



**Special Session**

**SPS**

**Milwaukie City Council**



## MINUTES

MILWAUKIE CITY COUNCIL  
www.milwaukieoregon.gov

## SPECIAL SESSION

FEBRUARY 25, 2014  
City Hall Council Chambers

**Mayor Ferguson** called the special session to order at 4:09 p.m.

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

**Excused:** Councilor Scott Churchill

**Staff Present:** City Manager Bill Monahan, City Recorder Pat DuVal, City Attorney Dan Olsen, Community Development Director Steve Butler, and Planning Director Denny Egner

### Intergovernmental Agreement with Clackamas County Service District #1 Regarding an Easement for Riverfront Park

**Mr. Butler** provided introductory comments on the intergovernmental agreement (IGA) related to a Riverfront Park easement that had been under consideration for some time. Following this agreement, the City would need to work out access over the Trolley Trail with the North Clackamas Parks and Recreation District (NCPRD).

**Mr. Olsen** highlighted several elements of the agreement that included compensation and withdrawal of the County's objection to the permit application. The easement purchase price was \$63,200, and the agreement divided that amount into three equal annual payments beginning March 2014.

**Councilor Gamba** referred to section 4 of the IGA regarding the , Park Bridge and asked who would be responsible for repairs if the Bridge were damaged by an unknown party.

**Mr. Olsen** replied if the damage was a result of Clackamas County Service District #1 (CCSD#1) activities, the District would be responsible for repairs. If the Bridge was damaged by the City or users of the Park, then the City would pay for the repairs. Hit and run damage would have to be negotiated between the City and District.

**Gary Klein**, Milwaukie resident, looked forward to resolution of the easement issue. Although he was disappointed in the County's position, the easement cost was less than the original amount. He looked forward to moving ahead on the Park project.

**Mayor Ferguson** said staff and the legal team had worked hard to put this package together so the County would withdraw its letter of objection. He was pleased the City and County were finally reaching a resolution and keeping the cost down as much as possible.

**It was moved by Council President Hedges and seconded by Councilor Miller to approve the Resolution authorizing the City Manager to sign an intergovernmental agreement with Clackamas County Service District No. 1. Motion passed with the following vote: Councilors Hedges, Gamba, and Miller and Mayor Ferguson voting "aye." [4:0]**

**RESOLUTION NO. 15-2014:****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN AN INTERGOVERNMENTAL AGREEMENT WITH CLACKAMAS COUNTY SERVICE DISTRICT NO. 1****Establishing a New Milwaukie Municipal Code Chapter 5.50 Relating to Medical Marijuana Facilities – Ordinance**

**Mr. Egner** discussed actions by the legislature setting up standards and clarifying regulations for locations of medical marijuana facilities. The current legislature was working on clarifying those regulations.

**Mr. Olsen** said the proposed ordinance was part of the regulatory code that would temporarily prohibit the siting of medical marijuana facilities in the City of Milwaukie. By adopting this temporary prohibition the City Council will have additional time to consider zoning or other regulations. The Council could repeal the Ordinance prior to the December 31, 2014, sunset date.

**Richard, David, and Nancy Settje**, Milwaukie, discussed the benefits of siting medical marijuana facilities in Milwaukie where people with cards can spend their money locally. They wanted to be part of the community and have a good image. A facility would boost the community, and the City could use the money where it wished. Insurance, security, growing cannabis, transport, construction, and testing for compliance were just some of the businesses that would benefit. It was shaping up to be an enormous business in Colorado and Washington. Taxes could go into school construction with additional funds for things like road construction. Cities can impose fees to collect revenues, and there were many people with health issues that could benefit from the use of medical marijuana.

**Mayor Ferguson** said the Ordinance being proposed tonight was temporary, and the City could not ban or regulate facilities at this point until the legislature takes action. He reiterated this was a temporary measure and gave staff time to move through the proper channels.

**Councilor Miller** concurred with Mayor Ferguson's comments.

**Councilor Gamba** added these types of Ordinances gave jurisdictions until the end of the year in the event marijuana was fully legalized at the November election.

**Council President Hedges** appreciated the comments on the complexity of the industry. He understood the medical aspects, and he did not want to see the facilities pushed into the back streets rather than being with other retail businesses. He thought the delay was reasonable in order to seek a balance.

**It was moved by Council President Hedges and seconded by Councilor Miller for the first reading by title only of the Ordinance relating to medical marijuana facilities; establishing new code chapter 5.50; and declaring an emergency. Motion passed with the following vote: Councilors Hedges, Gamba, and Miller and Mayor Ferguson voting "aye." [4:0]**

**Mr. Monahan** read the ordinance for the first time by title only.

**It was moved by Councilor Gamba and seconded by Council President Hedges for the second reading in its entirety and adoption of the Ordinance relating to medical marijuana facilities; establishing new code chapter 5.50; and declaring an emergency. Motion passed with the following vote: Councilors Hedges, Gamba, and Miller and Mayor Ferguson voting "aye." [4:0]**

**Mr. Monahan** read the ordinance in its entirety.

**Ms. DuVal** polled the Council. Council President Hedges and Councilors Gamba and Miller and Mayor Ferguson voting "aye." [4:0]

**ORDINANCE NO. 2076:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, RELATING TO MEDICAL MARIJUANA FACILITIES; ESTABLISHING NEW CODE CHAPTER 5.50; AND DECLARING AN EMERGENCY.**

**Mr. Monahan** announced the upcoming tour of the City's water facilities.

**Adjournment**

**It was moved by Councilor Gamba and seconded by Council President Hedges to adjourn the special session. Motion passed with the following vote: Councilors Hedges, Gamba, and Miller and Mayor Ferguson voting "aye." [4:0]**

**Mayor Ferguson** adjourned the meeting at 4:56 p. m.

Respectfully submitted,



Pat DuVal, Recorder



## MILWAUKIE CITY COUNCIL

Office of the City Recorder  
10722 SE Main Street  
P) 503-786-7502  
F) 503-653-2444  
ocr@milwaukieoregon.gov

## Speaker Registration

The City of Milwaukie encourages all citizens to express their views to their elected city leaders in a **respectful** and **appropriate** manner. If you wish to speak before the City Council, fill out this card and hand it to the City Recorder.

Name: *Richard/David/Nancy Setzer* Organization: *Top Hat Express professional Cannabis Facility*  
Address: *Milwaukie* Phone: [Redacted]  
Email: [Redacted]

Meeting Date: *2/25/14*

### Topic to Discuss:

Agenda Item You Wish to Speak to:

- #4 Audience Participation
- #5 Public Hearing
- #6 Other Business

You are Speaking...

- in Support
- in Opposition
- from a Neutral Position
- to ask a Question

Comments: *Would like us to be the "Test" subjects for city of Milwaukie - see how it goes for you*

**Stauffer, Scott**

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**From:** DuVal, Pat  
**Sent:** Tuesday, February 25, 2014 1:24 PM  
**To:** Stauffer, Scott  
**Subject:** FW: City Council Special Session, 2/25/14 @ 4:00 p.m.

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**From:** Butler, Stephen  
**Sent:** Tuesday, February 25, 2014 1:12 PM  
**To:** 'staceymike@comcast.net'; Dave Green1  
**Cc:** k1ein23@comcast.net; roger@groupmojo.com; sherridow@co.clackamas.or.us; rhph33@comcast.net; Marston, Blanca; DuVal, Pat; Monahan, Bill  
**Subject:** RE: City Council Special Session, 2/25/14 @ 4:00 p.m.

Hi Mike,

I will ask that the City Recorder pass your message on to the City Council. Thanks.

Steve Butler, FAICP  
Community Development Director

City of Milwaukie  
6101 Johnson Creek Boulevard | Milwaukie, OR 97206  
T 503-786-7652 | C 503-710-2187  
Community Development 503-786-7600

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**From:** [staceymike@comcast.net](mailto:staceymike@comcast.net) [<mailto:staceymike@comcast.net>]  
**Sent:** Tuesday, February 25, 2014 12:46 PM  
**To:** Dave Green1  
**Cc:** [k1ein23@comcast.net](mailto:k1ein23@comcast.net); [roger@groupmojo.com](mailto:roger@groupmojo.com); [sherridow@co.clackamas.or.us](mailto:sherridow@co.clackamas.or.us); [rhph33@comcast.net](mailto:rhph33@comcast.net); Marston, Blanca; Butler, Stephen  
**Subject:** Re: City Council Special Session, 2/25/14 @ 4:00 p.m.

