



**Regular Session**

**RS**

**Milwaukie City Council**



**MINUTES**  
**MILWAUKIE CITY COUNCIL**  
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**REGULAR SESSION**  
 FEBRUARY 3, 2015  
 City Hall Council Chambers

**Council President Batey** called the 2,191<sup>st</sup> meeting of the Milwaukie City Council to order at 7:20 p.m.

Council Present: Councilors Scott Churchill, Mark Gamba, and Karin Power

Staff Present: City Manager Bill Monahan, Assistant to the City Manager Mitch Nieman, City Attorney Tim Ramis, City Recorder Pat DuVal, Community Development Director Steve Butler, Planning Director Denny Egner, Finance Director Casey Camors, Engineering Director Jason Rice, and Light Rail Construction Manager Stacy Bluhm

**CALL TO ORDER**

PLEDGE OF ALLEGIANCE

**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**

None scheduled.

**CONSENT AGENDA**

- A. City Council Meeting Minutes of the January 20, 2015, Special Session.
- B. Resolution 06-2015: a Resolution of the City Council of the City of Milwaukie, Oregon, revising membership to the Library Expansion Task Force.
- C. Resolution 07-2015: a Resolution of the City Council of the City of Milwaukie, Oregon, appointing Carolyn Tomei as a representative of the Island Station Neighborhood District Association (NDA) to the Kellogg Good Neighbor Committee.
- D. Oregon Liquor Control Commission (OLCC) Application for Big Bee Café, 4630 SE International Way – Change of Ownership.

Councilor Churchill requested that item C be removed from the consent agenda for discussion.

It was moved by Councilor Gamba and seconded by Councilor Power to approve consent agenda items A, B, and D. Motion to approve consent agenda items A, B, and D passed with the following vote: Councilors Gamba, Power, and Churchill and Council President Batey voting “aye.” [4:0]

Council President Batey proposed that discussion of consent agenda item C be at the end of the meeting.

**AUDIENCE PARTICIPATION**

Council President Batey outlined the process for audience participation. Seeing no requests to speak, she asked Mr. Monahan for any follow up comments from the January 20, 2015, City Council audience participation.

Mr. Monahan reported at the last meeting there was a request from Greg Baartz-Bowman, Milwaukie resident, asking about the possibility of installing a crosswalk at 26<sup>th</sup> Avenue and Harrison Street. Mr. Rice reviewed the background with Mr. Baartz-Bowman and why the decision was made not to install one at this time. He communicated with Mr. Baartz-Bowman about possible future funding.

**Council President Batey** had visited the site and agreed it was quite a distance from any crosswalk.

**Mr. Rice** said staff applied for Community Development Block Grant (CDBG) Funds for crosswalks which included the one under discussion. The outcome of the grant application would be known in April.

**Mr. Monahan** reported there was a follow up comment from David Aschenbrenner that addressed a similar situation at Home Avenue and King Road. If there was funding for such mid-block crosswalks, then Mr. Aschenbrenner was also interested in having one installed.

**Council President Batey** noted one of the issues Ray Bryan brought up in his recent *Pilot* article was to reconsider reinstating the Walk Safely Milwaukie Program. There would likely be public input on this topic at the upcoming City Council Goal Setting session.

## **PUBLIC HEARING**

None scheduled.

## **OTHER BUSINESS**

### **A. Expedited Annexation of Property Located at 8908 SE 55<sup>th</sup> Avenue - Ordinance**

**Mr. Egner** provided the staff report in which the City Council was requested to approve File #A-14-05, an expedited annexation of the property located at 8908 SE 55<sup>th</sup> Avenue in the Northeast Sewer Extension (NESE) area. He provided background on the NESE Project and the construction of the sewer system in Dual Interest Area 1. The City annexed rights of way in 2010 so that the properties in that area abutted the Milwaukie City limits. Since that time, more than 140 properties had annexed in order to connect to sewer most frequently because of failing septic systems. He showed a map of the area. The subject site was in the manufacturing zone (M Zone) and planned for industrial use. The annexation met all relevant criteria and no necessary parties that the City notified submitted any objections. Staff recommended approval of the annexation.

**It was moved by Councilor Gamba and seconded by Councilor Churchill for the first and second readings by title only and adoption of the Ordinance annexing a tract of land identified as Tax Lot 1S2E30AB07000 and located at 8908 SE 55<sup>th</sup> Avenue into the City Limits of the City of Milwaukie (File #A-14-05). Motion passed with the following vote: Councilors Gamba, Power, and Churchill and Council President Batey voting "aye." [4:0]**

**Mr. Monahan** read the Ordinance two times by title only.

**Ms. DuVal** polled the City Council: Councilors Gamba, Power, and Churchill and Council President Batey voting "aye." [4:0]

#### **ORDINANCE NO. 2091:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ANNEXING A TRACT OF LAND IDENTIFIED AS TAX LOT 1S2E30AB07000 AND LOCATED AT 8908 SE 55<sup>TH</sup> AVENUE INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE (FILE #A-14-05).**

### **B. Solid Waste Hauler Franchise Agreement – Ordinance and Resolution**

**Ms. Camors** provided the staff report in which the City Council was requested to adopt an Ordinance amending Chapter 13.24 of the Milwaukie Municipal Code regarding management and collection of solid waste and recycling. The current franchise was due to expire December 2015. The significant changes included the term of the agreement which was a ten year rolling agreement, modification to the financial penalty

language, increased insurance coverage requirements, and increased penalties for nonfranchised persons engaging in franchised activities under Chapter 13.24.

The second action requested was to adopt a Resolution granting non-exclusive franchises to the current five haulers for solid waste management services. There was concurrence on the staff recommendation for adoption of both the Ordinance and the Resolution from the City Attorney, City Manager, Clackamas County Office of Sustainability, and the five franchised haulers.

There were no questions or comments from City Council.

**Dave White**, regional representative for the Oregon Refuse and Recycling Organization, said one of his responsibilities was to represent the Milwaukie franchised collection companies. These companies provide solid waste and recycling collection services to Milwaukie's residents and businesses. He submitted the following testimony for the record.

As noted in the staff report, the Milwaukie haulers and I have met with Finance Director Casey Camors and Clackamas County Senior Analyst Rick Winterhalter to discuss the proposed changes to the franchise provisions contained in City Code Chapter 13.24. We greatly appreciate the opportunity to engage in these positive and productive discussions.

The Milwaukie haulers have a decades-long tradition of commitment to providing excellent collection service in the city. We believe this partnership between the city and its franchised haulers is a cost effective, efficient, and sustainable system for providing solid waste, recycling, and yard debris collection services to the city's residents and businesses. With the passage of this Ordinance and Resolution, the haulers look forward to continuing to assist the city in its waste recovery and sustainability efforts.

The haulers ask that you accept the recommendation in the staff report and approve the Ordinance and Resolution.

**It was moved by Councilor Churchill and seconded by Councilor Gamba to approve the first and second readings by title only and adoption of the Ordinance amending Chapter 13.24 of the Milwaukie Municipal Code regarding management and collection of solid waste and recycling. Motion passed with the following vote: Councilors Gamba, Power, and Churchill and Council President Batey voting "aye." [4:0]**

**Mr. Monahan** read the Ordinance two times by title only.

**Ms. DuVal** polled the City Council: Councilors Gamba, Power, and Churchill and Council President Batey voting "aye." [4:0]

**ORDINANCE No. 2092:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTER 13.24 OF THE MILWAUKIE MUNICIPAL CODE REGARDING MANAGEMENT AND COLLECTION OF SOLID WASTE AND RECYCLING.**

**It was moved by Councilor Power and seconded by Councilor Churchill to adopt the Resolution granting non-exclusive franchises for solid waste management services. Motion passed with the following vote: Councilors Gamba, Power, and Churchill and Council President Batey voting "aye." [4:0]**

**RESOLUTION NO. 08-2015:****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, GRANTING NON-EXCLUSIVE FRANCHISES FOR SOLID WASTE MANAGEMENT SERVICES.****C. TriMet Safety Committee Report**

**Ms. Bluhm** reported in her last Portland – Milwaukie Light Rail (PMLR) update to the City Council that she was asked to invite members of the TriMet Safety Committee to respond to questions and concerns. **Harry Saporta**, CSP, PE, Executive Director, TriMet Safety and Security, and **Kurt Wilkinson**, CSP, Manager, TriMet Safety Risk/Construction Safety, made a presentation to the City Council.

**Council President Batey** commented on the good partnership between TriMet and Milwaukie.

**Mr. Wilkinson** briefly reviewed the timeline of events, provided a description of rail crossing safety treatments, described how decisions were made, and retrofits made in the system. In August 2014 there was an onsite review of grade crossings at Harrison, Monroe, and Washington Streets, and several issues were identified as needing further analysis. There was an onsite review in October with the City, TriMet Project staff, TriMet Project Safety, and the Oregon Department of Transportation (ODOT) Rail Crossing Division to identify issues and what might need to be put into place now that construction was well underway. Mr. Wilkinson confirmed this work had been done with 3-D models earlier, but the review was more effective now that it could actually be seen. The Safety and Security Committee, which acted as a clearinghouse for the diverse groups offering input and recommendations, decided some changes should be made to the crossing orders that included realigning and repositioning some tactile warning devices that had already been installed, the addition of pedestrian warning devices, altering the fencing to improve sight lines, and adding swing gates.

The Committee had been working with Ms. Bluhm on some of the questions that came up during her January 2015 City Council update which Mr. Wilkinson hoped to answer in the course of his presentation. Many factors were taken into account when looking at crossing safety treatments. TriMet considered pedestrian and operator sight lines, track geometry, speed and stopping distances, frequency of usage, impacts of development that may result in retrofits, and demographics of the area such as schools and disabled population that might present challenges.

He showed slides of various pedestrian grade crossing treatments in the light rail system that included bedsted barriers with active warning devices which took a lot of space but caused people to slow down and face the direction of the oncoming trains on the track closest to them. The warning device was a continuous, audible and visual stimulation that the train was going to be there.

**Councilor Gamba** said he and Council President Batey had visited several crossings on the Blue Line. One of the sites they visited had a swing gate near a station. The train started out of the station but stopped for some reason. The train ended up crossing with no audibles; he could not see from his angle whether or not the lights were flashing.

**Mr. Saporta** said when the design criteria were established many years ago, there were concerns from the neighborhoods about the active warning devices. The warning bell did stop sounding when the gate was lowered. There is an active program in the Beaverton area to provide upgrades which had already begun in many areas. The bell was designed for vehicular rather than pedestrian traffic, and there were large flashing lights. Now there is a part-time pedestrian warning device with dual flashers and the bell. He would look into Councilor Gamba's concerns as the bell should continue to sound until the train had passed. They were typically in the 85 – 90 decibel range and could go as low as 60 decibels depending on the ambient noise level. He gave the City

Council his personal assurance that the system being designed for Milwaukie would be operational and function properly through the certification process.

**Mr. Wilkinson** noted that given the amount of space on the west side, these barriers worked well with good sight lines in each direction and with flashing lights that were active until the train was out of the circuit. Another approach on the west side was to outfit the skewed types of crossings with channeling, pedestrian swing gates, and the active warning signals. In order to make sure there was clearance for a person using a mobility device to pull up next to the gates, additional sidewalk and fencing was installed to make sure they could be pulled open. He showed a slide of a crossing just south of the Nike Campus where the Committee for Accessible Transportation reviewed the installation to ensure that a mobility device could get through. One addition was the installation of a Braille plate. The gate design was good, user friendly, and created a decision point before crossing the tracks. He understood there was a discussion of automatic gates, but more right of way would be required for the automatic device. Additionally, a swing gate would be installed next to it as a means for escaping the right of way if the gates came down while one was crossing. The other issue with installing them throughout the Milwaukie area was that it would not be possible to put them at good decision points. If they were activated at the same time as the street crossing gate, people may wait for 20 seconds, become impatient, and cross anyway. The position of the swing gates brings people closer to the right of way where they have better site lines. He noted that the site shown on the slide had a fantastic line of site with little pedestrian traffic. This was a 45-mph crossing.

**Councilor Churchill** was familiar with the area and understood TriMet would keep a watchful eye on increasing bike and pedestrian traffic over time.

**Mr. Wilkinson** added work was being done on the nearly 30-year old Gresham line to employ strategies to enhance safety including fencing, flashing warning devices, channeling, railing, and tactile warning. These treatments were going on throughout the system. Milwaukie will benefit from the experiences from earlier lines in the system. He discussed angled crossings. Mr. Wilkinson provided his closing comments: pedestrian safety was paramount, crossings were designed to channel pedestrians, audible and visual warnings of approaching trains were at gated crossings, pedestrian behaviors would be monitored and evaluated during the startup activities with CCTV, and crossing strategies would be revised as warranted.

**Mr. Saporta** noted that many trains will have forward facing cameras.

**Councilor Churchill** urged keeping the cameras for as long as possible during the testing period to capture data related to train speed, demographics, and freight in this relatively small urban area. He felt this was a unique situation on the TriMet system.

**Mr. Saporta** added the design was only one strategy. Another was a comprehensive and aggressive education program that targeted schools as well as the general public. The focus would be on school-aged children in the spring before classes were out and again in the fall when classes started. TriMet personnel will be present to observe behavior and provide guidance and recommendations. Mr. Saporta was scheduled to meet with North Clackamas School District representatives next week.

**Council President Batey** asked for clarification of why the bedsted barriers and gates were not in the Milwaukie design.

**Mr. Wilkinson** replied there was not enough room for the bedsted barriers, and he felt with the sight line restrictions that the gates were a better choice. People could be closer to the alignment and make a better choice.

**Councilor Churchill** supported the choice of the gates and the visual and audible crossings for the pedestrians. He was concerned that there were no gates on the freight side of the track on the west side of the crossings.

**Mr. Wilkinson** replied that the issue with just having gates on the east side had to do with the construction of the large retaining wall. There were good sight lines going from west to east because of the location of the freight tracks and the openness required. The freight train was moving more slowly and less frequently so there was more opportunity to look up and down the track.

**Councilor Churchill** said his concern was crossing three tracks and the different demographic groups using the crossing. There were a lot of schools nearby. For him he was still concerned about not having a gate on the west side for this complex crossing. Freight was moving at one speed that was traditionally about 10 – 15 mph and a light rail line that was authorized to run at 35 mph. He thought he had heard a number of years ago that if a light rail train was in a school zone that it would operate at a much lower speed.

**Mr. Saporta** explained that if children were observed near the crossing that the operator would lower the train speed.

**Councilor Churchill** appreciated TriMet's looking at best practices. He did believe there was a different situation with more susceptible demographics and light and heavy rail. He believed the presentations to the schools about 5 years ago indicated that train speeds would be 20 mph through our school zones, and other community members recalled the same statement.

**Mr. Saporta** said they would go back and review the documents. He noted along the Blue Line in Gresham trains did operate at 35 mph adjacent to schools. The 20 mph speed was part of the standard operating procedure when children were present.

**Councilor Churchill** believed there was a roadway between the school and the tracks, but in Milwaukie that was not the case. His preference was that TriMet revisit putting gates on the west side. Were the owners of the freight line objecting?

**Mr. Wilkinson** would speak with Union Pacific (UP) and explore the options including bedsted barriers.

**Councilor Churchill** understood it was all about safety for Milwaukie citizens, and he would like to look at gates on the west side.

**Councilor Power** asked during the data collection period if train speeds were included.

**Mr. Wilkinson** replied that all the trains are equipped with event recorders and that any data from the train was recorded. Trains will be monitored during testing and training prior to making their initial runs.

**Mr. Saporta** added this training period was an opportunity to get feedback from the public and the operators to help evaluate the crossings.

**Mr. Wilkinson** noted that operator training would begin June 1, and dynamic signal testing would begin in March. They were already talking about the shared crossings on the alignment.

**Councilor Churchill** hoped Mr. Saporta and Mr. Wilkinson would return in July to update the City Council and provide assurances or identify deficiencies for which resolution might be necessary before opening day in September.

**Councilor Gamba** understood the reasoning behind the swing gates, but he did have several concerns. A lot of children rode their bikes on the sidewalk going to and from school, and he was concerned if the gates were always closed that it would push children out into the street. He was also concerned about people in motorized wheelchairs who did not have a lot of arm use and how they would fare with the swing gates.

**Mr. Wilkinson** addressed the bike concern. The goal was to get people off their bikes when they came to the crossing and look carefully and make a good decision. One will

either be stopped by the swing gates or the crossing arm. He was not aware of any motorized wheelchair complaints.

**Mr. Saporta** added complaints were very few, and if there were any, the situation would be evaluated and modified if needed. He commented on maintenance issues related to motorized swing gates.

**Councilor Churchill** understood if there were a situation that there was a way to go back and modify the gates if people could not make them work.

**Mr. Wilkinson** noted the motorized swing gates at the Beaverton Transit Center were problematic and had been removed and replaced with bedsted barriers.

**Mr. Saporta** assured the Council that TriMet would work with the City to come up with a mutually agreeable solution.

**Councilor Gamba** said his other issue was almost a psychological question about a device, like a flashing yellow light, becoming invisible after a while. It was found that flashing yellow lights were more effective when pedestrians were present. In the same light, when the gates were always closed whether there was a train or not it might depend on the flashing red lights. That was why he preferred the automatic gates. Thinking about someone who went that way every, day he preferred automatic gates that only closed when a train was coming.

**Mr. Saporta** was not aware of any study on that subject. In conjunction with the gates, there were audible warning devices and flashing lights. This was a significant educational point. People sometimes think a gate is broken if he or she cannot see a train coming and may try to go around the gate. The pedestrian and driver behavior is informed with audible and visual devices. The devices will be active for both light rail and freight, so TriMet will need to be conscientious in educating the school children and the general public.

**Councilor Churchill** said with freight moving more slowly, one might expect to get across, but then one could be caught by a light rail train.

**Mr. Wilkinson** noted the gates were in such a position that a person could see where, from which direction, and on what track a train was coming.

**Councilor Gamba** said it seemed like there was space literally on the TriMet right of way to place the gate and in a spot where people could see.

**Mr. Wilkins** said he did not believe the device would fit inside the clearance envelope. There were clearance specifications for the trains with given maximum amount of movement within that dynamic envelope.

**Mr. Saporta** explained within that dynamic envelope the train actually rocked and rolled which was not noticeable to a train passenger.

**Council President Batey** had a new worry about not having gates on the west side which was the combination of freight and light rail.

**Councilor Power** said it seemed to her freight was running at faster speeds at least in her neighborhood.

**Mr. Wilkinson** said TriMet will only have access to light rail speeds. Another issue was UP clearance on the west side which he believed was 14 feet from the center of the track which set the gate pretty far from the track. That would put the gate 39 feet from the light rail track. With the sight lines, he did not believe it warranted putting the gates that far away. All of this was predicated on the position of the sound walls.

**Councilor Gamba** had concerns about freight trains stopping and backing up as they sometimes did, and people may try to cross. This was an important educational piece that it would not be safe to cross when the audible and flashing lights were operating. This was a complex crossing.

**Mr. Saporta** assured the City Council that TriMet would continue to evaluate the whole operation when the first train was introduced onto that track and continue beyond the startup date. Certain assumptions have been made, and he hoped they were correct. Operators are taught to provide constant feedback.

**Councilor Churchill** wanted information on the decision making process, whether or not the gates were installed on the west side.

**Councilor Gamba** suggested continuing the bike lane beyond what TriMet had installed.

#### **D. 22<sup>nd</sup> Avenue Safety Improvements Updates**

**Mr. Rice and Ms. Bluhm** addressed an issue brought to staff's attention by the public related to the opening of the Trolley Trail. The issue at hand was the intersection of 22<sup>nd</sup> Avenue and the Trolley Trail where the vision was poor and people were approaching speeds of about 35 mph coming off McLoughlin Boulevard to 22<sup>nd</sup> Avenue. It was difficult for anyone using the Trolley Trail to make a good decision, and it was apparent that something needed to be done. An open house was held at the Milwaukie Grange on December 17 where there was a good discussion of what might be done to improve the intersection. Mr. Rice and Ms. Bluhm were present to go over options developed by City and ODOT staff.

**Ms. Bluhm** reviewed the concepts that included the ODOT right-in right-out concept with a bit longer right turn pocket. It was close to a 90-degree turn with a tighter radius that would slow traffic. ODOT further proposed to carry pedestrians and bikes along the shoulders of 22<sup>nd</sup> Avenue and Bluebird Street with a traffic separator between the Trolley Trail and the travel lanes. The other concept was right-in only. The concern staff had was that there would not be a proper, safe turnaround if they came in northbound. Ideally, Milwaukie wanted to retain its businesses and provide access. One of the key concerns about this option was out of direction travel for pedestrians and bicyclists. Another concern was tight right angle turns that were not conducive to bicycle maneuvering. Further, City staff felt this option would negatively affect parking and access for existing business such as the River Road House. Another concern was the cost of an intersection realignment, pavement reconstruction, curbs, separators, lighting, and removal of part of the Trolley Trail.

**Mr. Rice** explained that at the meeting no one came to the table with any amount of money although everyone agreed it needed to be fixed. The hope was that an alternative would be found that was first of all safe and secondly something that could be achieved with those partners interested in participating to help solve the problem.

**Ms. Bluhm** said the City came up with a proposal to bring out the path with a curve and have a better line of sight as well as minimizing the crossing distance. She proposed a red textured concrete with an actual curb and a more mountable curb line, referred to as a truck apron, for larger vehicles. She showed a slide this treatment in Bend, Oregon.

**Council President Batey** liked the design.

**Councilor Power** thought it would make a big difference and be affordable alternative.

**Councilor Gamba** said he still preferred that the right-out be removed in order to get rid of one of the crossings. Also the cyclists were required to stop a couple of time. While addressing this it would be great to talk about the crossings slightly to the south.

**Ms. Bluhm** was concerned with the amount of delay for pedestrians and cyclists. She understood ODOT would look at signal modifications to address delay.

**Council President Batey** noted there was no right turn on Bluebird Street near Rusty's Resale when construction began. It was understandable that during construction that the street would be used to reroute traffic.

**Ms. Bluhm** thought it may have disappeared with the original Trolley Trail work.

**Mr. Rice** said that there were a lot of conflicts at the five intersections that Councilor Gamba mentioned. It would be a massive project requiring ODOT and Clackamas County involvement and might also include relocating homes. This project cleaned up the worst now rather than waiting, but everyone realized there was more to be done in the long term. This option was financially manageable since Stacy Witbeck was still onsite, and pedestrian and bike safety would be enhanced.

**Councilor Gamba** suggested going back to the no right-in and fix the signalization. He discussed a left arrow at Bluebird Street.

**Council President Batey** understood these suggestions would not slow down the current improvements at 22<sup>nd</sup> Avenue. Although there was no curb to impede a right turn at Bluebird, there was signage.

**Ms. Bluhm** would try to validate the no right turn.

**Mr. Rice** wanted to observe the changes to make sure it was working and preventing accidents, and there was some momentum upon which to capitalize. The goal was to prevent accidents.

**Councilor Power** noted that more drivers seemed confused about turning onto River Road.

**Ms. Bluhm** agreed this was a nonstandard intersection and was confusing to drivers.

**Mr. Rice** said that the pavement markings were planned to be redone.

**Councilor Churchill** felt due to the limited participation by other partners that this was a reasonable solution that he would support. He suggested rumble strips in the right hand turn pocket.

**Mr. Rice** said in recent discussions, ODOT suggested profile striping with different thicknesses that could be scraped clear and redone.

**Councilor Churchill** thought something that would provide a sensory warning was most appropriate.

**Council President Batey** asked if there were any value in adding a flasher or caution light. A pedestrian activated crossing might be another idea.

**Mr. Rice** replied that ODOT was concerned about visibility near the trestle. A flashing light with all the wiring would probably add about \$15,000 - \$20,000 to the project. It could probably be added after the fact.

**Ms. Bluhm** added from her perspective this was a different kind of crossing. In this case because there was not much of a right turn, the onus was on the pedestrians and cyclists to be cautious and make wise choices before the intersection.

**Mr. Rice** pointed out there was not a lot of room for cars in the deceleration lane and rear end accidents could be the risk.

**Ms. Bluhm** reviewed the next steps: continue working with ODOT to finalize the improvements; TriMet contractor to provide a cost estimate; and staff return to the City Council to discuss funding. She noted that TriMet could only include this additional work in its contract if approvals and funding were expedited.

**It was City Council consensus to accept the staff recommendation.**

#### **E. Amendment to TriMet – City of Milwaukie Betterments Intergovernmental Agreement (IGA) – Resolution**

**Ms. Bluhm** reported the TriMet – City of Milwaukie Betterments Agreement was approved in 2012, and the big item was the Kellogg Multiuse Trail and Bridge structure. That structure had \$1.2 million in Federal Transit Authority (FTA) funds. Part of the Agreement stipulated that the City was responsible for any additional funds necessary to complete the project. The effort at this time was to identify the additional \$256,000 to

make the connections from the Bridge structure to Lake Road and Robert Kronberg Park. Hopefully that could be accomplished before the light rail contractor left the project.

**Councilor Gamba** asked if it would be safe to say the City would not be obligated to actually build the trail.

**Ms. Bluhm** thought it was important for the City to show it was serious about making the connection and progressing toward Phase 3 of the project.

**Mr. Ramis** said in theory the FTA could come back, but it appeared it is not an action the federal government would like to take. It seemed rational to show the FTA that Milwaukie was peddling as fast as possible to get there.

**Ms. Camors** discussed funding and outlined several options. In the five year financial forecast, the general fund had the most funds. However, it was appropriate to use restricted resources first and those in line with City Council priorities and objectives. These restricted streams included the state gas tax portion of the transportation fund, the transportation systems development charge (SDC), and the fee in lieu of construction (FILOC) funds earmarked for projects in that particular neighborhood. Within that were many options including everything out of the general fund, the transportation fund could take out a loan from the general fund, the Island Station Neighborhood FILOC in the about of \$21,000, and the transportation SDC in the amount of \$150,000. Ms. Camors recommended using \$85,000 from the general fund, \$21,000 from the Island Station Neighborhood FILOC, and \$150,000 from the transportation SDC.

**Council President Batey** stated that the Island Station Neighborhood supported the idea of using the FILOC on this project.

**Ms. Camors** would bring a supplemental budget to the City Council in order to follow procedures.

**Councilor Churchill** observed the City Council wanted to do a lot of projects and suggested looking at the laundry list during goal setting.

**Ms. Camors** said there was more money in the general fund, but those dollars were there to carry out the Council goals and to address unforeseen circumstances.

**Council President Batey** commented this money could leverage other funds.

**Councilor Power** appreciated the detail.

**Councilor Gamba** urged that as the design went forward to keep in mind the look and feel that the City wanted.

**Council President Batey** understood the design would go before the Design and Landmarks Committee and the Planning Commission.

**Ms. Bluhm** discussed the design elements that had come before the City Council. The group discussed finishes and concerns about graffiti.

**It was moved by Councilor Churchill and seconded by Councilor Gamba to adopt the Resolution authorizing the City Manager to sign an amendment to the TriMet-City of Milwaukie Betterments Intergovernmental Agreement to provide additional funds for the Kellogg Multi-Use Bridge connections and clarify what improvements shall be constructed with those funds. Motion passed with the following vote: Councilors Gamba, Power, and Churchill and Council President Batey voting "aye" [4:0]**

**RESOLUTION NO. 09-2015:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN AN AMENDMENT TO THE TRIMET-CITY OF MILWAUKIE BETTERMENTS INTERGOVERNMENTAL AGREEMENT TO PROVIDE ADDITIONAL FUNDS FOR THE KELLOGG MULTI-USE BRIDGE CONNECTIONS AND CLARIFY WHAT IMPROVEMENTS SHALL BE CONSTRUCTED WITH THOSE FUNDS.**

**Resolution Appointing Carolyn to the Kellogg Good Neighbor Committee Island Station Neighborhood District Association (ISNDA) Position No. 2**

**The group agreed to defer consideration of this Resolution to the next meeting in Other Business.**

**F. Council Reports**

**Councilor Power** reminded people to attend the City Council goal setting session on Saturday, February 7 with the focus on community input.

**Councilor Churchill** thanked Mr. Nieman for his work on scheduling the City Council public input session for City Council goal setting.

