9	New FH Assembly	6	EA.	\$ 1,500.00	\$ 9,000.00	\$ 2,000.00	\$ 12,000.00	\$ 2,555.00	\$ 15,330.00	\$ 2,350.00	\$ 14,100.00	\$ 2,200.00	\$ 13,200.00
10	Remove Exist. FH	2	EA.	\$ 400.00	\$ 800.00	\$ 400.00	\$ 800.00	\$ 607.00	\$ 1,214.00	\$ 500.00	\$ 1,000.00	\$ 250.00	\$ 500.00
11	6" Class 52 for FH leads	50	LF	\$ 30.00	\$ 1,500.00	\$ 40.45	\$ 2,022.50	\$ 41.00	\$ 2,050.00	\$ 30.00	\$ 1,500.00	\$ 34.00	\$ 1,700.00
12	12" FL x MJ Butterfly Valve	4	EA.	\$ 800.00	\$ 3,200.00	\$ 775.00	\$ 3,100.00	\$ 1,527.00	\$ 6,108.00	\$ 1,000.00	\$ 4,000.00	\$ 1,000.00	\$ 4,000.00
13	8" FL x MJ Gate Valve	5	EA.	\$ 550.00	\$ 2,750.00	\$ 500.00	\$ 2,500.00	\$ 1,110.00	\$ 5,550.00	\$ 700.00	\$ 3,500.00	\$ 650.00	\$ 3,250.00
14	8" x 12" Hot Tap Assembly	2	EA.	\$ 2,000.00	\$ 4,000.00	\$ 1,500.00	\$ 3,000.00	\$ 2,636.00	\$ 5,272.00	\$ 1,800.00	\$ 3,600.00	\$ 610.00	\$ 1,220.00
15	8" x 10" Hot Tap Assembly	2	EA.	\$ 2,000.00	\$ 4,000.00	\$ 1,500.00	\$ 3,000.00	\$ 2,593.00	\$ 5,186.00	\$ 1,800.00	\$ 3,600.00	\$ 595.00	\$ 1,190.00
16	6" FL x MJ gate valve	1	EA.	\$ 500.00	\$ 500.00	\$ 300.00	\$ 300.00	\$ 650.00	\$ 650.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
17	12" x 12" MJ x FL Tee	1	EA.	\$ 500.00	\$ 500.00	\$ 320.00	\$ 320.00	\$ 1,178.00	\$ 1,178.00	\$ 500.00	\$ 500.00	\$ 300.00	\$ 300.00
18	Connection @ King & Home	1	LS	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 3,221.00	\$ 3,221.00	\$ 1,800.00	\$ 1,800.00	\$ 3,200.00	\$ 3,200.00
19	Cut & Cap existing waterlines	1	LS	\$ 2,500.00	\$ 2,500.00	\$ 320.00	\$ 320.00	\$ 909.00	\$ 909.00	\$ 250.00	\$ 250.00	\$ 1,500.00	\$ 1,500.00
20	Miscellaneous Fittings	1000	LBS.	\$ 1.25	\$ 1,250.00	\$ 2.60	\$ 2,600.00	\$ 2.00	\$ 2,000.00	\$ 2.00	\$ 2,000.00	\$ 1.60	\$ 1,600.00
21	8" Long Sleeve	1	EA.	\$ 250.00	\$ 250.00	\$ 107.00	\$ 107.00	\$ 209.00	\$ 209.00	\$ 300.00	\$ 300.00	\$ 100.00	\$ 100.00
22	1" Water Service (short side)	15	EA.	\$ 500.00	\$ 7,500.00	\$ 325.00	\$ 4,875.00	\$ 721.00	\$ 10,815.00	\$ 300.00	\$ 4,500.00	\$ 600.00	\$ 9,000.00
23	1" Water Service (long side)	20	EA.	\$ 950.00	\$ 19,000.00	\$ 480.00	\$ 9,600.00	\$ 839.00	\$ 16,780.00	\$ 350.00	\$ 7,000.00	\$ 850.00	\$ 17,000.00
24	Trench asphalt removal & restoration	2630	LF	\$ 6.00	\$ 15,780.00	\$ 6.10	\$ 16,043.00	\$ 8.00	\$ 21,040.00	\$ 15.00	\$ 39,450.00	\$ 15.00	\$ 39,450.00
25	Pipe Encasement	140	LF	\$ 75.00	\$ 10,500.00	\$ 88.00	\$ 12,320.00	\$ 11.00	\$ 1,540.00	\$ 75.00	\$ 10,500.00	\$ 40.00	\$ 5,600.00
26	Erosion Control	1	LS	\$ 2,000.00	\$ 2,000.00	\$ 2,100.00	\$ 2,100.00	\$ 1,186.00	\$ 1,186.00	\$ 1,000.00	\$ 1,000.00	\$ 2,500.00	\$ 2,500.00
TOTAL BID					\$ 187,500.00		\$ 201,071.50		\$ 226,708.00		\$ 230,450.00		\$ 247,682.00