I won't be able to make the 4:00pm meeting, and agree with everything Mr. Green stated below

---

**From:** "Dave Green1" <[Dave.Green1@ch2m.com](mailto:Dave.Green1@ch2m.com)>  
**To:** [MarstonB@milwaukieoregon.gov](mailto:MarstonB@milwaukieoregon.gov), [ButlerS@milwaukieoregon.gov](mailto:ButlerS@milwaukieoregon.gov)  
**Cc:** [k1ein23@comcast.net](mailto:k1ein23@comcast.net), [staceymike@comcast.net](mailto:staceymike@comcast.net), [roger@groupmojo.com](mailto:roger@groupmojo.com), [sherridow@co.clackamas.or.us](mailto:sherridow@co.clackamas.or.us), [rhph33@comcast.net](mailto:rhph33@comcast.net)  
**Sent:** Tuesday, February 25, 2014 9:43:05 AM  
**Subject:** RE: City Council Special Session, 2/25/14 @ 4:00 p.m.

Steve, please forward this message on to the City Council:

I am working out of town today, so I won't be able to attend the City Council Special Session tonight, but I strongly support the City of Milwaukie entering into the Intergovernmental agreement with Clackamas Service District No. 1. This

easement is a critical element for the progress and construction of Milwaukie's Riverfront Park, with grants and funding hinging on the resolution of this issue.

I urge the City Council to move forward with approving the Intergovernmental Agreement, allowing the necessary permits to be obtained for construction of the park.

Thanks for your consideration,  
Dave Green/Riverfront Task Force

---

**From:** Marston, Blanca [<mailto:MarstonB@milwaukieoregon.gov>]  
**Sent:** Monday, February 24, 2014 11:35 AM  
**To:** Green, Dave/PDX; Gary Klein ([k1ein23@comcast.net](mailto:k1ein23@comcast.net)); Mike Stacey ([staceymike@comcast.net](mailto:staceymike@comcast.net)); Roger Thompson ([roger@groupmojo.com](mailto:roger@groupmojo.com)); Sherri Dow ([sherridow@co.clackamas.or.us](mailto:sherridow@co.clackamas.or.us)); Bob Cooper ([bobcooper@gmail.com](mailto:bobcooper@gmail.com)); Christie Schaeffer ([christie@schaeffers.org](mailto:christie@schaeffers.org)); Lisa Gunion-Rinker ([lisa.gunion-rinker@bayer.com](mailto:lisa.gunion-rinker@bayer.com)); Lisa Lashbrook ([lialashbrook@gmail.com](mailto:lialashbrook@gmail.com)); Lynn Sharp ([lynn-sharp@comcast.net](mailto:lynn-sharp@comcast.net)); Mart Hughes ([carex@solidnet.com](mailto:carex@solidnet.com)); Ray Harris ([rhph33@comcast.net](mailto:rhph33@comcast.net))  
**Cc:** Butler, Stephen  
**Subject:** City Council Special Session, 2/25/14 @ 4:00 p.m.  
**Importance:** High

Greetings,

The City Council is having a Special Session tomorrow, February 25, at 4:00 p.m. The first item in the agenda is to discuss an Intergovernmental Agreement with Clackamas County Service District #1 Regarding an Easement for Riverfront Park.

You can find the City Council E-Packet at the following link: <http://www.milwaukieoregon.gov/citycouncil/city-council-special-session-5>

Regards,

Blanca Marston  
Administrative Specialist II

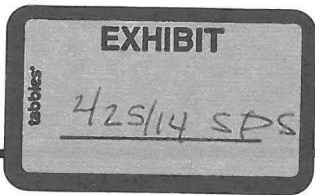
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## Moving Forward Milwaukie City Council Study Session #4

Moving Forward Milwaukie • February 20, 2014

### Presentation Overview


1. Project Goals
2. Lessons Learned – Quick Recap
3. How to Get Things Moving Forward
4. Public Investment – Benefits and Risks
5. Developer Perspective
6. Available Public Investment Tools
7. Discussion



### Project Goals

Why are we doing this?


- The goal of this project is **implementation**
- Make sure our commercial areas look and function the way our community wants them to
  - “Vibrant and amenity-rich downtown”
  - “Murphy & McFarland developed in a thoughtful manner”
- Take steps to have our commercial areas live up to their potential
- Make sure we have the right development standards in place to encourage new development



### Lessons Learned

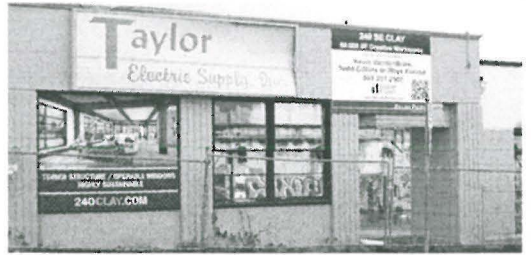

Quick Recap

- Downtown development code is not a significant barrier
  - Development Standards – min/max height; off-street parking
  - Use Standards – requirements/limitations on ground floor commercial
- Central Milwaukie code is a significant barrier
  - No uses permitted by right
- Negative cash flow situation (costs greater than revenues)
- Infrastructure costs are significant – PARs and frontage improvements



### How to Get Things Moving Forward


Transforming Real Estate Markets

### How to Get Things Moving Forward

Committed Leadership


- Public Leadership
  - Elected leaders who secure community vision
  - Pro-active, skilled staff
- Private Leadership
  - Property owners able/willing to put sites into play
  - Developers interested in untested market



### How to Get Things Moving Forward


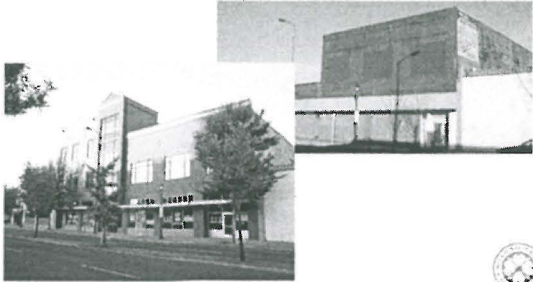
Strategic, Phased Approach

- Achieving desired transformation requires patience and long-term commitment
  - Martin Luther King Jr. Boulevard
  - Downtown Eugene
  - Cascade Station




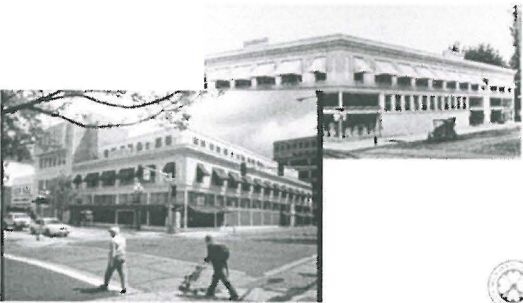
### How to Get Things Moving Forward

Case Study: Strategic, phased approach – MLK Blvd





### How to Get Things Moving Forward

Case Study: Strategic, phased approach – Eugene Downtown Athletic Club



### How to Get Things Moving Forward


Case Study: Strategic, phased approach – Cascade Station



### How to Get Things Moving Forward



Catalyst Projects

- Catalyst projects come in various sizes, uses (and one project is not always the game changer)
  - Alberta St small scale adaptive re-uses
  - Vanport Square on MLK
  - Eugene Downtown adaptive reuse of Penny's Building



### How to Get Things Moving Forward

Case Study: Catalyst Project – Alberta Street Adaptive Reuse




### How to Get Things Moving Forward

Case Study: Catalyst Project – Vanport Square




### How to Get Things Moving Forward

Case Study: Strategic, phased approach – Downtown Eugene




Adaptive reuse of former Penny's building into Broadway Commerce Center – stimulated new development and adaptive reuse across street into restaurant row



### How to Get Things Moving Forward


Case Study: Strategic, phased approach – Downtown Eugene cont'd



### How to Get Things Moving Forward



Potential Impacts of Light Rail

- Successful examples in the Portland region
  - Hillsboro – Orenco Station
  - Kenton – Posie's Cafe
  - Halo impacts on Mississippi Blvd





### How to Get Things Moving Forward

Case Study: Light Rail – Orenco Station





### How to Get Things Moving Forward

Case Study: Light Rail - Kenton





### How to Get Things Moving Forward

Case Study: Light Rail – Halo Effect on Mississippi Ave

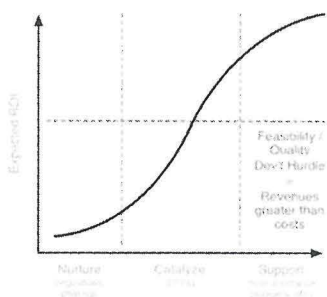




### Public Investment: Benefits & Risks

### Public Investment: Benefits & Risks


Framework for Public Investment

### Public Investment: Benefits & Risks

What are Public Investments?