**Council President Batey** announced the City had received the Certificate of Achievement for Excellence in Financial Reporting for its Comprehensive Annual Financial Report (CAFR) and the Popular Annual Financial Report (PAFR). Interested persons could pick up copies or view them on the City website. She would attend her first Regional Water Providers Consortium meeting.

**ADJOURNMENT**

**Council President Batey** adjourned the regular session at 9:35 p.m.

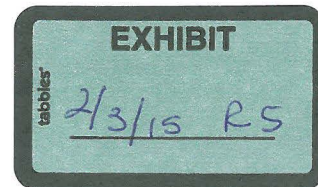
Respectfully submitted,




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Pat DuVal, Recorder

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Milwaukie City Council  
Testimony regarding Agenda No. 6.B  
Ordinance and Resolution: Solid Waste Hauler Franchise Agreement  
February 3, 2015

Good evening Council Members. My name is Dave White. I am regional representative for the Oregon Refuse and Recycling Association and in that capacity I represent the Milwaukie franchised collection companies. These companies provide solid waste and recycling collection services to Milwaukie's citizens and businesses.

My comments are regarding the Solid Waste Hauler Franchise Agreement in Agenda Item Number 6.B.

As noted in the staff report, the Milwaukie haulers and I have met with Finance Director Casey Camors and Clackamas County Senior Analyst Rick Winterhalter to discuss the proposed changes to the franchise provisions contained in City Code Chapter 13.24. We greatly appreciate the opportunity to engage in these positive and productive discussions.

The Milwaukie haulers have a decades-long tradition of commitment to providing excellent collection service in the city. We believe that this partnership between the city and its franchised haulers, is a cost-effective, efficient and sustainable system for providing solid waste, recycling and yard debris collection services to the city's residents and business. With the passage of this Ordinance and Resolution, the haulers look forward to continuing to assist the city in its waste recovery and sustainability efforts.

The haulers ask that you accept the recommendation in the staff report and approve the Ordinance and Resolution.

Thank you.



## 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 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. Note that this Speakers Registration card, once submitted to the City Recorder, becomes part of the public record.

Name: *David White*  
Address: [REDACTED]

Organization: *Milwaukie Franchised  
Haulers*  
Phone: [REDACTED]  
Email: [REDACTED]

Meeting Date: *2/3/15*

### Topic to Discuss:

Agenda Item You Wish to Speak to:

- #4 Audience Participation
- #5 Public Hearing
- #6 Other Business *6.B*

You are Speaking...

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

Comments:



**MILWAUKIE CITY COUNCIL  
REGULAR SESSION**

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

**AGENDA  
FEBRUARY 3, 2015**

2,191<sup>st</sup> Meeting  
Packet Materials  
Revised 1/30/2015

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

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

**A. None scheduled**

**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 of the January 20, 2015, Special Session** **2**
- B. A Resolution Revising Membership to the Library Expansion Task Force (LETF)** **4**
- C. A Resolution Appointing Carolyn Tomei to the Kellogg Good Neighbor Committee (KGNC) Island Station Neighborhood District Association (ISNDA) Position No. 2** **16**
- D. Oregon Liquor Control Commission (OLCC) Application for Big Bee Café, 4630 SE International Way – Change of Ownership** **18**

**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. Expedited Annexation of Property Located at 8908 SE 55<sup>th</sup> Avenue – Ordinance** **20**  
**File # A-14-05**  
Staff Senior Planner Li Alligood
- B. Solid Waste Hauler Franchise Agreement – Ordinance and Resolution** **45**  
Staff: Finance Director Casey Camors
- C. TriMet Safety Committee Report** **85**  
Staff: Light Rail Construction Manager Stacy Bluhm
- D. 22<sup>nd</sup> Avenue Safety Improvements Update** **86**  
Staff: Light Rail Construction Manager Stacy Bluhm  
Engineering Director Jason Rice
- E. Amendment to TriMet – City of Milwaukie Betterments Intergovernmental Agreement (IGA) – Resolution** **92**  
Staff: Light Rail Construction Manager Stacy Bluhm
- F. 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.



**RS 2/3/15**  
**Exhibit**

**A-14-05**

**Expedited Annexation of  
8908 SE 55<sup>th</sup> Ave**

**Dennis Egner, Planning Director  
Milwaukie City Council  
February 3, 2015**

# NESE Project

- Constructed sewer system in Dual Interest Area 1 (NESE area) in 2010-11
- Annexed rights-of-way in 2010 so that all properties were contiguous to city limits

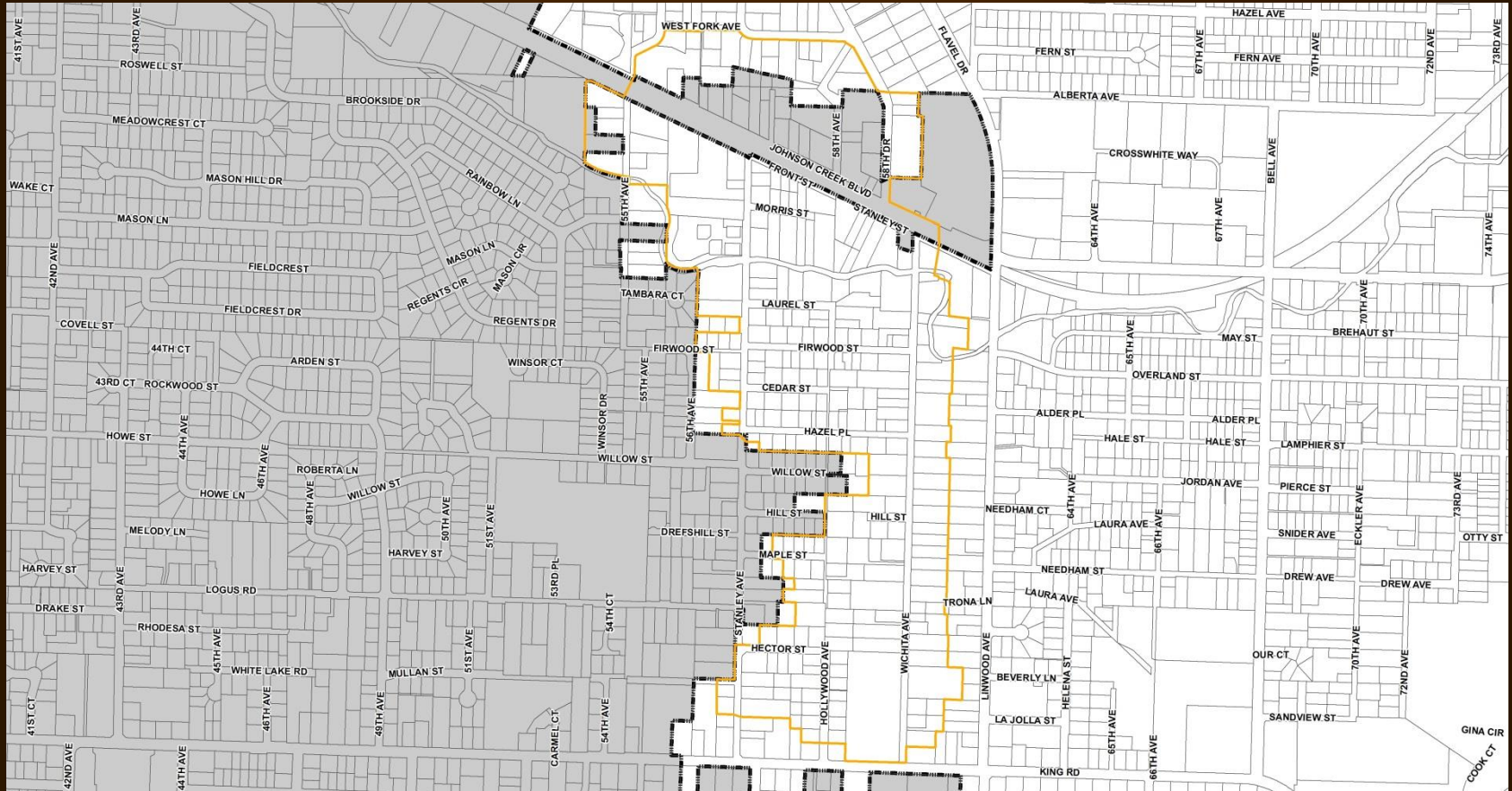


# Annexations

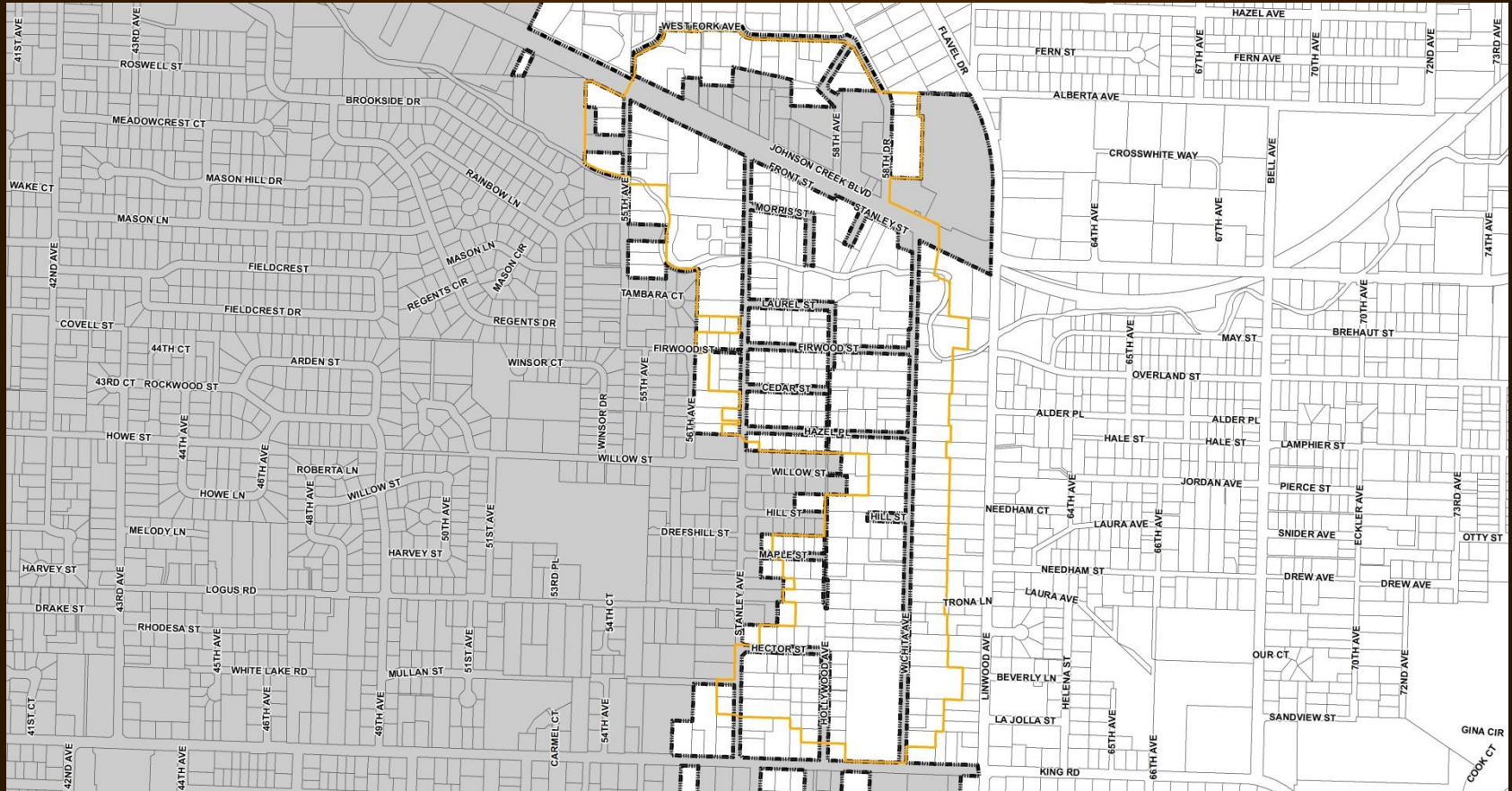
- More than 140 properties have annexed since 2010
- Most annex to connect to sewer
- Many are emergency sewer connections



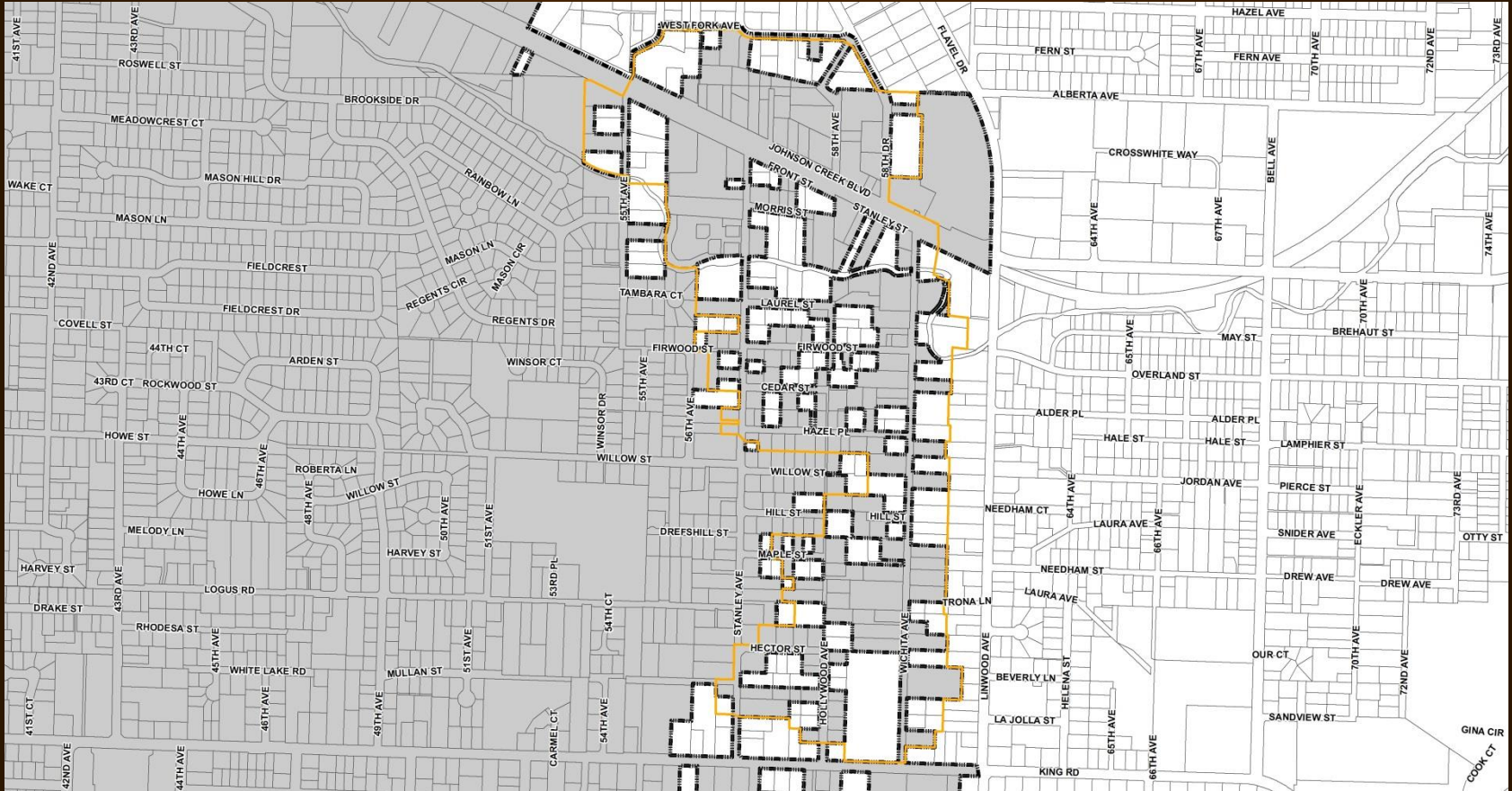
# City Limits – 2009



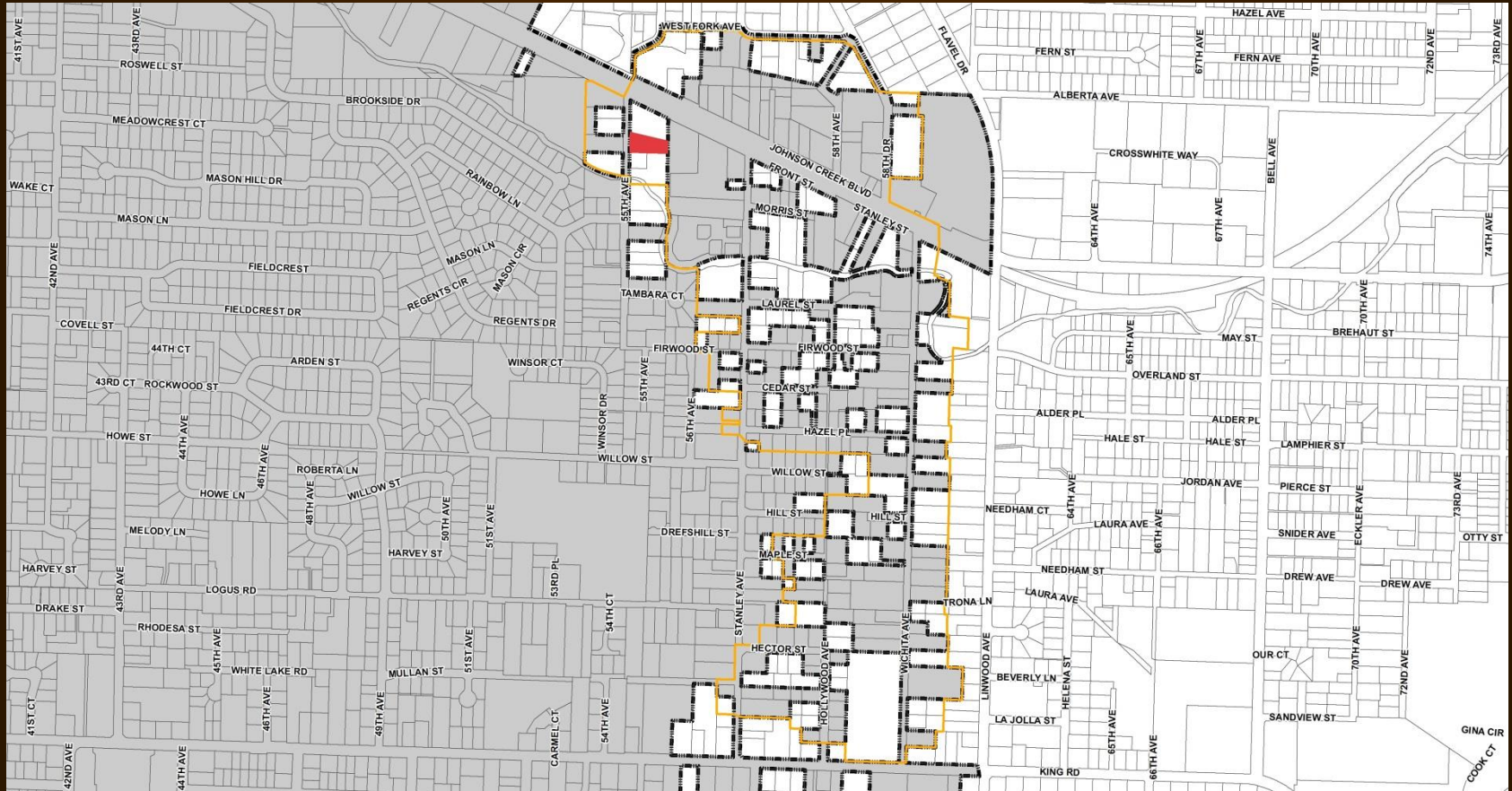
# City Limits – 2010



# City Limits – 2015



# Subject Site



# Summary

- Annexation meets all relevant State, regional, City criteria
- City notified all interested persons & necessary parties
- No objections by any necessary parties
- Options:
  - Approve annexation
  - Deny annexation





# Safety Treatments at Pedestrian Rail Crossings

**Harry Saporta, CSP, PE**

**Executive Director, Safety and Security**

**TriMet**

**Kurt Wilkinson, CSP**

**Manager, Safety Risk/Construction Safety**

**TriMet**

## Timeline of Events

- **Early August 2014 –site review of grade crossings**
  - Several issues identified for further analysis
- **October 2014 - On site meeting with CoM, TriMet Project Staff, TriMet Project Safety, and ODOT Rail Crossing Division to review identified issues**
- **Late December 2014 –Safety and Security Committee review of recommended safety treatments**
  - Realign tactile, addition of pedestrian warning device, alter fencing, and addition of swing gates

## Timeline of Events

- January 2015 – Presentation to CoM City Council regarding recommended safety treatments.
- **February 2015 – Presentation by TriMet Safety and response to concerns of Council Members**

# Factors Influencing Crossing Safety Treatments

- **Sight Lines of pedestrians and LRV Operators**
  - Site Triangle
- **Track Geometry**
- **Speed of trains and stopping distances**
- **Frequency of usage**
- **Demographics of area users**



# Pedestrian Grade Crossing Treatments

# Bedsted Barriers with Active Warning



# Active Visual/Audio Warning



TRIMET

# Passive and Active Warning with ADA accommodating approach



**TRI MET**

# Committee for Accessible Transportation Reviewed Installation





# Generic Concept – Angled Crossings



## Closing Remarks

- **Pedestrian safety is paramount**
- **Crossings designed to channel pedestrians through**
- **Provide audible and visual warning of approaching trains at gated crossings**
- **Monitor and evaluate pedestrian behaviors during startup activities - CCTV**
- **Revise crossing strategies as warranted**



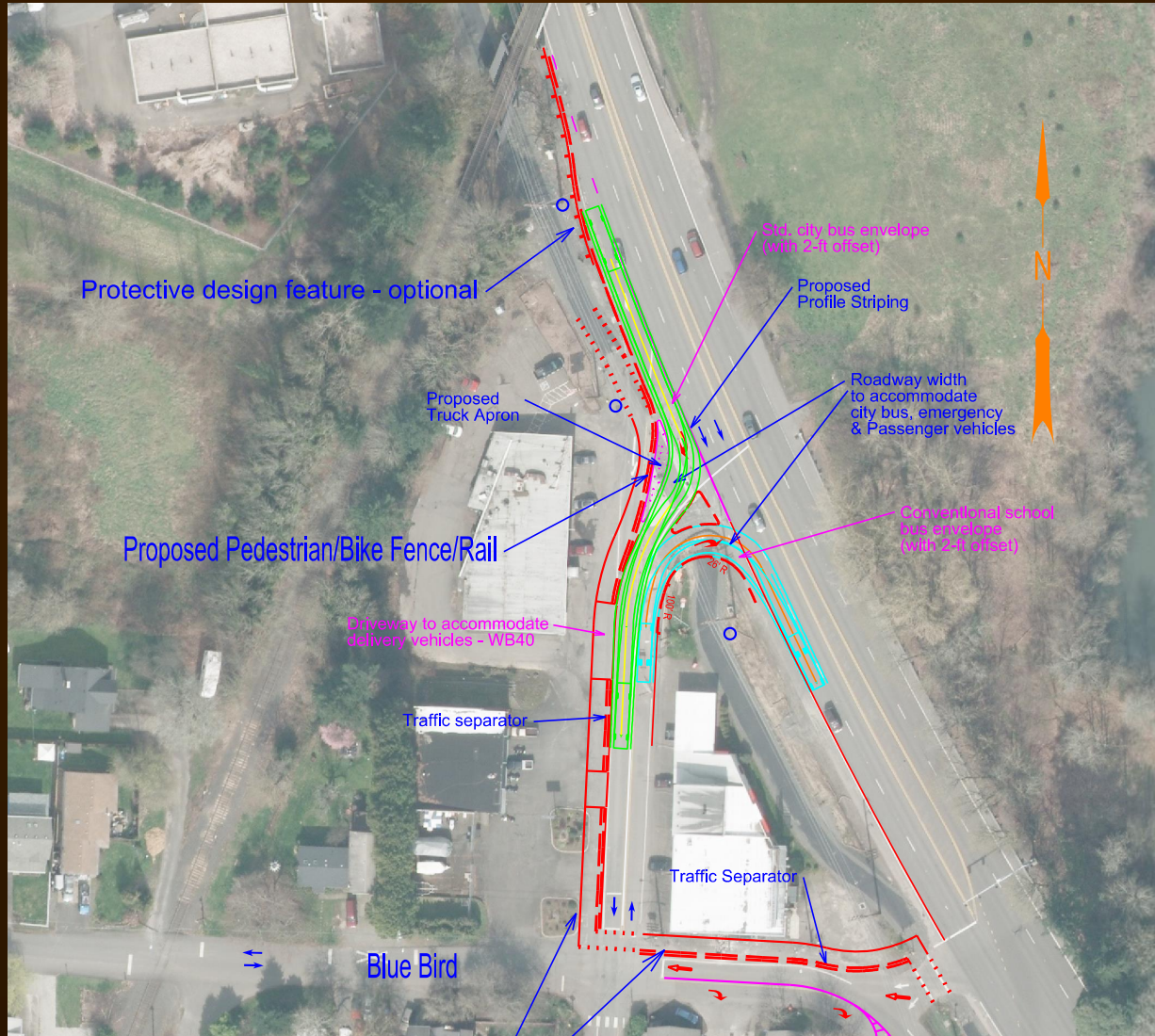
**RS Exhibits**

**2/3/2015**

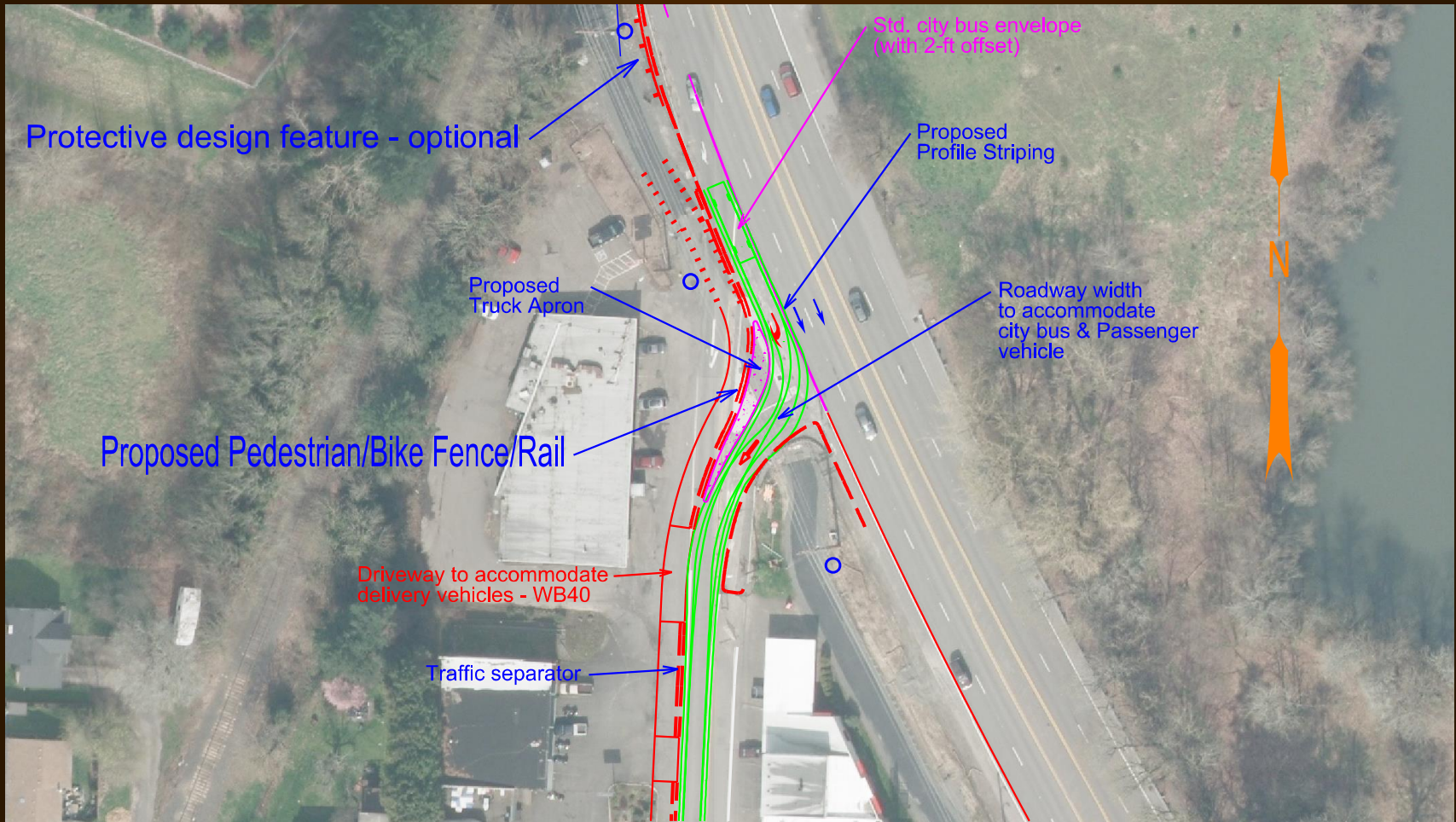
# **22<sup>ND</sup> AT MCLOUGHLIN SAFETY IMPROVEMENTS**