2000 - 2001 WATERLINE IMPROVEMENTS

PHASE 2

BID SUMMARY

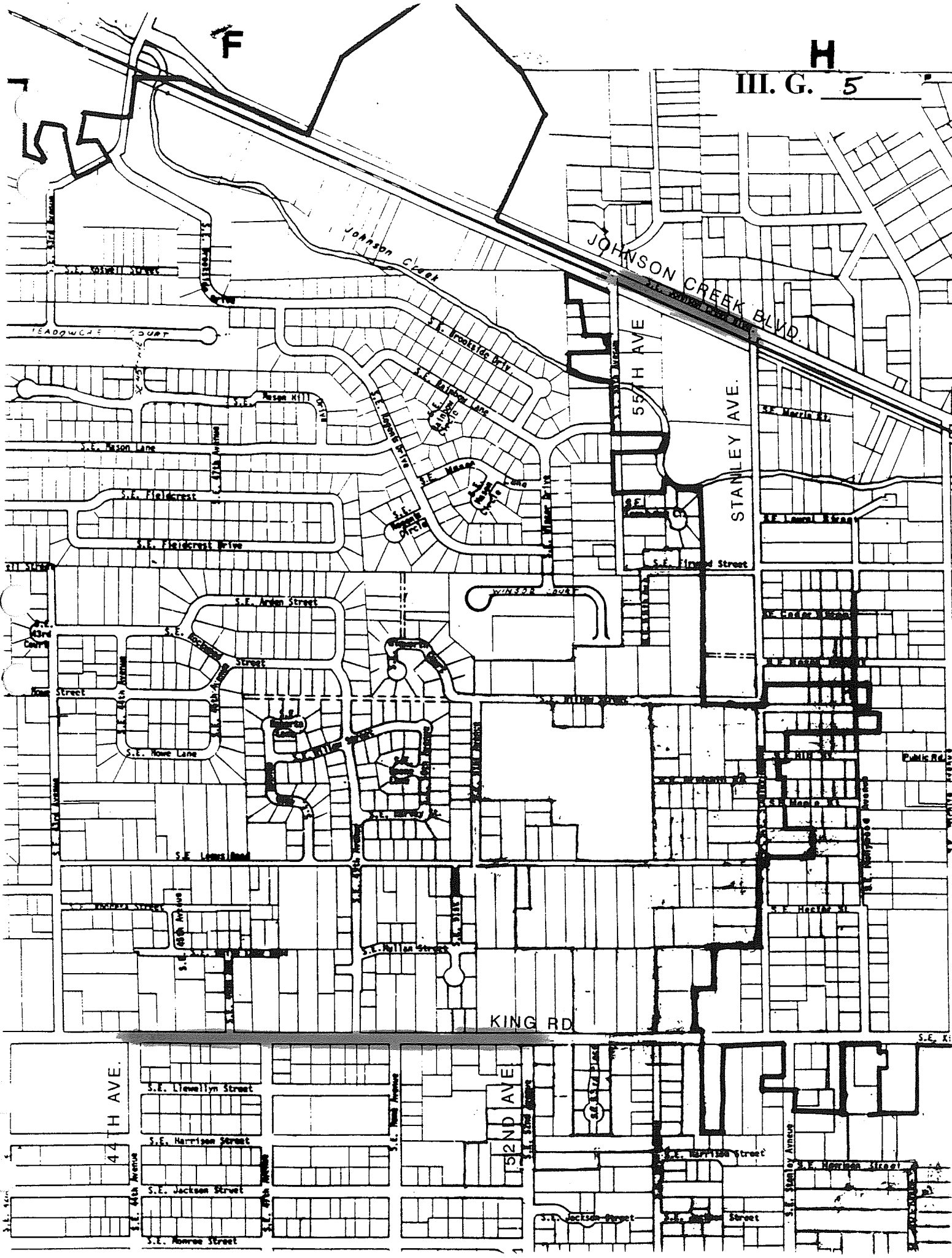
Contractor:				Miller & Sons		ENGINEER'S ESTIMATE	
Item #	Item of Work	Estimated Quantity	Unit	Unit Price	Total Bid Price	Unit Price	Total Bid Price
1	Mobilization	1	LS	\$14,150.00	\$ 14,150.00	\$ 11,345.00	\$ 11,345.00
2	Traffic Control	1	LS	\$11,720.00	\$ 11,720.00	\$ 11,345.00	\$ 11,345.00
3	12" Class 52 DI	832	LF	\$ 71.40	\$ 59,404.80	\$ 45.00	\$ 37,440.00
4	8" Class 52 DI	1830	LF	\$ 34.25	\$ 62,677.50	\$ 36.00	\$ 65,880.00
5	6" Class 52 DI	35	LF	\$ 34.00	\$ 1,190.00	\$ 24.00	\$ 840.00
6	4" Class 52 DI for Fire Service	30	LF	\$ 38.00	\$ 1,140.00	\$ 30.00	\$ 900.00
7	Connect to exist. 12" - 55th & JCB	1	LS	\$ 2,100.00	\$ 2,100.00	\$ 4,000.00	\$ 4,000.00
8	Connect to exist. 12" - Stanley & JCB	1	LS	\$ 2,250.00	\$ 2,250.00	\$ 4,000.00	\$ 4,000.00
9	New FH Assembly	6	EA.	\$ 2,650.00	\$ 15,900.00	\$ 2,500.00	\$ 15,000.00
10	Remove Exist. FH	2	EA.	\$ 400.00	\$ 800.00	\$ 400.00	\$ 800.00
11	6" Class 52 for FH leads	50	LF	\$ 24.15	\$ 1,207.50	\$ 25.00	\$ 1,250.00
12	12" FL x MJ Butterfly Valve	4	EA.	\$ 1,215.00	\$ 4,860.00	\$ 1,000.00	\$ 4,000.00
13	8" FL x MJ Gate Valve	5	EA.	\$ 854.00	\$ 4,270.00	\$ 650.00	\$ 3,250.00
14	8" x 12" Hot Tap Assembly	2	EA.	\$ 1,600.00	\$ 3,200.00	\$ 2,000.00	\$ 4,000.00
15	8" x 10" Hot Tap Assembly	2	EA.	\$ 1,480.00	\$ 2,960.00	\$ 2,000.00	\$ 4,000.00
16	6" FL x MJ gate valve	1	EA.	\$ 495.00	\$ 495.00	\$ 500.00	\$ 500.00
17	12" x 12" MJ x FL Tee	1	EA.	\$ 675.00	\$ 675.00	\$ 350.00	\$ 350.00
18	Connection @ King & Home	1	LS	\$ 3,175.00	\$ 3,175.00	\$ 3,000.00	\$ 3,000.00
19	Cut & Cap existing waterlines	1	LS	\$ 1,000.00	\$ 1,000.00	\$ 6,000.00	\$ 6,000.00
20	Miscellaneous Fittings	1000	LBS.	\$ 2.50	\$ 2,500.00	\$ 2.50	\$ 2,500.00
21	8" Long Sleeve	1	EA.	\$ 185.00	\$ 185.00	\$ 200.00	\$ 200.00
22	1" Water Service (short side)	15	EA.	\$ 395.00	\$ 5,925.00	\$ 400.00	\$ 6,000.00
23	1" Water Service (long side)	20	EA.	\$ 1,425.00	\$ 28,500.00	\$ 900.00	\$ 18,000.00
24	Trench asphalt removal & restoration	2630	LF	\$ 22.75	\$ 59,832.50	\$ 12.00	\$ 31,560.00
25	Pipe Encasement	140	LF	\$ 138.00	\$ 19,320.00	\$ 125.00	\$ 17,500.00
26	Erosion Control	1	LS	\$ 2,500.00	\$ 2,500.00	\$ 4,540.00	\$ 4,540.00
<u>TOTAL BID</u>					\$ 311,937.30		\$ 258,200.00

