



Regular Session

RS

Milwaukie City Council



MINUTES
MILWAUKIE CITY COUNCIL
www.milwaukieoregon.gov

REGULAR SESSION
JANUARY 21, 2014

Mayor Ferguson called the 2,166th meeting of the Milwaukie City Council to order at 7:11 p.m. in the City Hall Council Chambers.

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

Staff Present: City Manager Bill Monahan, Assistant to the City Manager Teri Bankhead, City Recorder Pat DuVal, City Attorney Shelby Rihala, Engineering Director Jason Rice, Finance Director Casey Camors, Engineering Technician Philip Kolb, and Civil Engineer Brad Albert.

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Milwaukie High Outstanding Student Achievement Award for January 2014 to Ian Diebert

Principal Mark Pinder introduced Ian Diebert and highlighted his achievements at Milwaukie High School. Mayor Ferguson and the Councilors congratulated Mr. Diebert on being selected as the January 2014 Outstanding Student Achievement Award recipient.

B. Seventh Annual Report on the Street Surface Maintenance Program

Mr. Albert discussed current and upcoming projects, overall street conditions, presented a revenue summary, and laid out program goals for the Street Surface Maintenance Program (SSMP). The most recently completed projects were Harrison Street Phase II, Main Street that included Americans with Disability Act (ADA) ramp updates, and slurry sealing in the Cedarcrest and Brookside Neighborhoods. Upcoming projects were Monroe Street Phase II which was base and surface reconstruction from Campbell Street to McLoughlin Boulevard at an estimated cost of \$550,000 as well as slurry and crack sealing in various neighborhoods. Mr. Albert reviewed the revenues which were generally as projected from the three funding sources, the street maintenance fee, local gas tax, and the PGE privilege tax. Work on arterials and collectors was improving the overall condition of the network with improvements on residential streets to follow. Additional benefits included improved bike connectivity, safer routes to schools, improved stormwater drainage, enhanced appearance, and organized infrastructure priorities to create efficiencies. He provided a chart of comparable fees and lane miles in Lake Oswego, Oregon City, and West Linn.

Councilor Gamba asked if the program allowed the use of funds for other projects such as sidewalks or widening Railroad Avenue.

Mr. Albert replied the SSMP did not have a sidewalk element.

Mr. Rice added no widening had been done to date.

Council President Hedges commented Railroad Avenue was two years out and asked if it would last that long.

Mr. Albert replied that the Street Department will do some patching and commented on the Stanley Avenue storm line and funding for the full project.

Mr. Rice said another element was the completion of Monroe Street before light rail opened.

CONSENT AGENDA

It was moved by Council President Hedges and seconded by Councilor Gamba to approve the consent agenda as presented.

A. City Council Meeting Minutes

1. December 3, 2013, Work Session;
2. December 17, 2013, Work Session; and
3. December 17, 2013, Regular Session

Motion passed with the following vote: Councilors Gamba, Miller, Churchill, and Hedges and Mayor Ferguson voting "aye." [5:0]

AUDIENCE PARTICIPATION

There was no audience participation or follow up from the previous meeting.

PUBLIC HEARING

None scheduled

OTHER BUSINESS

A. Northwest Natural Gas Company Franchise Agreement

Ms. Camors was joined by Stephanie Baxter, Northwest Natural Gas Company. Ms. Camors discussed the process for updating the agreement and noted the City and Northwest Natural had a good working relationship and partnered well when work was done in the right of way. Changes to the previous agreement included alignment of payments with the City's year end, late payment fees favorable to the City, and language to allow the City to change the fee as allowed by statute.

The group discussed the term of the agreement. Staff would return on February 4, 2014, for adoption of the ordinance granting the franchise.

B. Personal Services Agreement for City Prosecutor Legal Services – Resolution

Ms. Camors provided the staff report in which the City Council was requested to consider a Resolution directing staff to execute a personal services agreement with Rhett Bernstein, Attorney at Law, for City Prosecutor Services. The new agreement reduced insurance limits and decreased the number of reports.

Councilor Churchill was concerned about reducing monthly reports to annual reports.

Ms. Camors said the reports were not substantive and did not really indicate performance. The agreement allowed for other reports that might refine the process.

Councilor Churchill stated he would be in favor of some kind of quarterly reports.

Councilor Gamba asked if adding a misdemeanor court at some point would be within the parameters of this agreement.

Ms. Camors replied it would be outside the scope of work of this agreement and would increase the amount of compensation.

It was moved by Council President Hedges and seconded by Councilor Miller to adopt the Resolution directing staff to execute a personal services agreement with Rhett Bernstein, Attorney at Law, for City Prosecutor Services. Motion passed with the following vote: Councilors Gamba, Miller, Churchill, and Hedges and Mayor Ferguson voting "aye." [5:0]

RESOLUTION NO. 6-2014:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DIRECTING STAFF TO EXECUTE A PERSONAL SERVICES AGREEMENT WITH RHETT BERNSTEIN, ATTORNEY AT LAW, FOR CITY PROSECUTOR SERVICES.

C. Regional Committee Assignments

Mayor Ferguson had nothing further to report. Earlier concerns with meeting conflicts had been resolved.

D. Council Reports

Council President Hedges attended three Neighborhood District Association (NDA) meetings and the American Legion fundraiser dinner for emergency shelter supplies.

Councilor Churchill reported there was a high degree of interest in the Historic Milwaukie NDA regarding implementation of the railroad quiet zones.

Councilor Miller attended the North Clackamas Urban Watersheds Council meeting and the Legion fundraiser. Lake Road NDA attendees were curious about the bond measure and other events in the City.

Councilor Gamba attended the Good Neighbor Committee (GNC) where lighting was discussed. He attended the Metro Active Transportation Plan meeting and the Portland Milwaukie Light Rail meeting where bus service issues were discussed. He talked with the First Lady of Oregon Cylvia Hayes about coal trains and hosted the Watershed Film Festival.

Mayor Ferguson attended the North Clackamas Social Needs Forum and would speak at the Chamber of Commerce Annual State of the Cities luncheon. He encouraged people to attend the upcoming City Council goal setting session.

ADJOURNMENT

Mayor Ferguson adjourned the regular session at 8:08 p.m.

Respectfully submitted,

Pat DuVal

Pat DuVal, Recorder



MILWAUKIE CITY COUNCIL
REGULAR SESSION

City Hall Council Chambers
10722 SE Main Street
www.milwaukieoregon.gov

AGENDA
JANUARY 21, 2014

2,166th Meeting

1. **CALL TO ORDER** **Page #**
Pledge of Allegiance

2. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**

- A. **Milwaukie High Outstanding Student Achievement Award for
January 2014 to Ian Diebert
Introduced by Principal Mark Pinder**
- B. **Seventh Annual Report on the Street Surface Maintenance
Program** **2**
Staff: Civil Engineer Brad Albert

3. **CONSENT AGENDA**

These items are considered to be routine, and therefore, will not be allotted discussion time on the agenda; the items may be passed by the Council in one blanket motion; any Councilor may remove an item from the "Consent" agenda for discussion or questions by requesting such action prior to consideration of that part of the agenda.

- A. **City Council Meeting Minutes** **14**
1. **December 3, 2013, Work Session**
2. **December 17, 2013, Work Session**
3. **December 17, 2013, Regular Session**

4. **AUDIENCE PARTICIPATION**

The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140 of the Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360 of the Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.

5. **PUBLIC HEARING**

Public Comment will be allowed on items under this part of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.

- A. **None scheduled**

6. 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.

- A. Northwest Natural Gas Company Franchise Agreement 26**
Staff: Finance Director Casey Camors
- B. Personal Services Agreement for City Prosecutor Legal Services 49**
– Resolution
Staff: Finance Director Casey Camors
- C. Regional Committee Assignments**
Mayor Ferguson
- D. Council Reports**

7. INFORMATION

8. ADJOURNMENT

Meeting Information

- Executive Sessions: The Milwaukie City Council may meet in executive session immediately following adjournment pursuant to ORS 192.660(2).
 - All Executive Session discussions are confidential and those present may disclose nothing.
 - Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed.
 - Executive Sessions may not be held for the purpose of taking final actions or making final decisions.
 - Executive Sessions are closed to the public.
- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503-786-7555
- During meetings the Council asks that all pagers and cell phones be set on silent mode or turned off.



**Regular Session
Agenda Item No.**

2

**Proclamations,
Commendations,
Special Reports,
& Awards**



MILWAUKIE CITY COUNCIL
AGENDA ITEM SUMMARY

Agenda Item: **RS 2. B.**

Meeting Date: **1/21/14**

Title: **Seventh Annual Report on the Street Surface Maintenance Program**

Prepared By: Brad Albert, Civil Engineer

Department Approval: Jason Rice, Engineering Director

City Manager Approval: Bill Monahan

Approval Date: January 8, 2014

ISSUES BEFORE COUNCIL

This report is the seventh in a series of required updates to Council that presents the status of the Street Surface Maintenance Program (SSMP).

STAFF RECOMMENDATION

This informational update does not contain a staff recommendation.

KEY FACTS & INFORMATION SUMMARY

The program is on pace for meeting its goal of bringing major streets up to a Pavement Condition Index (PCI) rating of 75. Staff will continue to target major streets until they are brought up to a “Good” range and then begin to address the whole street system in an effort to raise the network PCI.

OTHER ALTERNATIVES CONSIDERED

Simply addressing major streets isn’t necessarily the most efficient way to manage an entire street network. Council could broaden the program goal to include other road classifications in an attempt to spend money where it gets the most “bang for its buck” towards preserving this asset.

CITY COUNCIL GOALS

The goal of the City’s SSMP is to bring all major streets to a point where the cost efficiencies of good preventative maintenance are enjoyed, approximately 75 or above, and maintain them at that level.

FISCAL NOTES

The program goals can be met as its current funding level. Additional funding would help bring the network PCI up to a “good” rating quicker, but is not necessary at this point to maintain the program.

ATTACHMENTS

1. Street Surface Maintenance Program Map
2. Updated SSMP Project Budget Tracker



MILWAUKIE CITY COUNCIL
STAFF REPORT

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Seventh Annual Report on the Street Surface Maintenance Program**

From: Brad Albert, Civil Engineer

Date: January 8, for the January 21, 2014 Meeting

ACTION REQUESTED

None. This is the annual update on the Street Surface Maintenance Program (SSMP) as required under the enacting ordinance (No. 1966) and is for information only.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

October 1, 2013: Staff presented an update of the SSMP report with a focus on ways to accelerate the program to Council

February 19, 2013: Staff presented the sixth annual SSMP report to Council

February 7, 2012: Staff presented the fifth annual SSMP report to Council

February 1, 2011: Staff presented the fourth annual SSMP report to Council

February 2, 2010: Staff presented the third annual SSMP report to Council

December 16, 2008: Staff presented the second annual SSMP report to Council

December 18, 2007: Staff presented the first annual SSMP report to Council

January 2, 2007: The City of Milwaukie's Street Surface Maintenance Program was adopted by Ordinance No. 1966, effective on July 1, 2007. The ordinance, in concert with related ordinances, established a street maintenance fee, an electric utility privilege tax and local gas tax to fund the SSMP. All funds were dedicated to street maintenance and rehabilitation, with the goal of bringing all arterials and collectors in the City to a "good" or better condition within ten years.

BACKGROUND

The Public Works Director is required to make an annual report to the City Council regarding the state of the street network and the Program¹. This is the seventh annual report and is organized into the following sections:

¹ MMC Section 3.25.020C, 3.25.040

- Completed Projects
- Upcoming Projects
- Overall Condition of the Network
- Workload Impacts and Overall Program Progress
- Revenue Summary
- Achievement of Program Goals

Completed Projects

In Program Year Seven (FY 2014), the second phase of Harrison Street was reconstructed, and Main Street was rehabilitated.

Harrison Street Phase 2, from Highway 99E to HWY 224, is estimated to cost \$540,000. Due to the number of anticipated conflicts including Light Rail construction and other capital projects, this phase was moved several years later from the original schedule. This was to ensure proper coordination for the planning and construction with the light rail project.

Main Street from Scott Street to Washington Street was estimated to cost \$315,000. This project included removal of the surface via grinding, repair of damaged base and repaving. This type of treatment is considered rehabilitation, rather than reconstruction like Harrison Street received.

Upcoming Projects

Year Eight (FY 2015) includes the reconstruction of Monroe Street from Hwy 224 to Hwy 99E. Monroe Street will receive the same reconstruction treatment as Harrison Street Phase II which is a cement-treated base and pavement overlay. This method has fewer impacts and is a less expensive option compared to standard street reconstruction.