**February 3, 2015**

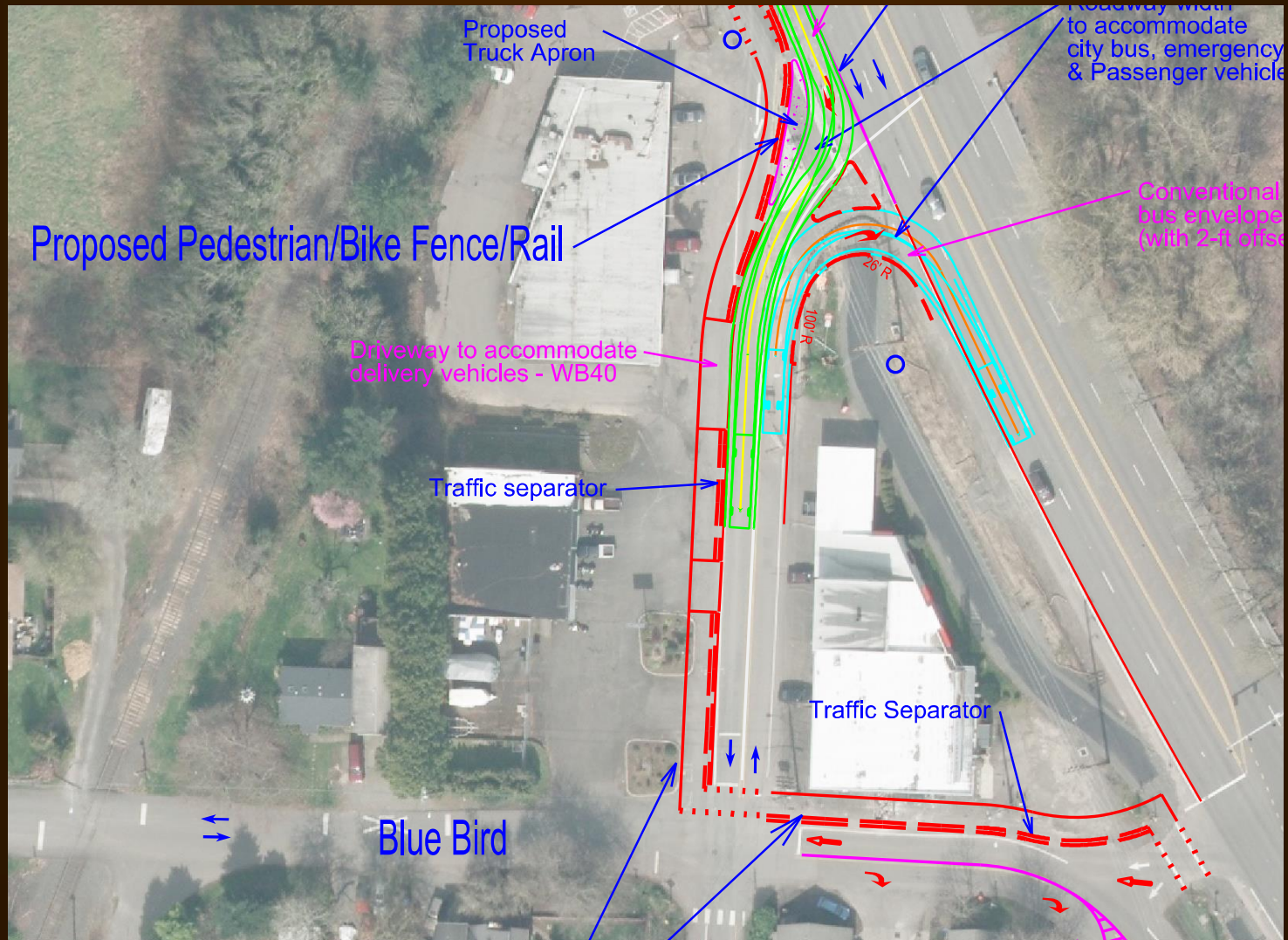
# ODOT Right In/Right Out Concept



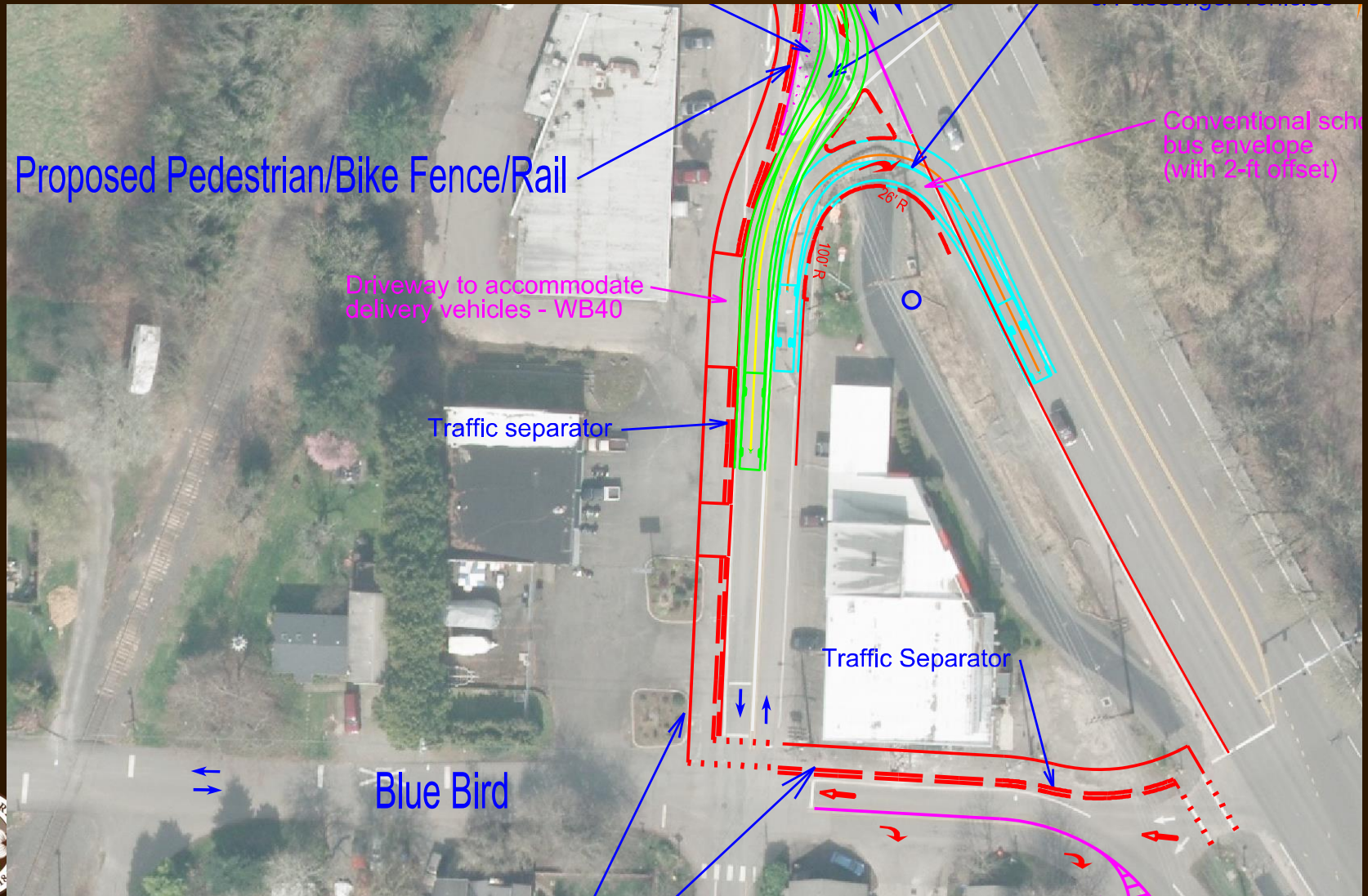
# ODOT Right In Only Concept



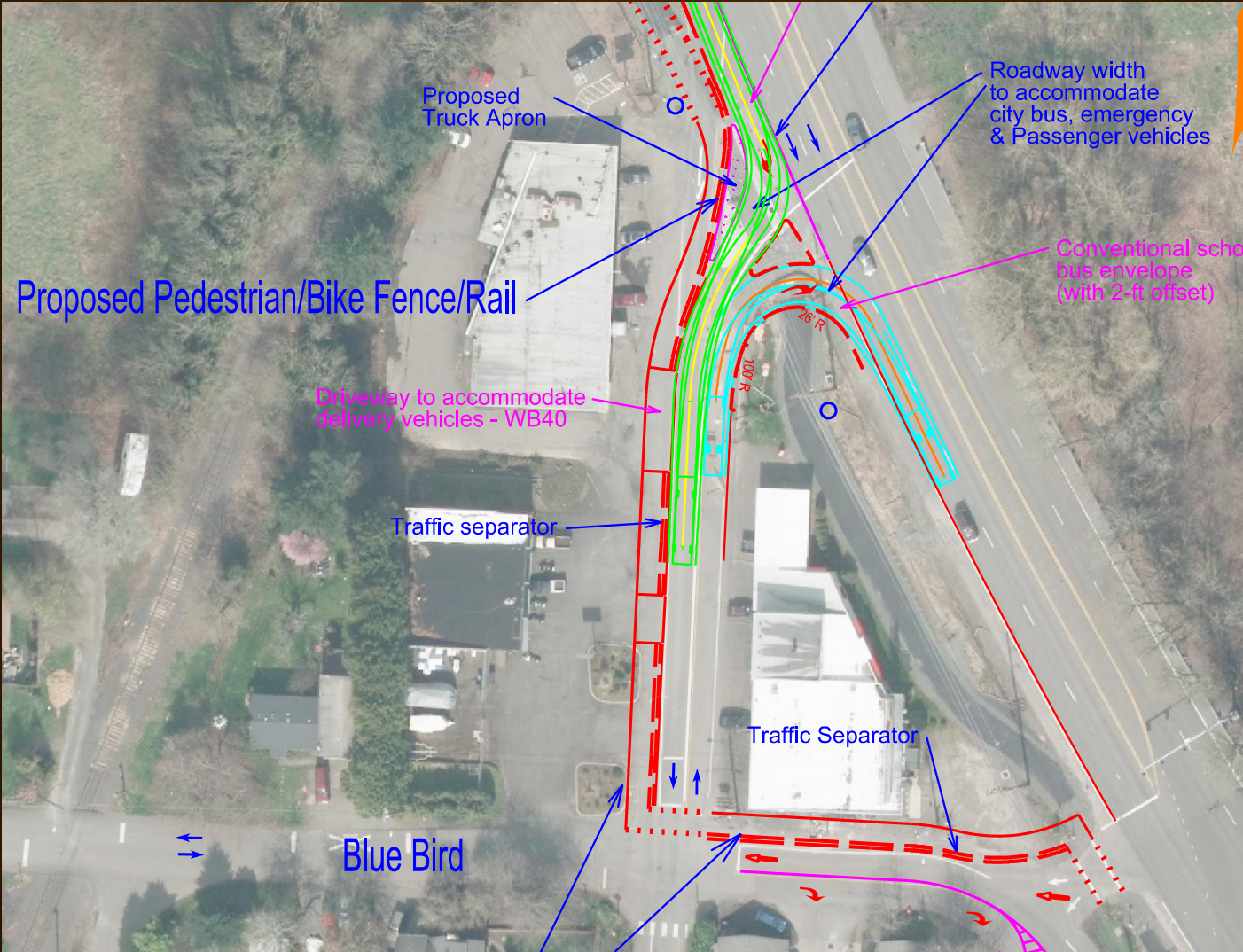
# Concern: Creates out-of-direction travel for pedestrians and bicyclists



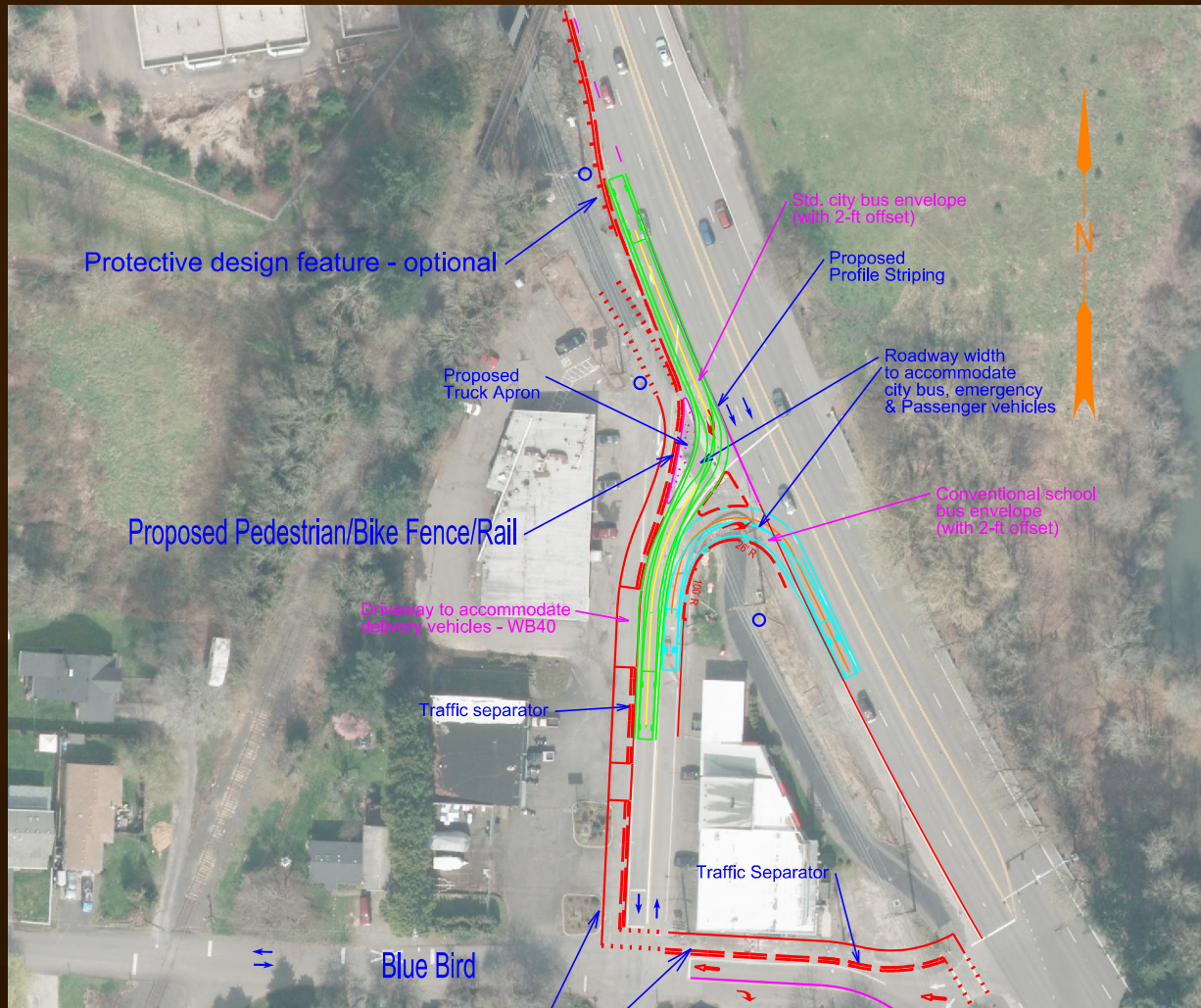
# Concern: Tight right-angle turns are not conducive to bicycle maneuvering



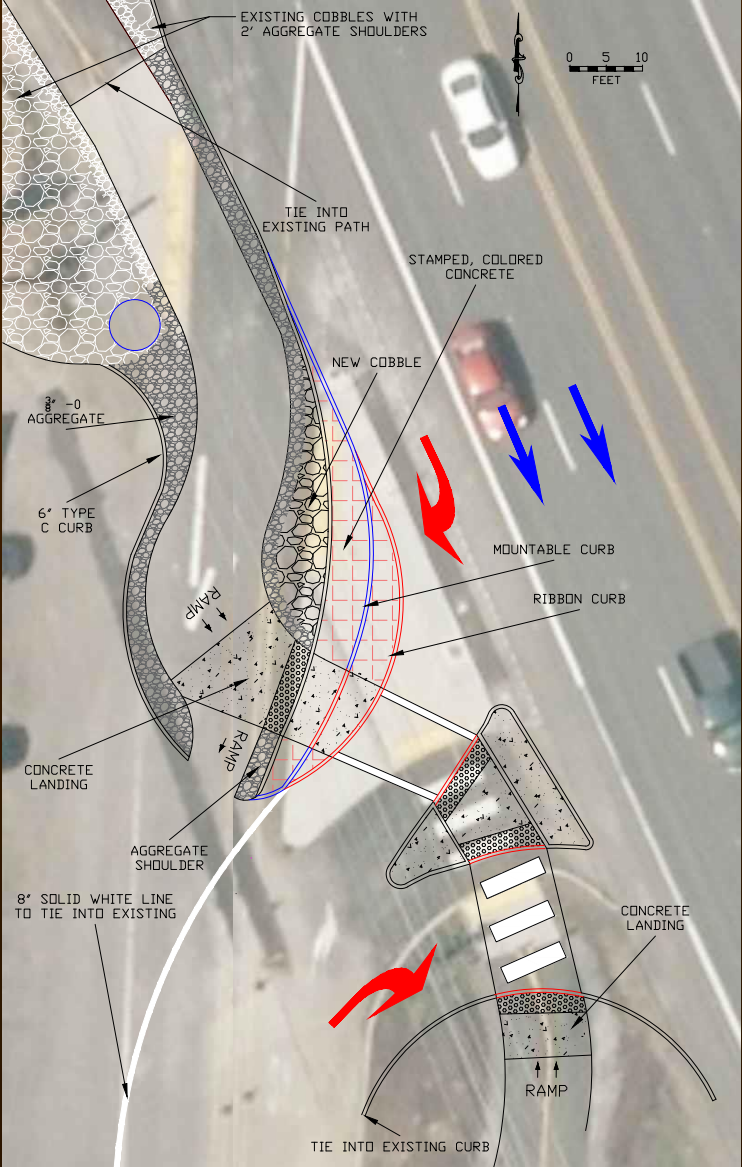
# Concern: Negatively affects parking and access for existing businesses



# Concern: Cost – Intersection re-alignment, pavement reconstruction, curbs, separators, lighting, removal of trolley trail, etc.



# MILWAUKIE CONCEPT



# SIMILAR CONCEPT



## Bend, Oregon

A textured truck apron and raised crosswalk at the corner of 3rd St. (Business 97) and Mt. Washington Drive



*Photos courtesy of Steve Jorgensen, Planning Manager, Bend Metro Park and Recreation District*



# NEXT STEPS

- Staff to continue working with ODOT to finalize the improvements
- TriMet to have their contractor provide an estimated cost
- Staff to return to City Council when costs are known to discuss funding
- Note that TriMet can only include this workscope in their contract if approvals and funding are expedited





**Regular Session  
Agenda Item No.**

**3**

# **Consent Agenda**



**MINUTES**  
MILWAUKIE CITY COUNCIL  
www.milwaukieoregon.gov

**SPECIAL SESSION**  
JANUARY 20, 2015  
City Hall Conference Room

**City Recorder DuVal** called the Special Session of the Milwaukie City Council to order at 4:55 p.m.

Council Present: Councilors Scott Churchill, Lisa Batey, Mark Gamba, and Karin Power

Staff Present: City Manager Bill Monahan, City Recorder Pat DuVal, and City Attorney Tim Ramis

### **CALL TO ORDER**

Pursuant to Milwaukie Municipal Code (MMC) Section 2.04.040 Presiding Officer – Designated, in the absence of the Mayor and Council President, the City Recorder called the meeting to order for the purpose of the Council’s electing a chairperson by majority vote.

**Mr. Monahan** stated that Mayor Jeremy Ferguson had submitted his resignation effective at 5:00 p.m. today, January 20, 2015. He provided brief comments on the process of appointing a chairperson to preside over the work session and to call the regular session to order. The first order of business on the regular session agenda would be the election of the Council President.

**It was moved by Councilor Gamba and seconded by Councilor Power to elect Councilor Batey as the City Council Chairperson. Motion passed with the following vote: Councilors Churchill, Batey, Gamba, and Power voting “aye.” [4:0]**

**Mr. Monahan** discussed the process for filling Council vacancies and referred to Milwaukie Charter Section 18, What Creates a Vacancy and Section 19, Filling of Vacancies. If the City Council did not call an election within 30 days following the occurrence of a vacancy, the City Manager would call for the election. Staff had prepared a Resolution declaring the vacancy and calling for the May 19, 2015, Special Election If the City Council wished to take action during the regular session. If the City Council did not take action and he called the election after the 30-day period, then the mayoral election would be in September 2015.

**It was the consensus of Council to consider the proposed Resolution calling for the May 19, 2015, Special Election during the regular session.**

**Mr. Ramis** discussed the options available to the City Council to fill the vacancy on an interim basis either by direct appointment or through an application process. Applicants would be required to meet qualifications as outlined in Charter Section 9, Qualifications of Elective Officers.

**It was the consensus of the Council to go through an application process beginning immediately with the deadline for receipt by the City Recorder of standardized application forms not later than 5:00 p.m. on February 11, 2015. Application forms received within the designated timeframe would be compiled and sent to the City Council on February 12, 2015. The City Recorder would schedule in-person interviews with the City Council for February 17, 2015, beginning at 5:00 p.m. in the conference room at 15 minute intervals. Resumes would be acceptable for additional documentation with a maximum of two pages.**

## **ADJOURNMENT**

**It was moved by Councilor Churchill and seconded by Councilor Gamba to adjourn the Special Session. Motion passed with the following vote: Councilors Churchill, Batey, Gamba, and Power voting “aye.” [4:0]**

**Chairperson Batey** adjourned the regular session at 5:32 p.m.

Respectfully submitted,

---

Pat DuVal, Recorder



MILWAUKIE CITY COUNCIL  
STAFF REPORT

**To:** Mayor and City Council

**Through:** Bill Monahan, City Manager

**Subject:** **Resolution to revise membership to the Library  
Expansion Task Force**

**From:** Katie Newell, Library Director

**Date:** February 3, 2015

**ACTION REQUESTED**

Revision of the Library Expansion Task Force (LETF) to update its membership

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

September 16, 2014, Work Session, LETF was instructed to update its membership, present to council an updated roster and continue its work on a library expansion.

December 18, 2012, Regular Session, the composition of the LETF was modified in recognition of changes caused by the November 2012 election, Resolution No. 63-2012.

February 21, 2012, Regular Session, the composition of the LETF was modified in recognition of changes to membership on the Library Board, Resolution No. 10-2012.

May 3, 2011, Regular Session, Council appointed the members of LETF, Resolution No.50-2011.

March 15, 2011, Regular Session, Council authorized creation of LETF, Resolution No. 35-2011.

**BACKGROUND**

In order to reconvene the LETF, the membership needs to be updated to reflect changes in the representatives from the City's Boards, Commissions and Committees (BCCs). When possible, people remained on the Task Force to maintain continuity even if serving in a different capacity.

The Library Board has indicated its preference for Kathi Shroeder and Ryan Healy to be its representatives and formally voted this at its meeting on October 27, 2014.

The Planning Commission met October 28, 2014, and voted Scott Barbur to serve as its representative.

MODA has provided a manager, Nancy Avery, to serve on LETF. MODA has provided the local business community representative to LETF since its inception.

The two Citizen-at-Large positions have been assumed by Melissa Perkins and Tom Hogan, both having served as Library Board representatives on LETF previously.

Councilor Karin Power will serve as the Council liaison.

The remaining positions representing the Library Foundation, Budget Committee and the NDAs have remained the same.

#### **CONCURRENCE**

The Library Director supports updating the LETF roster while still maintaining continuity of the original task force created in 2011.

#### **FISCAL IMPACTS**

None at this time.

#### **WORK LOAD IMPACTS**

Library Director and Circulation Supervisor will attend meetings.

#### **ATTACHMENTS**

1. Resolution No. 35-2011, creating LETF
2. Resolution No. 50-2011, appointing original LETF members
- 3 .Resolution No. 10-2012, revision of LETF roster
4. Resolution No. 63-2012 revision of LETF roster
5. Resolution No. \_\_\_\_-2015 revision of LETF roster

**RESOLUTION NO. 35-2011**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,  
CREATING THE LIBRARY EXPANSION TASK FORCE.**

**WHEREAS**, the Ledding Library (Library) has served the Milwaukie community for many years at its present location; and

**WHEREAS**, in 2010 the City entered into a Cooperative Intergovernmental Agreement between the Library District of Clackamas County and Library Cities; and

**WHEREAS**, the Library has been found to have insufficient size to house all facilities needed to serve the City of Milwaukie and the service area assigned to the City through the Cooperative Intergovernmental Agreement; and

**WHEREAS**, under the Cooperative Intergovernmental Agreement the City will receive \$1 million in 2012 to be used for capital facilities associated with the library, and

**WHEREAS**, the City lacks a long term facility plan that identifies options for expanding or relocating some facilities of the Ledding Library; and

**WHEREAS**, the Ledding Library Board (Board) and the City Council met in January, 2011 and discussed the need for undertaking an analysis of the needs and opportunities for expanding the library

**WHEREAS**, the Board has recommended the formation of a Library Expansion task Force to assist the Board and Council to assist in evaluation and development of alternatives; and

**WHEREAS**, the Board has recommended that the Task Force be comprised of representatives from the citizens at large, the neighborhood district associations, the Library Board, the Council, the Planning Commission, the Budget Committee and the local business community, with the assistance of the Library Director and staff from the Planning Department and Finance department as ex officio members,

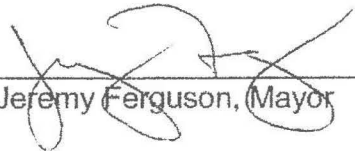
**NOW, THEREFORE, BE IT RESOLVED** that the City Council:

1. Creates the Library Expansion Task Force.
2. Authorizes the Mayor to bring forth names of representatives for approval by Council to fill the positions on the Task Force from the following:
  - a. Two Citizens at large
  - b. Two Neighborhood District Association representatives
  - c. Two Ledding Library board members

- d. A member of the City Council
  - e. A local business person
  - f. A Library Foundation member
  - g. A Planning Commissioner
  - h. A Budget Committee member
3. Designates that the Task Force will cease to function upon the completion of the following tasks:
- a. Develop a scope of work to evaluate options to either expand the Ledding Library or to pursue additional library facilities within the city that deliver services in association with the Ledding library (to be completed by July 1, 2011).
  - b. Evaluate the impact of assuming responsibility for delivering services to the unincorporated areas of Clackamas County (to be completed by July 1, 2011).
  - c. Cost out the options and present preliminary estimates to the City Council for direction (to be completed by September 1, 2011).
  - d. Follow Council direction and obtain necessary consultant services to develop detailed plans to present to Council of the alternative funding options (to be completed by January 1, 2012).


Introduced and adopted by the City Council on 3/15/11.