M.G. 4

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III. G. 5





To: Mayor and City Council

Through: Mike Swanson, City Manager Pro Tem
Martha Bennett, Assistant City Manager *MJB*
Jerry Baker, Public Works Director Pro-Tem *JB*

From: Jack R. Ostlund Jr., Associate Engineer *JRO*

Subject: Volume Based Sewer Rate

Date: May 25, 2001 for June 5, 2001 City Council Meeting

Action Requested

Adopt the attached resolution to change from a fixed to a volume based sanitary sewer rate.

Background

At the Council's direction at the February 1, 2000 council meeting, staff has contracted with the Financial Consulting Solutions Group (FCSG) to identify and to document policy and administrative issues relative to the conversion from a fixed sewer rate to a variable volume based sewer rate charge. Last year when the Council adopted the rate increase you received testimony from customers who believe that flat rates are not equitable. In addition, you stated that the sewer rate should promote water conservation. Staff presented FCSG's analysis report to the Citizen's Utility Advisory Board (CUAB) at a meeting on February 7, 2001. The report included customer water usage statistics. The usage patterns were used to select conceptual methods of determining possible rates based on volume of sanitary sewer use. The CUAB provided staff and the consultant with guidance in structuring a new rate structure.

Discussion

The City currently has a split rate structure. The City uses a flat fee billing system where all residential customers pay the same fee regardless of the volume of sewage produced. Commercial customers pay a variable charge based on their water consumption. The equity issue involves the question of how fair is it to charge all

V. 2

customers the same fee when it can be determined from water billings that there is a broad band of sewer usage among different residential and commercial customers. The water conservation issue is that customers may use less water if they have to pay for water that is actually entering the city's sanitary system and being treated at the Kellogg Sewer Treatment Plant or being diverted to the City of Portland sewer system.