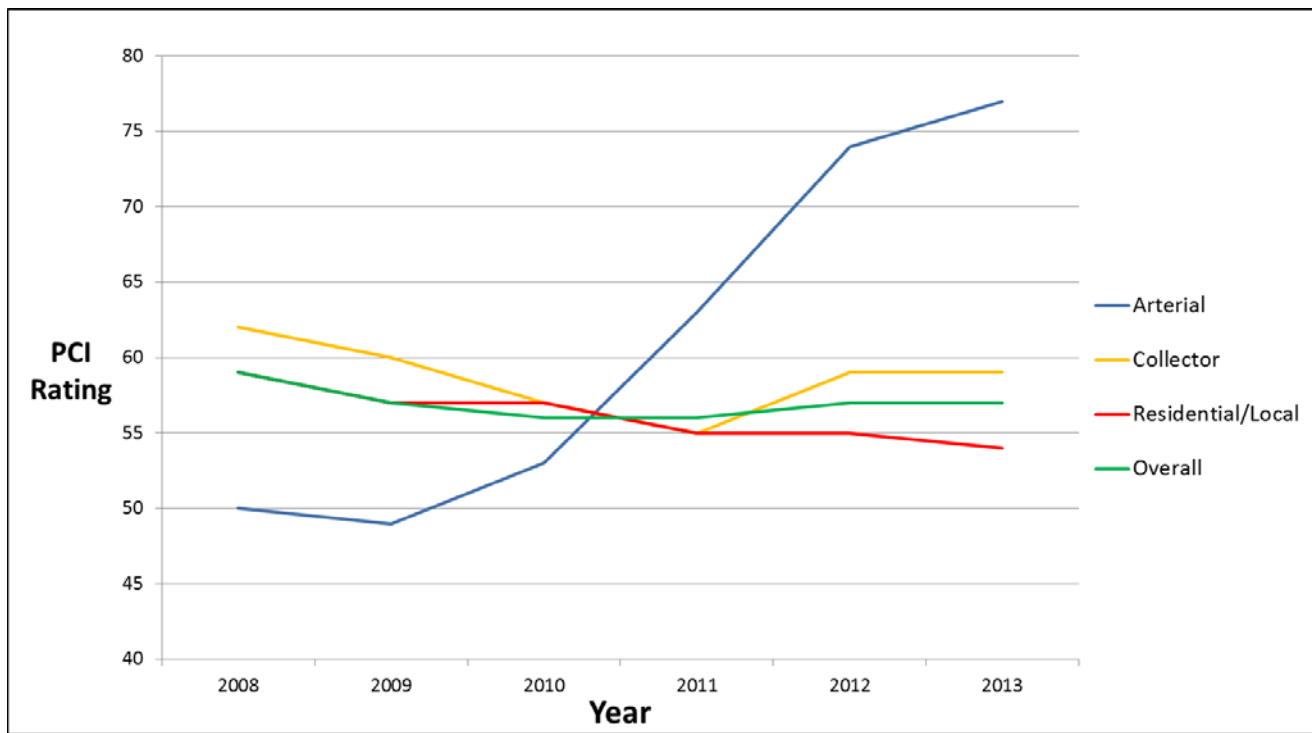
Overall Condition of the Network

The Engineering Department maintains a Pavement Condition Index (PCI) database of the entire network. This database is updated every 3-5 years based on a visual inspection of the network, and every 10 or so years based on more extensive “deflection” testing. The SSMP includes funds to keep this data current, so to inform the project selection criteria. The assessment is typically done by consultants who travel along every street and rate the condition of the pavement and assign a PCI rating reflecting its condition. This data is then processed to provide information on the overall state of the street network so that a scheduled maintenance program can be generated to suit budgetary constraints. This data also allows Staff to coordinate with other scheduled capital projects and to take advantage of opportunities to leverage other funds.

The last comprehensive evaluation of the street network was completed in 2011. At that time, the average PCI for the entire network was rated at a 57 on a scale of 100

and has been maintained to a 57. In the 3 years since that assessment was conducted, assuming no improvement to the network at all, the network PCI would have dropped about 10 points to 47.

Please note that the average condition of the network includes Arterial, Collector, Neighborhood Routes and Local classified streets. The primary goal of the first ten years of the program is to obtain an average PCI value of 75 for its Arterial and Collector routes only.



While the SSMP program has begun to increase PCI values for both Arterial and Collector streets, the overall condition of the network is holding. The reason this will continue to be the case is that the program focuses primarily on major streets which only account for a small fraction of the entire network. While slurry and crack seals are helping PCI values of local streets, many of Milwaukie’s Residential/Local streets are beyond the point of applying any sort of surface treatment. While it does not make sense to completely switch focus solely to local streets, those PCI values are pulling the entire network average down.

When the program continues beyond its 10-year program life, staff suggests modifying the method for which streets are selected for treatment, based on their overall benefit to the network PCI in the most cost effective way available. As an example, a street that can be treated with a “grind and asphalt inlay” today (at a fraction of the cost of having to rebuild it in 5 years) could make it a stronger candidate for treatment than a street in worse condition that needs to be rebuilt because it has already failed.

Workload Impacts and Overall Program Progress

The workload to implement and manage SSMP projects is substantial for the Engineering Department. Design of all SSMP projects occurs in-house, which includes surveys, design, and project management. Project design typically begins in the winter months for projects slated to begin in late spring, with additional project design in the spring for summer projects. It can take up to 3 months to complete a bid-ready set of contract documents for each project.

Members of the Engineering, Community Development, and Public Works Operation Departments form a SSMP Project team, which coordinates the ten-year paving schedule with the Capital Improvement Plan, Public Improvement Projects, and other City projects. These project team meetings require staff time for preparation and plan review. These meetings also become more frequent as design periods approach. Although these meetings require additional workload for each department, they are necessary to ensure departmental consensus regarding design decisions for upcoming projects. Furthermore, coordination within Engineering and between the utilities (Storm, Water, and Sewer) is necessary to make decisions regarding timelines of Capital Improvement Projects prior to paving a particular street. The utilities can then construct respective CIP projects prior to a paving project.

To meet the Engineering workload need during the construction phases, a contracted inspector has been used in the past. This inspector coordinates with both the City staff and the contractors to ensure that all applicable City standards are met or exceeded during paving operations. Use of this inspector has freed up time for City staff to perform other essential City duties while incurring minimal financial impact on the yearly Program fund. The Engineering Department anticipates continuing to design and manage projects with current staffing levels and using a contracted project inspection on a case-by-case basis, depending on workload and staffing levels.

Since the program's inception, an average of two to three streets have been paved each fiscal year. In accordance with program goals, this progress has been made on the major streets.

Revenue Summary

The SSMP resides in the City's Transportation Fund (fund 320-420), wherein revenues are collected specifically and exclusively for expenditures described in the Program. The three revenue sources are: (1) a street maintenance fee; (2) a local gas tax; and (3) an electric utility privilege tax.

1. Street Maintenance Fee

Revenue from the Street Maintenance Fee for fiscal year 2012-2013 was projected at \$606,000. The actual revenue collected was \$612,159, 1% higher than projected. Revenue for the current fiscal year is also projected at \$606,000. As of November 30, 2013, the revenue received from this fee was \$257,473 which slightly exceeds the year-to-date projection.

2. Local Gas Tax

The two-cent per gallon local gas tax was implemented beginning July 1, 2007. For fiscal year 2012-2013, gas tax revenue was projected at \$186,000, but \$219,520 was collected which included back taxes of approximately \$46,000. The current fiscal year projection for gas tax revenue is \$188,000. Actual year-to-date revenue (as of November 30, 2013) is at \$39,863, which includes only three months of revenue due to timing differences. Overall, this is 15% lower than expected. Reduced driving rates or seasonality may be the cause.

3. Electric Utility Privilege Tax

The Electric Utility Privilege Tax is a consumption-based tax that fluctuates with electrical usage and is collected in the spring. Staff predicted that the City would collect \$327,000 in the 2012-2013 fiscal year, but only \$315,055 was collected. This budget estimate in 2013-2014 is \$330,000.

Year Six (FY 2012-2013) total revenue for the above three revenue streams was \$1,146,734, which was 2% more favorable than the projected amount of \$1,119,000. SSMP also had \$94,160 in intergovernmental revenues and \$64,499 available and used in Fees In Lieu of Construction (FILOC) funds.

The first quarter of Year Seven (FY 2013-2014) total revenue shows \$193,830 collected and total year-to-date as of November 30th shows \$305,220 collected.

Achievement of Program Goals

The Program goals, described within the Council adopted document "Street Surface Maintenance Program" (Resolution No. 35-2006) include: (1) an average minimum PCI value of 75 for major streets; (2) a reduction of the deferred maintenance backlog for major streets; (3) preventative maintenance of major streets to avoid costly reconstruction; (4) continuance of city-wide emergency stopgap maintenance; and (5) Program revenue and expenditure goals. Each program goal is discussed separately below.

1. Major Street PCI Value Goal

The SSMP PCI Index Goal is to bring all major streets to a rating of 75 or better, with adequate maintenance to sustain this level of pavement quality. Staff finds that progress made to date as a result of this program is satisfactory.

2. Deferred Maintenance Goal

Nine of the eleven street projects were pavement overlays. These projects were done prior to the street sections reaching a point of deterioration that would have required reconstruction. This strategy of overlaying the pavement prior to deterioration is needed to reduce the amount of deferred street maintenance.

3. Preventative Maintenance Goal

This goal is to prevent any street from deteriorating to the point of requiring reconstruction and has been satisfied to date. Streets such as Main Street, Linwood Avenue, River Road, and 27th Avenue all have been rehabilitated to avoid more costly repairs in the future. Furthermore, certain local streets will undergo treatments of crack and slurry sealing.

4. Continuance of City-wide Emergency Stopgap Maintenance Goal

Stopgap methods of street maintenance are street patching and pothole filling. Current street fund revenues are adequate to perform needed stopgap repairs throughout the City without the need for SSMP funds. As the program continues, there will be less and less need for stopgap measures.

5. Program Cost Goal

The overall revenue goal is \$1.2 million per year for the first 10 years of the program. The average annual revenue for the program is \$1.1 million. The difference has not affected the program goals related to street maintenance so far, however, because project costs have overall been less than estimated.

SSMP projects are designed in-house, with staff responsible for project surveys, design, and project management. This in-house work provides savings to the fund compared to more costly outside project design by engineering firms.

As discussed previously, an on-call inspector has been used to inspect SSMP projects. An on-call inspector was used in FY 2013 and total amount spent in that fiscal year was \$27,577.40. In FY 2014, an on-call inspector was not used because Engineering was able to cover the inspection duties due to the timing of the paving project in relation to other capital improvement projects. Engineering will evaluate the need of an on-call inspector on a case by case basis in future years.

6. Additional Benefits

The SSMP program has additional benefits than improving the pavement condition throughout the City. These side benefits include improving bike routes by the removal of obstacles, altering street grades to allow for improved drainage, and improving street striping for bike facilities, pedestrian crossings, and needed adjustments in roadway alignment.

CONCURRENCE

This report was prepared by SSMP staff, which includes employees from the Engineering, Community Development, Finance and Public Works Departments.

The Citizen's Utility Advisory Board (CUAB) received a briefing at their December meeting. The board stated approval of the SSMP plan along with a desire to look for opportunity to move projects as the budget allows.

ALTERNATIVES

As noted earlier, the program goal focuses on major street improvement, with only crack sealing and slurry sealing treatment for the non-major streets. An alternative approach for the maintenance of the entire street network would be to focus on those streets with a surface in "good" condition, regardless of functional class. With this approach, assuming the same program funding level, the overall PCI would increase by 3 points to 60 over the next 5 years, rather than holding at 57.

There are other adjustments for the SSMP to consider. An assessment shows that by increasing the monthly rate for single family homes from \$3.35 to \$6.70, the city could raise funding of the program by \$600,000 annually. This additional funding could be used for:

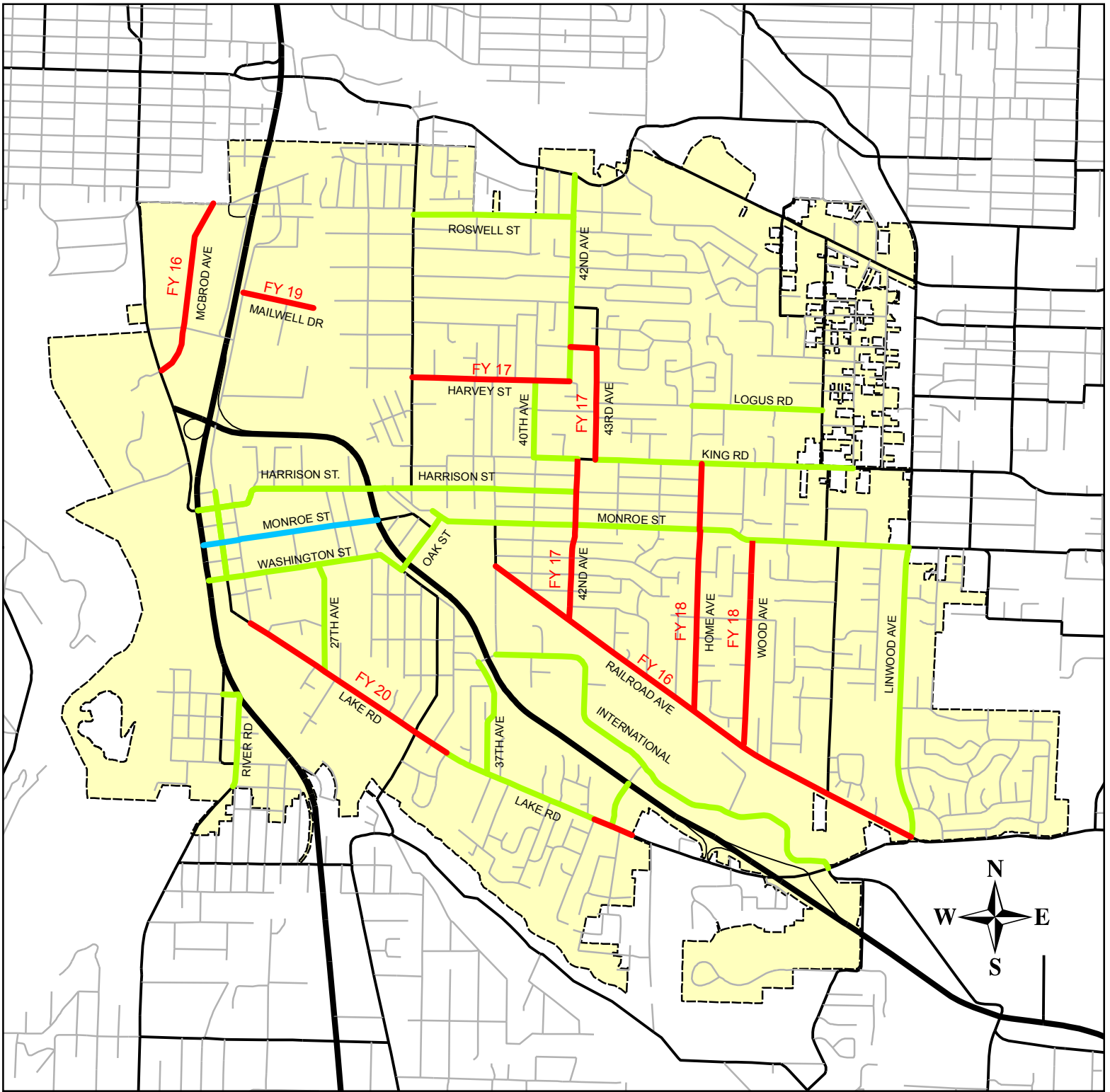
- Leveraging approximately \$5,000,000 in grant funds for streetscape reconstruction.
- Construction of approximately 1,500 feet of sidewalk.
- Maintenance related projects performed by Public Works Operations
- Transferring funds to the Public Works Streets Division because of lower revenue related to gas tax.
- Paving an additional two to three street each year.