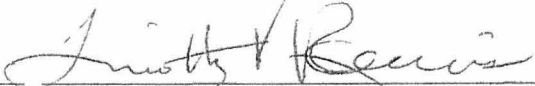
This resolution is effective on 3/15/11.

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

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

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

**RESOLUTION NO. 50-2011**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,  
APPOINTING THE LIBRARY EXPANSION TASK FORCE.**

**WHEREAS**, the Ledding Library Board recommended the formation of a Library Expansion Task Force to assist the Board and Council to assist in evaluation and development of alternatives; and

**WHEREAS**, the Board recommended that the Task Force be comprised of representatives from the citizens at large, the neighborhood district associations (NDAs), the Library Board, the Council, the Planning Commission, the Budget Committee and the local business community, with the assistance of the Library Director and staff from the Planning and Finance department as ex officio members; and

**WHEREAS**, Council stipulated that the citizen at large members and the NDA representatives should be appointed to represent the areas on either side of Highway 224, as follows - position A. the Lake Road, Historic Milwaukie and Island Station NDAs and position B. Hector Campbell, Ardenwald, Linwood, and Lewelling NDAs, and

**WHEREAS**, on March 15, 2011 the City Council passed Resolution 35-2011 creating a task force, and

**WHEREAS**, staff informed the various boards and committees of the opportunity to appoint representatives to the Task Force and on March 22, 2011 staff issued a press release and advertised the need for citizen and business member volunteers; and

**WHEREAS**, the designated groups have appointed representatives to serve on the Task Force and citizens have either applied or been nominated to serve, and

**WHEREAS**, Mayor Jeremy Ferguson has reviewed the list of applicants and recommends that the initial members of the Task Force be appointed,

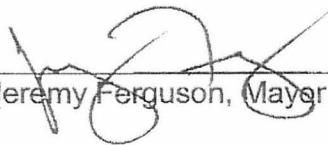
**NOW, THEREFORE, BE IT RESOLVED** that the City Council:

1. Appoints the initial members of the Library Expansion Task Force as follows:
  - a. Library Board – Mark Docken
  - b. Library Board – Tom Hogan
  - c. City Council – Greg Chaimov
  - d. Library Foundation – Ed Zumwalt
  - e. Budget Committee – Jon Stoll
  - f. Planning Commission – Lisa Batey

- g. Local Business person – ODS representative
- h. NDA Position A – Scott Churchill
- i. NDA Position B – Paul Klein
- j. Citizen At Large Position A – Christie Schaeffer
- k. Citizen At Large Position B – Kathi Schroeder


Introduced and adopted by the City Council on 5/3/2011

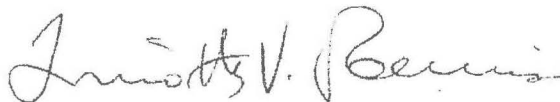
This resolution is effective on 5/3/2011.

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

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

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

Document2 (Last revised 09/18/07)

Attachment 3

RESOLUTION NO. 10-2012

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REVISING THE LIBRARY EXPANSION TASK FORCE AND APPOINTING MELISSA PERKINS TO THE TASK FORCE.**

**WHEREAS**, on March 15, 2011, the Milwaukie City Council passed Resolution No. 35-2011 creating the Library Expansion task Force; and

**WHEREAS**, the Task Force was appointed and is comprised of representatives from the citizens at large, the neighborhood district associations, the Library Board, the Council, the Planning Commission, the Budget Committee and the local business community, with the assistance of the Library Director and staff from the Planning Department and Finance department as ex officio members; and

**WHEREAS**, the Task Force has met regularly since June, 23, 2011 and has made significant progress assessing the needs and interests of the community to expand the library; and

**WHEREAS**, the Task force continues to function well and has not had the opportunity to complete its assigned tasks; and

**WHEREAS**, there has been one resignation from the Task Force and one or more additional members could be lost if their terms on City boards, commissions, or committees cease;

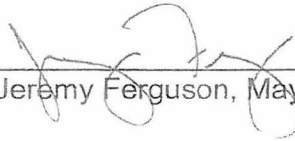
**WHEREAS**, the intent of the City Council is to maintain continuity of the task Force so the Task Force can produce the best possible work product and recommendations.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council:

1. Modifies resolution No. 35-2011 to:
  - a. Acknowledge that the Task Force's work will continue until the four tasks stated in Resolution No. 35- 2011 is completed.
  - b. Accept that an appointee who has represented the Ledding Library Board on the Task Force who become term limited and no longer serves on the Ledding Library Board may continue as a member of the Task Force.
  - c. Melissa Perkins, a member of the Ledding Library Board, is appointed to fill a vacancy on the Task Force caused by the resignation of Mark Docken, a member of the Ledding Library Board


Introduced and adopted by the City Council on 2/21/12.


This resolution is effective on 2/21/12.

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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

**RESOLUTION NO. 63-2012**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,  
REVISING MEMBERSHIP TO THE LIBRARY EXPANSION TASK FORCE.**

**WHEREAS**, the Library Expansion Task Force was established by Resolution 35-2011 to assist the Board and Council to assist in evaluation and development of alternatives; and

**WHEREAS**, the Task Force is comprised of representatives from the citizens at large, the neighborhood district associations (NDAs), the Library Board, the Council, the Planning Commission, the Budget Committee and the local business community, with the assistance of the Library Director and staff from the Planning and Finance department as ex officio members; and

**WHEREAS**, Council stipulated that the citizen at large members and the NDA representatives should be appointed to represent the areas on either side of Highway 224, as follows - position A. the Lake Road, Historic Milwaukie and Island Station NDAs and position B. Hector Campbell, Ardenwald, Linwood, and Lewelling NDAs; and

**WHEREAS**, on May 3, 2011 the City Council passed Resolution 50-2011 appointing members to the task force; and

**WHEREAS**, Greg Chaimov, who currently represents the Task Force City Council position, will no longer be eligible to fill this role due to his departure from Council December 31, 2012, but is a resident of the Island Station NDA; and

**WHEREAS**, Scott Churchill has been serving as the NDA Position A but was elected to take office on City Council January 2, 2013 and is eligible to serve as the Council representative on the Task Force; and

**WHEREAS**, Council desires that both individuals remain on the Task Force to provide for continuity of progress towards expansion of the library and proposes to switch these member positions; and

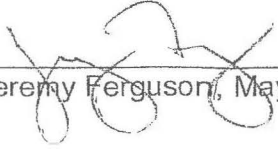
**WHEREAS**, on November 28, 2012, the NDA leadership group concurred with this change in the Council and NDA Position A representatives.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council revises the following Task Force positions effective January 1, 2013:

- a. City Council – Scott Churchill
- b. NDA Position A – Greg Chaimov


Introduced and adopted by the City Council on December 18, 2012.

This resolution is effective on December 18, 2012.

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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

## Attachment 5



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

### **Resolution No.**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REVISING MEMBERSHIP TO THE LIBRARY EXPANSION TASK FORCE.**

**WHEREAS**, the Library Expansion Task Force (LETF) was established by Resolution 35-2011 to assist the Library Board and City Council in evaluation and development of alternatives; and

**WHEREAS**, the LETF is comprised of representatives from the citizens at-large, the Neighborhood District Associations (NDA), the Library Board, the City Council, the Planning Commission, the Budget Committee, and the local business community, with the assistance of the Library Director and staff from the Planning and Finance departments as ex officio members; and

**WHEREAS**, on May 3, 2011, the City Council adopted Resolution 50-2011 appointing members to the LETF; and

**WHEREAS**, on February 21, 2012, the City Council adopted Resolution 10-2012 revising the LETF membership roster; and

**WHEREAS**, the intent of the City Council is to maintain continuity of the LETF so the Task Force can produce the best possible work product and recommendations.

**Now, Therefore, be it Resolved** that the City Council:

1. Modifies Resolution No. 50-2011 and Resolution No. 10-2012 to:
  - a. Appoint Melissa Perkins, a former member of the Ledding Library Board and currently serving on the LETF, as a Library Board representative to remain on the LETF at the Citizen at Large Position A.
  - b. Appoint Kathi Schroeder, a member of the Ledding Library Board and currently serving on the LETF as the Citizen At Large Position A and to remain on the LETF as one of the two Library Board representatives.
  - c. Appoint Tom Hogan, a former member of the Ledding Library Board and currently serving on the LETF as a Library Board representative and to remain on the LETF as the Citizen at Large Position B.
  - d. Appoint Ryan Healy, a member of the Ledding Library Board, to assume the second of two Library Board positions.
  - e. Appoint Nancy Avery, manager at MODA, to assume the Local Business position left vacant with the retirement of Fred Bruderlin of MODA.
  - f. Appoint Scott Barbur, a member of the Planning Commission, to assume the Planning Commission position left vacant when Lisa Batey's term expired.

2. Accepts the members of LETF as follows:
- a. Library Board – Kathi Schroeder
  - b. Library Board – Ryan Healy
  - c. City Council – Karin Power
  - d. Library Foundation – Ed Zumwalt
  - e. Budget Committee – Jon Stoll
  - f. Planning Commission – Scott Barbur
  - g. Local Business person – Nancy Avery, MODA
  - h. NDA Position A – Greg Chaimov
  - i. NDA Position B – Paul Klein
  - j. Citizen-At-Large Position A – Melissa Perkins
  - k. Citizen-At-Large Position B – Tom Hogan

Introduced and adopted by the City Council on **2/3/2015**.

This resolution is effective on immediately.

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Lisa Batey, Council President

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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Pat DuVal, City Recorder

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City Attorney



**MILWAUKIE CITY COUNCIL  
AGENDA ITEM SUMMARY**

Agenda Item: **RS 3. C.**

Meeting Date: **2/3/15**

Title: **Appoint Carolyn Tomei to the Kellogg Good Neighbor Committee Island Station Neighborhood District Association Position No. 2**

Prepared By: Jason Wachs, Community Programs Coordinator

Department Approval: Mitch Nieman, Assistant to City Manager

City Manager Approval: Bill Monahan, City Manager

Approval Date: 1/27/15

**ISSUES BEFORE COUNCIL**

Island Station Neighborhood District Association's (ISNDA) Position No.2 on the Kellogg Good Neighbor Committee (KGNC) was vacated by Karin Power on January 20, 2015 with her appointment as the Committee's Council Member Position. ISNDA voted at their January 21, 2015 meeting to recommend the appointment of Carolyn Tomei to fill the position until the end of the term, which is March 31, 2015. After March 31, 2015, ISNDA will recommend a new appointee by a vote of their membership.

**STAFF RECOMMENDATION**

Adopt Resolution appointing Carolyn Tomei to ISNDA's No.2 Position on the KGNC until the term ends on March 31, 2015.

**KEY FACTS & INFORMATION SUMMARY**

KGNCs intent is to ensure that two representatives from ISNDA serve on the Committee at all times.

**OTHER ALTERNATIVES CONSIDERED**

Leave ISNDA Position No.2 on KGNC vacant until the NDA recommends a new member after March 31, 2015.

**FISCAL NOTES**

There is no fiscal impact associated with making the subject appointment.

**ATTACHMENTS**

1. Resolution



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

**Resolution No.**

**A resolution of the City Council of the City of Milwaukie, Oregon appointing Carolyn Tomei as a representative of the Island Station Neighborhood District Association (NDA) to the Kellogg Good Neighbor Committee.**

**WHEREAS**, the Kellogg Good Neighbor Committee was created on February 5, 2013 by Resolution 06-2013 and was established to make recommendations to Council on funding priorities of the Good Neighbor Fund, established by the Intergovernmental Agreement between the City of Milwaukie and the Clackamas County Service District #1 (CCSD#1) to mitigate the impacts of the Kellogg Plant on the surrounding neighborhoods; and

**WHEREAS**, Karin Power served on the Kellogg Good Neighbor Committee since its creation in February, 2013 as a representative of the Island Station NDA until moving to the position of Council Member on the Kellogg Good Neighbor Committee as of January, 2015; and

**WHEREAS**, the Island Station NDA has voted and recommends Carolyn Tomei’s appointment to the Kellogg Good Neighbor Committee to fill the Island Station representative position No. 2 vacated by Karin Power; and

**Now, Therefore, be it Resolved**

**SECTION 1:** That Carolyn Tomei is appointed to the Milwaukie Kellogg Good Neighbor Committee as the Island Station NDA representative No.2 position.

**SECTION 2:** That her term of appointment shall commence immediately and shall expire March 31, 2015.

Introduced and adopted by the City Council on \_\_\_\_\_.

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

\_\_\_\_\_  
Lisa Batey, Council President

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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

**RS 3. D.**  
**2/3/15**



**To:** Mayor Ferguson and Milwaukie City Council  
**Through:** Bill Monahan, City Manager  
**From:** Steve Bartol, Chief of Police *Approved - SBB*  
**Date:** January 20, 2015  
**Subject:** O.L.C.C. Application – Big Bee Cafe– 4630 SE International Way

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**Action Requested:**

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Big Bee Cafe– 4630 SE International Way

**Background:**

We have conducted a background investigation and find no reason to deny the request for liquor license.



**Regular Session  
Agenda Item No.**

**6**

**Other Business**



Agenda Item: **RS 6. A.**  
Meeting Date: February 3, 2015

## COUNCIL AGENDA ITEM SUMMARY

**Issue/Agenda Title:** Expedited Annexation (File #A-14-05)

**Prepared By:** Li Alligood, Senior Planner

**Dept. Head Approval:** Denny Egner, Planning Director

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

**Reviewed by City Manager:** 1/26/15

### ISSUE BEFORE THE COUNCIL

Consideration of an expedited annexation for the property at 8908 SE 55<sup>th</sup> Ave (File #A-14-05).

### STAFF RECOMMENDATION

Approval of application #A-14-05.

### KEY FACTS & INFORMATION SUMMARY

The property owner has requested that the subject property be annexed in order to connect to City sewer. Upon annexation, the property will be zoned Manufacturing M. The existing residential structure at 8908 SE 55<sup>th</sup> Ave is a single-family home, which will be legally nonconforming in the M zone.

### OTHER ALTERNATIVES CONSIDERED

Council can approve or deny the requested annexation.

### CITY COUNCIL GOALS

n/a

### ATTACHMENT LIST

1. Annexation Ordinance
  - Exhibit A. Findings in Support of Approval
  - Exhibit B. Legal Description and Tax Map
2. Annexation Site Map
3. Applicant's Annexation Application
4. Comments Received

### FISCAL NOTES

Minimal fiscal impact is expected. It is expected that property taxes received by the City for this property will be roughly offset by the cost of providing services to the property.



**To: Mayor and City Council**

**Through: Bill Monahan, City Manager  
Denny Egner, Planning Director**

**From: Li Alligood, Senior Planner**

**Subject: File #A-14-05 – Expedited Annexation of 8908 SE 55<sup>th</sup> Ave**

**Date: January 27, 2015, for February 3, 2015, Regular Session**

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#### **ACTION REQUESTED**

Approve application A-14-05, an expedited annexation petition, and adopt the attached ordinance and associated findings in support of approval (Attachment 1). Approval of this application would result in the following actions:

- Annexation of 8908 SE 55<sup>th</sup> Ave (the "Annexation Property") into the City (Tax Map 1S2E30AB Tax Lot 07000).
- Application of an Industrial (I) land use designation and a Manufacturing (M zoning designation to the Annexation Property.
- Amendments to the City's Land Use Map and Zoning Map to reflect the City's new boundary and the Annexation Property's new land use and zoning designations.
- Withdrawal of the Annexation Property from the following urban service districts:
  - Clackamas County Service District for Enhanced Law Enforcement
  - Clackamas County Service District No. 5 for Street Lights

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

**June 2010:** Council approved the first annexation of property in the Northeast Sewer Extension (NESE) Project Area, at 5840 SE Morris St (Ordinance #2016, Land use file #A-10-01). Since then, Council has approved the annexation of more than 140 additional properties in the NESE area.

**January 2010:** Council annexed the rights-of-way in the Northeast Sewer Extension (NESE) Project Area making all properties in this area contiguous to the City limits and eligible for annexation (Ordinance #2010).

**July 1990:** Clackamas County Order No 90-726 established an Urban Growth Management Agreement in which the City and County agreed to coordinate the future delivery of services to the unincorporated areas of North Clackamas County. With

respect to Dual Interest Area “A,” the agreement states: *“The City shall assume a lead role in providing urbanizing services.”*

## **BACKGROUND**

### **Proposal**

The owner of the Annexation Property wishes to annex to the City to receive sewer service. The property is developed with a single-family home. Upon annexation, the existing residential use will be a legal nonconforming use, subject to the City's zoning ordinance for review and approval of any proposed alterations. The applicant proposes to demolish the residence and redevelop the site with an industrial/commercial building.

### **Site and Vicinity**

The Annexation Property is contiguous to the existing city limits. The Annexation Property is within the City's urban growth management area (UGMA). The area surrounding the site is developed with single-family residential and industrial uses.

### **Annexation Petition**

The petition is being processed as an expedited annexation at the request of the Annexation Property's owner. Under the expedited process, a City land use and zoning designation is automatically applied to the Annexation Property upon annexation. Any property that is within the UGMA and contiguous to the city limit may apply for an expedited annexation so long as all property owners of the area to be annexed and at least 50% of registered voters within the area to be annexed consent to the annexation. The Clackamas County elections office has certified that there are no registered voters living at the property. The owners have signed the petition so the thresholds are met for the Annexation Property.

### **Zoning and Comprehensive Plan Designations**

As set forth in MMC Table 19.1104.1.E, the expedited annexation process automatically assigns City land use and zoning designations to the Annexation Property based on the existing Clackamas County land use and zoning designations. The existing County land use designation for the Annexation Property is General Industrial (GI), which would assign the City's Industrial (I) Comprehensive Plan designation to it upon annexation. The current county zoning designation is Industrial I3, which would assign a city zoning designation of Manufacturing zone M upon annexation.

### **Expedited Annexation Approval Criteria**

Pursuant to City, regional, and State regulations on expedited annexations, all necessary parties, interested persons, and residents and property owners within 400 feet of the site were notified of these proceedings, under MMC 19.1103.4.1.C. A public hearing is not required for an expedited annexation; however, Council must adopt an ordinance to implement the annexation.

Expedited annexations must meet the approval criteria of MMC Subsection 19.1102.3. Compliance with the applicable criteria is detailed in Attachment 1 (Exhibit A, Findings).

### **Utilities, Service Providers, and Service Districts**

The City is authorized by ORS Section 222.120(5) to withdraw the Annexation Property from non-City service providers and districts upon annexation to the City. This allows for a more unified and efficient delivery of urban services to newly annexed property and is in keeping with the City’s Comprehensive Plan policies relating to annexation.

- Wastewater: The Annexation Property is within the City’s sewer service area and will be served by the City’s 8-inch sewer lines in 55<sup>th</sup> Ave.
- Water: The Annexation Property is currently served by Clackamas River Water (CRW). Pursuant to the City’s IGA with CRW, CRW will continue to serve the property, and it should not be withdrawn from this district at this time.
- Storm: The Annexation Property is not connected to a public storm water system. Treatment and management of on-site storm water will be required when new development occurs.
- Fire: The Annexation Property is currently served by Clackamas County Fire District No. 1 and will continue to be served by this fire district upon annexation, since the entire City is within this district.
- Police: The Annexation Property is currently served by the Clackamas County Sheriff’s Department and is within the Clackamas County Service District for Enhanced Law Enforcement, which provides additional police protection to the area. The City has its own police department, and this department can adequately serve the site. In order to avoid duplication of services, the site should be withdrawn from Clackamas County Service District for Enhanced Law Enforcement upon annexation to the City.
- Street Lights: The Annexation Property is currently within Clackamas County Service District No. 5 for Street Lights (the “District”). As of July 1, 2011, an intergovernmental agreement between the City and the District transferred operational responsibility to the City for the street lights and street light payments in the NESE area. Although the City now provides the services through the IGA, many of the properties will remain in the District until they are annexed to the City. The Annexation Property should be withdrawn from the District upon annexation.
- Other Services: Planning, Building, Engineering, Code Enforcement, and other municipal services are available through the City and will be available to the site upon annexation. The Annexation Property will continue to receive services and remain within the boundaries of certain regional and county service providers, such

as TriMet, North Clackamas School District, Vector Control District, and North Clackamas Parks and Recreation District.

### **CONCURRENCE**

All City departments, necessary parties, interested persons, and residents and property owners within 400 feet of the Annexation Property were notified of these annexation proceedings as required by City, regional, and State regulations. See Attachment 4 for comments received. The Lewelling Neighborhood District Association and the Southgate Planning Association also received notice of the annexation petition and meeting.

### **FISCAL IMPACT**

The annexation will have minimal fiscal impact on the City. Costs of providing governmental services will likely be off-set by the collection of property taxes. Per Clackamas County Assessor data, the total assessed value of the Annexation Property in 2013 was \$183,458. Total property tax collection of approximately \$3,460 is anticipated for the Annexation Property, and the City will receive approximately \$784 of this total. No incremental costs in the general fund are anticipated as a result of the annexation of this property.

### **WORK LOAD IMPACTS**

Work load impacts will be minimal and will likely include, but are not limited to, the following: utility billing; provision of general governmental services; and the setting up and maintenance of property records.

### **ALTERNATIVES**

The application is subject to Milwaukie Comprehensive Plan Chapter 6 City Growth and Governmental Relationships, Oregon Revised Statutes Chapter 222 City Boundary Changes, Metro Code Chapter 3.09 Local Government Boundary Changes, and MMC Chapter 19.1100 Annexations and Boundary Changes.

The City Council has two decision-making options:

1. Approve the application and adopt the ordinance and findings in support of approval.
2. Deny the application and adopt findings in support of denial.

### **ATTACHMENTS**

1. Annexation Ordinance  
Exhibit A. Findings in Support of Approval  
Exhibit B. Legal Description and Tax Map
2. Annexation Site Map
3. Applicant's Annexation Application
4. Comments Received

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ANNEXING A TRACT OF LAND IDENTIFIED AS TAX LOT 1S2E30AB07000 AND LOCATED AT 8908 SE 55<sup>TH</sup> AVENUE INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE. (FILE #A-14-05)**

**WHEREAS**, the territory proposed for annexation is contiguous to the City's boundary and is within the City's urban growth management area; and

**WHEREAS**, the requirements of the Oregon Revised Statutes for initiation of the annexation were met by providing written consent from all owners of land in the territory proposed for annexation; and

**WHEREAS**, the requirements of the Oregon Revised Statutes for initiation of the annexation are further satisfied in that written consent from a majority of electors is not required given that there are no electors residing on the property; and

**WHEREAS**, the territory proposed for annexation lies within the territory of Clackamas County Service District No. 5 for Street Lights and Clackamas County Service District for Enhanced Law Enforcement; and

**WHEREAS**, the annexation and withdrawals are not contested by any necessary party; and

**WHEREAS**, the annexation will promote the timely, orderly, and economic provision of public facilities and services; and

**WHEREAS**, Table 19.1504.1.E of the Milwaukie Municipal Code provides for the automatic application of City zoning and Comprehensive Plan land use designations; and

**WHEREAS**, the City conducted a public meeting and mailed notice of the public meeting as required by law; and

**WHEREAS**, the City prepared and made available an annexation report that addressed all applicable criteria, and, upon consideration of such report, the City Council favors annexation of the tract of land and withdrawal from all applicable districts based on findings and conclusions attached hereto as Exhibit A;

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

Section 1. The Findings in Support of Approval and attached as Exhibit A are hereby adopted.

Section 2. The tract of land described and depicted in Exhibit B is hereby annexed to the City of Milwaukie.

Section 3. The tract of land annexed by this ordinance and described in Section 2 is hereby withdrawn from Clackamas County Service District for Enhanced Law Enforcement and Clackamas County Service District No. 5 for Street Lights.

Section 4. The tract of land annexed by this ordinance and described in Section 2 is hereby assigned a Comprehensive Plan land use designation of Industrial and a Municipal Code zoning designation of Manufacturing zone M.

Section 5. The City shall immediately file a copy of this ordinance with Metro and other agencies required by Metro Code Chapter 3.09.030 and ORS 222.005 and 222.177. The annexation and withdrawals shall become effective upon filing of the annexation records with the Secretary of State as provided by ORS 222.180.

Read the first time on \_\_\_\_\_, and moved to second reading by \_\_\_\_\_ vote of the City Council.

Read the second time and adopted by the City Council on \_\_\_\_\_.

Signed by the Council President on \_\_\_\_\_.

\_\_\_\_\_  
Lisa Batey, Council President

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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

Document1 (Last revised 09/18/07)

**EXHIBIT A**  
**FINDINGS IN SUPPORT OF APPROVAL**

Based on the expedited annexation staff report for 8908 SE 55<sup>th</sup> Ave (the “Annexation Property”), the Milwaukie City Council finds:

1. The Annexation Property consists of one tax lot comprising 0.48 acres (Tax Map 1S2E30AB Tax Lot 07000). The site is contiguous to the existing city limits via 55<sup>th</sup> Ave along its western border and property to the east. The Annexation Property is within the regional urban growth boundary and also within the City’s urban growth management area (UGMA).  
  
The property is developed with a single-family dwelling. The surrounding area consists of a mix single-family dwellings and industrial uses.
2. The property owner seeks annexation to the City to access City services, namely sewer service.
3. The annexation petition was initiated by Consent of All Owners of Land on December 16, 2014, with an application for annexation submitted to the City on December 29, 2014. It meets the requirements for initiation set forth in ORS 222.125, Metro Code Section 3.09.040, and Milwaukie Municipal Code (MMC) Subsection 19.1102.2.A.1.
4. The annexation petition was processed and public notice was provided in accordance with ORS Section 222.125, Metro Code Section 3.09.045, and MMC 19.1104.
5. The annexation petition is being processed as an expedited annexation at the request of the property owner. It meets the expedited annexation procedural requirements set forth in MMC 19.1104.
6. The expedited annexation process provides for automatic application of City land use and zoning designations to the Annexation Property based on their existing land use designation in the County, which is General Industrial. Pursuant to MMC Table 19.1104.1.E, the automatic City Comprehensive Plan land use and zoning designations for the Annexation Property is I-Industrial and M-Manufacturing, respectively.
7. The applicable City approval criteria for expedited annexations are contained in MMC 19.1102.3. They are listed below with findings in italics.
  - A. The subject site must be located within the City’s urban growth management area (UGMA);  
*The Annexation Property is within the City’s UGMA.*
  - B. The subject site must be contiguous to the existing city limits;  
*The Annexation Property is contiguous to the existing city limits its western and eastern property lines.*

- C. The requirements of Oregon Revised Statutes for initiation of the annexation process must be met;

*Yachin Holdings, owner of the Annexation Property, consented to the annexation by signing the petition. There are no registered voters residing at the Annexation Property. As submitted, the annexation petition meets the Oregon Revised Statutes requirements for initiation pursuant to the "Consent of All Owners of Land" initiation method, which requires consent by all property owners and a majority of the electors, if any, residing at the Annexation Property.*

- D. The proposal must be consistent with Milwaukie Comprehensive Plan Policies;

*Chapter 6 of the Comprehensive Plan contains the City's annexation policies. Applicable annexation policies include: (1) delivery of City services to annexing areas where the City has adequate services and (2) requiring annexation in order to receive a City service. City sewer service is available to the Annexation Property in 55<sup>th</sup> Ave. As proposed, the annexation is consistent with Milwaukie Comprehensive Plan policies.*

- E. The proposal must comply with the criteria of Metro code Sections 3.09.045(d) and, if applicable, (e).

*The annexation proposal is consistent with applicable Metro Code sections for expedited annexations as detailed in Finding 8.*

8. Prior to approving an expedited annexation, the City must apply the provisions contained in Section 3.09.045.D of the Metro Code. They are listed below with findings in italics.