- Policy Changes: Land use and development codes geared to implement the City vision
- Infrastructure improvements: Parks, streetscapes, light rail, parking
- Direct Investment: Site acquisition, facades, rehab



### Public Investment: Benefits & Risks

Risks and Fears of Public Investment


- Project won't deliver on all its promises
- Catalytic impact won't be enough to jump start other development
- Perception that project is doable without public funds
- Scarce public resources
- Impact on tax payers



### Public Investment: Benefits & Risks



Benefits of Public Investment

- Provide publicly desired services and amenities
- Influence type, quality, timing of development
- Increase the tax base and revenues
- Retain existing residents, businesses and employees
- Attract new residents, businesses, employees and visitors
- Push the market: create new comps, demonstrating higher rents
- Enhance the image and perception of an area



### Public Investment: Benefits & Risks



Developer Perspective – Brad Malsin, Beam Development

### Available Public Investment Tools

Locally Controlled


1. SDCs & PARs/frontage improvements
2. Local Improvement Districts (LIDs)
3. Publicly-Owned Land Options
4. Urban Renewal (Tax Increment Financing/TIF)
5. Vertical & Multifamily Housing Vertical Tax Abatement

### Available Public Investment Tools

Locally Controlled – Code Revisions


- Revise codes to clarify more by-right development consistent with community vision
  - Portland: south waterfront, central east side
  - Oregon City: Willamette Falls
  - Hillsboro: downtown
  - Beaverton: downtown



### Available Public Investment Tools

Locally Controlled – SDCs & PARs/Frontage Improvements


- Financing: Gresham, Hillsboro
- Waivers: Molalla
- Sole Source: Bend, Portland



### Available Public Investment Tools

Locally Controlled – Local Improvement District (LID)


- Finance specific capital projects. Local jurisdictions issue tax exempt bonds, repaid through payments by affected property owners within the LID.
  - Portland: streetcar and tram
  - Eugene: public parking garage downtown



### Available Public Investment Tools

Locally Controlled - Publicly-Owned Land Options

- Write-downs
  - Eugene (Broadway Place mixed use development)
  - Portland (Pioneer Place, Museum Place, River Place)
  - Gresham (Crossings)
- Long-term land leases
  - Port of Portland (Cascade Station)
  - University of Oregon (Riverfront Research Park)
  - Lane County (Expansion of 5<sup>th</sup> Street Public Market)



### Available Public Investment Tools

Locally Controlled – Urban Renewal/Tax Increment Financing (TIF)


- Captures property tax growth from new development and appreciation
  - Salem (downtown)
  - Lake Oswego (downtown)
  - McMinnville (downtown)
  - Portland (downtown, Pearl District, Interstate)
- Property-specific “TIF Zones”
  - Wilsonville (vacant industrial properties)



### Available Public Investment Tools

Locally Controlled – Vertical & Multifamily Housing Tax Abatements


- Temporarily reduces or eliminates property tax for qualifying development for a fixed period of time.
  - North Main Village, Milwaukie
  - Royal Building, Springfield
  - Beranger Condominiums, Gresham
  - Third Central, Gresham
  - 4<sup>th</sup> & Main, Hillsboro (application stage)
  - Orenco Wrap, Hillsboro (application stage)



### Available Public Investment Tools


Other Funding Sources

- Metro Transit-Oriented Development (TOD) Program
- EB-5
- Low Income Housing Tax Credit (LIHTC)
- HUD Section 108 and 221d4
- Industrial Development Bonds



### Discussion


- How does the Council define “success” for new development in Milwaukie?
- What role should the City play in facilitating private development?
  - Direct investment vs sit back and hope the market provides the type of development the public wants?
- What types of projects are worth investing in, and with what tools?
- How can we realize the benefits of public investment and mitigate our risks and fears?



### Available Public Investment Tools

Other Funding Sources – Metro TOD Program


- Grants to stimulate construction of higher-density and mixed-use projects near transit.
  - Hillsboro Central, Hillsboro
  - The Crossings, Gresham
  - Westgate, Beaverton
  - Prescott Apartments, Portland



### Available Public Investment Tools

Other Funding Sources – EB-5

- Investment by foreigners in new commercial enterprises that will create new jobs for US citizens.
  - Residence Inn by Marriott in Pearl District
  - Apartment development in Beaverton
  - Senior housing in Newport



### Available Public Investment Tools



Other Funding Sources – Low Income Housing Tax Credit (LIHTC)

- Provides tax credits for acquisition, rehabilitation, new construction of rental housing targeted to lower-income or workforce households.
  - 20% of units for residents with <50% median income or 40% of units for residents with <60% or median income
  - Note that 60% of median income is essentially market rate in Milwaukee
- Successful examples in the Portland region:
  - Sitka and Ramona in Pearl
  - Gray's Landing, South Waterfront
  - Patton Park Apartments, Overlook
  - Ritzdorf Apartments, SE Portland



### Available Public Investment Tools


Affordable and Work Force Housing Can Look Good!

### Available Public Investment Tools

Other Funding Sources - HUD Section 108 and 221d4


- HUD Section 108: Allows a community to borrow up to 5 times its annual CDBG allocation to offer developers low interest rate loans.
  - Salem: hotel/conference center
  - Eugene: Downtown Broadway Commerce Center
  - Gresham: Arts Plaza Children's Fountain
- HUD 221d4 Housing program: Reduced equity requirements (20%) for market-rate multifamily development.
  - Portland: Cathedral Apartments
  - Portland: Prescott Apartments



### Available Public Investment Tools


Other Funding Sources – Industrial Development Bonds

- Tax-exempt bonds issued by the state of Oregon that provide long-term financing for land, buildings and equipment for manufacturers.
- IDBs can provide up to 100% of project financing
- Projects must have eligible anchor tenant (cannot be speculative)
  - Breedlove Guitars - Bend



### Discussion


- How does the Council define "success" for new development in Milwaukee?
- What role should the City play in facilitating private development?
  - Direct investment vs sit back and hope the market provides the type of development the public wants?
- What types of projects are worth investing in, and with what tools?
- How can we realize the benefits of public investment and mitigate our risks and fears?



### Thank you for your input!

Next Steps

- Public Event #4 – March 6<sup>th</sup>
  - Review the lessons learned from the development concepts & receive additional feedback from the public.
- Public Advisory Committee Meeting #4 – March 31<sup>st</sup>
  - Review code and transportation challenges
  - Potential policy & regulatory changes
- Council Work Session – April 1<sup>st</sup> (tentative)
  - Present results of Public Event #4
  - Select concepts for detailed development concept
  - Discussion of which financial tools, if any, to pursue





MILWAUKIE CITY COUNCIL  
SPECIAL SESSION

Milwaukie City Hall  
Council Chambers  
10722 SE Main St  
www.milwaukieoregon.gov

**REVISED AGENDA**  
**FEBRUARY 25, 2014**

	<b>4:00 p.m.</b>	<b>Call to Order</b>		<b>Page #</b>
1.	<b>Intergovernmental Agreement with Clackamas County Service District #1 Regarding an Easement for Riverfront Park</b>		Community Development Director Steve Butler	<b>1</b>
2.	<b>Establishing a New Milwaukie Municipal Code Chapter 5.50 Relating to Medical Marijuana Facilities – Ordinance</b>		Community Development Director Steve Butler	<b>23</b>
3.	<b>Adjourn Special Session</b>			

**Information**

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

**Public Notice**

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



Agenda Item: Resolution/IGA

Meeting Date: 02-25-2014

## COUNCIL AGENDA ITEM SUMMARY

**Issue/Agenda Title:** Intergovernmental Agreement with Clackamas County Service District #1 regarding an Easement for Riverfront Park

**Prepared By:**  
Community Development  
City Attorney

**Dept. Head Approval:**  
Parks and Sustainability

**City Mgr. Approval:**

### ISSUE BEFORE THE COUNCIL

Shall Council authorize entry into an intergovernmental agreement (IGA) under which the City would acquire a 0.66-acre permanent easement for constructing Riverfront Park facilities?