Below is a comparison of Milwaukie with other local jurisdictions regarding street maintenance fees collected and lane miles served.

<u>Jurisdiction</u>	<u>Total Collected</u>	<u>Lane miles</u>
Milwaukie	\$1,100,000	148
Lake Oswego	\$2,300,000	348
Oregon City	\$1,800,000	134
West Linn	\$2,565,000	200
Milwaukie (fee increase)	\$1,700,000	148

ATTACHMENTS

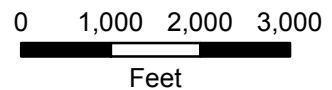
1. Street Surface Maintenance Program Map
2. Updated SSMP Project Schedule



MILWAUKIE
Dogwood City of the West

Street Surface Maintenance Program Map

- Future Projects
- Fiscal Year 2015 Projects
- Completed Projects



ATTACHMENT 2

January 2014
Updated Budget Schedule

FY	Account #	Budgetary Title	Activity Type	Project Code	Estimate	Actual
Year 6		Street Maintenance Fee			606,000	612,159
12/13	315-000-4200-0000	Franchise fees (privilege)			327,000	315,055
		Local Gas Tax			186,000	219,520
		Revenue			1,119,000	1,146,734
		Fund Balance/Working Capital			1,459,000	1,903,732
		Total Revenue			2,578,000	3,050,466
	420-6060-0000	Contractual Services	Testing, Inspection		48,000	2,298
	420-6500-0000	Utility Billing Expenses			12,000	11,901
		Operation Equipment, Repair & Maint.			-	-
	420-7510-0000	Crack/Slurry/Fog Seals	Preventive Maintenance	S04	65,000	-
	420-7510-0000	International Way				
		Harrison Phase 1 (32nd to 42nd)				
		Monroe Street (Oak to Linwood)				
		Freeman Way (Lake to 224)	Construction	S01	1,355,000	1,357,638
	420-7510-0000	McBrod	Survey	S07	-	12,375
	420-7510-0000	Lake Road	Transfer to ODOT		-	12,950
	420-9500-0000	Transfer to General Fund			202,000	202,000
			FY Expenses		1,682,000	1,599,162
			FY Revenue		2,578,000	3,050,466
			FY Fund Balance		896,000	1,451,304
FY	Account #	Budgetary Title	Activity Type		Estimate (as of Nov 30 2013)	Actual
Year 7		Street Maintenance Fee			606,000	257,473
13/14	000-4520-0000	Franchise fees (privilege)			330,000	-
	000-4322-0000	Local Gas Tax			188,000	39,863
	000-4530-0000	Other				7,889
		Revenue			1,124,000	305,225
		Fund Balance/Working Capital			896,000	1,451,304
		Total Revenue			2,020,000	1,756,529
	420-6060-0000	Contractual Services	Testing, Inspection		48,000	-
	420-6500-0000	Utility Billing Expenses			12,000	3,413
		Operation Equipment, Repair & Maint.			-	-
		General Administrative Services	Inspection Services		-	-
	420-7510-0000	Crack/Slurry/Fog Seals	Preventive Maintenance	S04	65,000	134,094
	420-7510-0000	Harrison Phase 2 (99E to 32nd)				
		Main Street (Scott to Adams)	Construction	S06	855,000	635,390
	420-9500-0000	Transfer to General Fund	Transfer		210,000	87,500
			FY Expenses		1,190,000	860,397
			FY Revenue		2,020,000	1,756,529
			FY Fund Balance		830,000	896,132
Year 8		Revenue			1,100,000	
14/15		Fund Balance/Working Capital			830,000	
		Total Revenue			1,930,000	-
	420-6060-0000	Contractual Services	Testing, Inspection		50,000	
		Operation Equipment, Repair & Maint.			2,000	
		General Administrative Services	Inspection Services		40,000	
		Crack/Slurry/Fog Seals	Preventive Maintenance		65,000	
	-	Monroe Street (99E to 224)	Reconstruction		275,000	
	420-9500-0000	Transfer to General Fund	Transfer		220,500	
			FY Expenses		652,500	-
			FY Revenue		1,930,000	-
			FY Fund Balance		1,277,500	-



**Regular Session
Agenda Item No.**

3

Consent Agenda

MINUTES
MILWAUKIE CITY COUNCIL WORK SESSION
DECEMBER 3, 2013

Council President Hedges called the work session to order at 5:06 p.m. in the City Hall Conference Room.

Council Present: Councilors Scott Churchill and Mark Gamba

Excused: Mayor Jeremy Ferguson and Councilor Mike Miller

Staff Present: City Manager Bill Monahan, City Recorder Pat DuVal, Community Development Director Steve Butler, Associate Planner Li Alligood, Senior Planner Ryan Marquardt, and Public Works Director Gary Parkin

City Manager's Report

Mr. Monahan briefly reviewed the evening's agenda and those of the upcoming December 17 and January meetings. The December study session was cancelled.

The group discussed attendance at the Oregon Plan Business Leadership Forum on December 9 and endorsement of Wilda Parks' appointment to the Metro Policy Advisory Committee (MPAC). Extension of the Wildlands' Feasibility Period would be considered, and Mr. Monahan suggested extending it through May 2014. In the previous meeting's audience participation, Mr. Parecki discussed street trees and a Charter amendment.

Community Development Department Projects

Mr. Butler provided an update on Parks and Sustainability. Related to the four undeveloped parks in Milwaukie, the Park and Recreation Board (PARB) had reviewed the draft request for proposals (RFP) at its November 26 meeting. New language was being developed to address the unique situation of Kronberg Park. The North Clackamas Parks and Recreation District (NCPRD) would be the lead agency on the master planning project. He addressed the new contract with David Evans and Associates (DEA) for Riverfront Park work.

Council President Hedges commented on the low level of support indicated in the recent ballot measure survey for Park development.

Mr. Butler discussed Planning Department applications and briefly commented on medical marijuana dispensaries. **Mr. Monahan** added Milwaukie staff was monitoring the issues taking place in other communities. **Mr. Butler** announced new hires in the Community Development Department. The Quiet Zone project was substantially complete. Staff was addressing questions that had come up related to the Adams St Connector and potential for future relocation of the Sunday Farmers' Market. The Clackamas County Board of Commissioners would hold its first hearing on the County Transportation System Plan (TSP) on December 4.

Council President Hedges recessed the work session at 5:44 p.m. Councilor Churchill arrived at 6:40 p.m., and Council President Hedges reconvened the work session at 6:40 p.m. Council President Hedges recessed the work session at 7:01 p.m. and reconvened it at 7:47 p.m. after the regular session was adjourned to complete the agenda topics.

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Moving Forward Milwaukie: Development Concepts – Tools and Assumptions

John Fregonese and **Nick Popenuk** briefed the City Council on the development concepts for the opportunity sites and sought direction regarding which draft concepts would receive further evaluation and financial analysis. Currently, the project is considering multiple prototype buildings that could be built on each of the seven sites. The City Council and public will have the chance to articulate what types of development were desirable on each and learn whether or not those concepts were financially feasible. Necessary Code, plans, and policy amendments would be identified to implement the desired development and give property owners the ability to make money.

Mr. Fregonese added if obstacles were identified, then solutions could be considered that took into account the developers' perspective. Initially, a simple site plan would be developed with an internal rate of return (IRR) of 12% - 15%.

Mr. Popenuk described the proposed outcomes from the January roundtable.

Mr. Fregonese explained there would be photo simulations of the best ideas and financial pro formas developed. The goal was that the City Council, public, professional consultants, and property owners move forward collegially.

Councilor Churchill commented that in the past there was some lack of clarity around certain properties and what they might support.

Mr. Popenuk said they would look for feedback on three draft options from which broad concepts would be tested and the numbers run.

Mr. Fregonese noted at this point it was a zoning and massing study, and he had not run the pro formas. He discussed building heights and options for development of the McFarland and Murphy sites. He noted the proximity of the Murphy site to Milwaukie Providence Hospital and feasibility of a senior care facility. There were certain restrictions related to the contaminated portion of the McFarland property.

Councilor Churchill wanted to make sure what was feasible from a financial standpoint and to have an understanding of the risks.

Mr. Popenuk added the Project Advisory Committee's (PAC) key point was the maximum height on most of the sites. A live/work development might be a possibility depending on transportation access.

Councilor Churchill was concerned about the amount of traffic generated by a five story development at a high risk intersection.

Council President Hedges would like to see one and five stories modeled.

Mr. Fregonese discussed the Dark Horse Comics site. The consensus was for three or four stories with commercial on the group floor.

Mr. Popenuk added that Dark Horse Comics was not opposed to consolidating its buildings in a robust redevelopment, but there would be a large gap to fill.

Council President Hedges thought Dark Horse Comics was a great asset, and he wanted to keep the company in Milwaukie.

Councilor Churchill discussed return on investment (ROI), scraping buildings, and identifying adaptive reuse.

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Mr. Fregonese said the top options for the Graham site were adaptive reuse and perhaps more height for a top floor restaurant to take advantage of the River views. It would be important to find out if the building was worth saving. There could be an interim use if the market did not justify a teardown.

Councilor Churchill saw Graham's as infill and more dense use of the site.

Mr. Fregonese discussed the Cash Spot site which was owned by the City and potential uses. There was consensus this could be a gateway to Milwaukie; however auto access to the site was challenging. The slope could lend the site for structured parking.

Councilor Churchill thought it would be difficult to support structured parking on the site because of the cost.

Mr. Fregonese reviewed the options for the Triangle site. The uses would be transit oriented and might perhaps be an interim food cart pod. Development should activate the station and could house a police substation.

Councilor Gamba was interested in the second floor use for a coffee and pastry shop and a newsstand people could visit while waiting for the train. He recommended something that would enliven the area even though it might be temporary.

Councilor Churchill suggested an historic building reconstruction.

Council President Hedges suggested something unusual like an old dining car.

Mr. Fregonese discussed the Texaco site that was half owned by the City and half by Metro for a transit oriented development (TOD). The top options were for three or four stories.

Councilor Churchill had concerns about the appropriate scale and density and noted it was Metro's choice to purchase for TOD.

Mr. Popenuk reminded the group of the intergovernmental agreement related to that property.

Council President Hedges commented he did not want the view of the River from Main St to be obscured or to build a Berlin Wall.

Mr. Fregonese suggested looking at step backs and plazas.

Mr. Popenuk discussed feedback on the three concepts and commented on the original intent of the agreements and program. The Code would be considered for needed amendments.

Councilor Churchill pointed out that was a different City Council, and the Texaco site may not be as viable as it was at that time.

Council President Hedges said although people may change the City had to abide by earlier agreements. He wanted any plan to have some indication of where the Sunday Farmers' Market would be located.

Councilor Gamba said as originally envisioned the South Downtown could provide the space for the Market. He liked the concept of the u-shaped building with stepped back higher stories.

Councilor Churchill heard Metro wanted four stories which was not appropriate on Main St. His preference would be step backs on Main St and McLoughlin Blvd.

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The group discussed the demand for office and commercial space and the growing interest in live/work opportunities.

Mr. Fregonese commented on Zoning Code amendments that might cut down on subsidies and single story commercial uses such as a restaurant. It might be possible to design a building with residential on the ground floor that could be converted in the future.

Mr. Popenuk said once the pro formas were run it could be determined what type of development could stand on its own feet.

Councilor Churchill commented he did not think the small commercial space at North Main Village on Harrison St worked that well.