- A. Find that the change is consistent with expressly applicable provisions in:

- (1) Any applicable urban service agreement adopted pursuant to ORS 195.205;

*There is one applicable urban service agreement adopted pursuant to ORS 195 in the area of the proposed annexation (see Finding #9, Street lights). The City has an UGMA agreement with Clackamas County that states that the City will take the lead in providing urban services in the area of the proposed annexation. The proposed annexation is in keeping with the City's policy of requiring property to annex to the City in order to connect to City services such as the existing sewer line.*

- (2) Any applicable annexation plan adopted pursuant to ORS 195.205;

*There are no applicable annexation plans adopted pursuant to ORS 195 in the area of the proposed annexation.*

- (3) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;

*There are no applicable cooperative planning agreements adopted pursuant to ORS 195 in the area of the proposed annexation.*

- (4) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services;

*Clackamas County completed a North Clackamas Urban Area Public Facilities Plan in 1989 in compliance with Goal 11 of the Land Conservation and Development Commission for coordination of adequate public facilities and services. The City subsequently adopted this plan as an ancillary Comprehensive Plan document. The plan contains four elements:*

- *Sanitary Sewerage Services*
- *Storm Drainage*
- *Transportation Element*
- *Water Systems*

*The proposed annexation is consistent with the four elements of this plan as follows:*

*Sewer:* *The City is the identified sewer service provider in the area of the proposed annexation and the existing sewer system can adequately serve the Annexation Property.*

*Storm:* *The Annexation Property is not connected to a public storm water system. Treatment and management of on-site storm water will be required when new development occurs.*

*Transportation:* *The City may require public street improvements along the Annexation Property's frontage when new development occurs.*

*Water:* *Clackamas River Water (CRW) is the identified water service provider in this plan. However, the City's more recent UGMA agreement with the County identifies the City as the lead urban service provider in the area of the proposed annexation. The City is in the process of developing a water service master plan for all of the territory within its UGMA and discussing possible service provision changes with CRW. In the meantime, CRW will continue to provide water service to the Annexation Property.*

- (5) Any applicable comprehensive plan.

*The proposed annexation is consistent with the Milwaukie Comprehensive Plan, which is more fully described on the previous page. The Clackamas County Comprehensive Plan contains no specific language regarding City annexations. The comprehensive plans, however, contain the City-County UGMA agreement, which identifies the area of the proposed annexation as being within the City's UGMA. The UGMA agreement requires that the City notify the County of proposed annexations, which the*

*City has done. The agreement also calls for City assumption of jurisdiction of local streets that are adjacent to newly annexed areas. The City has jurisdiction of the 55<sup>th</sup> Ave right-of-way adjacent to the proposed Annexation Property.*

B. Consider whether the boundary change would:

- (1) Promote the timely, orderly and economic provision of public facilities and services;

*The City is the identified urban service provider in the area of the proposed annexation, and the proposed annexation will facilitate the timely, orderly, and economic provision of urban services to the Annexation Property.*

*City sewer service is available in 55<sup>th</sup> Ave. The area is currently served by CRW, and the City does not propose to duplicate CRW's water system to serve the Annexation Property.*

- (2) Affect the quality and quantity of urban services; and

*The Annexation Property is a tax lot developed with a single-family residence. Annexation of the sites is not expected to affect the quality or quantity of urban services in this area, given the surrounding level of urban development and the existing level of urban service provision in this area.*

- (3) Eliminate or avoid unnecessary duplication of facilities and services.

*The Annexation Property will be served by the Milwaukie Police Department upon annexation. In order to avoid duplication of law enforcement services, the sites will be withdrawn from the Clackamas County Service District for Enhanced Law Enforcement.*

*CRW is the current water service provider in the area of the proposed annexation. Until such time as the existing IGA between the City and CRW is renegotiated, the City does not intend to duplicate CRW's existing water supply system or withdraw private Property being served by CRW from the CRW district. CRW will continue to be the water service provider in this area.*

9. The City is authorized by ORS Section 222.120 (5) to withdraw annexed territory from non-City service providers and districts upon annexation of the territory to the City. This allows for more unified and efficient delivery of urban services to newly annexed Property and is in keeping with the City's Comprehensive Plan policies relating to annexation.

Wastewater: The Annexation Property is within the City's sewer service area and is served by the City's 8-inch sewer lines accessible in 55<sup>th</sup> Ave.

Water: The Annexation Property is currently served by CRW through a CRW water line in 55<sup>th</sup> Ave. Pursuant to the City's IGA with CRW, the site should not be withdrawn from this district at this time.

Storm: The Annexation Property is not connected to a public storm water system. Treatment and management of on-site storm water will be required when new development occurs.

Fire: The Annexation Property is currently served by Clackamas County Fire District No. 1 and will continue to be served by this fire district upon annexation, since the entire City is within this district.

Police: The Annexation Property is currently served by the Clackamas County Sheriff's Department and is within the Clackamas County Service District for Enhanced Law Enforcement, which provides additional police protection to the area. The City has its own police department, and this department can adequately serve the site. In order to avoid duplication of services, the site should be withdrawn from Clackamas County Service District for Enhanced Law Enforcement upon annexation to the City.

Street Lights: The Annexation Property is currently within Clackamas County Service District No. 5 for Street Lights (the "District"). As of July 1, 2011, an intergovernmental agreement between the City and the District transferred operational responsibility to the City for the street lights and street light payments in the NESE area. Although the City now provides the services through the IGA, many of the properties will remain in the District until they are annexed to the City. The Annexation Property should be withdrawn from the District upon annexation.

Other Services: Planning, Building, Engineering, Code Enforcement, and other municipal services are available through the City and will be available to the site upon annexation. The Annexation Property will continue to receive services and remain within the boundaries of certain regional and county service providers, such as TriMet, North Clackamas School District, Vector Control District, and North Clackamas Parks and Recreation District.

**EXHIBIT B  
LEGAL DESCRIPTION AND TAX MAP**

Milwaukie Annexation File No. A-14-05

Property Address: 8908 SE 55<sup>th</sup> Ave, Milwaukie OR 97222

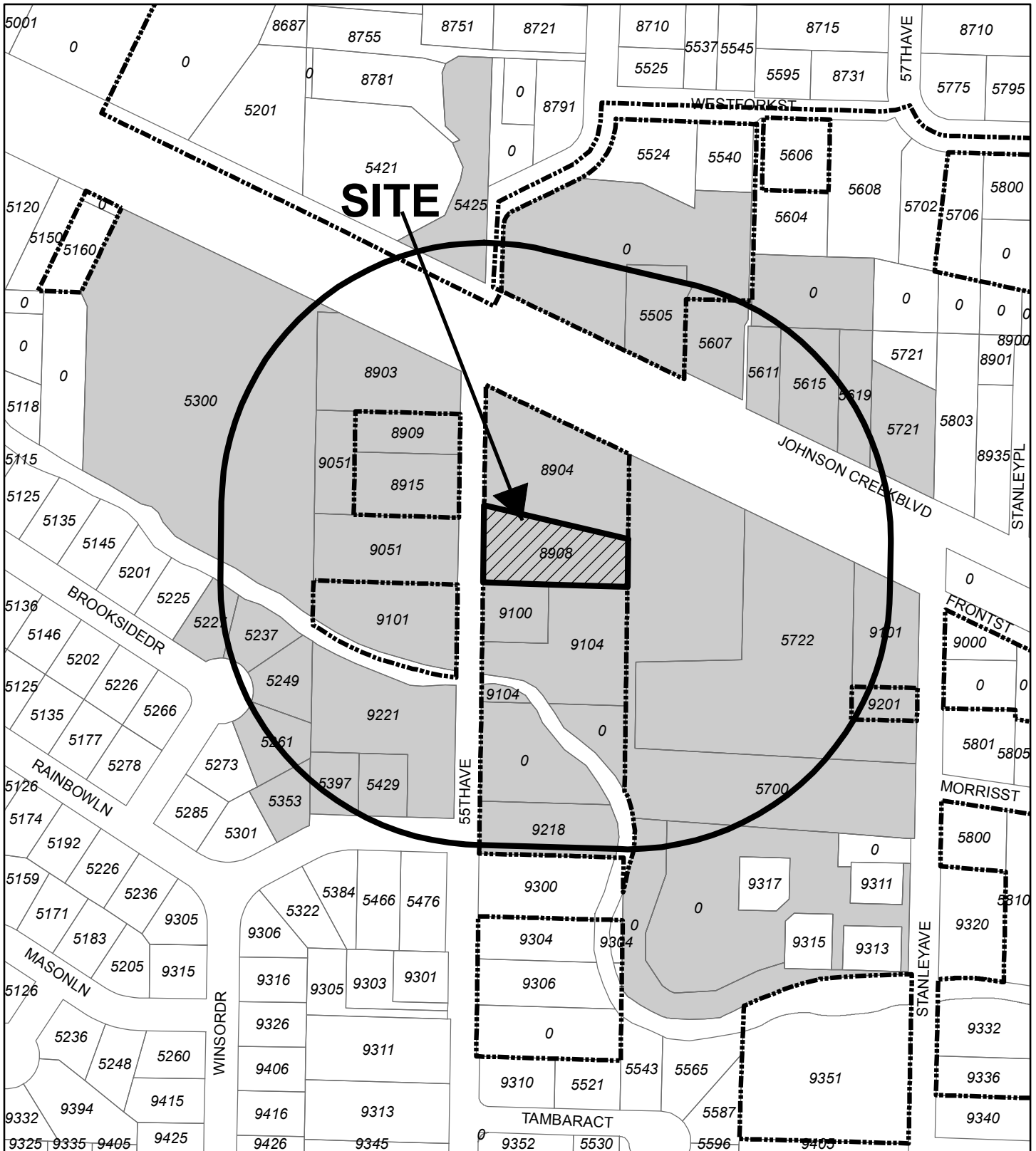
Tax Lot Description: 1S2E30AB07000

Legal Description: A portion of land lying within Clackamas County, Oregon, described as follows:

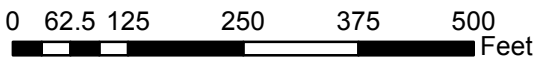
A part of Lot 7, GIBSON'S SUBDIVISION OF TRACTS 10, 11, 12, 13 and the West 480 feet of Tracts 1 and 2, LOGUS TRACTS, more particularly described as beginning at the Southeast corner of said Lot 7, and running thence North on the East line of said Lot 7, a distance of 72 feet; thence Northwesterly in a straight line to a point located 117 feet North of the Southwest corner of said Lot 7 and on the West line of said Lot 7; thence South 117 feet to the Southwest corner of said Lot 7; thence East 220 feet on the South line of said Lot 7, to the Southeast corner of said Lot 7, the place of beginning.



ATTACHMENT 2



**Site Map**  
**8908 SE 55th Ave**  
**(12E30AB07000)**  
**File#A-14-05**



**RS34**

**Legend**

- 400 foot buffer
- A-14-05 Site
- City Limit
- Tax Lots
- Notice Lots

# Expedited Annexation Application



PLANNING DEPARTMENT  
6101 SE Johnson Creek Blvd  
Milwaukie OR 97206

PHONE: 503-786-7630  
FAX: 503-774-8236  
E-MAIL: [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov)  
WEB: [www.milwaukieoregon.gov](http://www.milwaukieoregon.gov)

File #: A-14-05**RESPONSIBLE PARTIES:**

<b>APPLICANT</b> (owner or other eligible applicant): <u>YACHIN Holdings</u>	
Mailing address: <u>PO Box 219, Amity OR</u>	Zip: <u>97101</u>
Phone(s): <u>503 932 2718</u>	E-mail: <u>hillebrand@online.nw.com</u>
<b>APPLICANT'S REPRESENTATIVE</b> (if different than above): <u>Daniel F Hillebrand Sr</u>	
Mailing address: <u>SAME</u>	Zip: <u>SAME</u>
Phone(s): <u>503 835 5066</u>	E-mail: <u>SAME</u>

**SITE INFORMATION:**

Address(es): <u>8908 SE 55th Ave</u>	Map & Tax Lot(s): <u>12E30AB07000</u>	Property size: <u>0.48 AC</u>
Existing County zoning:	Proposed City zoning: <u>Gen Ind</u>	
Existing County land use designation:	Proposed City land use designation: <u>Gen Ind</u>	

**PROPOSAL (describe briefly):**

<u>Clean Site, Build a 3000 sq ft Steel Shop for Storage + small office space</u>
-----------------------------------------------------------------------------------

**LIST OF ALL CURRENT UTILITY PROVIDERS:**

Check all that apply (do not list water or sewer service providers)

<b>Cable, internet, and/or phone:</b>	<input checked="" type="checkbox"/> Comcast	<input type="checkbox"/> CenturyLink (formerly Qwest)	
<b>Energy:</b>	<input type="checkbox"/> PGE	<input checked="" type="checkbox"/> NW Natural Gas	
<b>Garbage hauler:</b>	<input type="checkbox"/> Waste Management	<input checked="" type="checkbox"/> Mel Deines	<input type="checkbox"/> Hoodview Disposal and Recycling
	<input type="checkbox"/> Wichita Sanitary	<input type="checkbox"/> Oak Grove Disposal	<input type="checkbox"/> Clackamas Garbage
<input type="checkbox"/> Other (please list):			

**SIGNATURE:**

**ATTEST:** I am the property owner or I am eligible to initiate this application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. I have attached all owners' and voters' authorizations to submit this application. I understand that uses or structures that were not legally established in the County are not made legal upon annexation to the City. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by: [Signature]Date: 29 Dec 2014

CONTINUED ON REVERSE

RS35

**THIS SECTION FOR OFFICE USE ONLY:**

<b>File #:</b> A-14.05 <b>Fee:</b> \$ 150 <b>Receipt #:</b> 571530 <b>Rcd. by:</b> A. M. H. <b>Date stamp:</b>	
<b>Associated application file #'s:</b> N/A	<b>RECEIVED</b>  <b>DEC 29 2014</b>  CITY OF MILWAUKIE PLANNING DEPARTMENT
<b>Neighborhood District Association(s):</b>	
<b>Notes</b> (include discount if any):	

**CERTIFICATION OF PROPERTY OWNERSHIP OF  
100% OF LAND AREA**

I hereby certify that the attached petition contains the names of the owners<sup>1</sup> (as shown on the last available complete assessment roll) of 100% of the land area of the territory proposed for annexation as described in the attached petition.

Name Ben Blessing  
Title GIS Cartographer  
Department Assessment  
County of CLACKAMAS  
Date 12-17-2014

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<sup>1</sup> Owner means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If a parcel of land has multiple owners, each consenting owner shall be counted as a percentage of their ownership interest in the land. That same percentage shall be applied to the parcel's land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.

## CERTIFICATION OF REGISTERED VOTERS

I hereby certify that the attached petition contains the names of at least 50% of the electors registered in the territory proposed for annexation as described in the attached petition.

8908 SE 55TH  
PORTLAND, 97206


*Paul Hanes*  
Name PAUL HANES  
Title BEAUTY CLERK  
Department ELECTIONS  
County of CLACKAMAS  
Date 12/26/14


CLACKAMAS COUNTY ELECTIONS  
SHERRY HALL, COUNTY CLERK  
1710 RED SOILS CT, SUITE 100  
OREGON CITY, OR 97045

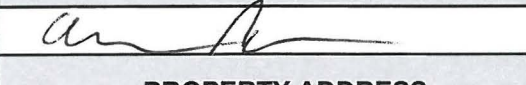


# PETITION SIGNERS

NOTE: This petition may be signed by qualified persons even though they may not know their property description or voter precinct number.

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
	Daniel F Hillebrand	<input checked="" type="checkbox"/>			12-16-2014
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
	Daniel Hillebrand Jr	<input checked="" type="checkbox"/>			12/14/14
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
	Abraham Hillebrand	<input checked="" type="checkbox"/>			12-14-14
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	

\*PO = Property Owner    RV = Registered Voter    OV = Owner and Registered Voter

## CERTIFICATION OF LEGAL DESCRIPTION AND MAP

I hereby certify that the description of the territory included within the attached petition (located on Assessor's Map 12E30AB) has been checked by me. It is a true and exact description of the territory under consideration and corresponds to the attached map indicating the territory under consideration.

Name Ben Blessing  
Title GIS Cartographer  
Department Assessor  
County of CLACKANAS  
Date 12-17-2014

## EXHIBIT "A"

A portion of land lying within Clackamas County, Oregon, described as follows:


A part of Lot 7, GIBSON'S SUBDIVISION OF TRACTS 10, 11, 12, 13 and the West 480 feet of Tracts 1 and 2, LOGUS TRACTS, more particularly described as beginning at the Southeast corner of said Lot 7, and running thence North on the East line of said Lot 7, a distance of 72 feet; thence Northwesterly in a straight line to a point located 117 feet North of the Southwest corner of said Lot 7 and on the West line of said Lot 7; thence South 117 feet to the Southwest corner of said Lot 7; thence East 220 feet on the South line of said Lot 7, to the Southeast corner of said Lot 7, the place of beginning.



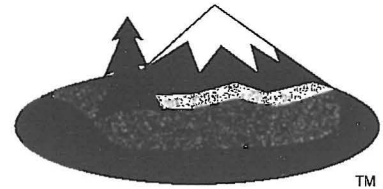
# NOTICE LIST

(This form is NOT the petition)

**LIST THE NAMES AND ADDRESSES OF ALL PROPERTY OWNERS AND REGISTERED VOTERS IN THE TERRITORY PROPOSED FOR ANNEXATION.**

	Name of Owner/Voter	Mailing Street Address	Property Address
		Mailing City/State/Zip	Property Description <small>(township, range, ¼ section, and tax lot)</small>
1	Daniel F Hillebrand Sr	PO Box 219 Amity OR 97101	
2	Daniel Hillebrand JR	8913 SE 139th Ave Happy, Valley, OR 97086	
3	 Abraham Hillebrand	5881 Eastland Ave Salem OR 97317	
4			
5			
6			
7			
8			
9			
10			

# Clackamas River Water



P.O. Box 2439 (503) 722-9220 16770 SE 82nd Drive, Clackamas  
Clackamas, Oregon 97015-2439 Fax (503) 656-7086 customerservice@crwater.com

January 23, 2015

VIA FACSIMILE AND MAIL

Li Alligood, Senior Planner  
City of Milwaukie  
6101 SE Johnson Creek Blvd.  
Milwaukie, OR 97206

Sent to Fax # 503-774-8236

RE: Proposed Expedited Process for Annexation:

- File No A-14-05  
8908 SE 55<sup>th</sup> St, Milwaukie - Tax Lot 03700 of Tax Map 1S2E30AB

Dear Li Alligood,

This is file notice of Clackamas River Water (CRW) having no objections to the expedited process relating to the above referenced proposed annexation. CRW as the domestic water supply district organized under ORS Chapter 264 and is therefore a necessary party to this proceeding.

For purposes of the record, we want to confirm our previous discussions with respect to the continued supply of domestic water by CRW in the affected right of way annexation for NE Milwaukie Sewer Extension Project area and per the Amended and Restated Agreement for Water Supply dated as of June 17, 2008 (paragraph 2). CRW will remain the domestic water service supplier for the term of the agreement or any extension, unless the parties agree otherwise as provided in the agreement. The confirmation of this understanding is the basis on which CRW will not object to the expedited process for the proposed annexation of the area right-of-ways and have no objection for the annexation for Tax Lot 07000 of Tax Map 1S2E30AB.

Please let me know if there are any additional comments or questions concerning annexation issues. Once again, thank you and your staff for your willingness to discuss this matter.

Very truly yours,

Lee E. Moore, Sr.  
General Manager



MILWAUKIE CITY COUNCIL  
STAFF REPORT

Agenda Item: **RS 6. B.**  
Meeting Date: **2/3/15**

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

Subject: **Solid Waste Hauler Franchise Agreement**

From: Casey Camors, Finance Director

Date: January 21, 2015 for February 3, 2015 meeting

**ACTION REQUESTED:**

Adopt two items:

1. An ordinance amending Chapter 13.24 of the Milwaukie Municipal Code regarding management and collection of solid waste and recycling, and
2. A resolution granting non-exclusive franchises for solid waste management services.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

December 20, 2005 – Milwaukie City Council adopted Ordinance 1955 amending the Milwaukie Municipal Code regarding management and collection of solid waste and recycling and declaring an emergency.

January 21, 2015 – Milwaukie City Council reviewed and discussed the ordinance amending Chapter 13.24 of the Code and the resolution granting the non-exclusive franchises for solid waste management services. No edits were suggested.

**BACKGROUND**

In 1994, the City of Milwaukie granted franchises to seven garbage haulers for the provision of solid waste management and collection services in the City. The original term of these franchises ended in October 2004. Council extended these franchise terms to allow staff to complete negotiations and finalize code changes. Prior to the extension lapse, staff negotiated an updated franchise agreement which was subsequently granted by the City Council on December 20, 2005. The current agreement term expires on December 21, 2015.

Staff, Rick Winterhaulter (Clackamas County Sustainability Analyst, Senior) and the City Attorney have worked closely with David White, negotiating for the five current franchised haulers, over the past five months to develop amended code language for solid waste management and collection. Rick Winterhaulter offers the City assistance with solid waste matters as he is an expert in this area and works closely with the haulers and their representative within the County.

Significant elements of the amendments to the Code language include:

- Modifications to financial penalty language disallowing duplicate penalties by City and State agency but allowing for City abatement or restitution costs.

- Increased insurance coverage requirements to be in line with tort thresholds and City contracting policy.
- Changes in the agreement term:
  - Change from a ten year franchise with annual rate evaluation and five year comprehensive review and allowance for two five year extensions, not to exceed ten additional years.
  - Change to a ten year rolling franchise, renewing annually, with annual rate evaluation and five year comprehensive review.
- Increase in penalties for nonfranchised persons engaging in any of the activities franchised under chapter 13.24.

Additional minor modifications were made to the Code to remove discrepancies, redundancies, grammar errors and outdated requirements.

Staff, the City Attorney, and the haulers have now agreed on the language presented to Council in the attached ordinance and resolution. Council is asked to adopt the Code language and grant the franchises.

**CONCURRENCE**

The City Attorney, the City Manager, Rick Winterhaulter and the five franchised haulers have reviewed these materials and concur with staff’s recommendation.

**FISCAL IMPACTS**

None anticipated.

**WORK LOAD IMPACTS**

Should Council request further Code amendments, staff time will be consumed in negotiations with the haulers and the City Attorney.

**ALTERNATIVES**

N/A

**ATTACHMENTS**

1. Draft Ordinance including Attachment A – Code Chapter 13.24 as Amended
2. Redline Code Chapter 13.24 as Amended
3. Draft Resolution including Exhibit A – hauler service area map

# Attachment 1



## CITY OF MILWAUKIE

*"Dogwood City of the West"*

### Ordinance No.

**An ordinance of the City Council of the City of Milwaukie, Oregon, amending Chapter 13.24 of the Milwaukie Municipal Code regarding management and collection of solid waste and recycling.**

**WHEREAS**, the current language in Chapter 13.24 was adopted in 2005 by ordinance number 1955 and has not been amended significantly since that time; and

**WHEREAS**, the terms of the franchises for the solid waste providers lapse on December 21, 2015 and renewal of those franchises will take place before that date; and

**WHEREAS**, the City and the solid waste management providers wish to update code language regarding the rules and regulations in this area; and

**WHEREAS**, the City and the solid waste management providers worked together to develop the amendments to Chapter 13.24 and approve of the substance thereof; and

**WHEREAS**, this ordinance enables continued provision of solid waste services and protects public health, which would be at risk if solid waste services are interrupted;

**Now, Therefore, the City of Milwaukie does ordain as follows:**

Section 1: Chapter 13.24 of the Milwaukie Municipal Code is hereby amended as shown in attachment A.

Section 2: All solid waste management service providers granted franchises by the City of Milwaukie shall comply with Milwaukie Municipal Code Chapter 13.24.

Section 3: Ordinance shall be effective March 5, 2015.

Read the first time on \_\_\_\_\_, and moved to second reading by \_\_\_\_\_ vote of the City Council.

Read the second time and adopted by the City Council on \_\_\_\_\_.

Signed by the Mayor on \_\_\_\_\_.

---

Lisa Batey, Council President

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

---

Pat DuVal, City Recorder

---

City Attorney

## ATTACHMENT A

### 13.24.010 POLICY

It is declared to be the public policy of the City of Milwaukie to regulate solid waste management service by:

- A. Insuring safe, economical, and comprehensive solid waste management service;
- B. Insuring service rates and charges that are just and reasonable and adequate to provide necessary public service;
- C. Prohibiting rate preferences and other discriminatory practices; and
- D. Providing technologically and economically feasible resource recovery by and through the franchisees. (Ord. 1955 § 1 (part), 2005)

### 13.24.020 DEFINITIONS

The following definitions shall apply to this chapter:

“Business” means any entity of one (1) or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational, or other activity that is nonresidential in nature, including public bodies.

“City” means the City of Milwaukie, Clackamas County, Oregon.

“City Council” or “Council” means the City Council of Milwaukie, Oregon.

In addition, for the purpose of this chapter, the following definitions shall be applicable:

“Allowable expenses” means those expenses that are known and measurable, calculated in accordance with Generally Accepted Accounting Principles (GAAP), not in excess of the fair market value of like services, and are reasonably and prudently incurred by the franchisee in the course of performing its obligations under this franchise.

“Bulky wastes” means large items of solid waste such as appliances, furniture, large auto parts, trees, branches greater than four (4) inches in diameter and thirty-six (36) inches in length, stumps, and other oversize wastes whose large size precludes or complicates their handling by normal collection, processing, or disposal methods.

“Commission” means the State of Oregon Environmental Quality Commission (EQC).

“Compensation” includes any type of consideration paid for service, including but not limited to, rent, the sale of recyclable materials, and any other direct or indirect provisions for payment of money, goods, or benefits by property owners, tenants, members, licensees, and similar persons. It shall also include any exchange of services, including the hauling of solid waste and waste. Compensation includes the flow of consideration from the person owning or possessing the solid waste or waste to the person collecting, sorting, transporting, or disposing of solid waste or waste.

“Curbside,” as defined here, may also be called “curbside/roadside” and means a location within three (3) feet of public right-of-way. This does not allow the garbage or recycling receptacle to be placed on the inside of a fence or enclosure even if the receptacle is within three (3) feet of said road or roads. For residences on “flag lots”, private roads, or driveways,

“curbside/roadside” shall be the point where the private road or driveway intersects a City road, public access road, State road, or federal road.

“Department” means the State of Oregon Department of Environmental Quality (DEQ).

“Disposal site” means land and facilities used for the disposal, handling or transfer of, or resource recovery from solid wastes, including but not limited to, dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting plants, and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility subject to the permit requirements of ORS 468B.050; a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete, or other similar nondecomposable material, unless the site is used by the public either directly or through a solid waste collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

“Franchisee” means the person to whom a franchise is granted by the City Council pursuant to this chapter. Such franchise shall grant exclusive rights to provide service and solid waste management service for compensation.

“Infectious waste” means biological waste, cultures and stocks, pathological wastes, and sharps, as defined in ORS 459.386 and 459.387.

“Person” means the state or a public or private corporation, cooperative, local government unit, public agency, individual, partnership, association, firm, trust, estate, or any other legal entity.

“Placed for collection” means solid waste or recyclable material that has been placed by the customer for service by a franchisee under the requirements contained in this chapter.

“Processing” means an operation where collected, source separated, recyclable materials are sorted, graded, cleaned, densified, or otherwise prepared for end use markets.

“Recyclable material” means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

“Resource recovery” means the process of obtaining useful material or energy resources from solid waste and includes:

1. “Energy recovery,” which means recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material;
2. “Material recovery,” which means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties and can be reused or recycled for some purpose;
3. “Recycling,” which means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity;
4. “Reuse,” which means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

“Solid waste” and “waste” are interchangeable. “Solid waste” means and includes all putrescible and nonputrescible waste, including but not limited to, garbage; compost; organic waste; yard

debris; brush and branches; land clearing debris; sewer sludge; residential, commercial and industrial building demolition or construction waste; discarded residential, commercial, and industrial appliances, equipment and furniture; discarded, inoperable or abandoned vehicles or vehicle parts and vehicle tires; manure; feces; vegetable or animal solid and semisolid waste and dead animals; and infectious waste. "Waste" means useless, unwanted, or discarded materials. The fact that materials, which would otherwise come within the definition of solid waste, may, from time to time, have value and thus be utilized shall not remove them from the definition. The terms "solid waste" or "waste" do not include:

1. Environmentally hazardous wastes as defined in ORS 466.055;
2. Materials used for fertilizer or for other productive purposes on land in agricultural operations in the growing and harvesting of crops or the raising of fowl or animals;
3. Septic tank and cesspool pumping or chemical toilet waste;
4. Source separated, principal recyclable materials as defined in ORS 459A and the rules promulgated there under and under this chapter, which have been purchased or exchanged for fair market value, unless the City declares a site of uncollected principal recyclable materials to be public nuisance;
5. Applications of industrial sludges or industrial waste byproducts authorized through a land use compatibility statement or management plan approval and that have been applied to agricultural lands according to accepted agronomic practices or accepted method approved by the land use compatibility statement or management plan, but not to exceed one hundred (100) dry tons per acre annually; stabilized municipal sewage sludge applied for accepted beneficial uses on land in agricultural, nonagricultural, or silvicultural operations; sludge-derived products applied for beneficial uses on land in landscaping projects.