The CUAB has concluded that the City, as the sewage provider, should take steps to establish an equitable and fair method of billing its residential customers. This would be based on a rate structure that includes a partial flat fee to cover the cost of the infrastructure and a variable volume rate based on the actual amount of sewage being produced by each customer. The variable portion would be determined using the water usage records provided by the City's water billing contractor Springbrook Software. Four winter months would be used to establish the rate, to avoid billing for water that is used for irrigation that never reaches the sewage treatment plant. The proposed rate structure for the next 3 fiscal years is shown in the following tables:

For commercial accounts, the charge will continue to be based on actual usage as determined each month. For residential accounts, including low-income residential accounts, the volume on which the monthly charge is based shall be the average monthly volume for the four-month period ending March 30 of each year. The volume rate would remain in effect from April 1 (immediately following the four-month averaging period) through March 30 of the following year.

All fractions of a 100 cubic foot (ccf) unit are to be rounded down.

Fiscal Year 2001/2002

<u># of CCF</u>	<u>Single-Family</u>	<u>Commercial</u>
0	\$29.00	\$29.00
2	\$30.40	\$34.00
4	\$31.80	\$39.00
6	\$33.20	\$44.00
8	\$34.60	\$49.00
10	\$36.00	\$54.00
12	\$37.40	\$59.00
14	\$38.80	\$64.00
16	\$40.20	\$69.00
20	\$43.00	\$79.00
25	\$46.50	\$91.50
30	\$50.00	\$104.00

*Each CCF of Usage is billed

<u>RATE STRUCTURE</u>	<u>2000/2001 CURRENT RATES</u>		<u>2001/2002 PROJECTED RATES</u>	
	<u>Fixed *</u>	<u>Volume (>16 ccf)</u>	<u>Fixed *</u>	<u>Volume (per ccf)</u>
<u>Residential (Incl. MFR)</u>	<u>\$36.25</u>	<u>-</u>	<u>\$29.00</u>	<u>\$0.70</u>
<u>Low-Income Residential</u>	<u>\$16.81</u>	<u>-</u>	<u>\$14.50</u>	<u>\$0.35</u>
<u>Commercial</u>	<u>\$36.25</u>	<u>\$2.30</u>	<u>\$29.00</u>	<u>\$2.50</u>

*Fixed Charge is imposed per unit for residential, per account for commercial

<u>RATE STRUCTURE</u>	<u>2002/2003 PROJECTED RATES</u>		<u>2003/2004 PROJECTED RATES</u>	
	<u>Fixed *</u>	<u>Volume (per ccf)</u>	<u>Fixed *</u>	<u>Volume (per ccf)</u>
<u>Residential (Incl. MFR)</u>	<u>\$22.00</u>	<u>\$ 1.40</u>	<u>\$15.00</u>	<u>\$2.10</u>
<u>Low-Income Residential</u>	<u>\$11.00</u>	<u>\$0.70</u>	<u>\$7.50</u>	<u>\$1.05</u>
<u>Commercial</u>	<u>\$22.00</u>	<u>\$2.75</u>	<u>\$15.00</u>	<u>\$2.95</u>

*Fixed Charge is imposed per unit for residential, per account for commercial

Concurrence

Staff supports the CUAB recommendation to use the combination of flat fee and variable volume fee method of billing all City sanitary sewer customers. Staff will provide the necessary staff support to carry out this mission if the Council adopts the recommended rate change. Finance staff participated in development of this rate structure.

Fiscal Impact

This change in rate structure method is revenue neutral and does not include an increase in the total amount billed.

Work Load Impacts

Staff that would be required to administer the program is estimated to be ½ FTE Accounting Technician. The estimated cost of adding this employee is \$20,000 per

V. 4

year (salary plus benefits). Engineering, sewer, and finance staff will bring Council a recommendation on this position within two months of adoption.

Alternatives

1. Adopt the recommended Flat Fee/Variable Volume Fee
2. Keep the existing rate structure
3. Ask Staff for more information

Recommendation

Adopt alternative 1

Attachment

1. Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ESTABLISHING SEWER SERVICE CHARGES.