Council President Hedges did not think there would be a lot of support for residential space on Main St. If there were residential on the McFarland site, the additional housing would bring extra business to the Milwaukie MarketPlace. The Murphy site could be all residential to encourage Providence to stay in Milwaukie because it was a wonderful little hospital.

Council President Hedges adjourned the work session at 9:10 p.m.

Respectfully submitted,

Pat DuVal, Recorder



Mr. Monahan called the Work Session to order at 5:08 p.m.

Council Present: Council President Dave Hedges and Councilors Scott Churchill, Mark Gamba, and Mike Miller and Mayor Ferguson

Staff Present: City Manager Bill Monahan, Finance Director Casey Camors, Assistant to the City Manager Teri Bankhead, Administrative Specialist Scott Stauffer, Program Coordinator Beth Ragel, Engineering Director Jason Rice, Court Manager Carla Bantz, Operations Director Gary Parkin, Planning Director Denny Egner, Interim Chief of Police Steve Bartol

Media Present: Michael Bamesberger, *The Oregonian*

City Manager's Report

Mr. Monahan noted that Mayor Ferguson was running late and reviewed the agenda.

Municipal Court Judge Request for Proposals (RFP)

Mr. Monahan discussed the Municipal Court Judge RFP and reported that a pro-tem judge is in place through January. The RFP process will work through a subcommittee with representatives of the Finance Department, the City Council and the City Attorney.

The group discussed observing final candidates in court if they were already judges.

Mr. Monahan noted the City Prosecutor's contract is coming up for review and Mr. Bernstein is interested in extending the same contract. Mr. Monahan recommended, and the group agreed, to extend the City Prosecutor's contract for another year.

Consent Agenda Item Discussion

Councilor Gamba asked, in regard to the Regular Session Consent Agenda item authorizing an abatement lien, if staff had actually spoken to the property owner.

Mr. Monahan replied that he was not sure and offered to remove the Agenda Item to the next Regular Session agenda. He added that Code Enforcement staff makes every effort to contact the property owner via the information available.

The group discussed certified mail as a way to communicate with property owners and vacant homes in the city. The group agreed to leave the item on the Consent Agenda.

Staff Responses to Audience Participation

Mr. Monahan discussed staff responses to recent public comments regarding code enforcement and habitat creation; he noted that the City Council will hear a Police Department lead discussion on the topic in January. He reported that the abatement process has been stopped while this issue is discussed by the City Council.

Councilor Miller reported that he had spoken to County Commissioner Jim Bernard, Public Affairs Coordinator Grady Wheeler, and a former director of the Milwaukie Downtown Development Association (MDDA) regarding the ownership of the trees along Main Street. He requested that discussion on that topic be held until January.

Mr. Monahan added that the number of trees planted by the MDDA along Main Street was actually between 20 and 25 and staff hopes to learn more from documents possibly in the possession of a former MDDA director.

Community Development Update

Mr. Egner introduced himself as the new Planning Director and discussed pending land use cases on Logus Road. He reviewed the status of the Road Home Project and a land use application filled by the North Clackamas School District (NCSD) for a permanent batting practice facility at Milwaukie High School (MHS). He didn't think a Design and Landmark Committee review for the NCSD application would be necessary but agreed the Neighborhood District Association (NDA) should be involved. The group requested links to the online version of the Transportation System Plan (TSP) and Council President Hedges requested a CD copy of the TSP.

Mr. Egner reported that the Moving Forward Milwaukie (MFM) project will meet with opportunity site property owners and will report to the City Council in January.

The group discussed the possible existence of a moratorium on flag lots being parceled. Mr. Egner and Mr. Rice agreed to investigate.

Mr. Rice reported on the status of the Riverfront Park project, noting easements held by Clackamas County Water Environment Services (WES) and the North Clackamas Parks and Recreation District (NCPRD) were being reviewed. He added that the architecture firm David Evans and Associates (DEA) is working on the final design which includes a joint permit with the federal and state governments.

Mr. Egner provided an update on the Monroe Street Transportation Growth Management (TGM) project.

The group discussed a possible project advisory committee with NDA representatives and possible public workshops to be held with Monroe Street residents and the public.

Mr. Rice reported on the Clackamas County TSP process and the Linwood-Harmony intersection project, which is currently not part of the County TSP under consideration. He reported that the City is still negotiating with an Oregon Department of Transportation (ODOT) vendor for the 17th Avenue Multiuse Trail project, citing concern about the vendor's overhead costs causing a final project budget overage which the City is responsible for per the terms of the inter-governmental agreement. Mr. Rice then announced that the City will be replacing trees on Main Street after consultation with property owners and after receiving an offer from TriMet to replace two trees in front of Libbie's restaurant with two smaller, slower growing trees. The group agreed with Mr. Rice's recommendation to accept the TriMet offer.

Councilor Churchill asked about the tree well prep and **Mr. Rice** said that staff and TriMet have agreed to inspect the work to ensure City standards are met.

Councilor Miller expressed concern about setting a precedent of buying replacement trees for property owners. **Mr. Rice** and **Mayor Ferguson** explained this is a special case where the City had provided incorrect information to the property owner.

Mr. Rice provided a brief update on the Quiet Zone project reporting that ODOT rail inspectors had signed off and the Federal Railroad Administration (FRA) had sent a letter to the Union Pacific Rail Road (UPRR) who should send out its final notice this Friday, which will silence train horns in the quiet zone immediately.

Regional Committee Assignments

Mayor Ferguson announced he was moving this agenda item to the Regular Session.

Citizens Utility Advisory Board (CUAB) Report on Wastewater and Utilities

Mr. Parkin introduced the members of the CUAB and reported on the board's review of the adequacy of the wastewater rate. He reported that the utility was doing well in meeting reserve and capital requirements and noted that the CUAB believes it is better to look at rate changes in July and not mid-year.

Mr. Alvarez stated that the utility was meeting the County's requirements and the CUAB is looking at a 9% or possibly smaller rate increase in 2014.

Mr. Parkin reported that water usage was about average during the summer and lower than average this fall, with no signs of additional usage.

Councilor Gamba recalled that he had testified against the rate increase and in favor of an alternate rate structure. He reported that he had heard from a single person living alone who broke out her basement as an accessory dwelling unit (ADU) and now these two people are paying the same as two families. He believes the rate system is unfair.

Ms. Kelland noted that the Clackamas County Service District (CCSD) charges a flat rate regardless of the number of residents in a home and the City has no way to put in to the equation any effective way to incentivize using less water.

Mr. Alvarez noted that the waste in the water is what affects the sewage treatment rate.

Councilor Gamba discussed future rate increases due to increased density that comes with population growth and how CCSD charges per volume not per unit.

The group discussed the flat wastewater rates now charged by CCSD and the City's previous flow-meter like system. It was noted that CCSD changed its rate structure and the City had to change accordingly or it would have taken years to meet the flat rates. The group then discussed the different per unit rate scenarios and the equations and methods reviewed by the CUAB in trying to figure out how to create a rate based equitably on usage. There was discussion about the current rate system's fairness and the burden of dealing with the CCSD imposed fixed rates.

Mr. Parkin and **Mayor Ferguson** recalled that past analysis of the rate system concluded that commercial customers subsidize residential customers and they agreed to share that analysis data with Councilor Gamba.

Mr. Parkin summarized that the CUAB has concluded that the current rate does provide adequate resources for the utility. He noted they were not asked to address the rate structure but that they had reviewed alternate tier rate plans and had determined those plans shifted costs from low to high flow users.

The group discussed the potential savings in using less through placing smaller pipes and how to get residents to use less water.

Mr. Parkin shifted the conversation to discussion of the water rate and discussed the current rate system based on the equitable rate per unit.

Councilor Gamba disagreed with Mr. Parkin about the equability of the per unit rate system noting that those using more units get an up to 20% reduction.

The group discussed the potential savings of moving to a tiered rate structure and noted other local governments who have moved to this model. They discussed the size and costs of the current water treatment system. They also discussed the equity of per gallon rates paid by residential, commercial and industrial users and the fixed costs of the City's available water sources.

Mayor Ferguson and **Councilor Gamba** agreed to attend upcoming CUAB meetings to further discuss utility rates and they requested a tour of the water system.

Ms. Kelland noted that the CUAB is working to get more information to the public about water usage averages and how to conserve water.

Mr. Alvarez and **Mr. Parkin** noted that even with reduced water consumption there will be fixed costs to maintain the system and to remain ready for fire and emergency uses.

Councilor Gamba stated that fixed costs are not an argument against implementing an equitable rate structure.

Council President Hedges and **Councilor Churchill** stated that they were happy to accept the CUAB's recommendation.

Mayor Ferguson recapped the conversation and encouraged Councilor Gamba to work with the CUAB and the Water Providers Consortium on the rate structure.

Councilor Miller expressed appreciation for the CUAB's work and concurred with Councilor Gamba's concern about the rate burden placed on single-person households.

Mayor Ferguson and **Ms. Ragel** presented Ms. Kelland with a certificate of appreciation for her years of service to the City.

Consent Agenda Item Discussion Revisited

Mr. Monahan reintroduced the Consent Agenda discussion and stated he had conferred with Interim Chief Bartol and can confirm that staff did reach out to the property owner but contact was not made, adding that staff believes the owner inherited the home but has abandoned the property.

Interim Chief Bartol reviewed the Code Enforcement abatement process and stated that he believes every effort has been made to communicate with the owner.

City Hall Parking Lot Use – Free Public Parking 6-Month Trial

Ms. Bankhead reviewed the City Council decision to increase the time limits on parking in part of the lot across Main Street from City Hall. She reported that staff believes the 4 hour public parking is working and stated that it was the recommendation of the City Manager's office to continue the current lot configuration and time limits for six more months. Ms. Bankhead reported that the plan has received community support.

The group discussed possible additional parking signage in and round the lot and agreed that the poor lighting is a safety issue for staff and the public.

Ms. Bankhead reported on updated permit numbers from the last six months.

The group discussed the usage of the 4 hour spots and how many parking permits have been sold. The group concurred with the City Manager's recommendation to continue the new parking time limits and lot configuration, with another review in six months.

Management Study

Mr. Ramis presented the market rates of five firms available to conduct the management study the City Council is considering. He noted that each firm has the experience and asked for a recommendation on which firm to work with.

The group discussed the firms' different rates.

Council President Hedges recommended using HR Answers, Mayor Ferguson and Councilor Gamba concurred.

The group discussed setting up interviews and Councilors Churchill and Hedges were appointed to meet with representatives of HR Answers within the next couple weeks.

Mayor Ferguson adjourned the Work Session at 6:50 p.m. and announced that the City Council would meet in Executive Session pursuant to ORS 192.660(2)(e) to deliberate with persons designated by the governing body to negotiate real property transactions.

Respectfully submitted,

Scott S. Stauffer, Administrative Specialist II



MINUTES
MILWAUKIE CITY COUNCIL
www.milwaukieoregon.gov

REGULAR SESSION
DECEMBER 17, 2013

CALL TO ORDER

Mayor Ferguson called the 2,164th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

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

Staff Present: City Manager Bill Monahan, Finance Director Casey Camors, Assistant to the City Manager Teri Bankhead, Administrative Specialist Scott Stauffer, and Operations Director Gary Parkin

Media Present: Michael Bamesberger, *The Oregonian*

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Outstanding Student Achievement Award to Kaylee Anderson

Mark Pinder, Milwaukie High School Principal, Mayor Ferguson and the City Council recognized Kaylee Anderson with the Outstanding Student Achievement Award for December 2013.

A. Portland Milwaukie Light Rail Update

Ms. Bluhm reviewed recent night work done in November and the work done on Monroe Street which now features new streetlights. She provided an update on the recently added art features. She shared with City Council an example of the fiber reinforced polymer deck being used for the Kellogg Pedestrian Bridge and provided an update on the anticipated cost savings that are expected with using the lighter polymer. She reported that Mailwell Drive will be closed in April and she plans to discuss parking issues with the City Council in February.

CONSENT AGENDA

It was moved by Council President Hedges and seconded by Councilor Miller to approve the consent agenda as presented.

A. City Council Meeting Minutes:

1. November 19, 2013, Work Session; and
2. November 19, 2013, Regular Session

B. Resolution No. 86-2013: A Resolution to Assess the Costs of Abatement of the Nuisance Located at 5622 SE Willow St and Entering the Same on the Docket of City Liens. Pursuant to Milwaukie Municipal Code Section 8.04.200(0).

Motion passed with the following vote: Councilors Hedges, Gamba, Miller, and Churchill and Mayor Ferguson voting "aye." [5:0]

AUDIENCE PARTICIPATION

Mr. Monahan reported on follow-up work done regarding the code and habitat restoration and noted that the Code Enforcement process has been suspended while the City Council reviews the issue.

Mayor Ferguson reported that one person had registered to speak and added that the issue of photo radar will be discussed by the City Council next year.

Bob Low, Portland, provided background information on the photo radar citation he received a couple years ago. He discussed the location of the photo radar van and the communication he has had with the Milwaukie Police Department. He suggested that the City Council should set guidelines for photo radar usage in the City.

Councilor Gamba asked Mr. Low to clarify the placement of the photo radar van.

Mayor Ferguson discussed changes the City has made in cooperation with the Oregon Department of Transportation (ODOT) concerning photo radar usage. He noted that the City Council has requested that revenue from photo radar be used for safety programs.