"Solid waste collection service" or "service" means the collection, transportation, or disposal of or resource recovery from solid wastes.

"Solid waste management" means the management of the accumulation, storage, collection, transfer, handling, compaction, transportation, treatment, processing and final disposal, or utilization of solid waste and waste or resource recovery from solid waste and facilities necessary or convenient to those activities. The franchisee may contract with another person to provide service of any type under the franchisee's service franchise, but the franchisee shall remain ultimately responsible for solid waste and waste management in the franchisee's franchised service area.

"Source separate" means that the person who last uses recyclable material separates the recyclable material from solid waste.

"Special wastes" shall have the meaning given to them in the METRO code as now referenced at METRO Code Section 5.02.015(s), or as hereafter amended, or as provided in the City's administrative rules. The collection of "special wastes" shall be controlled by this chapter and any rules adopted hereunder.

"Transfer station" means a fixed or mobile facility normally used as an adjunct of a solid waste collection and disposal system or resource recovery station between a collection route and a disposal site.

“Unallowable expenses” means any expenses not included in the definition of allowable expenses. Unallowable expenses shall include, but not be limited to :

1. Interest and amortization on the purchase of franchise routes or other routes or business opportunities;
2. Political and charitable contributions;
3. Federal, State, and local income taxes;
4. Loss on sale of assets;
5. Officer’s life insurance premiums;
6. Director fees;
7. Interest on the purchase of equipment or facilities to the extent that the purchase price exceeds the fair market value of the asset at the time of purchase;
8. Penalties and fines.

“Waste” means material that is no longer usable or wanted by the source of the material, which material is to be utilized or disposed by another person. For the purposes of this paragraph, “utilized” means the productive use of wastes through recycling, reuse, salvage, resource recovery, energy recovery, or landfilling for reclamation, habilitation, or rehabilitation of land.

“White goods” means kitchen or other large appliances which are bulky wastes.

“Yard debris” means and includes grass clippings, leaves, tree and shrub prunings of no greater than four (4) inches in diameter, or similar yard and garden vegetation. Yard debris does not include such items as: dirt, sod, stumps, logs, tree and shrub prunings greater than four (4) inches in diameter, rocks, plastic, animal waste or manure, cat litter, potting soil, prepared food wastes, or non-putrescible material. (Ord. 1992 § 1, 2009; Ord. 1955 § 1 (part), 2005)

### **13.24.030 ENFORCEMENT OFFICERS—ACCESS TO AND REVIEW OF BOOKS AND RECORDS**

A. The City Manager shall enforce the provisions of this chapter, and his or her agents, including Police Officers and employees of the Public Works Department, may enter any premises for the purpose of determining compliance with the provisions and terms of this chapter. Such entry shall be upon permission of the occupant or upon warrant.

B. In order for the franchisees to perform services under this chapter, it may be necessary for a franchisee to disclose to City or City may otherwise acquire, a franchisee’s confidential business or technical information. The City may make an inspection for such purposes upon at least twenty-four (24) hours’ notice, during normal business hours, at an office of the franchisee. The City will receive and maintain in confidence all information and will prevent the disclosure of information to others except as required by law in connection with litigation. The City will not use information for any purpose other than in connection with the performance of services pursuant to this chapter.

The above shall not apply to any portion of information: (1) which was developed by the City and is in the City’s possession prior to the City’s first receipt thereof directly or indirectly from a franchisee; (2) which is now or hereafter becomes through no act or failure to act on the City’s part generally available on a nonconfidential basis; (3) which was

heretofore or hereafter furnished to a franchisee by others as a matter of right without restriction on disclosure; or (4) which is required by law to be publicly disclosed by the City. Information shall not be deemed to be within one of the foregoing exceptions if it is merely embraced by more general information available on a nonconfidential basis.

The City agrees that each of its employees, agents, and subcontractors who participate in the performance of services or who has access to information is obligated in a manner consistent with this section. The obligations of this section shall survive the termination of any request for services and the termination of this chapter. (Ord. 1955 § 1 (part), 2005)

### **13.24.040 FRANCHISE REQUIRED AND EXCEPTIONS THERETO**

A. Except as otherwise provided in this chapter, it is unlawful for any person other than the franchise holders under the provisions of this chapter, to provide or offer to provide solid waste management or collection service in the City for compensation.

B. Nothing in this franchise shall:

1. Prohibit a federal or State agency that collects, stores, transports, or disposes of waste, solid waste, or recyclable materials, or those who contract with such agencies to perform the service, but only insofar as the service is performed by or for the federal or state agency;
2. Prohibit any person in the City from hauling that person's own waste, solid waste, or recyclable materials in a lawful manner; provided, however, that no person will be permitted to haul such waste, solid waste, or recyclable material for any other person or firm. In the case of a residential dwelling unit (whether individually owned, nonowner occupied, or grouped through an association or cooperative of property owners) any waste generated or produced is owned by the individual owner or occupant and not by the landlord, property owner, cooperative, or association or property manager or agent of such person;
3. Prohibit a generator of source separated recyclable material from selling or exchanging such material to any person for fair market value for recycling or reuse;
4. Prohibit any person from transporting, disposing of, or resource recovering sewage sludge, septic pumpings, and cesspool pumpings;
5. Prohibit any person licensed as a motor vehicle wrecker under ORS 822.110 et seq., from collecting, transporting, disposing of, or utilizing motor vehicles or motor vehicle parts;
6. Prohibit any person transporting solid waste through the City that is not collected within the City;
7. Prohibit a contractor registered under ORS Chapter 701 from hauling waste created in connection with the demolition, construction, or remodeling of a building or structure or in connection with land clearing and development. Such waste shall be hauled in equipment owned by the contractor and operated by the contractor's employees;

8. Prohibit the collection, transportation, and reuse of repairable or cleanable discards by private charitable organizations regularly engaged in such business or activity including, without limitation, Salvation Army, Goodwill, St. Vincent De Paul, and similar organizations;
9. Prohibit a person from conducting an activity determined by the City Manager to be a civic, community, benevolent, or charitable program, providing that such activity does not include the collection of putrescible solid waste. The organization conducting such program shall comply with all applicable provisions of this chapter;
10. Prohibit a person from transporting or disposing of waste that is produced as an incidental part of the regular carrying on of the business but a person shall not provide collection service for any accumulated waste generated by a customer of that business;
11. Require franchisee to store, collect, transport, dispose of, or resource recover any hazardous waste as defined by or pursuant to ORS Chapter 466; provided, however, that franchisee may engage in a separate business of handling such wastes separate and apart from this franchise and chapter. (Ord. 1955 § 1 (part), 2005)

#### **13.24.045 BUSINESS RECYCLING REQUIREMENTS**

All businesses within the City shall comply with waste prevention, recycling, and composting requirements as set forth in this chapter and the regulations promulgated hereunder.

- A. Businesses shall source separate all recyclable paper, cardboard, glass and plastic bottles and jars, and metal cans for reuse or recycling.
- B. Businesses shall ensure the provision of recycling receptacles for internal and/or external maintenance or work areas where recyclable materials are collected, stored, or both.
- C. Businesses shall post accurate signs that:
  1. Describe the location where recyclable materials are collected, stored, or both;
  2. Identify the materials the business must source separate for reuse or recycling; and
  3. Provide recycling instructions.
- D. Persons providing garbage collection service to business tenants as part of their rental/lease, shall provide recycling collection systems enabling the business tenants to recycle in compliance with this chapter and any regulations promulgated hereunder. (Ord. 1992 § 2, 2009)

#### **13.24.050 ADOPTION AND REVISION OF RULES**

- A. Under authority of the Milwaukie Municipal Code, the City Manager is authorized to adopt rules, procedures and forms to implement provisions of this chapter that regulate the collection and disposal of solid waste, recycling, and yard debris within the City.

B. Any rule adopted or revised according to the authority of the Milwaukie Municipal Code shall require a public review process. Not less than ten (10) nor more than thirty (30) days before such public review process, notice shall be given by publication in a newspaper of general local circulation. Such notice shall include the place, time, and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.

C. During the public review, the City Manager or designee shall hear testimony or receive written comment concerning the proposed rules. The City Manager shall review the recommendations; taking into consideration the comments received during the public review process and shall either adopt the proposal, modify or reject it.

D. An interim rule may be adopted by the City Manager or designee without prior notice upon a finding that failure to act promptly will result in serious prejudice of the public interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this subsection shall be effective for a period of not longer than one hundred eighty (180) days. (Ord. 1955 § 1 (part), 2005)

#### **13.24.060 SANITARY AND SAFETY REGULATIONS**

A. Each franchisee shall comply with all State, federal, regional, and City laws, rules, and regulations relating to solid waste management service, as now or hereafter constituted.

B. Violation shall be an offense against the City; however, if a financial penalty is imposed by the State, federal or regional agency, the City will not impose an additional financial penalty. Notwithstanding, the City reserves the right to assess abatement or restitution costs when applicable.

C. Where enforcement action is not taken by any other agency, the City may exercise this authority in order to cure the violation. (Ord. 1955 § 1 (part), 2005)

#### **13.24.070 STANDARDS FOR COLLECTION AND STORAGE OF SOLID WASTES AND RECYCLABLE MATERIALS**

A. Storage and collection of solid waste and recyclable materials shall not create vector production and sustenance, conditions for transmission of disease to man or animals, fire hazards, or hazards to service or disposal workers or to the public. All solid wastes placed for collection shall be stored by the customer in a can (metal or heavy-duty plastic), cart, metal container, or drop box, and such receptacles, other than drop boxes, must have tightfitting covers and hand or mechanical bales to facilitate pickup. Extra volumes of solid waste that are in addition to the subscribed service, may be in heavy plastic bags that are securely tied at the top and which will accommodate the weight and volume of waste contained in them so that they do not break open upon being collected. The cleanliness of the grounds surrounding the solid waste and recyclable materials storage area and of the receptacle for such materials shall be the responsibility of the customer. Solid waste containing putrescible materials shall be stored in closed containers.

B. Recyclable materials and yard debris shall be prepared by customers and placed at curbside for collection by a franchisee in accordance with rules and standards adopted under this chapter.

C. Customers shall provide a space for all cans, carts, containers, or drop boxes, whether used for garbage or recycling, that has adequate and safe access for collection personnel and equipment. The space provided must also comply with the City development code.

D. Placement of receptacles for collection by a franchisee and requirements pertaining to weight limitations, type, and quality, and contents of receptacles placed for collection by a franchisee shall be in accordance with rules and standards adopted under this chapter.

E. The temporary storage of solid waste is permitted without compliance with the requirements for solid waste disposal sites if the temporary storage is provided under safe and sanitary conditions. Temporary storage must comply with all relevant codes and chapters of the City. (Ord. 1955 § 1 (part), 2005)

### **13.24.080 FRANCHISE REQUIREMENTS**

A. Each franchisee shall make available, for subscription, all levels of solid waste collection service for which the City sets rates, to every customer in its franchised geographic area, subject to the limitations in Section 13.24.150 for refusal of service. Collection of bulky wastes shall be made by special arrangement between franchisee and a customer. Each franchisee shall provide each of their new customers with City-approved written information on all solid waste and recycling collection services that are available and the rates for these services. The franchisee shall not intentionally provide solid waste collection service to customers in another franchisee's geographic area within the Milwaukie City limits except by arrangement with another franchisee under a subcontract. Customers shall be given written notice of any changes in service.

B. Each franchisee shall use proper and suitable equipment for the hauling, removal, and transportation of solid waste. All equipment for transporting solid waste on public roadways within the City shall be covered and all equipment for handling the waste material shall be watertight and drip proof to the greatest extent practicable. All equipment shall be kept clean at all times and sufficient equipment shall be kept on hand to properly and adequately remove all solid waste, subject to the terms of this chapter, together with rules and standards adopted under this chapter.

C. Each franchisee shall make available solid waste management and collection service as defined in Section 13.24.020 of this chapter to customers in the City not less than once per week.

D. Each franchisee may subcontract with others to provide a portion of the solid waste collection service where the franchisee does not have the necessary equipment or service capability. Such a subcontract shall not relieve the franchisee of responsibility for providing and maintaining service and from compliance with this chapter. The franchisee shall provide written notice to the City of its intention to subcontract any portion of the solid waste collection service prior to entering into such agreement, and provide the City with a copy of the agreement, which shall require City approval prior to the agreement becoming

effective, provided however that such approval shall not be unreasonably withheld. The subcontractor shall comply with all provisions of this chapter.

E. Each franchisee shall provide the opportunity to recycle in accordance with Chapter 459A of Oregon Revised Statutes, together with the rules and regulations promulgated thereunder by the EQC, DEQ, METRO and the City.

F. Each franchisee shall permit inspection by the City of the franchisee's facilities, equipment, and personnel at reasonable times.

G. Each franchisee shall comply with all laws relating to solid waste management service and shall not have a record of violations of law or chapters that would indicate an inability to satisfactorily perform the service being franchised.

H. Each franchisee shall submit a certificate of public liability insurance with a thirty (30) day notice of cancellation clause, acceptable to the City, which will cover its business operation including each vehicle operated by the franchisee. This coverage shall include contractual liability insurance. Coverage will include two million dollars (\$2,000,000.00) per occurrence and three million dollars (\$3,000,000.00) general annual aggregate. The insurance shall name City as an additional insured and shall require written notice to City thirty (30) days in advance of cancellation. If contractor hires a carrier to make delivery, contractor shall ensure that the carrier complies with this subsection. The insurance shall indemnify and save the City harmless against liability or damage which may arise or occur from an injury to persons or property as a result of the franchisee's operation of the solid waste business.

I. Each franchisee shall comply with the hours of collection which may be set by rules and regulations under this chapter.

J. Each franchisee shall provide staff, equipment, transportation, and disposal for waste collected at one annual collection event in the City. Expenses from this event shall be reported in annual financial reports as allowable expenses for services provided within the City. (Ord. 1955 § 1 (part), 2005)

### **13.24.090 NONEXCLUSIVE FRANCHISE**

A. No person shall do business in the collection and transport of solid waste generated within the City without a current, valid City franchise. An additional franchise to provide collection service for solid waste, recyclable materials, and yard debris in a solid waste franchised service area (as described in 12.24.120) of the City shall be granted only after a determination of need for the service. The determination of need is the responsibility of the City Council, which will seek the best balance of the following objectives:

1. To insure safe, efficient, economical, and comprehensive solid waste service;
2. To avoid duplication of service that will cause inefficiency, excessive use of fuel, increased traffic, and greater wear on streets;
3. To provide service in areas of marginal return;
4. To promote and encourage recycling and resource recovery;

5. To improve the likelihood of the franchise holder making a reasonable profit and thereby encourage investment in modern equipment;
6. To cooperate with other governmental bodies by recognizing their service arrangements; and
7. To otherwise provide for the service in a manner appropriate to the public interest.

B. In granting a franchise renewal or a new franchise due to an annexation by the City or termination or revocation of a franchise, the Council shall, in addition to the above, consider the following factors in selecting a new or replacement franchisee:

1. The candidate's prior service record in the same or a related industry and its professional relationships with other corporate entities and local, regional, and/or State jurisdictions;
2. The candidate's financial ability to perform the obligations of a franchise holder;
3. The candidate's equipment and personnel available to meet current and future needs of a franchise holder;
4. The candidate's ability to provide all services to customers within the geographic boundaries of the designated franchise area, including every residential, multifamily, and commercial customer;
5. The candidate's exercise of the burden of proof demonstrating a proposed franchise area is being or has been underserved by the existing or previous franchise holder; and
6. The candidate's good moral character as is relevant to a franchised provider's customer relations, namely any unpaid judgments against the applicant (whether doing business under the same or another name) and any judgments for civil fraud or for a crime of dishonesty.

C. Franchises granted by the City shall be nonexclusive, however it is understood that during the term of franchises granted under this chapter, the City shall not grant any other person a franchise for solid waste management unless there is a showing by the applicant of the need for such additional service in the proposed service area. As to such application(s), the Council may consider whether a current franchisee is capable of providing the additional service. In evaluating whether a need exists for additional service, the City Council may consider, among any other criteria deemed relevant by the City Council, the following items:

1. An increase in the population of the City;
2. An extension of the boundaries of the City;
3. Intensive residential, commercial, or industrial development within the boundaries of the City;
4. Changes in solid waste technology and/or recycling collection technology that could substantially improve collection service or reduce collection costs to residents of the City;
5. The effect that an additional franchise would have on each existing franchisee's ability to meet the City's service standards and maintain a fair return on its investment;

6. The number of existing collection franchisees or drop box service franchisees, as applicable, providing service in the area of the City in which the applicant wishes to provide service; and
7. Changes in federal or State laws, rules or regulations that substantially affect solid waste or recycling collection requirements.

(Ord. 1955 § 1 (part), 2005)

### **13.24.100 TERM OF FRANCHISE**

A. A franchise to provide collection service for solid waste, recyclable materials, and yard debris in a portion of the City shall be granted for a period of ten (10) years, beginning February XX, 2015.

B. Unless grounds exist for suspension, modification, or revocation of a franchise under Section 13.24.140 of this chapter, each franchise shall be considered as a continuing ten (10) year term. Beginning 1 January of each year, each franchise will be considered renewed for an additional ten (10) year term, unless at least thirty (30) days prior to 1 January of any year the City notifies all the franchisees of the intent to terminate the continuing franchise system. Upon the giving of such notice, the franchisees will each have a franchise which will terminate on 1 January, ten years from the date of the last renewal prior to the notice of termination.

C. At least every five years thereafter, the City Manager or designee shall report to the Council a comprehensive review of the rates, customer service, franchise performance and overall state of the franchise system to determine if the system is achieving waste reduction, increased recycling, cost effective collection services and providing a high level of service to residents and businesses.

1. Upon consideration of this system status report, as noted in B above, the Council may elect to continue or terminate the continuing franchise system. If Council elects to terminate the continuing franchise system, all franchises will expire ten (10) years after the last renewal, as provided in paragraph B above.
2. Any such election to continue or terminate the continuing franchise system shall only be made after notice to all interested parties and public hearing.
3. The City shall review franchises annually to evaluate rates.

D. The City may initiate proceedings to terminate the continuing franchise system at any time, whether or not a five-year review is being conducted.

E. A decision by Council to terminate the continuing franchise system shall in no way affect the franchisee's obligations under the existing franchise agreement.

F. Nothing in this section restricts the Council from suspending, modifying, or revoking a franchise for cause pursuant to Section 13.24.140 of this chapter.

G. A franchisee who desires to terminate its rights and obligations under a franchise, shall give not less than ninety (90) days' notice of its intent. Upon receipt of such notice the Council shall initiate proceedings to consider applications by any other person for a franchise to serve the same area. (Ord. 1955 § 1 (part), 2005)

**13.24.110 NOTICE REQUEST FOR FRANCHISE APPLICATIONS**

A. Prior to the end of a franchise term, notice that the City intends to solicit applications for solid waste franchises shall be published in a newspaper of general circulation within the City. Notice shall also be sent to all holders of Milwaukie solid waste franchises. The City Manager or designee may keep a list of interested persons who will also be provided notice.

B. The City Manager shall establish forms and deadlines. (Ord. 1955 § 1 (part), 2005)

**13.24.120 DESCRIPTION OF FRANCHISE AREAS**

A City solid waste franchise service area shall include single unit residential customers and any multifamily residential, commercial, and industrial customers within that service area. The service areas shall be determined by Council resolution. The franchise areas and the franchisees serving such areas shall be indicated on a map entitled "Solid Waste Franchise Service Areas of the City of Milwaukie" (the "map"). A copy of the map shall be dated with the effective date of the Council resolution and maintained in the office of the City Manager. Amendments to the map may be made by Council resolution, and copies of amendments shall be kept on file by the City Recorder. (Ord. 1955 § 1 (part), 2005)

**13.24.130 TRANSFER OF FRANCHISE**

- A. An assignment or transfer of a franchise shall include, but not be limited to:
  1. A sale, exchange, or other transfer of fifty percent (50%) or more of franchisee's assets dedicated to service in the City;
  2. A sale, exchange, or other transfer of fifty percent (50%) or more of the outstanding common stock of a franchisee;
  3. Any reorganization, consolidation, merger, recapitalization, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction to which franchisee or any of its shareholders is a party which results in a change of ownership or control of fifty percent (50%) or more of the value or voting rights in the stock of the franchisee; and
  4. Any combination of the foregoing that has the effect of a transfer or change of ownership and control.

B. The franchisee shall provide no less than sixty (60) days' advance written notice to the City of any proposed transfer or assignment. Except as specifically authorized by the City, the franchisee shall not assign any of its rights or delegate or otherwise transfer any of its obligations to any other person without the prior consent of the City Council. Any such assignment without the consent of City Council shall be void and any such attempted assignment shall constitute default and grounds for termination of the franchise.

C. If a franchisee requests the City's consent to transfer the franchise, the City shall act on such request within sixty (60) days of the receipt of the franchisee's written request together with all information, as set forth below, required for the City's action on the

request. The City shall not unreasonably refuse to consent to an assignment of the franchise to a proposed assignee that has sufficient knowledge, experience, and financial resources so as to be able to meet, to the satisfaction of the City Council, in its sole discretion, all obligations of the franchisee hereunder. An application to the City to consider a sale or other transfer of a franchise shall include the following:

1. A nonrefundable application fee of two thousand dollars (\$2,000.00) payable at the time of application to the City in advance to defray the City's anticipated expenses and costs resulting from the franchisee's request;
2. Financial statements audited or reviewed by a certified public accountant of the proposed assignee's operations for the three (3) immediately preceding operating years together with any additional evidence of financial ability to perform its franchise obligations; and
3. A showing that the proposed assignee meets all City criteria for the grant of a franchise as are set out in Section 13.24.090 of this chapter.

(Ord. 1955 § 1 (part), 2005)

#### **13.24.140 SUSPENSION, MODIFICATIONS, OR REVOCATION OF FRANCHISE**

A. The City Council may suspend, modify, or revoke the contract of a franchisee upon finding that the holder thereof has violated this chapter or ORS Chapter 459 or Chapter 459A, or any rule or regulation promulgated thereunder.

B. When the City receives information indicating a violation of this chapter, a written notice of such violation shall be provided to the franchisee. Such notice shall provide a description of the alleged violation, and shall provide a reasonable opportunity to correct the violation.

C. Upon receipt of the written notice, referred to in subsection B of this section, the franchisee shall have thirty (30) days from the date of mailing of the notice in which to comply or to request a public hearing before the City Council. A request for a public hearing before the City Council shall be made in writing and in the event a public hearing is held, the franchisee and other interested persons shall have a reasonable opportunity to present information and testimony in oral or written form.

D. The Council shall adopt findings of fact and conclusions which will support or deny the alleged violation. The Council may, on the basis of such findings, suspend, modify, or revoke the franchise of said franchisee or condition such action upon continued compliance with this code. The franchisee shall comply with the time specified in the notice or with the order of the City Council. (Ord. 1955 § 1 (part), 2005)

#### **13.24.150 INTERRUPTION OF SERVICE**

Each franchisee agrees, as a condition of their franchise, that whenever the City Council finds that the failure of service or threatened failure of service would result in creation of an immediate and serious health hazard or serious public nuisance, the City Council may, after a minimum of twenty-four (24) hours' actual notice to the franchisee and a public hearing if the franchisee requests it, provide or authorize another person to temporarily provide the service or

to use and operate the land, facilities, and equipment of the franchisee to provide emergency service. If a public hearing is requested by the franchisee, it may be held immediately by the City Council after compliance with the minimum notice requirements for such meetings established by the Oregon Public Meetings Law. The City Council shall return any seized property and business upon abatement of the actual or threatened interruption of service, and after payment to the City for any net cost incurred in the operation of the solid waste service. (Ord. 1955 § 1 (part), 2005)

### **13.24.160 RATES UNDER THIS CHAPTER**

A. The City Council shall review and set rates on an annual basis by Council resolution that considers the following goals:

1. Rates shall be established to the greatest extent practicable on a cost of service basis.
2. Rates shall be adequate to provide an expected operating margin for the subsequent rate year equal to ten percent (10%) of composite city-wide gross revenues; however, the City shall not be required to change rates if the expected operating margin in the current year falls between eight (8%) and twelve percent (12%) of gross revenues. The ten percent (10%) target, and the eight (8%) to twelve percent (12%) range of return on gross revenues is considered sufficient to reflect the level of business risk assumed by the franchisee, to allow investment in equipment, and to ensure quality collection service.

B. Accordingly, the City shall have the authority to commission audits, reviews, or analyses of franchisee annual reports to validate hauler submissions. The expected operating margin for the subsequent rate year shall incorporate projected and expected inflation factors, and the effect of known or expected increases or decreases in expenses or revenues prepared on a composite basis.

C. The rates charged by franchisees shall conform to the most current Council rate resolution. Prior to implementation, the Council must approve any interim rate for services not included in the current resolution.

D. If the franchisees for the majority of the franchise areas within the City notify the City Manager in writing that they believe a material change outside the franchisees' control has occurred, and the change will have an adverse effect on operating margins, such that current year operating margins will be less than seven percent (7%), a material change will be deemed to have occurred. At that time, the City may undertake any type of review it finds necessary to validate the existence of the material change and estimate its effect on the operating margin. If the results of the review are such that no rate adjustment is warranted, persons requesting the review shall reimburse the City for reasonable costs incurred during the investigation at the time the next payment of franchise fees is due.

E. If the City believes that a material change has occurred that will result in a current year operating margins falling under eight percent (8%) or over twelve percent (12%), the City may undertake a supplementary rate review at its own expense.

F. A change in tipping fee at disposal facilities will be evaluated by the City to determine the effect upon rates and services. (Ord. 1955 § 1 (part), 2005)

### **13.24.170 FRANCHISE FEE**

A. For the privilege of using the City's streets and other facilities and for the purpose of defraying the City's regulatory expenses, each franchisee shall pay a franchise fee to the City equal to five percent (5%) of cash receipts on residential service, commercial and drop box service, net of material sales revenue. For drop box service, disposal costs will be considered a pass-through cost. The franchise fee shall be computed and collected on a calendar quarterly basis. The fee shall be paid by the franchisee not later than the last day of the month immediately following the end of the quarter. A franchise fee payment shall become delinquent if not paid by the last day of the month immediately following the end of the quarter. A simple interest charge of eighteen percent (9%) shall be charged against the entire delinquent balance until the balance is paid.

B. At the time of payment of the quarterly fee, each franchisee shall file with the City Manager a statement of quarterly cash receipts for the period covered by the tendered fee. Such statements shall be public records. Each franchisee shall maintain books and records disclosing the cash receipts derived from business conducted within the City, which shall be open at reasonable times for audit by the City Manager or designee. The City may require a uniform system of bookkeeping and record keeping to be used by all franchisees.

C. Material misrepresentation of cash receipts by a franchisee constitutes cause for revocation of the franchise.

D. The franchise fee imposed by this section is in addition to and not in lieu of any other fee, charge, or tax imposed by the City. The obligation to pay franchise fees on cash receipts generated from services performed under a City franchise shall survive termination of the franchise no matter how terminated.

E. The City Council by resolution may change the amount and computation of franchise fees from time to time. The Council, by resolution, may reallocate the franchise fee percentages for different customer groups, such as residential or commercial, if such a reallocation mitigates a cost of service disparity that is not fully corrected through the rate setting process. In order to do so, the City Manager must be able to demonstrate that the composite rate of return among the franchisees is improved. Such a reallocation may not materially reduce the amount of total franchise fee revenue obtained by the City. (Ord. 1955 § 1 (part), 2005)

### **13.24.180 PAYMENT FOR SERVICES AND INTERRUPTION OR DISCONTINUANCE OF SERVICE**

A. Rules and regulations pertaining to billing sequences may be adopted pursuant to this chapter. Solid waste management service may be discontinued by any franchisee when payment for such service is delinquent for a period of thirty (30) days, and after giving ten (10) days' written notice of delinquency to the occupant of the premises. The franchisee

shall not be required to resume service until the delinquency is paid and until a deposit equal to two (2) months' service is paid in advance.