WHEREAS, Milwaukie Municipal Code Section 13.12.070A authorizes the City Council to establish sewer service charges by resolution; and

WHEREAS, Milwaukie Municipal Code Chapter 13.20 authorizes the City to provide for reduced rates for low-income customers;

WHEREAS, the City Council has previously established sewer service charges; and

WHEREAS, the Citizens Utility Advisory Board has recommended revising the existing sewer charges to include a volume-based rate for all customers; and

WHEREAS, the City Council finds that the recommended rates result in a revenue-neutral change that more fairly spreads the costs among customers and therefore accepts the recommendation;

NOW, THEREFORE, BE IT RESOLVED that the Milwaukie City Council establishes the following volume based sewer charges, which shall prevail over any previously established charge:

TYPE OF USE	JULY 1, 2001 through JUNE 30, 2002		JULY 1, 2002 through JUNE 30, 2003	
	Fixed *	Volume (per ccf)	Fixed *	Volume (per ccf)
Residential (Incl. MFR)	\$ 29.00	\$0.70	\$22.00	\$1.40
Low-Income Residential	14.50	\$0.35	\$11.00	\$0.70
Commercial	29.00	2.50	\$22.00	\$2.75

*Fixed Charge is imposed per unit for residential, per account for Commercial

RATE STRUCTURE	Commencing JULY 1, 2003			
	Fixed *	Volume (per ccf)		
Residential (Incl. MFR)	\$15.00	\$2.10		
Low-Income Residential	\$7.50	1.05		
Commercial	\$15.00	2.95		

*Fixed Charge is imposed per unit for residential, per account for Commercial

V. 6

For commercial accounts, the charge shall be based on actual usage as determined each month. For residential accounts, including low-income residential accounts, the volume on which the monthly charge is based shall be the average monthly volume for the four month period ending March 30 of each year, which volume shall remain in effect from April 1 (immediately following the four month averaging period) through March 30 of the following year.

All fractions of a 100 cubic foot unit (ccf) are to be rounded down.

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

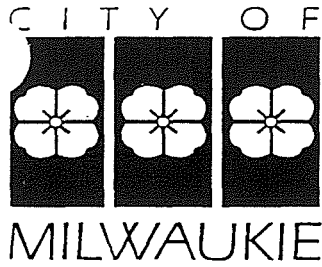
Jim Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney



Traffic Safety Board TSB Minutes

For April 11, 2001

Johnson Creek Blvd., Meeting Room

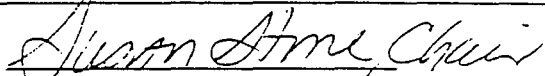
Final

Type of meeting: Regular

Attendees: **Board Members-**Susan Stone (Chair), Gene Covey , Linda Montgomery, Julie Wisner (excused absence) , Bogdan Garbar excused absence (Student Member)
Staff – Brion Barnett (Staff Liaison)
Others –

----- Agenda Topics -----		
Meeting called to order at 6:10 PM		
minutes		
Discussion: Susan Stone moved, Linda Montgomery seconded the motion to accept the 3/29/01 minutes as amended.		
Action items:	Person responsible:	Deadline:
Submit approved minutes for Council packet.	Brion Barnett	
ACTS/Oregon Bicycle Helmet Grant		
Latest contact from Dave Wells w/Linwood indicate that the TNT event will be held on 5/17/01.		
Action items:	Person responsible:	Deadline:
Check to see if proceeds of helmet sales can be donated to PTO	Brion Barnett	
Traffic Control Device Requests		
No new TCDR's to report, but Barnett reported that the City has agreed to remove the speed bump on 32 nd Ave. at the Floss Street intersection.		
Action items:	Person responsible:	Deadline:
Finish quotes for speed bump removal on 32 nd Ave .	Brion Barnett	5/9/01
Schedule traffic counts/speed survey for 32 nd Ave. speed bumps.	Brion Barnett	5/25/01

Other Business		
OFFICE ELECTIONS -		
Conclusions:		
Action items:	Person responsible:	Deadline:
Information Sharing		
Action items:	Person responsible:	Deadline:
Next meeting -- agenda topics, date, time & location		
Conclusions: Next Meeting Date: May 9, 2001 Time: 6 PM, Location: Johnson Creek Boulevard Meeting Room		
Action items:	Person responsible:	Deadline:
Meeting Adjourned at 8:00 PM		


Susan Stone, Chair


Brion Barnett, Staff Liaison

North Clackamas Parks and Recreation District
MILWAUKIE CENTER
Center/Community Advisory Board
Minutes for April 13, 2001

Members Present: Kim Buchholz, Marc Burnham, Molly Hanthorn, Eleanor Johnson, Stan Keltz, Dolly Macken-Hambright, Alice Neely, Joan Newman, Mary Siberz, Ben Tabler, Janet Witter, Jim Young

Members Excused: Hillary Kenney, Jim McCready, Joan Staley, Carol Storment

Members Absent: Karen Kasserman

CALL TO ORDER: The meeting was called to order at 10:01 am by Vice Chair Dolly Macken-Hambright.

MINUTES: Janet Witter moved to approve the minutes from the previous meeting as presented. Second by Kim Buchholz. Motion passed.

CORRESPONDENCE: Dolly read a notice from CCI that Anne and Jim McCready (C/CAB Chair) received the Bill Brod Make A Difference Award from their organization this year.