Councilor Churchill commented that he has seen 2 accidents in 8 years at that intersection, and noted there is some value in holding the speed in that area.

PUBLIC HEARING

None Scheduled.

OTHER BUSINESS

A. Vehicle Purchase – Vactor for Public Works – Resolution

Mr. Parkin introduced the resolution and discussed what the Vactor does and noted the one being replaced was the City's first Vactor and had been purchased in 2001. He discussed the uses of a Vactor in meeting the requirements of the National Pollutant Discharge Elimination System (NPDES) permit. He reported that the sewer, water and storm funds were budgeted for the purchase of a new Vactor.

It was moved by Councilor Miller and seconded by Councilor Gamba to authorize the City Manager to approve the purchase of a new Vactor to replace the current one used by the Public Works Department, at a cost not to exceed the budgeted amount of \$350,000. Motion passed with the following vote: Councilors, Hedges, Gamba, Miller, and Churchill and Mayor Ferguson voting "aye." [5:0]

RESOLUTION No. 87-2013:

A Resolution of the City Council of the City of Milwaukie, Oregon, authorizing the City Manager to approve the purchase of a replacement Vactor used by the Public Works Department, at a cost not to exceed the budgeted amount of \$350,000.

B. Regional Committee Assignments

Mayor Ferguson reported that he had distributed committee assignments to the City Council and would like any changes within the week to make adjustments by January.

C. Council Reports

Councilor Churchill met with several citizens regarding the placement of a new bike rack at Monroe Street and McLoughlin Boulevard.

Council President Hedges attended the Clackamas County Coordinating Committee (C4) meeting which has been ended by the County Commission's focus on alternate programs. He noted that City would probably not be part of the county project going forward. He also attended a River Health Advisory meeting where he heard a presentation on the Kellogg Plant odor.

Councilor Miller attended a North Clackamas Parks and Recreation District meeting where they are developing a 10 year master plan. He also met with citizens concerned about the placement of a bike rack at Monroe Street and McLoughlin Blvd.

Councilor Gamba commented that he thought the Arts Committee had input on the placement of the bike rack. He reported that he attended two Clackamas County Commission meetings to testify about the Linwood-Harmony intersection project being considered for inclusion in the County Transportation System Plan. He also went to the Metro Joint Policy Committee on Transportation (JPACT) meeting and heard good discussion on a lot of topics. He went to the City's Winter Solstice Bonfire on behalf of the Mayor and he attended a focus group on the bond measure. He also went on the Bike Milwaukie ride.

Mayor Ferguson reported that he had recently returned from being in Haiti where he helped provide community health clinics. He thanked staff for the recent updates in the Council Chambers, Councilor Gamba for filling in for him at the Winter Solstice Bonfire; he thanked several community members for assisting in lighting the bonfire, and he also thanked Ms. Ragel for organizing the Umbrella Parade and Winter Solstice Bonfire.

INFORMATION

A. Official Presentation of the 2013 Ed Zumwalt Volunteer of the Year Award to Dion Shepard

Mayor Ferguson and the City Council introduced the award and reviewed the 2013 selection process and presented the plaque to Ms. Shepard.

ADJOURNMENT

Mayor Ferguson moved to adjourn the regular session at 8:06 p.m.

Respectfully submitted,

Scott S. Stauffer, Administrative Specialist II



**Regular Session
Agenda Item No.**

6

Other Business



MILWAUKIE CITY COUNCIL
STAFF REPORT

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Northwest Natural Gas Company Franchise Agreement**

From: Casey Camors, Finance Director

Date: January 21, 2014

ACTION REQUESTED

Discuss an Ordinance granting a nonexclusive franchise agreement to Northwest Natural Gas Company for 10 years from the effective date of the ordinance.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

Ordinance No 1911 was adopted by the City Council on November 18, 2002.

BACKGROUND

Milwaukie has had a nonexclusive franchise agreement with Northwest Natural for many years. The most recent agreement was accepted by the City Council through Ordinance No. 1911, adopted in November, 2002. That agreement expired on January 1, 2013.

Since the Ordinance was adopted, the following has taken place:

1. The City and Northwest Natural have honored the agreement and enjoyed a good working relationship. No disagreements arose regarding the terms of the agreement.
2. NW Natural has been a good partner in working in the City's right of way.
3. The City has received the maximum franchise fee allowed by statute and payments were made on time.
4. Northwest Natural has developed a model franchise agreement that it has negotiated for use in other local area communities.

City staff from Finance, Public Works, Engineering, and the City Attorney's Office all reviewed the draft agreement and provided input to the process. The proposed agreement before the City Council was compared to the existing franchise agreement. In addition, staff reviewed the agreements adopted in other jurisdictions to understand whether language negotiated by those cities could be of value to Milwaukie.

The proposed franchise agreement now before the City Council is for a ten year term granting a nonexclusive franchise for ten years to construct, maintain, and operate a gas utility system within the city.

The agreement has been modified from the 2002 franchise agreement to better:

1. align franchise fee payments with the City's year end
2. provide for late payment fees at rates that are more favorable to the City than under the existing ordinance
3. offer flexibility in the franchise fee rate paid if increases are allowed by state law

Staff recommends that the City Council adopt an ordinance accepting the Northwest Natural franchise effective thirty days after the date of acceptance, to remain in effect for ten years, unless sooner terminated as provided in the franchise agreement.

CONCURRENCE

Finance, Public Works, Engineering and the City Attorney's Office all concur with the franchise agreement as proposed.

FISCAL IMPACTS

The City will continue to receive franchise payments at the same percentage as established through the earlier franchise agreement. The City receives the maximum franchise fee as allowed by statute.

WORK LOAD IMPACTS

The development of the franchise agreement required devotion of City staff time. During the life of the proposed ten year franchise agreement, Engineering staff will regularly coordinate with Northwest Natural so the agreement is properly carried out. In addition, Finance staff will process payments.

ALTERNATIVES

If the terms of the agreement are not acceptable to the City Council, staff can be directed to negotiate alternative terms, however, the franchise fee cannot exceed the limit established by statute.

ATTACHMENTS

1. Proposed Ordinance that includes all terms of the franchise agreement
2. Existing Franchise Agreement – Ordinance No. 1911

Attachment 1



CITY OF MILWAUKIE
"Dogwood City of the West"

Ordinance No.

AN ORDINANCE GRANTING A NON-EXCLUSIVE GAS UTILITY FRANCHISE TO NORTHWEST NATURAL GAS COMPANY, AND FIXING TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Northwest Natural Gas Company ("Grantee") has been providing gas service within the City of Milwaukie ("City"); and

WHEREAS, Grantee is duly authorized by the Oregon Public Utility Commission ("OPUC") to supply gas within the City; and

WHEREAS, the City has the authority to regulate the use of the Public ROW (as defined below) within the City and to receive compensation for the use of the Public ROW; and

WHEREAS, the City and Grantee both desire Grantee to continue to be able to provide gas service within the City and to establish the terms by which Grantee shall use and occupy the Public ROW;

NOW THEREFORE, THE CITY OF MILWAUKIE

THE CITY OF MILWAUKIE ORDAINS AS FOLLOWS:

Section 1: Definitions and Explanations.

- (1) As used in this ordinance.
 - (a) "Bridge" includes a structure erected within the City to facilitate the crossing of a river, stream, ditch, ravine or other place, but does not include a culvert.
 - (b) "City" means the City of Milwaukie, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, including its boundaries as extended in the future.
 - (c) "Council" means the legislative body of the City.
 - (d) "Gas mains" includes all gas transmission and distribution facilities located on or under any street, bridge or public place within the City.

- (e) “Grantee” means the corporation referred to in Section 2 of this ordinance.
- (f) “Gross Revenue” means revenues received from the use of the Gas Utility System within the City Limits less related net uncollectibles. Gross Revenues shall include revenues from the use, rental, or lease of the Gas Facilities, except when those revenues have been paid to Grantee by another franchisee of the City and the paid revenues are used in the calculation of the franchise fee for the operations of the other franchisee within the City Limits. Gross Revenues shall not include proceeds from the sale of bonds, mortgage, or other evidence of indebtedness, securities or stocks, or sales at wholesale by Grantee to any public utility or public agency when the public utility or public agency purchasing the gas is not the ultimate customer. Gross Revenues will also not include public purpose charges, provided that such charges or surcharges are required or authorized by federal or state statute, administrative rule, or by tariff approved by the OPUC and raise revenue used solely for a public purpose and not to compensate Grantee for the sale or use of natural gas or for the use, rental, or lease of Grantee’s Gas Facilities in the City.
- (g) “Person” includes an individual, corporation, association, firm, partnership and joint stock company.
- (h) “Public place” includes any city-owned park, place or grounds within the City that is open to the public but does not include a street or bridge.
- (i) "Qualified Contractor" means a person that is knowledgeable about the construction and operation of a natural gas transmission and distribution system, and must be subject to and comply with the qualifying standards relating to the work in question as set forth in 49 CFR Part 192, Subpart N – Qualifications of Pipeline Personnel.
- (j) “Right of way” means any right of way or public utility easement within the City and under City ownership, control, or administration. It includes, but is not limited to, streets, roads, alleys, sidewalks, trails, paths, public easements, and all other public ways or areas, including the subsurface under and air space over these areas. “Right of way” does not include any state highway or county road.

(2) As used in this ordinance, the singular number may include the plural and

the plural number may include the singular.

Section 2: Rights Granted.

Subject to the conditions and reservations contained in this ordinance, the City hereby grants to NORTHWEST NATURAL GAS COMPANY, a corporation, the right, privilege and franchise to:

- (1) Construct, maintain and operate a gas utility system within the City.
- (2) Install, maintain and operate on and under the right of way and bridges and public places of the City, facilities for the transmission and distribution of gas to the City and its inhabitants and to other customers and territory beyond the limits of the City; and
- (3) Transmit, distribute and sell gas.

Section 3: Use of Streets, Bridges and Public Places by Grantee.

- (1) Before the Grantee may use or occupy any right of way, bridge or public place, the Grantee shall first obtain permission from the City to do so and shall comply with any special conditions the City desires to impose on such use or occupation.
- (2) The compensation paid by the Grantee for this franchise includes all compensation for the use of rights of way, bridges and public places located within the City as authorized.

Section 4: Duration.

This franchise is granted for a period of 10 years from and after the effective date of this ordinance.

Section 5: Franchise Not Exclusive.

This franchise is not exclusive, and shall not be construed as a limitation on the City in:

- (1) Granting rights, privileges and authority to other persons similar to or different from those granted by this ordinance.
- (2) Constructing installing, maintaining or operating any City-owned public utility.

Section 6: Public Works and Improvements Not Affected by Franchise.

The City reserves the right to:

- (1) Construct, install, maintain and operate any public improvement, public work or facility.
- (2) Do any work that the City may find desirable on, over or under any right of way, bridge or public place.
- (3) Vacate, alter or close any right of way, bridge or public place, provided that the City shall attempt to make available to Grantee an alternative right of way for the location of its facilities. If the City is unable to provide an acceptable alternative location, Grantee may be responsible for purchasing an easement for its use outside existing City right of way.
- (4) Whenever the City shall excavate or perform any work in any of the present and future rights of way and public places of the City, or shall contract, or issue permits, for such excavation or work where such excavation or work may disturb Grantee's gas mains, pipes and appurtenances, the City shall, in writing, notify Grantee sufficiently in advance of such contemplated excavation or work to enable Grantee to take such measures as may be deemed necessary to protect such gas mains, pipes and appurtenances from damage and possible inconvenience or injury to the public. In any such case, the Grantee, upon request, shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed excavation or other work.
- (5) Whenever the City shall vacate any street or public place for the convenience or benefit of any person or governmental agency or instrumentality, the City shall reserve a public utility easement for Grantee's facilities then existing in such right of way or public place if reasonably practicable.
- (6) Grantee shall permit City, without charge, to run wires or place equipment in Grantee's trenches for municipal purposes, as long as such installation is consistent with federal pipeline safety regulations. The City shall indemnify and hold Grantee harmless from loss or damage resulting from the City's wires or equipment.

Section 7: Continuous Service.

The Grantee shall maintain and operate an adequate system for the distribution of gas in the City. The Grantee shall use due diligence to maintain continuous and uninterrupted 24-hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by state authorities and to standards of the City which are not in conflict with those adopted by the state authorities. Under no circumstances shall the Grantee be liable for an interruption or failure of service caused by act of God, unavoidable accident or other circumstances beyond the control of the Grantee through no fault of its own.

Section 8: Safety Standards and Work Specifications.

- (1) The facilities of the Grantee shall at all times be maintained in a safe and workmanlike manner.
- (2) For the purpose of carrying out the provisions of this ordinance, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

Section 9: Control of Construction.

The Grantee shall file with the City maps showing the location of any construction, extension or relocation of its Gas mains, pipes, and appurtenances in the streets of the City and shall obtain from the City approval of the location and plans prior to commencement of the work. The City may require the Grantee to obtain a permit before commencing the construction, extension or relocation of any of its Gas mains, pipes, and appurtenances.

Section 10: Street Excavations and Restorations.