B. No franchisee shall terminate service to any or all of its customers except in accordance with the provisions of this chapter. Service may be interrupted or terminated when:

1. The street or road access is unavoidably blocked through no fault of the franchisee or if there is no reasonable alternative route or routes to serve all or a portion of its customers; but in either event, the City shall not be liable for any such blocking of access; or
2. Adverse weather conditions render providing service unduly hazardous to persons or equipment providing such service or if such interruption or termination is caused by an "act of God" or a public enemy.

C. A franchisee shall have the right to establish, by agreement with individual customers in the City, the time or times when solid waste shall be gathered and collected, but such agreement shall not conflict with any rules adopted by the City. (Ord. 1955 § 1 (part), 2005)

### **13.24.190 ANNEXATION OF PROPERTY TO CITY**

If property is annexed by the City, the City and the franchisee shall comply with ORS 459.085(3). (Ord. 1955 § 1 (part), 2005)

### **13.24.200 VIOLATIONS**

A. Without the consent of the owner or lessee, it is unlawful for any person to dispose of, place or deposit any waste, solid waste, or recyclable materials in a container, drop box, or other receptacle owned or leased by another person.

B. No unauthorized person shall take or remove any solid waste or recyclable materials placed for collection by a franchisee.

C. No person shall provide nor offer to provide solid waste management service in the City unless they are exempted under Section 13.24.040 of this chapter or unless they are a franchisee under this chapter.

D. No person shall violate any other provisions of this chapter or rules and regulations promulgated thereunder.

E. These violations shall be subject to the penalties set forth in Section 13.24.210 of this chapter. (Ord. 1955 § 1 (part), 2005)

### **13.24.210 PROCESS FOR DETERMINING PENALTIES**

A. Any person deemed to be in violation of any of the provisions of this chapter shall be charged with a civil infraction and cited into Municipal Court using the civil infraction procedures of Title I of the Milwaukie Municipal Code.

B. Any person violating any of the provisions of this chapter shall be deemed guilty of a civil infraction, and upon conviction thereof, shall be fined according to rules established under

Section 1.12.010 of this code. Any nonfranchised person engaging in any of the activities franchised under this chapter for compensation shall in addition be guilty of a civil infraction for each incident or day, whichever is greater, of the violation of the chapter and subject to an additional fine not exceeding five hundred dollars (\$500.00). (Ord. 1955 § 1 (part), 2005)

# Attachment 2

## CHAPTER 13.24 SOLID WASTE MANAGEMENT

### Note

\* Prior ordinance history: Ords. 1752 and 1760.

### 13.24.010 POLICY

It is declared to be the public policy of the City of Milwaukie to regulate solid waste management service by:

- A. Insuring safe, economical, and comprehensive solid waste management service;
- B. Insuring service rates and charges that are just and reasonable and adequate to provide necessary public service;
- C. Prohibiting rate preferences and other discriminatory practices; and
- D. Providing technologically and economically feasible resource recovery by and through the franchisees. (Ord. 1955 § 1 (part), 2005)

### 13.24.020 DEFINITIONS

The following definitions shall apply to this chapter:

“Business” means any entity of one (1) or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational, or other activity that is nonresidential in nature, including public bodies.

“City” means the City of Milwaukie, Clackamas County, Oregon.

“City Council” or “Council” means the City Council of Milwaukie, Oregon.

In addition, for the purpose of this chapter, the following definitions shall be applicable:

“Allowable expenses” means those expenses that are known and measurable, calculated in accordance with Generally Accepted Accounting Principles (GAAP), not in excess of the fair market value of like services, and are reasonably and prudently incurred by the franchisee in the course of performing its obligations under this franchise. ~~A narrative of allowable expenses shall be established by the City in its administrative rules.~~

“Bulky wastes” means large items of solid waste such as appliances, furniture, large auto parts, trees, branches greater than four (4) inches in diameter and thirty-six (36) inches in length, stumps, and other oversize wastes whose large size precludes or complicates their handling by normal collection, processing, or disposal methods.

“Commission” means the State of Oregon Environmental Quality Commission (EQC).

“Compensation” includes any type of consideration paid for service, including but not limited to, rent, the sale of recyclable materials, and any other direct or indirect provisions for payment of money, goods, or benefits by property owners, tenants, members, licensees, and similar persons. It shall also include any exchange of services, including the hauling of solid waste and waste. Compensation includes the flow of consideration from the person owning or possessing the solid waste or waste to the person collecting, sorting, transporting, or disposing of solid waste or waste.

“Curbside,” as defined here, may also be called “curbside/roadside” and means a location within three (3) feet of public right-of-way. This does not allow the garbage or recycling receptacle to be placed on the inside of a fence or enclosure even if the receptacle is within three (3) feet of said road or roads. For residences on “flag lots”, private roads, or driveways, “curbside/roadside” shall be the point where the private road or driveway intersects a City road, public access road, State road, or federal road.

“Department” means the State of Oregon Department of Environmental Quality (DEQ).

“Disposal site” means land and facilities used for the disposal, handling or transfer of, or resource recovery from solid wastes, including but not limited to, dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting plants, and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility subject to the permit requirements of ORS 468B.050; a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete, or other similar nondecomposable material, unless the site is used by the public either directly or through a solid waste collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

“Franchisee” means the person to whom a franchise is granted by the City Council pursuant to this chapter. Such franchise shall grant exclusive rights to provide service and solid waste management service for compensation.

“Infectious waste” means biological waste, cultures and stocks, pathological wastes, and sharps, as defined in ORS 459.386 and 459.387.

“Person” means the state or a public or private corporation, cooperative, local government unit, public agency, individual, partnership, association, firm, trust, estate, or any other legal entity.

“Placed for collection” means solid waste or recyclable material that has been placed by the customer for service by a franchisee under the requirements contained in this chapter.

“Processing” means an operation where collected, source separated, recyclable materials are sorted, graded, cleaned, densified, or otherwise prepared for end use markets.

“Recyclable material” means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

“Resource recovery” means the process of obtaining useful material or energy resources from solid waste and includes:

1. “Energy recovery,” which means recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material;
2. “Material recovery,” which means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties and can be reused or recycled for some purpose;
3. “Recycling,” which means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity;

4. "Reuse," which means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

"Solid waste" and "waste" are interchangeable. "Solid waste" means and includes all putrescible and nonputrescible waste, including but not limited to, garbage; compost; organic waste; yard debris; brush and branches; land clearing debris; sewer sludge; residential, commercial and industrial building demolition or construction waste; discarded residential, commercial, and industrial appliances, equipment and furniture; discarded, inoperable or abandoned vehicles or vehicle parts and vehicle tires; manure; feces; vegetable or animal solid and semisolid waste and dead animals; and infectious waste. "Waste" means useless, unwanted, or discarded materials. The fact that materials, which would otherwise come within the definition of solid waste, may, from time to time, have value and thus be utilized shall not remove them from the definition. The terms "solid waste" or "waste" do not include:

1. Environmentally hazardous wastes as defined in ORS 466.055;
2. Materials used for fertilizer or for other productive purposes on land in agricultural operations in the growing and harvesting of crops or the raising of fowl or animals;
3. Septic tank and cesspool pumping or chemical toilet waste;
4. Source separated, principal recyclable materials as defined in ORS 459A and the rules promulgated there under and under this chapter, which have been purchased or exchanged for fair market value, unless the City declares a site of uncollected principal recyclable materials to be public nuisance;
5. Applications of industrial sludges or industrial waste byproducts authorized through a land use compatibility statement or management plan approval and that have been applied to agricultural lands according to accepted agronomic practices or accepted method approved by the land use compatibility statement or management plan, but not to exceed one hundred (100) dry tons per acre annually; stabilized municipal sewage sludge applied for accepted beneficial uses on land in agricultural, nonagricultural, or silvicultural operations; sludge-derived products applied for beneficial uses on land in landscaping projects.

"Solid waste collection service" or "service" means the collection, transportation, or disposal of or resource recovery from solid wastes.

"Solid waste management" means the management of the accumulation, storage, collection, transfer, handling, compaction, transportation, treatment, processing and final disposal, or utilization of solid waste and waste or resource recovery from solid waste and facilities necessary or convenient to those activities. The franchisee may contract with another person to provide service of any type under the franchisee's service franchise, but the franchisee shall remain ultimately responsible for solid waste and waste management in the franchisee's franchised service area.

"Source separate" means that the person who last uses recyclable material separates the recyclable material from solid waste.

"Special wastes" shall have the meaning given to them in the METRO code as now referenced at METRO Code Section 5.02.015(s), or as hereafter amended, or as provided in the City's administrative rules. The collection of "special wastes" shall be controlled by this chapter and any rules adopted hereunder.

“Transfer station” means a fixed or mobile facility normally used as an adjunct of a solid waste collection and disposal system or resource recovery station between a collection route and a disposal site.

“Unallowable expenses” means any expenses not included in the definition of allowable expenses. Unallowable expenses shall include, but not be limited to -and:

1. Interest and amortization on the purchase of franchise routes or other routes or business opportunities;
2. Political and charitable contributions;
3. Federal, State, and local income taxes;
4. Loss on sale of assets;
5. Officer’s life insurance premiums;
6. Director fees;
7. Interest on the purchase of equipment or facilities to the extent that the purchase price exceeds the fair market value of the asset at the time of purchase;
8. Penalties and fines.

“Waste” means material that is no longer usable or wanted by the source of the material, which material is to be utilized or disposed by another person. For the purposes of this paragraph, “utilized” means the productive use of wastes through recycling, reuse, salvage, resource recovery, energy recovery, or landfilling for reclamation, habilitation, or rehabilitation of land.

“White goods” means kitchen or other large appliances which are bulky wastes.

“Yard debris” means and includes grass clippings, leaves, tree and shrub prunings of no greater than four (4) inches in diameter, or similar yard and garden vegetation. Yard debris does not include such items as: dirt, sod, stumps, logs, tree and shrub prunings greater than four (4) inches in diameter, rocks, plastic, animal waste or manure, cat litter, potting soil, prepared food wastes, or non-putrescible material. (Ord. 1992 § 1, 2009; Ord. 1955 § 1 (part), 2005)

### **13.24.030 ENFORCEMENT OFFICERS—ACCESS TO AND REVIEW OF BOOKS AND RECORDS**

A. The City Manager shall enforce the provisions of this chapter, and his or her agents, including Police Officers and employees of the Public Works Department, may enter any premises for the purpose of determining compliance with the provisions and terms of this chapter. Such entry shall be upon permission of the occupant or upon warrant.

B. In order for the franchisees to perform services under this chapter, it may be necessary for a franchisee to disclose to City or City may otherwise acquire, a franchisee’s confidential business or technical information. The City may make an inspection for such purposes upon at least twenty-four (24) hours’ notice, during normal business hours, at an office of the franchisee ~~located in the local metropolitan area~~. The City will receive and maintain in confidence all information and will prevent the disclosure of information to others except as required by law in connection with litigation. The City will not use information for any purpose other than in connection with the performance of services pursuant to this chapter.

The above shall not apply to any portion of information: (1) which was developed by the City and is in the City's possession prior to the City's first receipt thereof directly or indirectly from a franchisee; (2) which is now or hereafter becomes through no act or failure to act on the City's part generally available on a nonconfidential basis; (3) which was heretofore or hereafter furnished to a franchisee by others as a matter of right without restriction on disclosure; or (4) which is required by law to be publicly disclosed by the City. Information shall not be deemed to be within one of the foregoing exceptions if it is merely embraced by more general information available on a nonconfidential basis.

The City agrees that each of its employees, agents, and subcontractors who participates in the performance of services or who has access to information is obligated in a manner consistent with this section. The obligations of this section shall survive the termination of any request for services and the termination of this chapter. (Ord. 1955 § 1 (part), 2005)

### **13.24.040 FRANCHISE REQUIRED AND EXCEPTIONS THERETO**

A. Except as otherwise provided in this chapter, it is unlawful for any person other than the franchise holders under the provisions of this chapter, to provide or offer to provide solid waste management or collection service in the City for compensation.

B. Nothing in this franchise shall:

1. Prohibit a federal or State agency that collects, stores, transports, or disposes of waste, solid waste, or recyclable materials, or those who contract with such agencies to perform the service, but only insofar as the service is performed by or for the federal or state agency;
2. Prohibit any person in the City from hauling that person's own waste, solid waste, or recyclable materials in a lawful manner; provided, however, that no person will be permitted to haul such waste, solid waste, or recyclable material for any other person or firm. In the case of a residential dwelling unit (whether individually owned, nonowner occupied, or grouped through an association or cooperative of property owners) any waste generated or produced is owned by the individual owner or occupant and not by the landlord, property owner, cooperative, or association or property manager or agent of such person;
3. Prohibit a generator of source separated recyclable material from selling or exchanging such material to any person for fair market value for recycling or reuse;
4. Prohibit any person from transporting, disposing of, or resource recovering sewage sludge, septic pumpings, and cesspool pumpings;
5. Prohibit any person licensed as a motor vehicle wrecker under ORS 822.110 et seq., from collecting, transporting, disposing of, or utilizing motor vehicles or motor vehicle parts;
6. Prohibit any person transporting solid waste through the City that is not collected within the City;
7. Prohibit a contractor registered under ORS Chapter 701 from hauling waste created in connection with the demolition, construction, or remodeling of a building or structure or in connection with land clearing and development. Such waste shall be

hauled in equipment owned by the contractor and operated by the contractor's employees;

8. Prohibit the collection, transportation, and reuse of repairable or cleanable discards by private charitable organizations regularly engaged in such business or activity including, without limitation, Salvation Army, Goodwill, St. Vincent De Paul, and similar organizations;

9. Prohibit a person from conducting an activity determined by the City Manager to be a civic, community, benevolent, or charitable program, providing that such activity does not include the collection of putrescible solid waste. The organization conducting such program shall comply with all applicable provisions of this chapter;

10. Prohibit a person from transporting or disposing of waste that is produced as an incidental part of the regular carrying on of the business but a person shall not provide collection service for any accumulated waste generated by a customer of that business;

11. Require franchisee to store, collect, transport, dispose of, or resource recover any hazardous waste as defined by or pursuant to ORS Chapter 466; provided, however, that franchisee may engage in a separate business of handling such wastes separate and apart from this franchise and chapter. (Ord. 1955 § 1 (part), 2005)

#### **13.24.045 BUSINESS RECYCLING REQUIREMENTS**

All businesses within the City shall comply with waste prevention, recycling, and composting requirements as set forth in this chapter and the regulations promulgated hereunder.

A. Businesses shall source separate all recyclable paper, cardboard, glass and plastic bottles and jars, and metal cans for reuse or recycling.

B. Businesses shall ensure the provision of recycling receptacles for internal and/or external maintenance or work areas where recyclable materials are collected, stored, or both.

C. Businesses shall post accurate signs that:

1. Describe the location where recyclable materials are collected, stored, or both;
2. Identify the materials the business must source separate for reuse or recycling; and
3. Provide recycling instructions.

D. Persons providing garbage collection service to business tenants as part of their rental/lease, shall provide recycling collection systems enabling the business tenants to recycle in compliance with this chapter and any regulations promulgated hereunder. (Ord. 1992 § 2, 2009)

#### **13.24.050 ADOPTION AND REVISION OF RULES**

A. Under authority of the Milwaukie Municipal Code, the City Manager is authorized to adopt rules, procedures and forms to implement provisions of this chapter that regulate the collection and disposal of solid waste, recycling, and yard debris within the City.

B. Any rule adopted or revised according to the authority of the Milwaukie Municipal Code shall require a public review process. Not less than ten (10) nor more than thirty (30) days before such public review process, notice shall be given by publication in a newspaper of general local circulation. Such notice shall include the place, time, and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.

C. During the public review, the ~~solid waste coordinator~~ City Manager or designee shall hear testimony or receive written comment concerning the proposed rules. The City Manager shall review the recommendations; taking into consideration the comments received during the public review process and shall either adopt the proposal, modify or reject it.

D. An interim rule may be adopted by the City Manager or designee without prior notice upon a finding that failure to act promptly will result in serious prejudice of the public interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this subsection shall be effective for a period of not longer than one hundred eighty (180) days. (Ord. 1955 § 1 (part), 2005)

#### **13.24.060 SANITARY AND SAFETY REGULATIONS**

A. Each franchisee shall comply with all State, federal, regional, and City laws, rules, and regulations relating to solid waste management service, as now or hereafter constituted.

B. Violation shall be an offense against the City; however, if a financial penalty is imposed by the State, federal or regional agency, the City will not impose an additional financial penalty. Notwithstanding, the City reserves the right to assess abatement or restitution costs when applicable.

C. Where enforcement action is not taken by any other agency, the City may exercise this authority in order to cure the violation. (Ord. 1955 § 1 (part), 2005)

#### **13.24.070 STANDARDS FOR COLLECTION AND STORAGE OF SOLID WASTES AND RECYCLABLE MATERIALS**

A. Storage and collection of solid waste and recyclable materials shall not create vector production and sustenance, conditions for transmission of disease to man or animals, fire hazards, or hazards to service or disposal workers or to the public. All solid wastes placed for collection shall be stored by the customer in a can (metal or heavy-duty plastic), cart, metal container, or drop box, and such receptacles, other than drop boxes, must have tightfitting covers and hand or mechanical bales to facilitate pickup. Extra volumes of solid waste that are in addition to the subscribed service, may be in heavy plastic bags that are securely tied at the top and which will accommodate the weight and volume of waste contained in them so that they do not break open upon being collected. The cleanliness of the grounds surrounding the solid waste and recyclable materials storage area and of the

receptacle for such materials shall be the responsibility of the customer. Solid waste containing putrescible materials shall be stored in closed containers.

B. Recyclable materials and yard debris shall be prepared by customers and placed at curbside for collection by a franchisee in accordance with rules and standards adopted under this chapter.

C. Customers shall provide a space for all cans, carts, containers, or drop boxes, whether used for garbage or recycling, that has adequate and safe access for collection personnel and equipment. The space provided must also comply with the City development code.

D. Placement of receptacles for collection by a franchisee and requirements pertaining to weight limitations, type, and quality, and contents of receptacles placed for collection by a franchisee shall be in accordance with rules and standards adopted under this chapter.

E. The temporary storage of solid waste is permitted without compliance with the requirements for solid waste disposal sites if the temporary storage is provided under safe and sanitary conditions. Temporary storage must comply with all relevant codes and chapters of the City. (Ord. 1955 § 1 (part), 2005)

#### **13.24.080 FRANCHISE REQUIREMENTS**

A. Each franchisee shall make available, for subscription, all levels of solid waste collection service for which the City sets rates, to every customer in its franchised geographic area, subject to the limitations in Section 13.24.150 for refusal of service. Collection of bulky wastes shall be made by special arrangement between franchisee and a customer. Each franchisee shall provide each of their new customers with City-approved written information on all solid waste and recycling collection services that are available and the rates for these services. The franchisee shall not intentionally provide solid waste collection service to customers in another franchisee's geographic area within the Milwaukie City limits except by arrangement with another franchisee under a subcontract. Customers shall be given written notice of any changes in service.

B. Each franchisee shall use proper and suitable equipment for the hauling, removal, and transportation of solid waste. All equipment for transporting solid waste on public roadways within the City shall be covered and all equipment for handling the waste material shall be ~~equipped with a metal body,~~ watertight and drip proof to the greatest extent practicable. All equipment shall be kept clean at all times and sufficient equipment shall be kept on hand to properly and adequately remove all solid waste, subject to the terms of this chapter, together with rules and standards adopted under this chapter.

C. Each franchisee shall make available solid waste management and collection service as defined in Section 13.24.020 of this chapter to customers in the City not less than once per week.

D. Each franchisee may subcontract with others to provide a portion of the solid waste collection service where the franchisee does not have the necessary equipment or service capability. Such a subcontract shall not relieve the franchisee of ~~total~~ responsibility for providing and maintaining service and from compliance with this chapter. The franchisee shall provide written notice to the City of its intention to subcontract any portion of the solid

waste collection service prior to entering into such agreement, and provide the City with a copy of the agreement, which shall require City approval prior to the agreement becoming effective, provided however that such approval shall not be unreasonably withheld. The subcontractor shall comply with all provisions of this chapter.

E. Each franchisee shall provide the opportunity to recycle in accordance with Chapter 459A of Oregon Revised Statutes, together with the rules and regulations promulgated thereunder by the EQC, DEQ, METRO and the City.

F. Each franchisee shall permit inspection by the City of the franchisee's facilities, equipment, and personnel at reasonable times.

G. Each franchisee shall comply with all laws relating to solid waste management service and shall not have a record of violations of law or chapters that would indicate an inability to satisfactorily perform the service being franchised.

H. Each franchisee shall submit a certificate of public liability insurance with a thirty (30) day notice of cancellation clause, acceptable to the City, which will cover its business operation including each vehicle operated by the franchisee. This coverage shall include contractual liability insurance. Coverage will include ~~two~~ million dollars (\$~~2,000,000.00~~) per occurrence and ~~three~~ million dollars (\$~~3,000,000.00~~) general annual aggregate. The insurance shall name City as an additional insured and shall require written notice to City thirty (30) days in advance of cancellation. If contractor hires a carrier to make delivery, contractor shall ensure that the carrier complies with this subsection. The insurance shall indemnify and save the City harmless against liability or damage which may arise or occur from an injury to persons or property as a result of the franchisee's operation of the solid waste business.

I. Each franchisee shall comply with the hours of collection which may be set by rules and regulations under this chapter.

J. Each franchisee shall provide staff, equipment, transportation, and disposal for waste collected at one annual collection event in the City. Expenses from this event shall be reported in annual financial reports as allowable expenses for services provided within the City. (Ord. 1955 § 1 (part), 2005)

### **13.24.090 NONEXCLUSIVE FRANCHISE**

A. No person shall do business in the collection and transport of solid waste generated within the City without a current, valid City franchise. An additional franchise to provide collection service for solid waste, recyclable materials, and yard debris in a service area solid waste franchised service area (as described in 12.24.120) of the City shall be granted only after a determination of need for the service. The determination of need is the responsibility of the City Council, which will seek the best balance of the following objectives:

1. To insure safe, efficient, economical, and comprehensive solid waste service;
2. To avoid duplication of service that will cause inefficiency, excessive use of fuel, increased traffic, and greater wear on streets;
3. To provide service in areas of marginal return;

4. To promote and encourage recycling and resource recovery;
5. To improve the likelihood of the franchise holder making a reasonable profit and thereby encourage investment in modern equipment;
6. To cooperate with other governmental bodies by recognizing their service arrangements; and
7. To otherwise provide for the service in a manner appropriate to the public interest.

B. In granting a franchise renewal or a new franchise due to an annexation by the City or, termination, or revocation of a franchise, the Council shall, in addition to the above, consider the following factors in selecting a new or replacement franchisee:

1. The candidate's prior service record in the same or a related industry and its professional relationships with other corporate entities and local, regional, and/or State jurisdictions;
2. The candidate's financial ability to perform the obligations of a franchise holder;
3. The candidate's equipment and personnel available to meet current and future needs of a franchise holder;
4. The candidate's ability to provide all services to customers within the geographic boundaries of the designated franchise area, including every residential, multifamily, and commercial customer;
5. The candidate's exercise of the burden of proof demonstrating a proposed franchise area is being or has been underserved by the existing or previous franchise holder; and
6. The candidate's good moral character as is relevant to a franchised provider's customer relations, namely any unpaid judgments against the applicant (whether doing business under the same or another name) and any judgments for civil fraud or for a crime of dishonesty.

C. Franchises granted by the City shall be nonexclusive, however it is understood that during the term of franchises granted under this chapter, the City shall not grant any other person a franchise for solid waste management unless there is a showing by the applicant of the need for such additional service in the proposed service area. As to such application(s), the Council may consider whether a current franchisee is capable of providing the additional service. In evaluating whether a need exists for additional service, the City Council may consider, among any other criteria deemed relevant by the City Council, the following items:

1. An increase in the population of the City;
2. An extension of the boundaries of the City;
3. Intensive residential, commercial, or industrial development within the boundaries of the City;
4. Changes in solid waste technology and/or recycling collection technology that could substantially improve collection service or reduce collection costs to residents of the City;

5. The effect that an additional franchise would have on each existing franchisee's ability to meet the City's service standards and maintain a fair return on its investment;
6. The number of existing collection franchisees or drop box service franchisees, as applicable, providing service in the area of the City in which the applicant wishes to provide service; and
7. Changes in federal or State laws, rules or regulations that substantially affect solid waste or recycling collection requirements.

(Ord. 1955 § 1 (part), 2005)

### 13.24.100 TERM OF FRANCHISE

A. A franchise to provide collection service for solid waste, recyclable materials, and yard debris in a portion of the City shall be granted for a period of ten (10) years, beginning ~~February XX~~ December 21, 2015~~05~~.

B. Unless grounds exist for suspension, modification, or revocation of a franchise under Section 13.24.140 of this chapter, each franchise shall be considered as a continuing ten (10) year term. Beginning 1 January first (1<sup>st</sup>) of each year, each franchise will be considered renewed for an additional ten (10) year term, unless at least thirty (30) days prior to 1 January first (1<sup>st</sup>) of any year the City notifies all the Franchisees of the intent to terminate the continuing franchise system. Upon the giving of such notice, the Franchisees will each have a franchise which will terminate on 1 January, the January first (1<sup>st</sup>) which is ten years from the date of the last renewal prior to the notice of termination.

~~C.B.~~ The City shall review franchises annually to evaluate rates and may review customer service and franchisee performance issues. At least every five years thereafter, the City Manager or designee shall report to the Council a comprehensive review of the rates, customer service, franchise performance and overall state of the franchise system to determine if the system is achieving waste reduction, increased recycling, cost effective collection services and providing a high level of service to residents and businesses.

1. Upon consideration of this system status report, as noted in B above, the Council may elect to continue or terminate the continuing franchise system. If Council elects to terminate the continuing franchise system, all franchises will expire ten (10) years after the last renewal, as provided in paragraph B above.

2. Any such election to continue or terminate ~~extension of the~~ continuing franchise system shall ~~be granted~~ only be made after notice to all interested parties and public hearing.

~~4.3.~~ The City shall review franchises annually to evaluate rates.

D. The City may initiate proceedings to terminate the continuing franchise system at any time, whether or not a five-year review is being conducted.

~~E.G.~~ A decision by Council to terminate the continuing franchise system ~~not grant a franchisee an additional ten five-year renewal extension~~ shall in no way affect the franchisee's obligations under the existing franchise agreement. ~~If the Council determines not to extend a franchise term, then the franchisee shall continue to provide service during the years that are remaining in its franchise term. At all times the franchisee remains~~

~~subject to MCC. Staff shall report to the Council a comprehensive review of the rates. As part of this review, the City may review customer service, franchise performance and overall state of the franchise system based on the first sixty (60) months of the franchise term. As part of that review, at the request of a franchisee, staff may make a recommendation to renew or not renew, and the Council may consider renewing that person's franchise for an additional five (5) years to be added to the end of the existing term for a total of ten (10) years. Any such extension shall be granted only after the notice to all interested parties and a public hearing.~~

~~FD.~~ Nothing in this section restricts the Council from suspending, modifying, or revoking ~~a~~the franchise for cause pursuant to Section 13.24.140 of this chapter.

~~GE.~~ A franchisee who desires to terminate its rights and obligations under a franchise, shall give not less than ninety (90) days' notice of its intent. Upon receipt of such notice the Council shall initiate proceedings to consider applications by any other person for a franchise to serve the same area. (Ord. 1955 § 1 (part), 2005)

### **13.24.110 NOTICE REQUEST FOR FRANCHISE APPLICATIONS**

A. Prior to the end of a franchise term, notice that the City intends to solicit applications for solid waste franchises shall be published in a newspaper of general circulation within the City. Notice shall also be sent to all holders of Milwaukie solid waste franchises. The City Manager or designee may keep a list of interested persons who will also be provided notice.