### STAFF RECOMMENDATION

Staff recommend that City Council authorize the City Manager to enter into the agreement on behalf of the City.

### KEY FACTS & INFORMATION SUMMARY

The easement area to be acquired consists of a tract of land approximately 0.66 acre. The easement would allow the City to develop part of Riverfront Park on the land. The territory would remain part of the park in perpetuity, so long as the area was used for park uses.

### OTHER ALTERNATIVES CONSIDERED

While the subject territory has always been part of the Riverfront Park plan, it is possible to amend the plan to eliminate the subject area and associated access improvements.

### ATTACHMENT LIST

1. EXHIBIT A: STAFF REPORT.
2. EXHIBIT B: PROPOSED IGA
3. EXHIBIT C: EXHIBITS TO PROPOSED IGA
4. RESOLUTION

### FISCAL NOTES

Entering into this IGA will require the city to pay \$63,200.00 out of the general fund over 3 years. Interfund transfers are available to offset the impact on the general fund.



MILWAUKIE CITY COUNCIL  
STAFF REPORT

**To:** Mayor and City Council

**Through:** Bill Monahan, City Manager

**Subject:** **IGA with CCSD#1 for Riverfront Park**

**From:** Steve Butler, Community Development Director  
Dan Olsen, Assistant City Attorney

**Date:** February 24, 2014

**ACTION REQUESTED**

Staff request that Council examine the proposed IGA and authorize the City Manager to sign the agreement.

**BACKGROUND**

This revised staff report replaces the one issued on February 21, and reflects the most current status of the IGA.

As Council is aware, prime features of the proposed Riverfront Park development include the park's easily-accessible location, provisions for ample public parking, and special riverfront amenities such as a boat ramp and amphitheater.

The park development abuts property owned by Clackamas County Service District #1 ("CCSD#1"). An approximately 0.66 acre of underutilized property, within CCSD#1's ownership, would be valuable to the public if incorporated into the park.

Accordingly, this IGA facilitates development of park facilities on that property. To accomplish this, the IGA recites terms of agreement on important issues, and authorizes the two bodies to approve a permanent easement, from CCSD#1 to the City. The easement supplies the authority from CCSD#1 to construct improvements on the approximately 0.66-acre tract of land. The City still needs to obtain an easement over the "Trolley Trail" from the North Clackamas Parks and Recreation District.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

Technical staff and professional appraisers, for both the City and CCSD#1, identified and discussed the principal issues in a series of meetings and discussions between June 2013 and the present time.

Principal issues discussed include, but are not limited to, the following:

- Maintaining CCSD#1's access to the Kellogg Creek Wastewater Treatment Plant, principally from McLoughlin Avenue;

- Creating efficient circulation of park user vehicles, and CCSD#1 vehicles, on the easement area;
- Recent versions of the agreement required CCSD#1 to maintain public access to the area currently referred to as “Kellogg Park,” which wraps around the western side of the treatment plant and has a southern terminus at SE Eagle Street and the Island Station neighborhood. CCSD#1 has now objected to that language, although it indicates it has no plans to alter public access. Accordingly, the language requiring such access has been removed ; and
- Providing acceptable financial compensation to CCSD#1.

### **FISCAL IMPACTS**

The easement purchase price is \$63,200.00. The agreement divides the payment into three equal parts payable one part per year starting March 2014 and ending in March 2016. There is no prepayment penalty. The City may source the funds from the General Fund; there are sufficient balances available in other funds to support funding via interfund transfer.

### **WORK LOAD IMPACTS**

Riverfront Park’s existing project scope and schedule have included work necessary to improve the easement area for park uses. Thus, this IGA does not affect work load.

### **ALTERNATIVES**

Other options include:

- Foregoing construction of park improvements upon this 0.66 acre tract of land and associated improvement for public access.

### **ATTACHMENTS**

1. Draft IGA
2. Draft exhibits to the IGA
3. Resolution

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1  
AND  
THE CITY OF MILWAUKIE  
REGARDING ACCESS AND DEVELOPMENT  
NEAR KELLOGG CREEK PLANT

THIS INTERGOVERNMENTAL AGREEMENT REGARDING ACCESS AND DEVELOPMENT NEAR KELLOGG CREEK PLANT (this "Agreement") is effective as of the 28th day of February, 2014 (the "Effective Date") by and between Clackamas County Service District No. 1, a county service district ("CCSD#1") and the City of Milwaukie, an Oregon municipality ("City"), each also individually referred to as "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS, the Parties are authorized to enter into agreements regarding the provision of services to their residents, customers and service areas pursuant to their respective charter or principal acts and ORS 190.010; and

WHEREAS, the City owns and operates a public park located west of Highway 99E between Adams Street (on the south) and Harrison Street (to the north) ("Park"), and is finalizing plans for significant improvements to the Park ("Park Improvements"); and

WHEREAS, CCSD#1 owns and operates a sewage treatment facility ("Kellogg Plant") and land located south of and adjacent to the Park ("CCSD#1 Property"), together with an easement over the Park property which allows CCSD#1 to access Highway 99E pursuant to the easement accepted pursuant to Board Order 72-469 as recorded in real property records of Clackamas County (the "CCSD#1 Easement"); and

WHEREAS, the City desires to enter into an agreement with CCSD#1 which allows the City to utilize a portion of the CCSD#1 Property to, among other things, support reconfiguration and redevelopment of Park; and

WHEREAS, CCSD#1 is willing to accommodate City's requests on the terms and conditions set forth herein;

**NOW THEREFORE**, the Parties hereby agree as follows:

1. Access. CCSD#1 agrees that City may use a portion of CCSD#1 Property as provided in this Agreement and in the Easement granted to the City pursuant to Section 7 below (the "City Easement") as part of its Park redevelopment effort. Such agreement is conditioned on the City compliance with the other terms set forth herein, including access and traffic flow. The parties agree that the design of the Park upon which this Agreement

is based is as set forth on Exhibit A, which CCSD#1 hereby approves. The Parties agree that the traffic flow pattern within the CCSD#1 Easement area and City Easement area shall be as set forth on Exhibit B, including but not limited to ingress/egress plans for the industrial truck traffic coming to and from the Kellogg Plant. The City agrees it will not make any changes to the access, traffic flow, parking, or related site design issues within the CCSD#1 Easement area or the City Easement area without prior consultation with, and consent from, CCSD#1, which consent will not be unreasonably withheld, conditioned or delayed. City shall be responsible to secure any and all third-party easements, permits or related permissions that may be required to implement the Park Improvements within the CCSD#1 Easement and City Easement areas and adjacent rights-of-way (collectively, the “Third-Party Approvals”). To the extent they apply to the CCSD#1 Property, such Third-Party Approvals shall be in the name and for the benefit of CCSD#1.

2. Easement Area Management. CCSD#1 shall have the designated reserved parking spaces as depicted on Exhibit B (“CCSD#1 Exclusive Parking Spaces”). The City covenants and agrees to (i) place signs which designate the CCSD#1 Exclusive Parking Spaces as reserved for CCSD#1 use at all times; (ii) enforce City driving, parking, and other ordinances strictly in the CCSD#1 Easement area and City Easement area portions of the Park to ensure safe vehicular traffic by CCSD#1 vehicles; and (iii) respond promptly when notified by CCSD#1 staff of a problem regarding the foregoing. City’s obligation to respond to parking issues shall not exceed its normal ticket enforcement efforts equal to those undertaken for the downtown area of the City; provided, however, that police or other appropriate personnel shall respond if there is blockage of access to or from the Kellogg Plant. CCSD#1 shall have the right to post the CCSD#1 Exclusive Parking Spaces with tow away signs and, without limiting the foregoing, may enforce such postings to the full extent permitted by law. CCSD#1 acknowledges that the City may contract with a third party to perform maintenance services in the Park. If the City does so, its agreement with such contractor shall expressly require the contractor to perform its work consistent with the terms and conditions of this Agreement.