- (1) Subject to the provisions of this ordinance, the Grantee may make necessary excavations for the purpose of constructing, installing, maintaining and operating its facilities. Except in emergencies, and in the performance of routine service connections and ordinary maintenance on private property, prior to making an excavation in the traveled portion of any right of way, bridge or public place, and, when required by the City, in any untraveled portion of any right of way, bridge, or any public place, the Grantee shall obtain from the City approval of the proposed excavation and of its location. Grantee shall give notice to the City by telephone,

electronic data transmittal or other appropriate means prior to the commencement of service or maintenance work and as soon as is practicable after the commencement of work performed under emergency conditions.

- (2) When any excavation is made by the Grantee, the Grantee shall promptly restore the affected portion of the right of way, bridge or public place to the same condition in which it was prior to the excavation. The restoration shall be in compliance with specifications, requirements and regulations of the City in effect at the time of such restoration. If the Grantee fails to promptly restore the affected portion of a right of way, bridge or public place to the same condition in which it was prior to the excavation, the City may make the restoration, and the cost thereof shall be paid by the Grantee.

Section 11: Location and Relocation of Facilities.

- (1) All facilities of the Grantee shall be placed so that they do not interfere unreasonably with the use by the City and the public of the rights of way, bridges and public places and in accordance with any specifications adopted by the City governing the location of facilities.
- (2) The City may require, in the public interest, the removal or relocation of facilities maintained by the Grantee in the rights of way of the City, and the Grantee shall remove and relocate such facilities within a reasonable time after receiving notice to do so from the City. The cost of such removal or relocation of its facilities shall be paid by the Grantee, but when such removal or relocation is required for the convenience or benefit of any person, governmental agency or instrumentality other than the City, Grantee shall be entitled to reimbursement for the reasonable cost thereof from such person, agency or instrumentality. The City shall provide the Grantee with timely notice of any anticipated requirement to remove or relocate its facilities and shall cooperate with the Grantee in the matter of assigning or allocating the costs or removal or relocation.

Section 12: Compensation.

- (1) As compensation for the franchise granted by this ordinance, the Grantee shall pay the City an amount equal to five percent (5%) of gross revenue.
- (2) The compensation required by this section shall be payable semi-annually on or before March 15 for the six month period ending December 31, and September 15 for the six month period ending June

30. Within sixty (60) days after the termination of this franchise, compensation shall be paid for the period elapsing since the close of the last six month period for which compensation has been paid.

- (3) The Grantee shall furnish to the City with each payment of compensation required by this section a statement showing the amount of Gross Revenue of the Grantee within the City for the period covered by the payment computed on the basis set out in subsection (1) of this section. The compensation for the period covered by the statement shall be computed on the basis of the gross revenue so reported. If the Grantee fails to pay the entire amount of compensation due the City through error or otherwise, the difference due to City shall be paid by the Grantee within fifteen (15) days from discovery of the error or determination of the correct

amount. Any overpayment to the City through error or otherwise shall be offset against the next payment due from the Grantee. Interest at the rate of nine percent (9%) per annum will accrue on late payments.

- (4) Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.
- (5) During the term of this franchise, and if allowed by law, the City may elect to receive increased compensation for the remaining term in an amount allowed by law. The City shall make this election by giving 90 days' written notice to Grantee.
- (6) The City specifically reserves the right to impose a fee or tax, as allowed by law, on any new business undertaking of Grantee that is operated within the City. For the purposes of this Section, "new business undertaking" means a business other than use of the City right of way for the transmission, distribution, and sale of natural gas as described in this ordinance. The City may otherwise separately regulate and obtain compensation for any other use of the City's rights-of-way than those specifically authorized herein. The provisions of this franchise agreement do not impair the imposition of ad valorem taxes on the property of Grantee, as allowed by law.

Section 13: Books of Account and Reports.

The Grantee shall keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under section 12 of this ordinance. The City may inspect the books of account at any time during business hours and may audit the books from time to time. The City may require periodic reports from the Grantee relating to its operations and revenues within the City. All amounts of Franchise Fees paid by Grantee shall be subject to audit or financial review by the City, provided that only payments that occurred or should have occurred during a period of thirty-six (36) months prior to the date the City notifies the Grantee of its intent to perform an audit or financial review.

Section 14: Supplying Maps Upon Request.

The Grantee shall maintain on file, at an office in Oregon, maps and operational data pertaining to its operations in the City. The City may inspect the maps and data at any time during business hours. Upon request of the City, the Grantee shall furnish to the City, without charge and on a current basis, maps showing the location of the Gas mains, pipes, and appurtenances of the Grantee in the City.

Section 15: Indemnification.

The Grantee shall indemnify and save harmless the City and its officers, agents, elected officials, and employees from any and all loss, cost and expense arising from damage to property and/or injury to, or death of, persons due to any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and franchise hereby granted.

Section 16: Assignment of Franchise.

This franchise binds and benefits the successors, legal representatives and assigns of the Grantee. No assignment of the franchise shall be effective without the written approval of the City Council of Milwaukie. The Council may condition that approval upon a reasonable adjustment to the rate of compensation under section 12 of this franchise.

Section 17: Termination of Franchise for Cause.

The City may terminate this franchise as provided in this Section, subject to Grantee's right to a court review of the reasonableness of such action, upon the willful failure of the Grantee to perform promptly and completely each and every material term, condition or obligation imposed upon it under or pursuant to this ordinance. The City shall provide the Grantee written notice of any such failure

and the Grantee shall have sixty (60) days from receipt of notice to cure such failure, or if such failure cannot reasonably be cured within sixty (60) days, to commence and diligently pursue curing such failure.

Section 18: Remedies Not Exclusive, When Requirement Waived.

All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this ordinance, including termination of the franchise, are not exclusive and the City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

Section 19: Expiration.

At the end of the Franchise term, if the City and Grantee are negotiating another franchise and have not concluded their negotiations, Grantee's rights and responsibilities shall be controlled by this Franchise until the City grants a new franchise and Grantee accepts it.

Section 20: Confidential and Proprietary Information.

When requested by Grantee, and subject to the provisions of state law and the Oregon Public Records Law, the City shall treat as confidential any public record or information provided by Grantee and designated by Grantee as confidential.

Section 21: Severability

If any section or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, all portions of the ordinance that are not held to be invalid or unconstitutional shall remain in effect until the ordinance is terminated or expired.

Section 22: Acceptance.

The Grantee shall, within thirty (30) days from the date this ordinance takes

effect, file with the City its written unconditional acceptance of this franchise, and if the Grantee fails so to do, this ordinance shall be void.

PASSED by the Milwaukie City Council this _____ day of _____, 2014.

Signed and approved by the Mayor this _____ day of _____, 2014.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

ACCEPTANCE

City Manager
City of Milwaukie
10722 SE Main Street
Milwaukie, OR 97222

This is to advise the City of Milwaukie, Oregon (the "City") that Northwest Natural Gas Company (the "Grantee") hereby accepts the terms and provisions of Ordinance No. _____ passed by the Milwaukie City Council on _____, 2014 (the "Franchise") granting a Franchise for ten (10) years to Grantee. The Grantee agrees to abide by each and every term of the Franchise, and shall become effective thirty days after adoption of Ordinance No. _____ and after acceptance of said agreement by NW Natural Gas Company (the "Grantee").

BY: _____

Name: _____

TITLE: _____

DATE: _____

This Acceptance was received by the City of Milwaukie on _____, 2014.

City Recorder

Attachment 2

ORDINANCE NO. 1911

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

WHEREAS, the current franchise will expire January 31, 2003 and it is in the interest of the City and its citizens that the franchise renewal take effect upon expiration of the current franchise so that seamless provision of natural gas services and appropriate regulation thereof can occur ; and

WHEREAS, the City Council finds based on its assessment of community needs that the proposed non-exclusive franchise agreement attached hereto as Exhibit A meets those community needs and that it should therefore grant the franchise renewal requested, consistent with the terms and conditions of Exhibit A.; and

WHEREAS, the City Council finds that it is appropriate to have the new franchise take effect on January 1 and to have the new agreement supersede the existing agreement;

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Franchise Grant. Northwest Natural Gas Company is hereby granted a ten year nonexclusive franchise, effective January 1, 2003, to operate a natural gas utility system and to maintain and operate facilities for the provision of natural gas within rights of way within the City of Milwaukie. The terms of the franchise are those terms set out in the form of Franchise Agreement between the City and Northwest Natural attached hereto as Exhibit 1.


Section 2. Acceptance Required. The grant of franchise in this ordinance may be withdrawn if Northwest Natural fails to accept the grant of franchise by executing a Franchise Agreement in the form of Exhibit 1 within 30 days of adoption of this ordinance.

Section 3. Existing Franchise Superseded. The existing franchise granted to Northwest Natural Gas is set to expire on January 31, 2003. All provisions of the existing franchise shall remain in effect until the new franchise granted by this ordinance takes effect. Once the new franchise granted by this ordinance takes effect, the provisions of the new franchise shall prevail over any inconsistent provisions of the existing franchise.

Read the first time on 11/19/02 , and moved to second reading by 4-0 vote of the City Council.

Read the second time and adopted by the City Council on 11/19/02 .

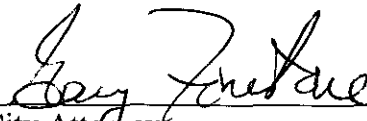
Signed by the Mayor on 11/19/02 .


James Bernard, Mayor

ATTEST:

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


Pat DuVal, City Recorder


City Attorney

Document4 (Last revised)

FRANCHISE AGREEMENT

The City of Milwaukie, an Oregon municipal corporation ("City"), and Northwest Natural Gas Company, a corporation ("NW Natural"), enter into this agreement, which is effective January 1, 2003.

1. **Rights Granted**

- A. This agreement sets forth the terms of the nonexclusive franchise granted by the City to NW Natural and accepted by NW Natural by signing this agreement. In return for the payment and other obligations set forth in this franchise agreement, NW Natural shall have a nonexclusive right and privilege to operate a natural gas utility system providing natural gas services to residents within the City and to install, maintain and operate facilities for the transmission of natural gas within rights of way, as well as related communications system for the distribution of natural gas. Nothing in this agreement limits the City from granting others the right to carry on activities similar to or different from the ones described in this agreement.
- B. All facilities in possession of NW Natural currently located within rights of way are covered by this agreement and are deemed lawfully placed in their current locations. The City may require relocation as further specified in this agreement.

2. **Term**

This agreement shall be effective as of January 1, 2003 and shall remain effective through January 1, 2013 unless sooner terminated as provided in this agreement.

3. **Construction Work**

- A. *Non-emergencies.* Except in the case of an emergency, NW Natural shall file with the City Engineer maps or plans showing the location of any facilities to be placed in the right of way prior to the placement of those facilities. NW Natural shall also file with the City Engineer maps or plans showing the location of any construction work to be performed in the right of way, even if no new facilities are placed. No non-emergency work involving excavation, new facilities or relocated facilities may be performed until the City Engineer has approved the location for the work and facilities. No facilities shall be attached to a bridge without approval by the City Engineer of the design of facilities and method of attachment. In issuing the approval for non-emergency work, the City Engineer may restrict the times or dates when the work may be performed in order to minimize disruption of rights of way and may require work by NW Natural to be coordinated with work of the City or of others using the rights of way.

- B. *Emergencies.* NW Natural may conduct emergency work at any time and must provide the City Engineer with oral notice of the emergency work as soon as reasonably possible and no later than one business day after the emergency work has commenced. NW Natural shall provide the City Engineer a map of any excavations and repavings conducted on an emergency basis within 30 days of completion of the work. NW Natural shall also provide the City Engineer a map of any new facilities constructed on an emergency basis within 30 days of completion of the work.
- C. *Reasonable care.* All work by NW Natural within the rights of way shall be conducted with reasonable care and with the goal of eliminating or minimizing the risk to those using city rights of way and to eliminate or minimize the risk of damage to public or private property. All work shall be performed in accordance with all applicable laws and regulations. NW Natural shall not move, cut, modify or otherwise affect any facility of any other entity in the right of way without the consent of the other entity and notification to the City.

4. **Maps**

NW Natural shall maintain maps and operations data pertaining to its operations in the City on file at an office in Oregon. With 24 hours prior notice, the City may inspect the maps at any time during business hours. Upon request of the City and without charge, and subject to the provisions of this section, NW Natural shall furnish current maps to the City, either in a printed form, or, if the City maintains compatible data base capability, then by electronic data in read-only format, showing the location of its facilities, but not other proprietary information, used in operating NW Natural's transmission and distribution facilities within the City's Urban Growth Boundary area served by NW Natural. NW Natural and the City may determine that the location of certain Gas Facilities should be confidential as the public interest may require. In such a case, NW Natural is under no obligation to provide records of the location of these facilities to City and the City shall treat any public record disclosing the location of these facilities as confidential, subject to the provision of state law and the Oregon Public Records Law. The City shall limit access to any such confidential record to trustworthy employees of the City with a need to know the information set out in the record. The City will not sell or transmit NW Natural maps or data to third parties unless permitted by NW Natural. The City will make available to NW Natural any City-prepared maps or data.

5. **Excavation**

Subject to Sections 3 and 6 of this agreement, NW Natural may make all necessary excavations within any right of way for the purpose of installing, repairing or maintaining any facility.