BOARD/COMMITTEE REPORTS:

North Clackamas Parks and Recreation District Advisory Board – Jim Young stated that, through several special work sessions, the Board reviewed and discussed the Parks budgets and impacts. At the 4/12 Board meeting, they made final decisions regarding the budget and then recommended it's approval. Jim mentioned that the Aquatic Park will be asked to operate with no more than \$325,000 tax base subsidy. The District is moving forward with the Comprehensive Master Plan. The consultants were at the 4/12 Board meeting. They are looking for citizen members to serve in a number of roles during the process. The intent is to have enough of the Master Plan complete to focus on a levy election in fall '02. The Principal from Jennings Lodge Elementary School and a School Board member attended the 4/12 Board meeting and made an appeal to the District to work more closely to develop services for that community. NCPRD will have the Summer RecMobile at those sites this summer.

Program/Services Committee – Molly Hanthorn reported on the following: The Quilt Show is on target for early June and has a good troop of volunteers. Dolly Macken-Hambright has offered to chair the next year's Fashion Show. A Walking Club is being developed. The Housing Fair is coming up on May 10. The Speech and Hearing Institute provide a series of options monthly with hearing aid checks, hearing tests and education. Cheryl Nally attended a Stroke Support Group facilitators training recently. Jim Young asked if the staff intends to check into the Volkswalk options in Milwaukie to blend with the Walking Group. Stan reported that Tax Aide is almost over and the Milwaukie Center group does the highest volume of tax returns of the overall Tax Aide programs in Oregon with the least number of mistakes.

Nutrition/Transportation – Jim Young reported a need for more members on the committee. Ben Tabler will be the liaison back to the Board in Jim's absence. The

VII. A 2-2

Rummage Sale netted \$1,800. The Meals on Wheels driver situation is good at this time. There is a need, however, for more medical escort drivers. The Social Services office has a gerontology intern from Clackamas Community College through mid-June. Staff requests information on any older adult yard clean ups that are needed. Dolly Macken-Hambright suggested connecting with Steve Campbell, Code Compliance with the City of Milwaukie, on needs he sees in the community.

Building Review – Stan reported that back parking lot “loading zone” signs are made and will be installed early May. The Friends of the Milwaukie Center Gift Nook and Endowment Committees will combine their resources with Friends’ General Fund to assist the Center with bathroom stall repainting and recarpeting the major use areas of the Center during September maintenance week.

History Committee – Janet Witter reported that she visited with Don McLaughlin, who’s family owned a section of North Clackamas Park prior to it becoming a park. Don loaned Janet some old photos of activities in the park area in past years. Molly Hanthorn shared the reprint of a booklet of the history of Milwaukie.

Friends – Joan shared that Pam DeCristoforo, the Friend’s Office Coordinator for the last five years, will be leaving to take a job with Clackamas County Social Services. The Friends are advertising for the position and will interview on Wednesday, 4/18. The Friends had a successful Spaghetti Dinner with great community sponsorship. The event netted \$1,080. The Friends’ Annual Campaign is still going on and Board members who have not yet contributed this year are urged to join.

DIRECTOR’S REPORT:

Joan shared the latest National Council on Aging report on the federal issues related to aging concerns. Joan also shared that at a state level, aging advocates are asking for assistance in contacting legislators regarding senior and disabled funding issues. The Center’s maintenance staff person, Chuck, was getting married April 14 and will be on his honeymoon for two weeks. The annual Volunteer Recognition event is slated for April 27, 2:30 pm and all Board members are asked to come and “be appreciated.”

INFORMATION/ANNOUNCEMENTS:

Dolly asked for members to assist on an ad hoc committee to elect a slate of officers for 2001 – 2002, to be presented at the May meeting. Alice Neely and Kim Buchholz volunteered.

AGENDA FOR NEXT MEETING:

Joan mentioned that there is a possibility that the consultants for the Parks District Comprehensive Master Plan process may want to visit with the Board in May – she will follow up on that.

ADJOURN:

Dolly Macken-Hambright adjourned the meeting at 11:05 am.

North Clackamas Parks and Recreation District
MILWAUKIE CENTER DIVISION
Monthly Report for April, 2001

Programs/Services:

April is National Volunteer Recognition Month. At the Milwaukie Center, over 900 volunteers give over one hundred thousand hours of service each year in over 75 different areas. April 27, the staff of the Center recognized our volunteers with our annual party just for them. Over 150 volunteers attended, receiving thanks from dignitaries, enjoying delicious refreshments, door prizes and gifts. Many thanks to Lin Dahl, staff, who chaired the volunteer recognition event.

The Transportation Program has officially started to provide transportation services for the City of Happy Valley. These services are made possible through the State Special Transportation Fund of the Oregon Transportation Network as approved by the Oregon State Legislature. The grant is awarded in two year cycles and will need to be renewed after the biennium for continuation.

The Tax Aide Program finished it's annual tax assistance service for lower income older adults and people with disabilities on April 16. This year, 10 volunteer preparers put in 2,090 hours and completed 1,260 tax returns from the Milwaukie Center, alone. The Milwaukie Center Tax Aide Program is the largest in Oregon – and reports are that they have the lowest error rate of all Tax Aide Programs!