3. CCSD#1 Actions. CCSD#1 agrees that it shall withdraw its objection letter to the City’s pending US Army Corp of Engineers (“ACOE”) permit application. A copy of the withdrawal letter is attached hereto as Exhibit C; the original thereof shall be signed by CCSD#1 simultaneously upon execution of this Agreement and delivered to the City. The City is authorized to deliver the letter to the ACOE. As part of the Park Improvements the City must obtain (i) an access permit from the Oregon Department of Transportation (“ODOT”) allowing construction of a new access point onto Highway 99E at Adams Street; and (ii) the Third-Party Approvals. CCSD#1 agrees to work with City staff to execute the ODOT access change letter request. CCSD#1 shall also work with the City and any third parties in good faith to negotiate and resolve any and all remaining outstanding issues relating to this project to the mutual satisfaction of all parties.

4. Park Bridge. The parties agree that the current bridge located within the CCSD#1 Easement (“Park Bridge”) is essential for appropriate traffic flow and safe travel both for the Park and Kellogg Plant traffic. To the extent the Park Bridge is damaged by acts of CCSD#1 such damage shall be repaired and paid by CCSD#1; to the extent the Park Bridge is damaged by the City or users of the Park, such damage shall be repaired and paid for by the City. Results of an ODOT-funded bridge inspection and load rating currently underway (the “Bridge Report”) will be reviewed by the City and CCSD#1 when completed. Within six (6) months of receipt of the Bridge Report, the parties will use the Bridge Report as a basis to negotiate in good faith to reach agreement on the percentage that each party will pay toward the capital expenses that may be needed to maintain, repair, upgrade, and if necessary replace, the Park Bridge. At such time as the Park Bridge requires capital investment to maintain functionality, the parties will use the referenced percentages to determine the share of expenses for such repairs and/or upgrades.

5. 99E Bridge. CCSD#1 acknowledges that the existing bridge structure owned and operated by the City which allows passage of Kellogg Creek beneath Highway 99 (“99E Bridge”) may require repair and replacement at some time during the term of this Agreement. CCSD#1 consents to any and all activities associated with such repair of the 99E Bridge at the City’s expense so long as a reasonable means of vehicular access (including access for CCSD#1 trucks and personnel), is retained or provided between the Kellogg Plant and Highway 99E. In the event that access to the traffic signal at Washington St. is unavailable, the access south of Kellogg Creek will remain open and accessible to CCSD#1 trucks and personnel in such a manner that the normal operations of the Kellogg Plant are not impaired.

6. Construction. CCSD#1 acknowledge that there may be disruptions due to construction of the Park Improvements. City agrees to minimize such disruptions, to coordinate with Kellogg Plant staff to prevent any material impact on treatment operations and biosolid or other vehicular traffic. For the purposes of the preceding sentence, “material” shall mean obstructing or substantially delaying the daily ingress and egress of CCSD#1 staff, equipment or agents to and from the Kellogg Plant. All construction work shall generally be at City’s expense and timed to minimize impacts on CCSD#1 traffic, and the parties acknowledge that the only District funding that may be associated with the Park Improvements and access change shall come from the Good Neighbor Fund as defined in the service agreement between the Parties dated December 20, 2012. District funding for Park Bridge repair or replacement projects will come from sources other than the Good Neighbor Fund.

7. Easements. City and CCSD#1 each acknowledge that the City needs an easement over a portion of the CCSD#1 Property to effectuate the Park plan set forth on Exhibit A (the “City Easement”), and that CCSD#1 as a special purpose municipal entity must receive appropriate consideration for such Easement. A copy of the City Easement is attached to this Agreement as Exhibit D; the original thereof shall be signed by CCSD#1 simultaneously upon execution of this Agreement and delivered to the City. The City will cause the City Easement to be recorded in the deed records of Clackamas County at

the City's expense. As compensation for the City Easement the City agrees to pay CCSD#1 the cash sum of Sixty-Three Thousand Two Hundred and no/100 Dollars (\$63,200.00) (the "Consideration"). The City shall pay the Consideration in two payments of Twenty-One Thousand Sixty-Six and no/100 Dollars (\$21,066.00) each, payable on March 3, 2014 and March 2, 2015, respectively, and one payment of Twenty-One Thousand Sixty-Seven and no/100 Dollars (\$21,067.00) on March 1, 2016, without any interest accruals. The full amount of the Consideration may be paid earlier without penalty at the discretion of the City.

8. Maintenance. The City agrees that, as part of the planned Park improvements, it intends to construct improvements on City Easement area located on the CCSD#1 Property, including drive aisles, parking spaces, landscaping, curbs and sidewalks. The City shall be responsible for all maintenance and repair relating to all such improvements for the life of the City Easement.

9. Breach. In the case of a breach of the City Easement, the remedies shall be as set forth therein. In the case of breach of this Agreement by either party, the non-breaching party shall notify the breaching party, who shall have ten (10) business days to remedy such breach, unless such breach cannot reasonably be remedied within such time period, in which case the breaching party shall commence a remedy within such ten (10)-day period and continuously and diligently pursue the remedy to completion. If such breach is not remedied, or there is a pattern of failure to perform promised obligations under this Agreement or the City Easement, the non-breaching party may (i) exercise any remedy available to it in law or equity, and (ii) at its discretion, undertake self-help measures and the breaching party shall be responsible to pay all costs relating to such self-help, including staff time and reasonable attorney's fees arising therefrom.

10. Term; Creates Covenant Running with Land. This Agreement shall be effective as of execution and shall remain in effect for such time as the Park Improvements (as they may be modified from time-to-time as permitted hereunder), are located on the CCSD#1 Property. This Agreement shall be a covenant running with the land as to both the City Property on which the Park is located and as to the CCSD#1 Property. The parties agree that this Agreement shall be recorded in the deed records of Clackamas County, Oregon. It shall terminate only upon termination of the City Easement, which may only be done by (i) mutual consent of the parties or (ii) upon the City ceasing to use CCSD#1 Property for park purposes as described in Exhibit A hereto.

11. Other Necessary Acts. Each Party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out the purposes of this Agreement in order to provide and secure to the other Party the full and complete enjoyment of rights and privileges hereunder.

12. Responsible Parties. To the extent any third party makes any claim or brings any action, suit or proceeding, including, but not limited to, a claim alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") with respect to the Park, the Park Improvements, or other issue or obligation arising under this Agreement against CCSD#1 or City or their elected officials, employees or agents, the City shall defend such Third

Party Claim at its sole expense and hold CCSD#1 harmless from any loss, damages, expenses (including attorney's fees), judgments, fines or settlement amounts arising therefrom, except when such Third Party Claim directly relates solely to the actions of CCSD#1 staff, agents, or vehicles (a "CCSD#1 Claim"), in which case CCSD#1 shall have the sole obligation to defend and pay such CCSD#1 Claim, and shall hold the City harmless from any loss, damages, expenses (including attorney fees), judgments, fines, or settlement amounts arising therefrom. If the Third Party Claim may have an element of a CCSD#1 Claim but is not solely attributable to CCSD#1 actions, then the parties shall confer and devise a claim-appropriate defense and each party shall pay their respective share as found as part of a judgment or settlement. The City's or CCSD#1's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if such party had sole liability in the proceeding; provided, however, that such cap shall not transfer liability to the indemnified party and to the extent a court or other authority imposes liability beyond the Oregon law cap, the indemnifying party shall be responsible to make the indemnified party whole.

13. Severability and Waiver. In case any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired in any way. One or more waivers by either Party of any provision, term, condition or covenant shall not be construed by the other Party as a waiver of subsequent breach of the same by the other Party.

14. Amendment. The Agreement may be amended at any time, but only by mutual written agreement of both parties.

15. No Third-Party Beneficiaries. The Parties to this Agreement and their successors and permitted assigns are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons.

16. Governing Laws. This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Venue in connection with any legal proceeding affecting this Agreement shall be in the Circuit Court of the State of Oregon for Clackamas County.

17. Successors and Assigns; Counterparts. This Agreement is to be binding on the successors and assigns of the Parties hereto. No assignment of this Agreement shall be effective until the assignee assumes, in writing, the obligations of the assigning Party, and delivers such written assumption to the original Party to this Agreement. This Agreement may be executed in one or more counterparts.