6. **Restoration After Excavation**

Except as otherwise provided in this section, NW Natural shall restore the surface of any right of

way disturbed by any excavation by NW Natural to the same condition it was in prior to its excavation. In the event that NW Natural's work is coordinated with other construction work in the right of way, the City Engineer may excuse NW Natural from restoring the surface of the right of way, providing that as part of the coordinated work, the right of way surface is restored at least to the condition it was in prior to any excavation. All restoration of right of way surface shall be subject to the approval of the City Engineer, who may issue an order requiring correction of the restoration work. If the correction order is not complied with within 30 days or such other time as may be specified in the order, the City may restore the surface of the right of way, in which case NW Natural shall pay the City for the cost of resurfacing, including all administrative costs of resurfacing and of issuing the correction order.

7. Relocation

- A. *Permanent Relocation - General.* The City may by written order require NW Natural to move any facility in the right of way. If the relocation is the result of a public project, NW Natural shall be responsible for the costs of relocation. If the relocation is required to accommodate an individual development, NW Natural shall have the right to seek reimbursement from the developer. In no event shall the City be responsible for the costs of relocation of any of NW Natural's facilities.
- B. *Notice.* The notice required by Subsection A of this Section shall be in writing and shall be provided at least 90 days before the date that NW Natural is required to move its facilities. The City will endeavor to provide as much notice as possible. The notice shall specify the date by which the existing facilities must be removed. Nothing in this provision shall prevent the City and NW Natural from agreeing, either before or after notice is provided, to a schedule for relocation. In the event that NW Natural fails to comply with a notice to relocate and the City and NW Natural have not reached agreement on a schedule for relocation, the City may remove NW Natural's facilities that were the subject of the relocation notice at NW Natural's expense. All personnel or contractors employed by City to relocate NW Natural facilities shall be qualified to perform the work.
- C. *Location for Relocated Facilities.* The City shall provide NW Natural with a suitable location in existing right-of-way for all facilities required to be relocated.

8. City Public Works and Improvements

Nothing in this agreement shall be construed in any way to prevent the City from excavating, grading, paving, planking, repairing, widening, altering, or doing any work that may be needed or convenient in any right of way. The City shall coordinate any such work with NW Natural to avoid, to the extent reasonably foreseeable, any obstruction, injury or restrictions on the use of any of NW Natural's facilities.

9. **Payment by NW Natural for Use of Rights of Way**

- A. In consideration for its use of rights of way and for the City's administration of the rights of way, NW Natural agrees to pay City a franchise fee of five percent of the gross revenue received by NW Natural from customers for natural gas consumed within the City. The fee shall be paid semi-annually for the preceding six month period. To the extent permissible under state law and regulation, the franchise fee imposed by this subsection shall be considered an operating expense of NW Natural and shall not be itemized or billed separately to consumers within the City.
- B. NW Natural shall pay the franchise fee to the City Finance Director for the period from July 1 through December 31 of each year on or before April 1 of the following year. NW Natural shall pay the franchise fee for the period from January 1 through June 30 of each year on or before October 31 of the same year. Interest on late payments shall accrue from the due date at a rate equal to the prime rate of interest as established by the Bank of America or its successor, and shall be computed based on the actual number of days elapsed from the due date until payment. Interest shall accrue without regard to whether the City has provided notice of delinquency. However, should payment be insufficient due to an error in computation, interest payments shall not begin to accrue until 10 days after the discovery of the error by NW Natural or receipt by NW Natural of notice of the error.
- C. With its payments, NW Natural shall provide the City a statement under oath showing NW Natural's gross revenue for the period for which the payment is made.
- D. The City may audit NW Natural at any time while this agreement is in effect to determine the accuracy of the reporting of gross revenues. NW Natural shall make all records available to the City and any auditor retained by the City on demand. Any such audit shall be at City's expense unless the audit reveals an underpayment of one percent in any one year, in which case NW Natural shall reimburse the City for the costs of the audit.
- E. In consideration of NW Natural's agreement to pay the franchise fee, the City agrees that it will not impose any additional license fee, tax, or charge on the business of NW Natural while this agreement is in effect, but this provision shall not exempt the property of NW Natural from lawful ad valorem property taxes. This provision shall be void and have no effect if NW Natural fails to or refuses to pay the franchise fee or if the franchise fee is held to be invalid or void for any reason.
- F. The obligation to pay the franchise fee imposed by Subsection A of this Section shall

survive expiration of this agreement. In the event this agreement is terminated before expiration, NW Natural shall pay City the franchise fee based on gross revenue through the date of termination within 60 days of the termination date.

10. Vacation of Right of Way

Whenever the City vacates any right of way for the convenience or benefit of any person or government agency or instrumentality, NW Natural's rights under this agreement shall be preserved as to any of its facilities then existing in the right-of-way if reasonably practicable. To the extent NW Natural's rights in the right of way cannot be preserved, City shall attempt to provide an acceptable alternative right of way for the location of NW Natural's facilities. If the City is unable to provide an acceptable alternative location, NW Natural may be responsible for purchasing an easement for its use outside existing City right of way. If NW Natural's facilities must be relocated from a vacated right of way, the petitioners of such vacation, unless in support of a public project, shall bear the costs of relocating the facilities. Upon receipt of a notice of a petition for vacation, NW Natural shall as soon as practicable investigate and advise the City and petitioners in writing whether the facilities must be relocated, the estimated costs of relocation and the time needed for this relocation.

11. City's Right to Use NW Natural Facilities

NW Natural shall permit City, without charge, to run wires or place equipment in NW Natural trenches for municipal purposes. The City shall indemnify and hold NW Natural harmless from loss or damage resulting from the City's wires and equipment.

12. Scope of Right Granted

This agreement grants NW Natural the right to place gas transmission facilities and related facilities in the right of way and to operate those facilities. It does not give NW Natural the right to place other resources or facilities in the right of way.

13. Termination

- A. *By City.* The City may terminate this agreement upon one year's written notice to NW Natural in the event that the City decides to provide natural gas to customers throughout the City.
- B. *By City for Nonpayment.* City may terminate this agreement and NW Natural's franchise if NW Natural fails to pay the franchise fee. The City shall provide 30 days' notice of termination prior to any termination for non-payment. The agreement shall not be terminated if NW Natural pays the full amount, including interest, within 30 days of the notice.

- C. *By City for Cause.* If NW Natural ceases to maintain its facilities and the lack of maintenance increases the risk of personal injury or property damage, the City may terminate this agreement by providing NW Natural 30 days' notice of termination. The agreement shall not be terminated if NW Natural restores its facilities to the satisfaction of the City within 30 days of the notice.

14. Sale of Franchise

NW Natural shall not sell or assign this franchise to an entity that is not authorized by the Oregon Public Utilities Commission to provide service as a natural gas utility in the City.

15. Removal of Facilities

If this agreement is terminated or expires on its own terms and is not replaced by a new franchise agreement or similar authorization, NW Natural shall remove the facilities pursuant to ORS 221.470, provided, however, that NW Natural and City may agree in writing to some other disposition of the facilities.

16. Nondiscrimination

NW Natural shall provide service to natural gas consumers in the City without discrimination or undue preference or disadvantage.

17. Hold Harmless

NW Natural shall indemnify and hold harmless the City, its public officials and employees against any and all claims, damages, costs and expenses to which they may be subjected as a result of any action by NW Natural under this agreement or otherwise arising from the rights and privileges granted by this agreement. This indemnity does not extend to claims that arise primarily from the City's own negligence or fault.

18. Notice

Any notice under or relating to this agreement shall be sent by first class mail or delivered by hand to the following addresses:

IF TO CITY:

City Manager
Milwaukie City Hall
10722 SE Main Street
Milwaukie, OR 97222

IF TO NW NATURAL:

NW Natural Gas Company
220 NW Second Avenue
Portland, Oregon 97209
Attn: Franchise Manager

19. Effect of Invalidity of a Portion of this Agreement

If any section, subsection, sentence, clause, phrase, or other portion of this ordinance is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, all portions of the agreement that are not held to be invalid or unconstitutional shall remain in effect until the contract is terminated or expired. After any declaration of invalidity or unconstitutionality of a portion of this agreement, either party may demand that the other party meet to discuss amending the agreement to adjust the relationship of the parties to conform to their original intent in entering into this agreement. If the parties are unable to agree on a revised franchise agreement within 90 days after a portion of the agreement is found to be invalid or unconstitutional, either party may terminate the agreement on 180 days' notice to the other party.

20. Third-Party Beneficiaries

Nothing in this agreement shall be construed or applied to create rights in or grant remedies to any third party as a beneficiary of this agreement or any duty or obligation established in this agreement.

21. Representations and Warranties

Each of the parties to this agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.


22. Definitions

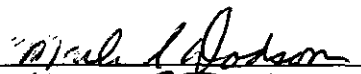
- A. "Facility" includes any poles, wires, fixtures, equipment, conduit, circuits, and other property necessary or convenient to the supply of natural gas owned or operated by NW Natural within the City.
- B. "Right of way" means any right of way or public utility easement within the City and under City ownership, control or administration. "Right of way" does not include any state highway or county road.
- C. "Install" means to erect, construct, build or place.

- D. "Gross revenue" includes any and all revenue earned by NW Natural within the City from the sale of natural gas after adjustment for the net write-off of uncollectible accounts. Gross revenue shall also include revenue from the use, rental or lease of NW Natural's operating facilities other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgages, or other evidence of indebtedness, securities, or stocks, sales at wholesale to a public utility when the utility purchasing the service is not the ultimate consumer, or revenue paid directly by the United States of America or any of its agencies.

CITY OF MILWAUKIE

NW NATURAL GAS COMPANY


By: James M. Bernaro
Title: Mayor
Dated: 11-18-2002


By: Mark S. Dodson
Title: President and CEO
Dated: 11-22-02

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MILWAUKIE CITY COUNCIL
AGENDA ITEM SUMMARY

Agenda Item: **RS 6. B.**

Meeting Date: **1/21/14**

Title: **Personal Services Agreement for City Prosecutor Legal Services**

Prepared By: Casey Camors, Finance Director

Department Approval: Casey Camors

City Manager Approval: Bill Monahan, City Manager

Approval Date: January 13, 2014

ISSUES BEFORE COUNCIL

Resolution directing staff to execute a personal services agreement with Rhett Bernstein, Attorney at Law, for City Prosecutor Services.

STAFF RECOMMENDATION

Execute a personal services agreement with Rhett Bernstein, Attorney at Law, for City Prosecutor Services.

KEY FACTS & INFORMATION SUMMARY

Mr. Bernstein has been the City of Milwaukie City Prosecutor for two years. The Finance Director requested evaluation information from Acting Police Chief Steve Bartol and Court Operations Supervisor Carla Bantz. Mr. Bernstein continues to be ranked highly. Minimal modifications were made to the agreement based on previous year's experiences:

1. Required insurance limits were reduced based on a low risk assessment and as approved by the City Risk Manager.
2. Monthly and semiannual case management reporting requirements were reduced to annual requirements.

OTHER ALTERNATIVES CONSIDERED

Perform a request for proposal process for City Prosecutor services.

CITY COUNCIL GOALS

N/A

FISCAL NOTES

Compensation for City Prosecutor services remains steady at \$45,000 per year.

ATTACHMENTS

1. Staff Report
2. Resolution
3. Personal Services Agreement



MILWAUKIE CITY COUNCIL
STAFF REPORT

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Personal Services Agreement for City Prosecutor
Legal Services**

From: Casey Camors, Finance Director

Date: January 13, 2014

ACTION REQUESTED

Adopt the resolution directing staff to execute a personal services agreement with Rhett Bernstein, Attorney at Law, for City Prosecutor Services.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

October 18, 2011 – City Council concurred with the City Manager’s proposal to review the City Prosecutor contract and consider options for better ways to manage that function. With this structure the hiring function would be with the City Council.

November 1 – December 1, 2011 – The City published a Request for Proposals for City Prosecutor and seventeen proposals were submitted for the position by the December 1 deadline.

December 6, 2011 – Five applicants were selected to advance to the next step of the process by a panel consisting of Councilors Hedges and Miller, Ted Naemura of Jordan Ramis, Police Chief Bob Jordan, Court Operations Supervisor Carla Bantz, and City Recorder Pat DuVal.

January 6, 2012 – An interview panel made up of Councilors Hedges and Miller, Police Chief Bob Jordan, Court Operations Supervisor Carla Bantz, Code Compliance Coordinator Tim Salyers, and City Recorder Pat DuVal interviewed the five applicants. The panel recommended Rhett Bernstein, Attorney at Law, to the City Council for Prosecutor Services.

January 17, 2012 – The City Council adopted Resolution 6-2012 directing staff to accept a proposal and negotiate a personal services agreement at a fixed price for the term of one year. The agreement expired January 31, 2013.

February 1, 2012 – The personal services agreement between Rhett Bernstein, Attorney at Law, and the City of Milwaukie was successfully negotiated.

February 19, 2013 – The second personal services agreement between Rhett Bernstein, Attorney at Law and the City of Milwaukie was successfully negotiated.

BACKGROUND

Mr. Bernstein and the City of Milwaukie successfully negotiated an agreement for Prosecutor Services through January 31, 2014. Earlier in the process, the City Recorder requested evaluation information from Police Chief Bob Jordan and Court Operations Supervisor Carla Bantz, and each ranked Mr. Bernstein highly for the accuracy of his legal consultation, legal representation, staff work, cost/fiscal accountability and control, responsiveness, and communication. A number of modifications were made to the agreement based on the previous year's experiences:

1. The annual flat fee was increased from \$42,000 to \$45,000;
2. The authorization procedure for services performed outside the scope of work was clarified;
3. Reference to deferred sentencing in the scope of work was deleted as that will be managed internally; and
4. The case assignment was amended to 75 from 40 – 50 to more accurately reflect the caseload.