Twenty eight community folk took advantage of the Spring Community Garden Day. The Clackamas County Master Gardeners did 72 soil tests and provided garden consultations.

A staff member from the Social Services Department attended a stroke support group facilitator training by The American Stroke Association, a division of the American Heart Association, reiterating the message, "Stroke is a 911 Emergency!" Advanced treatments are available only within the first few hours of symptoms. The Center's Stroke Support Group meets monthly, providing information and assistance to almost 50 individuals annually.

Fund-raisers:

The Friends of the Milwaukie Center finished their second month of the Annual Campaign membership drive. To date, almost \$13,000 has been raised in the drive, with hopes of raising \$15,000 by the end of June. Have you renewed your membership with the Friends' organization each year through a financial donation? It is not too late!

Staff Changes:

Pam DeCristoforo, Office Coordinator for the Friends of the Milwaukie Center, Inc. for over five years, accepted a job with Clackamas County Social Services. The staff and the Friends of the Milwaukie Center will miss working with Pam but we hope to see her back in true volunteer mode!



Leading Library Board April minutes

4/23/01
6:30 PM
Leading Library

Meeting called by: Pat Healy

Attendees: Attendees: Pat Healy, Tom Hogan, Anna O'Guinn, Shannon Scott, Ed Zumwalt
Absent: Arlene Miller, Sue Trotter
Staff: Cynthia Sturgis

Agenda topics

Approval of minutes

February minutes approved as written. No quorum for the March meeting.

Librarian's report

The Friends of the Library volunteer brunch is scheduled for Saturday, April 28th at 10:00.

A new sign has been installed at the front of the library. This one matches the library sign on Harrison Street.

Email notice for holds is now being offered. Patrons can change to this new service by speaking to an Aide at the circulation desk.

Beginning in May, the library management team will begin working on a time table for long range plan projects.

On May 17th, Pat, Joe and Cynthia will be attending an OLA sponsored workshop about the basics of building expansion projects.

Budget update

No news at this point. The city budget committee is discussing the general fund and charges for administrative services at the meeting this week. City Manager Mike Swanson will be notifying department budget officers during the next few weeks to review and discuss his recommendations.

Transit center

Pat Healy and Ed Zumwalt started a discussion about the latest proposals for the Milwaukie transit center and possible light rail station. Current proposals include moving the transit center north to the Southgate property, asking Metro to purchase the junior high for the city and using property behind the school for a future light rail station, and buying the Safeway property for future development. The possibilities of using the junior high for a new library building or the Safeway property for library expansion were also discussed.

**RIVERFRONT BOARD
May 21, 2001**

The meeting was called to order at 7:00 p.m. in the City Hall Conference Room.

Board members present: Green, Loaiza, Martin, and Wall.

Staff present: City Manager Pro Tem Swanson, Program Specialist Herrigel, Associate Engineer Barnett.

Guests: David Reid, Outreach Coordinator, Johnson Creek Watershed Council and Gary Klein, property owner.

Elect Chair

It was moved by Green and seconded by Wall to elect Steve Loaiza Board Chair. Motion passed unanimously among the members present.

Loaiza agreed to serve as chair for 6 months, and Green agreed to serve as vice chair.

Approve Minutes

It was moved by Green and seconded by Martin to accept the April Board meeting minutes as presented. Motion passed 3 – 0 – 1 with Wall abstaining because he had not attended that meeting.

Legal Ramifications of Moving the Boat Ramp

Swanson discussed state boat ramp grants and noted some of the agreements speak to repaying funds if the use changes. Most of these agreements expire in the next few years, and the City would likely have no financial obligation. If the City were to walk away today, repayment would be between \$20,000 and \$30,000 at most.

Chair Loaiza excused himself from the meeting.

Johnson Creek Watershed Council Update

Reid provided information on the restoration plan components that include reconnecting the floodplain, connecting backwater channels to the creek, restoring the natural meander, providing for wetland storage, revegetating stream banks, and improving fish habitat.

The plan looks at the objectives of various jurisdictions in the 52-square mile watershed. Johnson Creek is divided into reaches, and each reach has a list of restoration opportunities local jurisdictions and property owners can accomplish.

VII. A. 4-2

Milwaukie encompasses reaches 1 and 2. Projects in these areas include improving fish habitat, reconnecting and restoring the floodplain, reducing impacts of impervious surfaces, and educating property owners on stream stewardship. This is a critical area because all spawning fish must pass through it. The estimated cost for the combined projects in this reach is \$10.7 million. He discussed the work done on Crystal Springs by Portland.

Reid outlined the willing seller strategy. Additionally, the Watershed Council works with property owners on plantings and dealing with runoff problems. There are a number of solutions for dealing with runoff depending on the site including designing bio-swales, reducing parking space size to increase vegetation area, and planting more trees in parking lots. He discussed the benefits of placing large woody debris in streams to reduce erosion and provide shaded, protective pools for fish.