18. No Waiver. No failure by City or CCSD#1 to insist on the strict performance of any agreement, term, covenant, or condition of this Agreement or to exercise any right or remedy consequent to a breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to

be performed or complied with by either Party, and no breach by either Party, shall be waived, altered, or modified except by a written instrument executed by the non-breaching Party. No waiver of any breach shall affect or alter this Agreement, but each and every agreement, term, covenant, and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach.

19. Cumulative Remedies. Each right and remedy provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by City or CCSD#1 of any one or more of the rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Party in question of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have, pursuant to official action that the respective governing bodies duly authorized the same, caused their respective officers to execute this Agreement on their behalf on the date stated above.

CITY OF MILWAUKIE,  
a municipal corporation

CLACKAMAS COUNTY SERVICE  
DISTRICT NO. 1, a county service district

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Mayor

Title: Chair

ATTEST: \_\_\_\_\_

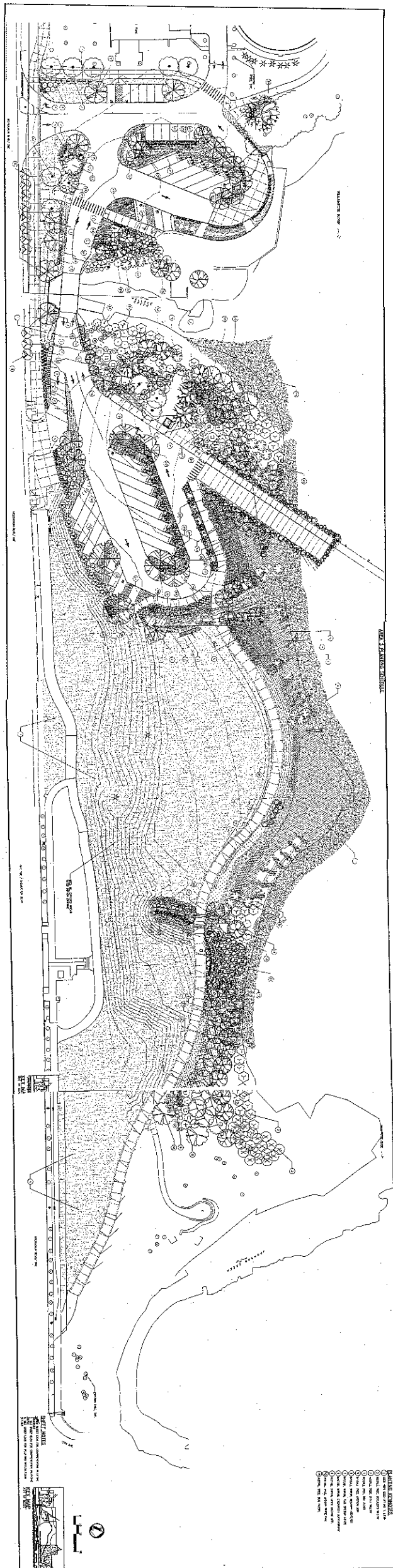
ATTEST: \_\_\_\_\_

Title: City Recorder

Title: Secretary

Exhibit A

*Park Plan*

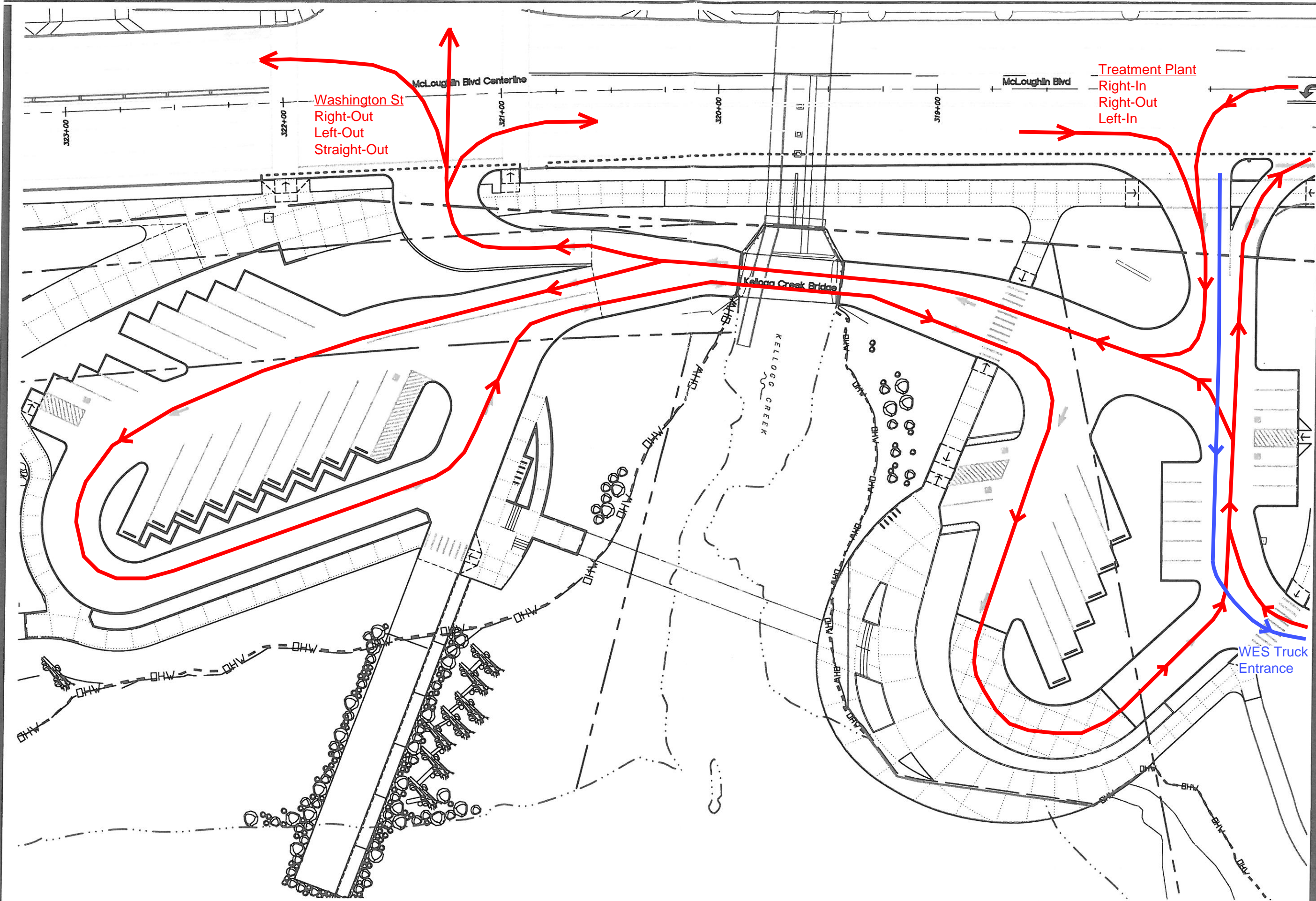


Note:  
 Plan set as of February 24, 2014,  
 and exclusive of park Phase 3.

Exhibit B

*Traffic Flow Design*

P:\MAEX0000018\0400CAD\CHKBRD\SDH\ECBS-5-MAEX18-C30.dwg Jun 18, 2013 - 12:20pm



**USER SOUTHBOUND EXIT  
MILWAUKIE RIVERFRONT PARK  
PARK IMPROVEMENT PROJECT**  
CITY OF MILWAUKIE,  
MILWAUKIE, OREGON

**DAVID EVANS  
AND ASSOCIATES INC.**  
2100 Southwest River Parkway  
Portland Oregon 97201  
Phone: 503.223.6663

REVISIONS: APPD.

DATE: SEPT. 1, 2009  
DESIGN:  
DRAWN:  
CHECKED:  
REVISION NUMBER:

SCALE: AS SHOWN

PROJECT NUMBER:  
MAEX0000-0018

DRAWING FILE:  
ECBS-5-MAEX18-C30.dwg

SHEET NO.