Mr. Bernstein and the City of Milwaukie successfully negotiated an agreement for Prosecutor Services through January 31, 2015. The Finance Director requested evaluation information from Acting Police Chief Steve Bartol and Court Operations Supervisor Carla Bantz. Again, Mr. Bernstein was ranked highly. Minimal modifications were made to the agreement based on previous year's experiences:

1. Required insurance limits were reduced based on a low risk assessment and as approved by the City Risk Manager.
2. Monthly and semiannual case management reporting requirements were reduced to annual requirements.

FISCAL IMPACTS

Compensation for City Prosecutor services remains steady at \$45,000 per year.

WORK LOAD IMPACTS

None.

ALTERNATIVES

The City Council may wish to enter into the Agreement with Mr. Bernstein or decline and direct staff to begin a request for proposal process for City Prosecutor services.

ATTACHMENTS

1. Resolution
2. Personal Services Agreement

Attachment 1



CITY OF MILWAUKIE
"Dogwood City of the West"

Resolution No.

A resolution of the City Council of the City of Milwaukie, Oregon, directing staff to execute a Personal Service Agreement with Rhett Bernstein, Attorney at Law, for City Prosecutor Services

WHEREAS, the Municipal Court for the City of Milwaukie constitutes the City's judicial tribunal and hears cases arising under the Municipal Code, the Development Code, and the Oregon Vehicle Code; and

WHEREAS, the City Council approved a one year contract with Rhett Bernstein on February 1, 2012 as an option for better managing that function; and

WHEREAS, the City Council approved a second one year contract with Rhett Bernstein on February 19, 2013 based on satisfactory performance; and

WHEREAS, affected City staff evaluated the City Prosecutor's performance over the past year and found him qualified and capable of continuing to perform this professional service for the City of Milwaukie; and

WHEREAS, staff reviewed the previous agreements with Rhett Bernstein and found them to be sufficient; and

WHEREAS, work outside the scope of his prosecutorial duties will be evaluated on a case-by-case basis at an hourly rate;

Now, Therefore, be it Resolved that the City Council directs staff to enter into an agreement with Rhett Bernstein, Attorney at Law, for City Prosecutor Services at a fixed price for the term of one year.

Introduced and adopted by the City Council on _____.

This resolution is effective on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney



PERSONAL SERVICES AGREEMENT WITH THE CITY OF MILWAUKIE, OREGON FOR CITY PROSECUTOR SERVICES

THIS AGREEMENT made and entered into this 1st day of February, 2014 by and between the City of Milwaukie, a municipal corporation of the State of Oregon, hereinafter called City, and Rhett Bernstein, Attorney at Law, hereinafter called Contractor.

RECITALS

WHEREAS City has need for the services of a person or an entity with particular training, ability, knowledge, and experience as possessed by Contractor, and

WHEREAS City has determined that Contractor is qualified and capable of performing the professional services as City does hereinafter require, under those terms and conditions set forth,

THEREFORE the Parties agree as follows:

1. SERVICES TO BE PROVIDED

Contractor shall provide services as specified in the Scope of Work and Performance Expectations, a copy of which is attached hereto, labeled Exhibit A and hereby incorporated by reference. Contractor shall initiate services immediately upon receipt of City's notice to proceed, together with an executed copy of this Agreement.

2. EFFECTIVE DATE AND DURATION

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, by January 31, 2015. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. COMPENSATION

City agrees to pay Contractor not to exceed a flat fee of three thousand seven hundred fifty dollars (\$3,750.00) on a net-30 day basis for one year, for a total annual flat fee of \$45,000. The Contractor will provide such services for one year and that the contract between the City of Milwaukie and Contractor will be reviewed after conclusion of the year. The Contractor will bill the City of Milwaukie for *de novo* trials on a flat fee of \$300 per *de novo* trial. For services not described in the Scope of Work provision, monthly the Contractor will bill the City of Milwaukie on an hourly basis of \$125 per hour on a net-30 day basis for performance of those services described in the Scope of Work, which payment shall be based upon the following applicable terms:

- A. Payment by City to Contractor for performance of services under this Agreement includes all expenses incurred by Contractor, with the exception of expenses, if any identified in this Agreement as separately reimbursable.
- B. Payment will be made in installments based on Contractor's invoice, subject to the approval of the City Manager, or designee, and not more frequently than monthly. Payment shall be made only for work actually completed as of the date of invoice.

- C. Payment by City shall release City from any further obligation for payment to Contractor, for services performed or expenses incurred as of the date of the invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.
- D. Where applicable, Contractor must make payment promptly as due to persons supplying Contractor labor or materials for the execution of the work provided by this order. Contractor must pay all contributions or amounts due from Contractor to the Industrial Accident Fund incurred in the performance of this order. Contractor shall not permit any lien or claim to be filed or prosecuted against City or any subdivision of City on account of any labor or material to be furnished. Contractor further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- E. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person as such claim becomes due, City's Finance Director may pay such claim and charge the amount of the payment against funds due or to become due the Contractor. The payment of the claim in this manner shall not relieve Contractor or their surety from obligation with respect to any unpaid claims.
- F. If labor is performed under this order, then no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, or emergency or where the public policy absolutely requires it, and in such cases, except cases of contracts for personal services as defined in ORS 279A.055, the labor shall be paid at least time and a half for all overtime in excess of eight (8) hours a day and for all work performed on Saturday and on any legal holidays as specified in ORS 279B.020. In cases of contracts for personal services as defined in ORS 279A.055, any labor shall be paid at least time and a half for all hours worked in excess of forty (40) hours in any one week, except for those individuals excluded under ORS 653.010 to 653.260 or under 29 USC SS 201-209.
- G. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Contractor or all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- H. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.
- I. Payment by City to Contractor for performance of services under this Agreement outlined above is earned when paid and is not deposited in the Contractor's trust account. The City's tender of funds vests interest in the funds to the Contractor immediately on deposit. Payment by City to Contractor for performance of services under this Agreement will not be deposited into the Contractor's trust account and the deposit of the payment by City to the Contractor for performance of services under this Agreement means that the funds are the sole property of the Contractor. If the City otherwise becomes dissatisfied and discharges the Contractor from further performance of services under this Agreement, the City may be entitled to a refund of all or part of the fee if the services under this Agreement for which payment was made are not completed by Contractor.

4. OWNERSHIP OF WORK PRODUCT

City shall be the owner of and shall be entitled to possession of any and all work products of Contractor which result from this Agreement, including any computations, plans, correspondence or 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.

5. 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 subcontract, 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.

6. STATUS OF CITY PROSECUTOR AS INDEPENDENT LEGAL COUNSEL

Contractor certifies that:

- A. 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. 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, or 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.
- B. The undersigned Contractor hereby represents that no employee of the City, 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 Agreement, except as specifically declared in writing.

If this payment is to be charged against Federal funds, Contractor certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his or her 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 are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

- C. Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- D. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.
- E. City requires that attorney services be provided without conflict by the attorney's representation of clients on matters contrary to City's legal interests. Thus, Contractor shall not engage services of other attorneys or other professionals who individually, or through members of a firm, represent one or more clients on matters contrary to City's interests.

Should Contractor, or a professional he or she has engaged, represent a client in a matter contrary to City's legal interests, Contractor shall promptly consult with the Finance Director or other designated official about the conflict. Contractor shall resolve the conflict to City's satisfaction

within seven (7) days of consulting with the City official. Unresolved conflicts are grounds for termination of this agreement.

7. 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 the City, its officers, agents, employees and volunteers 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 to the extent that the liability arises out of the sole negligence of the City and its employees. Such indemnification shall also cover claims brought against the City under state or federal workers’ 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.

8. INSURANCE

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all activities of the contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier. Such insurance shall be primary and non-contributory.

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

A. Commercial General Liability Insurance

Contractor shall obtain, at contractor’s expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an “occurrence” form. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

Coverage	Limit
General Aggregate	\$1,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one fire)	500,000
Medical Expense (Any one person)	5,000

B. Professional Liability Insurance

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per occurrence shall not be less than \$1,000,000.

Annual aggregate limit shall not be less than \$1,000,000. Coverage procured through the Oregon State Bar Professional Liability Fund shall be sufficient to comply with this section.

C. Additional Insured Provision

The Commercial General Liability Insurance and other policies the City deems necessary shall include the City, its officers, directors, employees and volunteers as additional insureds with respect to this contract.

D. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days' notice of cancellation to the City.

E. Insurance Carrier Rating

Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

F. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Contractor shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

Certificates of Insurance should read "Insurance certificate pertaining to contract for City Prosecutor Services. The City of Milwaukie, its officers, directors and employees shall be added as additional insureds with respects to this contract." A notation stating that "Insured coverage is primary" shall appear in the description portion of certificate.

G. Independent Contractor Status

The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.

H. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

I. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in the general liability policy.

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:

City of Milwaukie
 Attn: Finance
 10722 SE Main Street
 Milwaukie, Oregon 97222

Business Phone: 503-786-7555
 Business Fax: 503-653-2444
 Email Address: finance@milwaukieoregon.gov

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.

9. METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail, email or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

City	Contractor
City of Milwaukie	Company: Rhett Bernstein, Attorney at Law
Attn: Accounts Payable	Attn: Rhett Bernstein
10722 SE Main Street	Address: 1785 Willamette Falls Dr., Suite 4
Milwaukie, Oregon 97222	West Linn, OR 97068
Phone: 503-786-7523	Phone: 503-723-5566
Fax: 503-786-7528	Fax: 503-722-4549
Email Address: tuckerk@milwaukieoregon.gov	Email Address: rlbernst@gmail.com

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

10. 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.

11. TERMINATION WITHOUT CAUSE

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

Contractor may terminate this agreement at any time and without cause, by giving notice to City. If Contractor terminates this agreement, contractor shall observe Oregon State Bar Rule of Professional Conduct 1.16 in its entirety, with particular attention to not causing material adverse effect on City’s interests, informing all pertinent courts of law about any withdrawals from representation.

Contractor shall transfer custody of all files to the City upon termination of this agreement, whether for cause or for no cause.

12. TERMINATION WITH CAUSE

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:

- 1) 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.
- 2) 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.
- 3) 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.
- 4) 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:

- 1) If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) 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.

13. 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.

14. 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, 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 disabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause 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.

15. NON-WAIVER

The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement 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.

16. 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 659A.142, and all regulations and administrative rules established pursuant to those laws.

17. 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.

18. EXTRA (CHANGES) WORK

Only the Finance Director, Casey Camors, may authorize extra (and/or change) work. Failure of Contractor to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.

19. WARRANTIES

All work shall be guaranteed by Contractor for a period of one year after the date of final acceptance of the work by the owner. Contractor warrants that all practices and procedures, workmanship and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve Contractor from liability under warranties contained in or implied by this Agreement.

20. 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.

21. GOVERNING LAW

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

22. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapters 279A and 279B, the provisions of which are hereby made a part of this agreement.

23. 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.

24. AUDIT

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, 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.

25. 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 validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

26. 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 OF MILWAUKIE

CONTRACTOR

Signature

Signature

William Monahan, City Manager

Printed Name & Title

Printed Name & Title

Contract No. _____

Date

Date

EXHIBIT A

SCOPE OF WORK (SERVICES TO BE PROVIDED)

- Manage approximately 75 cases assigned by the Municipal Court that include, but are not limited to: vehicle code, building code, development code, and municipal code violations.
- Attend court session one day per month to conduct attorney-represented trials.
- Respond to discovery requests and pretrial motions, developing and utilizing, as much as possible, a form bank.
- Maintain record of cases managed by Contractor and report annually on December 31st to the Finance Director those cases actively managed in the past year.
- Consult with Finance Director and Court Clerk to discuss statistical information, such as number of cases handled, outcomes, or time spent on cases. Be prepared to draft one three-page report annually by December 31st with content and format at direction of Finance Director.
- Answer case questions from client (usually from court staff and police department).
- Conduct trials *de novo* in cases where defendants take an appeal from municipal court to the state courts.

PERFORMANCE EXPECTATIONS NOT IDENTIFIED ELSEWHERE IN THIS SCOPE OF WORK

- **Attendance and dependability:** Contractor will report to court at scheduled times; will return phone calls and emails within 24 hours; will work conscientiously, accurately, and thoroughly.
- **Proper attire:** Contractor will observe Uniform Trial Court Rule 3.010 and wear court-appropriate attire during all appearances in Municipal Court and any non-appearance work task that may take place on City of Milwaukie government premises.
- **Preparation:** Contractor will interview and subpoena all necessary witnesses; conduct pretrial negotiation and site visits, where necessary; prepare exhibits; and conduct any necessary legal research and drafting. Documents needing court signature will be prepared in advance whenever possible.
- **Communication:** Contractor must create professional written correspondence and keep file copies of correspondence, either in paper or electronic format.
- **Oregon State Bar Statement of Professionalism:** Contractor is expected to abide by the Statement of Professionalism adopted by the Bar, available at this link and incorporated by reference: http://www.osbar.org/_docs/forms/Prof-ord.pdf