The Watershed Council is working on a speakers bureau as well as cleanup and planting parties. There was interest in a cleanup party at the mouth of Johnson Creek this summer.

Green asked if some of the riverfront design work could be linked with the restoration efforts and recommended Atlas Landscaping work with the Johnson Creek Watershed Council to ensure coordinated efforts.

Martin suggested Reid contact the Corp of Engineers about its restoration projects.

Swanson said there are no funds in the 2001 - 2002 budget to continue riverfront design work or to install the sign. The McLoughlin Boulevard improvement project will impact the riverfront significantly, and he recommended the Riverfront Board be involved. The City will have to provide a \$200,000 local match for the McLoughlin Boulevard project.

McLoughlin Boulevard Project Status

Barnett updated the Board on the McLoughlin Boulevard Improvement Project. The Technical Advisory Committee (TAC), made up of representatives from the City of Milwaukie, Oregon Department of Transportation (ODOT), and DKS Associates, is documenting constraints before the project goes to final design. The main issue is funding, so efforts are confined to the area between Harrison and Washington Streets. He described the street cross section. The intent is to maintain the east curblin, and push the improvements west. The TAC will work with the owners of Vic's Tavern and the Antique Mall.

The key goals at this point are to document constraints, estimate the cost of constructing a pedestrian underpass to the riverfront, and determining the feasibility of a 3-signal system on McLoughlin Boulevard. The underpass will cost \$5 - \$10 million, and, depending on funding, it could be done in about 10

years. ODOT approved the 3-signal system but the tradeoff is limiting some current movement. For the riverfront, at least in the short term, there will be right in and right out access only. This will impact boat ramp users as well traffic associated with the Kellogg Treatment Plant. In the long-term, engineers are looking at the feasibility of access to the boat ramp and treatment plant via Washington Street. At one time there was the thought of concentrating the improvements to a 2-block area because of budget limitations. However, the 3-signal plan is all or nothing, so this will likely be the first phase of improvements. The signals will be at Harrison, Monroe, and Washington, and the one at Jefferson Street will be eliminated. The entire 4-block improvement between Harrison and Washington Streets will cost about \$4 million. The adopted downtown plan puts Milwaukie in a good position. He is hopeful the project will be a showcase and get additional funding.

Barnett discussed the public outreach efforts to date and the public forum planned on June 13. The earliest construction will be in 2003.

The group discussed the project in relationship to the future of the boat ramp. **Wall** asked if getting the project funded would reduce Milwaukie's chances of relocating the boat ramp.

Barnett said this is all very preliminary work, and the final design will consider options.

Green was not sure the McLoughlin Boulevard project would have a lot of impact on the boat ramp. It is being accommodated until another solution or alternate location is found.

Barnett added the current McLoughlin Boulevard project is in the right-of-way and does not prohibit future riverfront development phases.

Green observed accommodating the riverfront downtown plan and the boat ramp are both constraints. He understood the last two properties on the riverfront would be acquired as part of the McLoughlin Boulevard project.

Swanson added the McLoughlin project will really open up the riverfront. The group discussed possible scenarios for purchasing the 2 remaining properties.

Green asked if the additional 20-foot right-of-way on the west side had been taken into consideration in the riverfront plan.

Swanson responded Atlas Landscaping is aware of the McLoughlin project and its significant impacts.

Barnett added Crandall/Arambula attends the McLoughlin Boulevard TAC meetings.

VII. A. 4-4

Herrigel asked how the widening would impact the first reach of the Johnson Creek Restoration Plan.

Barnett said the TAC is aware of regulatory constraints, and OTAK working on the phase 1 environmental.

Herrigel said, in the absence of an immediate riverfront phase 1, the McLoughlin piece will at least draw people's attention with new lighting, the boulevard treatment, and a more open view of the river.

The group discussed the feasibility of moving the bike lanes to the west and away from the vehicle lanes. **Green** suggested moving the bike lanes into the riverfront park to recoup 6-feet of park space.

It was moved by Wall and seconded by Martin to make an official Riverfront Board recommendation to construct the bike lane on the west side the trees and plant the trees next to the travel lanes. Motion passed unanimously among the members present.

Next Steps

1. Next Board meeting on June 12, 6:00 p.m., City Hall Conference Room;
2. Joint City Council work session on June 18;
3. Board appointments; Loaiza suggested a recruiting a member from the boating community;
4. Staff will provide an update on the Kellogg Creek project and future of the fish ladder;
5. Swanson will provide Wall with a copy of the boat ramp grant memo and matrix.

Adjourn

It was moved by Wall and seconded by Martin to adjourn the meeting. Motion passed unanimously among the members present.

Vice Chair Green adjourned the meeting at 8:30 p.m.

Pat DuVal, Recorder