**5**

OF 7

Exhibit C  
*ACOE Objection Withdrawal Letter*

February 28, 2014

U.S. Army Corps of Engineers  
Attn: CENWP-OP-GP (James Holm)  
PO Box 2946  
Portland, OR 97208-2946

Re: Withdrawal of objections to permit application  
Corps of Engineers Action ID No. NWP-2009-19  
Oregon DSL No. 41713-RF

Dear Mr. Holm,

This letter follows up our January 14, 2010 letter. In that letter, Clackamas County Service District #1 (CCSD#1)—which owns the Kellogg Creek Water Pollution Control Plant on McLoughlin Boulevard (Kellogg Plant)—communicated its concerns regarding the City of Milwaukie's permit application to authorize Riverfront Park construction activity.

The purpose of this letter is to inform the Corps that CCSD#1's concerns have been addressed by the City of Milwaukie, and thus CCSD#1 withdraws its earlier objections.

Two specific developments have addressed our prior concerns. First, as to vehicular access onto, and within, CCSD#1's site, the city has developed an access flow plan. This plan adds a curb cut to McLoughlin to facilitate trucks' and personnel's entry into and exit from the Kellogg Plant. The access flow plan also contains an onsite circulation plan that should reduce potential vehicular conflicts between park users and CCSD#1 personnel to acceptable levels.

Second, as to use of CCSD#1 property for park purposes, the City and CCSD#1 have concluded negotiations allowing the City's acquisition of a park easement over CCSD#1's property. The negotiated transfer of an appropriate easement has satisfied CCSD#1's prior concerns about nonconsensual use of its property.

Thank you for the opportunity to present this communication. Please call me at (503) 742-4623 if there are any questions.

Sincerely,

Chris Storey  
Assistant County Counsel

Exhibit D  
*City Easement*

AFTER RECORDING RETURN TO:

CITY OF MILWAUKIE  
10722 SE MAIN STREET  
MILWAUKIE OR 97222

---

*This space is reserved for recorder's use.*

### **PERMANENT PARK USE EASEMENT**

Clackamas County Service District No. 1, a Chapter 451 county service district (Grantor), hereby conveys to the City of Milwaukie, a municipal corporation (Grantee), and its successors and assigns, a nonexclusive perpetual and permanent easement for the purposes of constructing, maintaining, and operating a public park, including parking and related improvements and activities over and across the following described real property:

That tract of land described in Exhibit "A" and depicted graphically in Exhibit "B," both exhibits being incorporated herein.

The consideration paid for this Easement is the sum of \$63,200, together with other valuable consideration.

**TO HAVE AND TO HOLD** said easement to said Grantee, for the use and purpose herein above described and in accordance with and subject to the terms and conditions set forth in the Intergovernmental Agreement Regarding Access and Development near Kellogg Creek Plant, dated February 28, 2014, the terms of which are incorporated herein and which constitute covenants that run with the land and inure to the benefit of and are binding on the parties and their respective grantees, successors, and assigns.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE



**ENGINEERING PLANNING  
FORESTRY**  
13910 S.W. Galbreath Dr., Suite 100  
Sherwood, Oregon 97140  
Phone: (503) 925-8799  
Fax: (503) 925-8969  
AKS JOB # 3836



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**EXHIBIT A**  
Access Easement

A tract of land lying in the Northeast One-Quarter of Section 35, Township 1 South, Range 1 East, Willamette Meridian, City of Milwaukie, Clackamas County, Oregon being more particularly described as follows:

Beginning at the northeast corner of Document Number 70-27388, Clackamas County Deed Records, said point bearing South 81°53'00" West 321.18 feet from the northeast corner of Block 39 of the plat of "Plan of the Town of Milwaukie", Clackamas County Plat Records; thence South 04°24'15" East 120.94 feet to a point; thence South 81°27'04" West 352.30 feet to the ordinary low water line of the Willamette River as defined by Elevation 5.0 feet (NGVD29); thence following said ordinary low water line North 31°39'41" East 16.56 feet; thence North 39°05'52" East 54.09 feet; thence North 52°36'37" East 34.96 feet to the westerly extension of the north line of Document Number 70-27388, Clackamas County Deed Records; thence along said westerly extension of said north line North 70°20'20" East 50.38 feet to the northwest corner thereof; thence along said north line North 70°20'20" East 235.1 feet to the point of beginning.

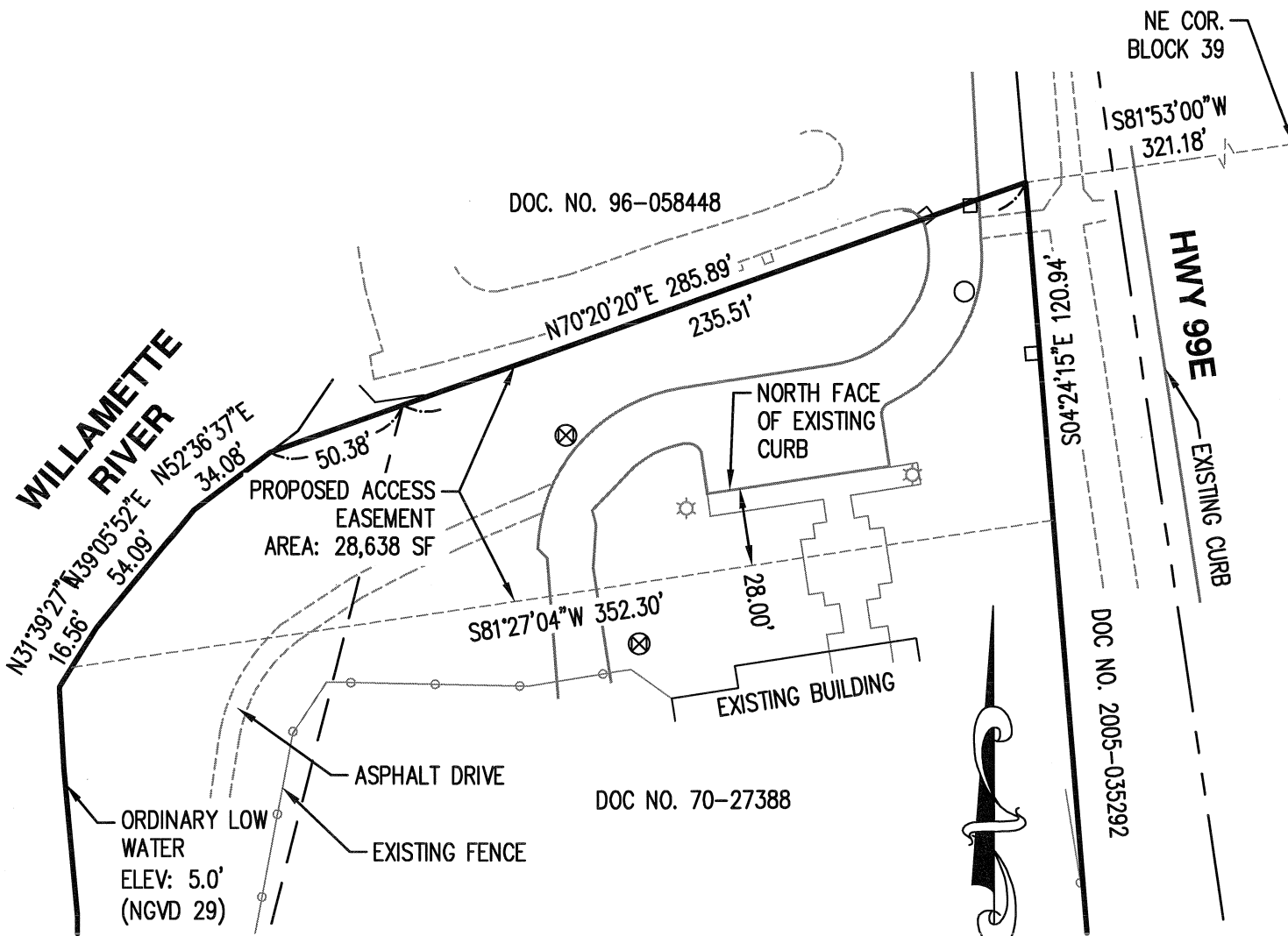
The above described tract of land contains 28,638 square feet, more or less.



# EXHIBIT B

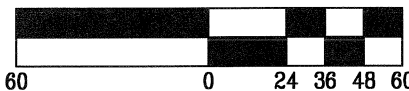
## ACCESS EASEMENT

A TRACT OF LAND LOCATED IN THE NORTHEAST 1/4,  
SEC. 35, T1S, R1E, W.M., CITY OF MILWAUKIE,  
CLACKAMAS COUNTY, OREGON



PREPARED FOR  
CITY OF MILWAUKIE  
6101 SE JOHNSON CREEK BLVD.  
MILWAUKIE, OR 97206  
11-15-13

SCALE 1" = 60 FEET



**REGISTERED  
PROFESSIONAL  
LAND SURVEYOR**

**OREGON**  
JANUARY 11, 2005  
ROBERT D. RETTIG  
60124LS

RENEWS: 12/31/14

RIVERFRONT PARK	
JOB NAME:	ACCESS EASEMENT
JOB NUMBER:	3836
DRAWN BY:	MEB
CHECKED BY:	RDR
DWG NO.:	3836CXMP

AKS ENGINEERING AND FORESTRY, LLC  
13910 SW GALBREATH DR  
SUITE 100  
SHERWOOD, OR 97140  
PHONE: 503.925.8799  
FAX: 503.925.8969



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SPS21

Attachment 2



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

**Resolution No.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN AN INTERGOVERNMENTAL AGREEMENT WITH CLACKAMAS COUNTY SERVICE DISTRICT NO. 1**

**WHEREAS,** Oregon law authorizes units of local government to enter into agreements regarding the provision of services to their residents, customers, and service areas; and

**WHEREAS,** the City of Milwaukie ("City") and Clackamas County Service District No. 1 ("CCSD#1") wish to enter into an agreement under which the City may obtain a park easement over CCSD#1 territory; and

**WHEREAS,** the easement will serve the City's development of Riverfront Park along the Willamette River; and

**WHEREAS,** the City and CCSD#1 have negotiated the terms of this IGA and wish to enter into the agreement annexed to this Resolution.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Milwaukie, Oregon, that:

**Section 1.** The City Manager shall sign an IGA with CCSD#1 in substantially the form as the IGA annexed to this Resolution.

**Section 2.** This resolution is effective on February 25, 2014.

Introduced and adopted by the City Council on February 25, 2014.

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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



MILWAUKIE CITY COUNCIL  
STAFF REPORT

SPS 2  
2/25/14

**To:** Mayor and City Council  
**Through:** Bill Monahan, City Manager

**Subject:** **Establishing a new Milwaukie Municipal Code Chapter 5.50 relating to medical marijuana facilities.**  
**From:** Steve Butler, Community Development Director  
**Date:** February 25, 2014

### **ACTION REQUESTED**

Approve an Ordinance to create Chapter 5.50 of the Milwaukie Municipal Code, which would temporarily prohibit the siting of medical marijuana facilities in the City.

### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

None.

### **BACKGROUND**

The 2013 Legislature passed HB 3460, establishing a state regulatory system for medical marijuana dispensaries. On March 3, 2014, the state Oregon Health Authority (OHA) will begin accepting applications from individuals who wish to register and operate a medical marijuana dispensary in Oregon. The Milwaukie Municipal Code is currently silent as to what regulations apply to medical marijuana dispensaries.

Several cities have enacted temporary prohibitions on siting medical marijuana dispensaries in their communities until additional work is done to determine the best way to regulate these facilities. By enacting this temporary prohibition on medical marijuana facilities, the Council will have additional time to consider zoning or other regulations, seek public input, and adopt proper regulations.

### **FISCAL IMPACTS**

None.

### **WORK LOAD IMPACTS**

This Ordinance is not expected to impact work load. If passed, current staff resources will be used to research and develop regulatory options. If not passed, current staff resources will be used to process the local approval piece of the state application.

### **ALTERNATIVES**

The Council could choose to take no action, amend the development code to provide for zoning for the facilities specific to use and zone, or research other options for action by the City.

### **STAFF RECOMMENDATION**

Staff recommends that City Council approve the proposed Ordinance.

### **ATTACHMENTS**

1. EXHIBIT A: ORDINANCE



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

**Ordinance No.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, RELATING TO MEDICAL MARIJUANA FACILITIES; ESTABLISHING NEW CODE CHAPTER 5.50; AND DECLARING AN EMERGENCY.**

**WHEREAS**, during the 2013 Special Session, the Oregon Legislature passed HB 3460, which allows for the establishment and licensing of medical marijuana facilities; and

**WHEREAS**, the Oregon Health Authority is charged with formulating administrative rules governing the licensing of medical marijuana facilities and will begin accepting applications for their operation in March, 2014; and

**WHEREAS**, the City Council believes that the operation of a medical marijuana facility has the potential to endanger the health, safety, and welfare of its citizens without adequate local regulation; and

**WHEREAS**, City Council desires time to determine the impacts of the rules adopted by the State of Oregon and pending legislation; gather public input about siting of facilities within the city; understand the potential community impacts; and consider zoning regulations and policy options related to siting medical marijuana facilities in compliance with state and federal law; and

**WHEREAS**, pursuant to Article XI, Section 2 of the Oregon Constitution, the City of Milwaukie is a "home rule" municipal corporation having the authority that the constitution, statutes, and common law of the United States and this State expressly or implicitly grant or allow over the civil affairs of its City.

Now, Therefore, **THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:**

Section 1. A new Chapter 5.50 is adopted and added to the Municipal Code of Milwaukie which will read as follows:

**5.50 Medical Marijuana Facilities**

5.50.010. Purpose and Intent. The purpose of this Section is to temporarily prohibit medical marijuana facilities licensed by the State of Oregon from operating within the City of Milwaukie to allow the City Council time to consider and adopt proper zoning or other regulations for medical marijuana facilities. The

State of Oregon is set to grant licenses to medical marijuana facilities in March 2014. The City Council finds that March, 2014, is too soon to provide adequate time to consider the issues related to medical marijuana facilities, seek public input, and adopt proper regulations. Therefore, the City Council is implementing this prohibition to provide time to review the State of Oregon's medical marijuana facilities licensing rules and consider the issues related to the impacts of medical marijuana facilities in the City of Milwaukie.

Section 2. A new section 5.50.020 of the Municipal Code of Milwaukie which will read as follows is hereby adopted:

5.50.020. Definitions. Except where the context specifically requires otherwise, as used in this Chapter, the following words and phrases mean:

(A) "Building" means any structure having a roof supported by columns or walls, for the housing, shelter or enclosure of persons, animals, chattels, or property of any kind.

(B) "Location" means any parcel of land, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area.

(C) "Medical marijuana facility" means a medical marijuana facility licensed by the State of Oregon under HB 3460 (2013) and/or ORS 475.300 et seq., including future amendments thereto.

(D) "Structure" means anything which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

Section 3. A new section 5.50.030 of the Municipal Code of Milwaukie which will read as follows is hereby adopted:

5.50.030. Prohibited Activities. It is unlawful to establish, operate, use, or to cause or permit the establishment, operation, or use of a medical marijuana facility within the City of Milwaukie.

Section 4. A new section 5.50.040 of the Municipal Code of Milwaukie which will read as follows is hereby adopted:

5.50.040. City Employees Have No Authority to Permit Medical Marijuana Facilities. The use of any building, structure, location, premises, or land for a medical marijuana facility is not currently enumerated in the City of Milwaukie Municipal or Development Codes as a permitted use in any zoning district. Neither the City Manager nor any city employees is authorized to determine or permit the use of any building, structure, location, premises, or land as a medical marijuana facility in any zoning district.

Section 5. A new section 5.50.050 of the Municipal Code of Milwaukie which will read as follows is hereby adopted:

5.50.050. Violations.

(A) A person who violates this Chapter commits a civil infraction and shall be subject to a fine of up to \$200. Each violation, and each day that a violation continues, constitutes a separate civil infraction.

(B) The civil infraction procedures in Chapter 1.08 of the Municipal Code of Milwaukie apply to the prosecution of any violation of this Chapter.

Section 6. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 7. Emergency Clause. It is necessary for the public health, safety and general welfare that this ordinance take effect immediately; therefore, an emergency is declared to exist and this ordinance shall be effective upon the date of its adoption.

Section 8. Ordinance Automatically Expires. This ordinance automatically expires and is to be deemed repealed at 11:59:59 p.m. on December 31, 2014, unless sooner repealed or extended by City Council ordinance.

By \_\_\_\_\_ vote of all Council members present after being read by number and title only, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis, PC

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

\_\_\_\_\_