B. The City Manager shall establish forms and deadlines. (Ord. 1955 § 1 (part), 2005)

### **13.24.120 DESCRIPTION OF FRANCHISE AREAS**

A City solid waste franchise service area shall include single unit residential customers and any multifamily residential, commercial, and industrial customers within that service area. The service areas shall be determined by Council resolution. The franchise areas and the franchisees serving such areas shall be indicated on a map entitled "Solid Waste Franchise Service Areas of the City of Milwaukie" (the "map"). A copy of the map shall be dated with the effective date of the Council resolution and maintained in the office of the City Manager. Amendments to the map may be made by Council resolution, and copies of amendments shall be kept on file by the City Recorder. (Ord. 1955 § 1 (part), 2005)

### **13.24.130 TRANSFER OF FRANCHISE**

A. An assignment or transfer of a franchise shall include, but not be limited to:

1. A sale, exchange, or other transfer of fifty percent (50%) or more of franchisee's assets dedicated to service in the City;
2. A sale, exchange, or other transfer of fifty percent (50%) or more of the outstanding common stock of a franchisee;

3. Any reorganization, consolidation, merger, recapitalization, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction to which franchisee or any of its shareholders is a party which results in a change of ownership or control of fifty percent (50%) or more of the value or voting rights in the stock of the franchisee; and
4. Any combination of the foregoing that has the effect of a transfer or change of ownership and control.

B. The franchisee shall provide no less than sixty (60) days' advance written notice to the City of any proposed transfer or assignment. Except as specifically authorized by the City, the franchisee shall not assign any of its rights or delegate or otherwise transfer any of its obligations to any other person without the prior consent of the City Council. Any such assignment without the consent of City Council shall be void and any such attempted assignment shall constitute default and grounds for termination of the franchise.

C. If a franchisee requests the City's consent to transfer the franchise, the City shall act on such request within sixty (60) days of the receipt of the franchisee's written request together with all information, as set forth below, required for the City's action on the request. The City shall not unreasonably refuse to consent to an assignment of the franchise to a proposed assignee that has sufficient knowledge, experience, and financial resources so as to be able to meet, to the satisfaction of the City Council, in its sole discretion, all obligations of the franchisee hereunder. An application to the City to consider a sale or other transfer of a franchise shall include the following:

1. A nonrefundable application fee of two thousand dollars (\$2,000.00) payable at the time of application to the City in advance to defray the City's anticipated expenses and costs resulting from the franchisee's request;
2. Financial statements audited or reviewed by a certified public accountant of the proposed assignee's operations for the three (3) immediately preceding operating years together with any additional evidence of financial ability to perform its franchise obligations; and
3. A showing that the proposed assignee meets all City criteria for the grant of a franchise as are set out in Section 13.24.090 of this chapter.

(Ord. 1955 § 1 (part), 2005)

### **13.24.140 SUSPENSION, MODIFICATIONS, OR REVOCATION OF FRANCHISE**

A. The City Council may suspend, modify, or revoke the contract of a franchisee upon finding that the holder thereof has violated this chapter or ORS Chapter 459 or Chapter 459A, or any rule or regulation promulgated thereunder.

B. When the City receives information indicating a violation of this chapter, a written notice of such violation shall be provided to the franchisee. Such notice shall provide a description of the alleged violation, and shall provide a reasonable opportunity to correct the violation.

C. Upon receipt of the written notice, referred to in subsection B of this section, the franchisee shall have thirty (30) days from the date of mailing of the notice in which to

comply or to request a public hearing before the City Council. A request for a public hearing before the City Council shall be made in writing and in the event a public hearing is held, the franchisee and other interested persons shall have a reasonable opportunity to present information and testimony in oral or written form.

D. The Council shall adopt findings of fact and conclusions which will support or deny the alleged violation. The Council may, on the basis of such findings, suspend, modify, or revoke the franchise of said franchisee or condition such action upon continued compliance with this code. The franchisee shall comply with the time specified in the notice or with the order of the City Council. (Ord. 1955 § 1 (part), 2005)

### **13.24.150 INTERRUPTION OF SERVICE**

Each franchisee agrees, as a condition of their franchise, that whenever the City Council finds that the failure of service or threatened failure of service would result in creation of an immediate and serious health hazard or serious public nuisance, the City Council may, after a minimum of twenty-four (24) hours' actual notice to the franchisee and a public hearing if the franchisee requests it, provide or authorize another person to temporarily provide the service or to use and operate the land, facilities, and equipment of the franchisee to provide emergency service. If a public hearing is requested by the franchisee, it may be held immediately by the City Council after compliance with the minimum notice requirements for such meetings established by the Oregon Public Meetings Law. The City Council shall return any seized property and business upon abatement of the actual or threatened interruption of service, and after payment to the City for any net cost incurred in the operation of the solid waste service. (Ord. 1955 § 1 (part), 2005)

### **13.24.160 RATES UNDER THIS CHAPTER**

A. The City Council shall review and set rates on an annual basis by Council resolution that considers the following goals:

1. Rates shall be established to the greatest extent practicable on a cost of service basis.
2. Rates shall be adequate to provide an expected operating margin for the subsequent rate year equal to ten percent (10%) of composite ~~franchise-city-wide~~ gross revenues; however, the City shall not be required to change rates if the expected operating margin in the current year falls between eight (8%) and twelve percent (12%) of gross revenues. The ten percent (10%) target, and the eight (8%) to twelve percent (12%) range of return on gross revenues is considered sufficient to reflect the level of business risk assumed by the franchisee, to allow investment in equipment, and to ensure quality collection service.

B. Accordingly, the City shall have the authority to commission audits, reviews, or analyses of franchisee annual reports to validate hauler submissions. The expected operating margin for the subsequent rate year shall incorporate projected and expected inflation factors, and the effect of known or expected increases or decreases in expenses or revenues prepared on a composite basis.

C. The rates charged by franchisees shall conform to the most current Council rate resolution. Prior to implementation, the Council must approve any interim rate for services not included in the current resolution.

D. If the ~~haulers~~ franchisees for the majority of the franchise areas within the City notify the City Manager in writing that they believe a material change outside the franchisees' control has occurred, and the change will have an adverse effect on operating margins, such that current year operating margins will be less than seven percent (7%), a material change will be deemed to have occurred. At that time, the City may undertake any type of review it finds necessary to validate the existence of the material change and estimate its effect on the operating margin. If the results of the review are such that no rate adjustment is warranted, persons requesting the review shall reimburse the City for reasonable costs incurred during the investigation at the time the next payment of franchise fees is due.

E. If the City believes that a material change has occurred that will result in a current year operating margins falling under eight percent (8%) or over twelve percent (12%), the City may undertake a supplementary rate review at its own expense.

F. A change in tipping fee at disposal facilities will be evaluated by the City to determine the effect upon rates and services. (Ord. 1955 § 1 (part), 2005)

### 13.24.170 FRANCHISE FEE

A. For the privilege of using the City's streets and other facilities and for the purpose of defraying the City's regulatory expenses, each franchisee shall pay a franchise fee to the City equal to five percent (5%) of cash receipts on residential service, commercial and drop box service, net of material sales revenue. For drop box service, disposal costs will be considered a pass-through cost. The franchise fee shall be computed and collected on a calendar quarterly basis. The fee shall be paid by the franchisee not later than the last day of the month immediately following the end of the quarter. A franchise fee payment shall become delinquent if not paid by the last day of the month immediately following the end of the quarter. A simple interest charge of eighteen percent (~~9~~18%) shall be charged against the entire delinquent balance until the balance is paid.

B. At the time of payment of the quarterly fee, each franchisee shall file with the City Manager a ~~verified~~ statement of quarterly cash receipts for the period covered by the tendered fee. Such statements shall be public records. Each franchisee shall maintain books and records disclosing the cash receipts derived from business conducted within the City, which shall be open at reasonable times for audit by the City Manager or designee. The City may require a uniform system of bookkeeping and record keeping to be used by all franchisees.

C. Material misrepresentation of cash receipts by a franchisee constitutes cause for revocation of the franchise.

D. The franchise fee imposed by this section is in addition to and not in lieu of any other fee, charge, or tax imposed by the City. The obligation to pay franchise fees on cash receipts generated from services performed under a City franchise shall survive termination of the franchise no matter how terminated.

E. The City Council by resolution may change the amount and computation of franchise fees from time to time. The Council, by resolution, may reallocate the franchise fee percentages for different customer groups, such as residential or commercial, if such a reallocation mitigates a cost of service disparity that is not fully corrected through the rate setting process. In order to do so, the City Manager must be able to demonstrate that the composite rate of return among the franchisees is improved. Such a reallocation may not materially reduce the amount of total franchise fee revenue obtained by the City. (Ord. 1955 § 1 (part), 2005)

#### **13.24.180 PAYMENT FOR SERVICES AND INTERRUPTION OR DISCONTINUANCE OF SERVICE**

A. Rules and regulations pertaining to billing sequences may be adopted pursuant to this chapter. Solid waste management service may be discontinued by any franchisee when payment for such service is delinquent for a period of thirty (30) days, and after giving ten (10) days' written notice of delinquency to the occupant of the premises. The franchisee shall not be required to resume service until the delinquency is paid and until a deposit equal to two (2) months' service is paid in advance. ~~In the event service is discontinued for delinquency, the City shall be given a copy of the written notice of delinquency given by a franchisee to the occupant of the premises.~~

B. No franchisee shall terminate service to any or all of its customers ~~under this chapter~~ except in accordance with the provisions of this chapter. Service may be interrupted or terminated when:

1. The street or road access is unavoidably blocked through no fault of the franchisee or if there is no reasonable alternative route or routes to serve all or a portion of its customers; but in either event, the City shall not be liable for any such blocking of access; or
2. Adverse weather conditions render providing service unduly hazardous to persons or equipment providing such service or if such interruption or termination is caused by an "act of God" or a public enemy.

C. A franchisee shall have the right to establish, by agreement with individual customers in the City, the time or times when solid waste shall be gathered and collected, but such agreement shall not conflict with any rules adopted by the City. (Ord. 1955 § 1 (part), 2005)

#### **13.24.190 ANNEXATION OF PROPERTY TO CITY**

If property is annexed by the City, the City and the franchisee shall comply with ORS 459.085(3). (Ord. 1955 § 1 (part), 2005)

#### **13.24.200 VIOLATIONS**

A. Without the consent of the owner or lessee, it is unlawful for any person to dispose of, place or deposit any waste, solid waste, or recyclable materials in a container, drop box, or other receptacle owned or leased by another person.

B. No unauthorized person shall take or remove any solid waste or recyclable materials placed for collection by a franchisee.

C. No person shall provide nor offer to provide solid waste management service in the City unless they are exempted under Section 13.24.040 of this chapter or unless they are a franchisee under this chapter.

D. No person shall violate any other provisions of this chapter or rules and regulations promulgated thereunder.

E. These violations shall be subject to the penalties set forth in Section 13.24.210 of this chapter. (Ord. 1955 § 1 (part), 2005)

### **13.24.210 PROCESS FOR DETERMINING PENALTIES**

A. Any person deemed to be in violation of any of the provisions of this chapter shall be charged with a civil infraction and cited into Municipal Court using the civil infraction procedures of Title I of the Milwaukie Municipal Code.

B. Any person violating any of the provisions of this chapter shall be deemed guilty of a civil infraction, and upon conviction thereof, shall be fined according to rules established under Section 1.12.010 of this code. Any nonfranchised person engaging in any of the activities franchised under this chapter for ~~compensation, compensation~~ shall in addition be guilty of a civil infraction for each ~~incident or day, whichever is greater,~~ of ~~the~~ violation of the chapter and subject to an additional fine not exceeding ~~one five~~ hundred dollars (\$~~54~~00.00) ~~for each and every day after the first day of such violation.~~ (Ord. 1955 § 1 (part), 2005)

# Attachment 3



## CITY OF MILWAUKIE

*"Dogwood City of the West"*

### Resolution No.

**A resolution of the City Council of the City of Milwaukie, Oregon, granting non-exclusive franchises for solid waste management services.**

**WHEREAS**, the franchise terms for the current solid waste collection franchise holders will expire December 21, 2015; and

**WHEREAS**, the current franchisees have requested to continue their franchises for solid waste and recycling service; and

**WHEREAS**, the current franchisees are in good standing with franchise fee payments and all other aspects of current solid waste and recycling codes; and

**WHEREAS**, the current franchisees meet the terms and conditions for granting a franchise as set forth in section 13.24.090 of Chapter 13.24 as amended.

**Now, Therefore, be it Resolved that:**

Section 1: Solid waste management franchises are hereby granted to the following companies:

Clackamas Garbage, Inc.  
Hoodview Disposal & Recycling, Inc.  
Mel Deines Sanitary Service, Inc.  
Waste Management of Oregon, Inc.  
Wichita Sanitary Service

Section 2: In accordance with the provisions of Chapter 13.24 of Milwaukie Municipal Code, as amended, the franchisees are assigned the geographical districts shown on the attached Exhibit A.

Section 3: These franchises shall be for a rolling term of 10 years unless canceled by either party pursuant to Chapter 13.24, as amended.

Section 4: The franchisees shall, within 10 days from the date of this resolution, file with the City their written acceptances of this franchise, and if any franchisee fails to do so, their franchise approval will become void.

Section 5: All franchises granted pursuant to this resolution shall be effective March 5, 2015.

Section 6: This resolution is effective upon passage.

Introduced and adopted by the City Council on \_\_\_\_\_.

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

---

Lisa Batey, Council President

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

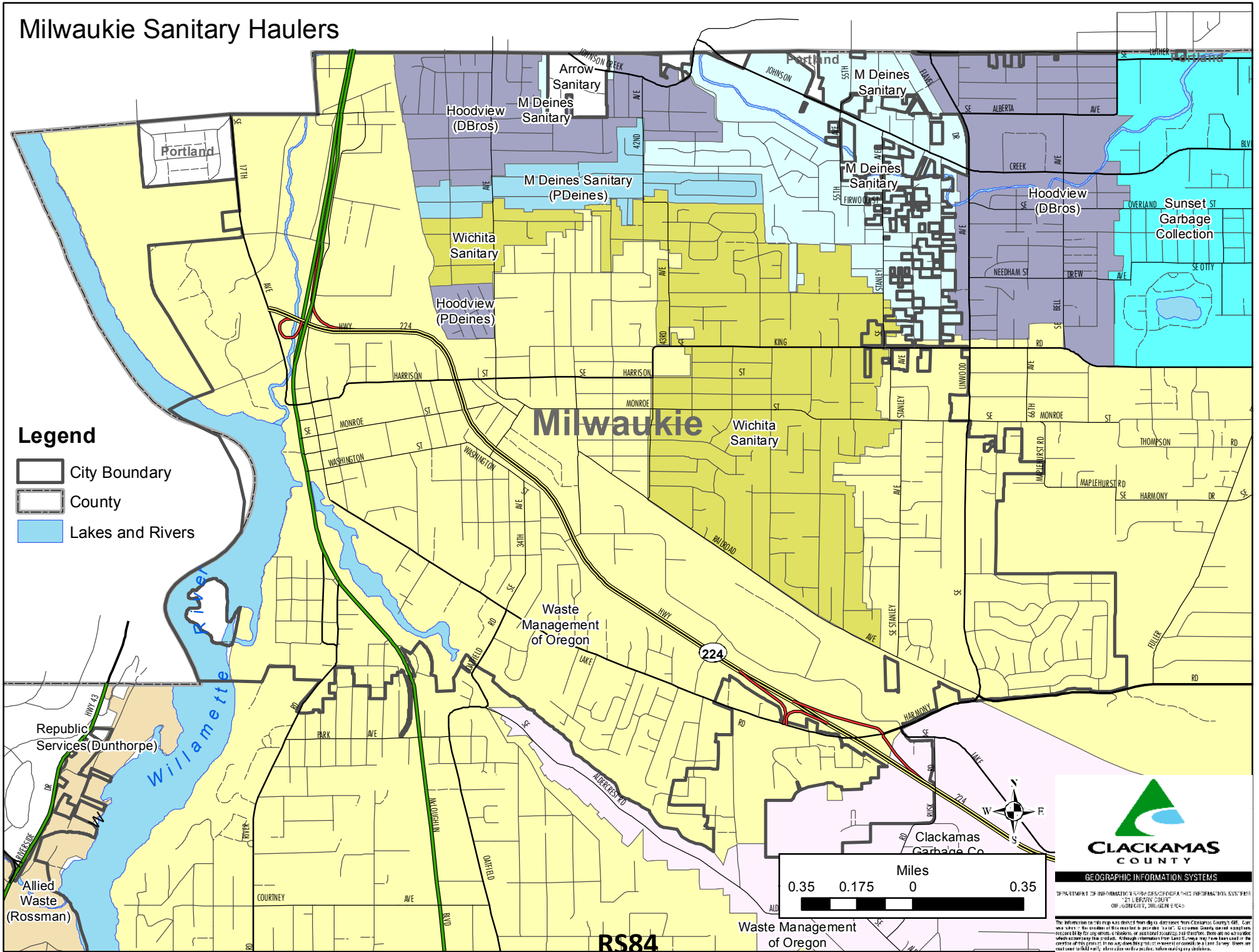
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Pat DuVal, City Recorder



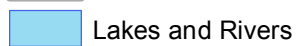
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City Attorney

# Milwaukie Sanitary Haulers



## Legend

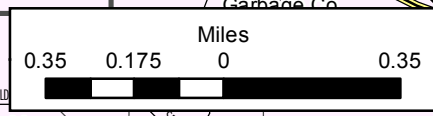
-  City Boundary
-  County
-  Lakes and Rivers



**CLACKAMAS COUNTY**  
GEOGRAPHIC INFORMATION SYSTEMS

DEPARTMENT OF INFORMATION & SERVICE DEVELOPMENT  
CLACKAMAS COUNTY  
OFFICE CITY, OREGON 97142

The information on this map was derived from data distributed from Clackamas County GIS. Clackamas County is not responsible for any errors, omissions, or additional liability, or for any use of the information for purposes not intended by the original provider. Although information from Clackamas County has been used in the creation of this product, its use does not constitute an endorsement or approval by Clackamas County of the product or its use. Clackamas County is not responsible for any errors or omissions in this product.



RS84



Agenda Item: **RS 6. C.**  
Meeting Date: **2/3/15**

## **COUNCIL AGENDA ITEM SUMMARY**

**Issue/Agenda Title:** Milwaukie Light Rail Crossing Safety Improvements

**Prepared By:** Stacy Bluhm, Light Rail Construction Manager

**City Manager Approval:** Bill Monahan

**Reviewed by City Manager:**

### **ISSUES BEFORE THE COUNCIL**

TriMet staff are scheduled to attend City Council to further discuss the proposed safety improvements for pedestrians at the Washington, Monroe and Harrison rail crossings.

### **STAFF RECOMMENDATION**

This item is informational; for discussion purposes only.

### **KEY FACTS & INFORMATION SUMMARY**

Milwaukie's Light Rail Construction Manager provided an update to City Council on the proposed safety improvements for pedestrians at the Washington, Monroe and Harrison rail crossings on January 20, 2015. These improvements (the installation of swing gates 6.5 feet from track centerline on all six sidewalk approaches east of the rail alignment, installation of TriMet Pedestrian Flashers adjacent to the sidewalks between the two light rail tracks to provide pedestrian-scaled audible and visual warning of approaching trains, and re-orientation of the ADA tactile warning bars to improve sightlines) were recommended by the PMLRT Safety & Security Task Force. City Council requested that staff return to further discuss this issue.

### **OTHER ALTERNATIVES CONSIDERED**

The use of automatic pedestrian gates and/or bedstead barriers was also considered.

### **CITY COUNCIL GOALS**

Not applicable.

### **ATTACHMENT LIST**

None.

### **FISCAL NOTES**

No new fiscal issues.



MILWAUKIE CITY COUNCIL  
**AGENDA ITEM SUMMARY**

Agenda Item: **RS 6. D.**

Meeting Date: **2/3/15**

**Added 1/29/15**

Title: **McLoughlin Blvd./22<sup>nd</sup> Ave. Intersection Improvements**

Prepared By: Jason Rice, Engineering Director  
Stacy Bluhm, Light Rail Construction Manager

Department Approval:

City Manager Approval: Bill Monahan

Approval Date:

### **ISSUES BEFORE COUNCIL**

In conjunction with the Light Rail improvements, Milwaukie, ODOT, NCPRD, and TriMet considered options to improve the safety of the Trolley Trail crossing of SE 22nd Avenue at McLoughlin Boulevard while making it more user-friendly. Milwaukie and ODOT staff developed some improvement concepts and have reached an agreement on their preferred option. Now that an alternative has been agreed upon, Staff would like to gain consensus from Council and discuss how the City should proceed.

### **STAFF RECOMMENDATION**

Staff recommends approving Version 2 of proposed plans as it has been agreed upon by Milwaukie and ODOT Staff as the most feasible.

### **KEY FACTS & INFORMATION SUMMARY**

The Trolley Trail crossing of 22<sup>nd</sup> Avenue at McLoughlin was reconstructed in 2012. But just as that project was coming to a close, TriMet began construction of its improvements tied to the Light Rail Project. While the area was under construction, the Trolley Trail was officially "closed" south of River Road, and trail users north of River Road were diverted over to 22<sup>nd</sup> Avenue via Bluebird Street through a series of temporary detours.

As improvements to the Light Rail Project were drawing to a close, Milwaukie and ODOT Staff sought ways to create a user-friendly design that would improve the safety of the Trolley Trail crossing. After both a site visit and an Open House in the Island Station Neighborhood to discuss alternatives, ODOT Staff made an attempt to capture those comments in Version 1a and 1b (depicted in Attachment #1 and #2). Once these alternatives were received by Milwaukie Staff, staff identified several concerns associated with those concepts and felt that another alternative should be considered.

That alternative improvement concept (Version 2) is included as Attachment #3. The City then prepared a summary table (Attachment #4) comparing the improvements and met with ODOT to further discuss the policy implications of the proposed improvements and which alternative to pursue. ODOT reviewed the City's alternative and comparison summary table and informed Milwaukie Staff that they were supportive of the City's concept. It is worth noting as well that this improvement concept is also endorsed by North Clackamas Parks & Recreation staff.

Staff wishes to discuss these policy alternatives with Council in order to quickly gain consensus on a solution. Staff will then forward the desired improvement concept to TriMet for review and ask that they provide an estimate for the work in the hopes that their contractor will be able to construct the improvement before demobilizing.

### **OTHER ALTERNATIVES CONSIDERED**

Both ODOT and Milwaukie Staff explored the two versions and have concluded that while Version 1 does have some benefits over Version 2, trail users would not necessarily support the out-of-direction travel created by the concept. Version 2 is also the more cost feasible alternative and is less intrusive on the local businesses in the vicinity.

### **CITY COUNCIL GOALS**

This project is not specifically called out as a 2014 Council Goal, but does accomplish the Council's goal to improve livability in the neighborhoods.

### **FISCAL NOTES**

After it is determined that a solution is acceptable to Council; Staff will forward it to TriMet in order to determine their ability to aid financially. Depending on that conversation, Staff may need to come back to Council in order to determine what level of funding Milwaukie will need to provide.

It is assumed that there is a large financial benefit to TriMet's contractor already being mobilized to the site. Staff would like to take advantage of these savings by requesting the work to be done by Stacy and Witbeck Inc. as a Change Order to the Light Rail Work. Again, once Staff has an acceptable solution from Council, this option will be explored.

### **ATTACHMENTS**

1. Version 1a of the Plans (Prepared by ODOT) – Right In and Right Out
2. Version 1b of the Plans (Prepared by ODOT) – Right In Only
3. Version 2 of the Plans (Prepared by Milwaukie and approved by ODOT in concept)
4. Analysis of Version 1 compared to Version 2 of the Plans (Prepared by Milwaukie Staff)

NOTE: Attachments 3 & 4 were switched from how they were originally published.

# Attachment 1



Protective design feature - optional

Std. city bus envelope (with 2-ft offset)

Proposed Profile Striping

Proposed Truck Apron

Roadway width to accommodate city bus, emergency & Passenger vehicles

Proposed Pedestrian/Bike Fence/Rail

Conventional school bus envelope (with 2-ft offset)

Driveway to accommodate delivery vehicles - WB40

Traffic separator

Traffic Separator

Blue Bird

Proposed Shared Path

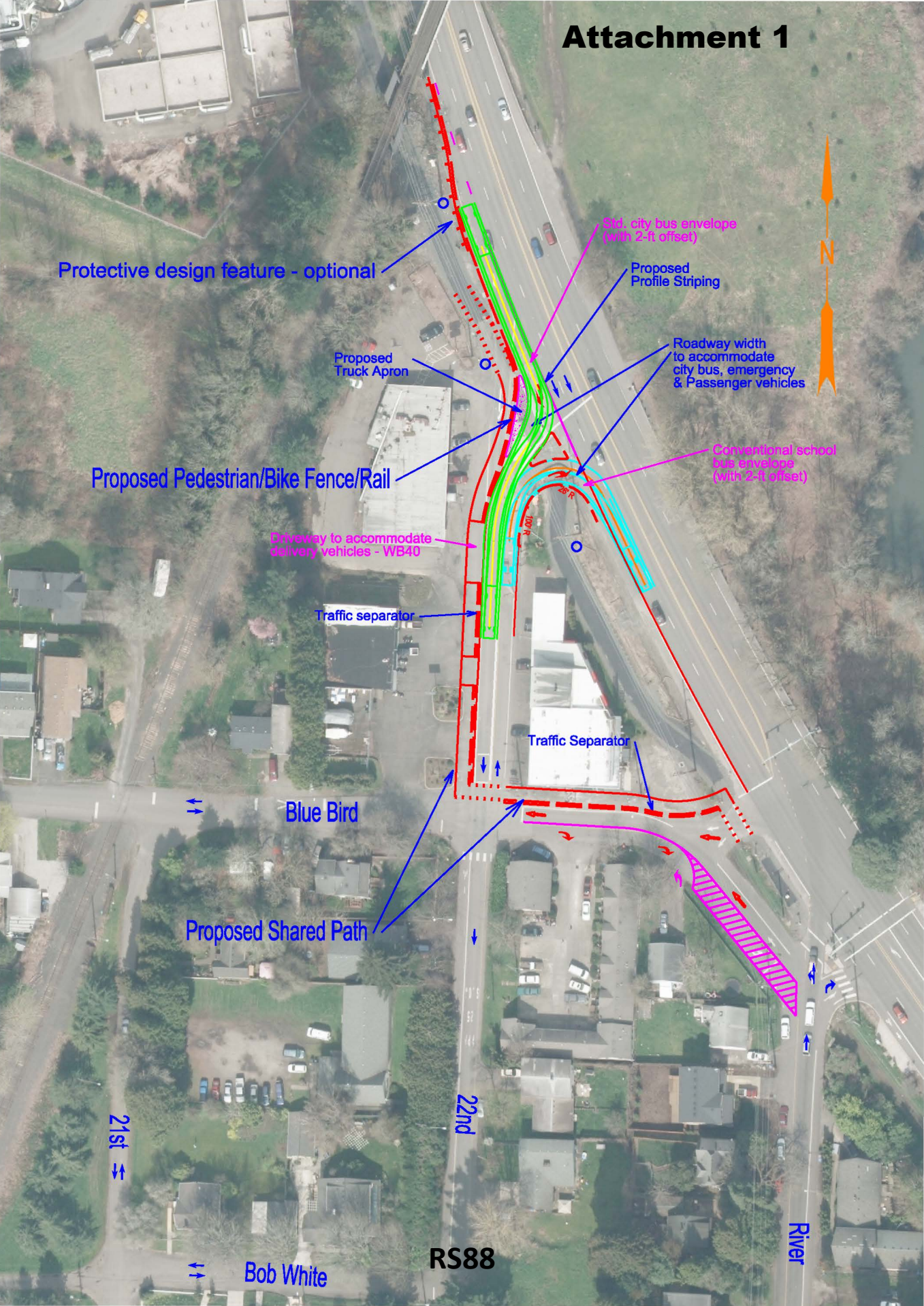
21st

22nd

RS88

Bob White

River



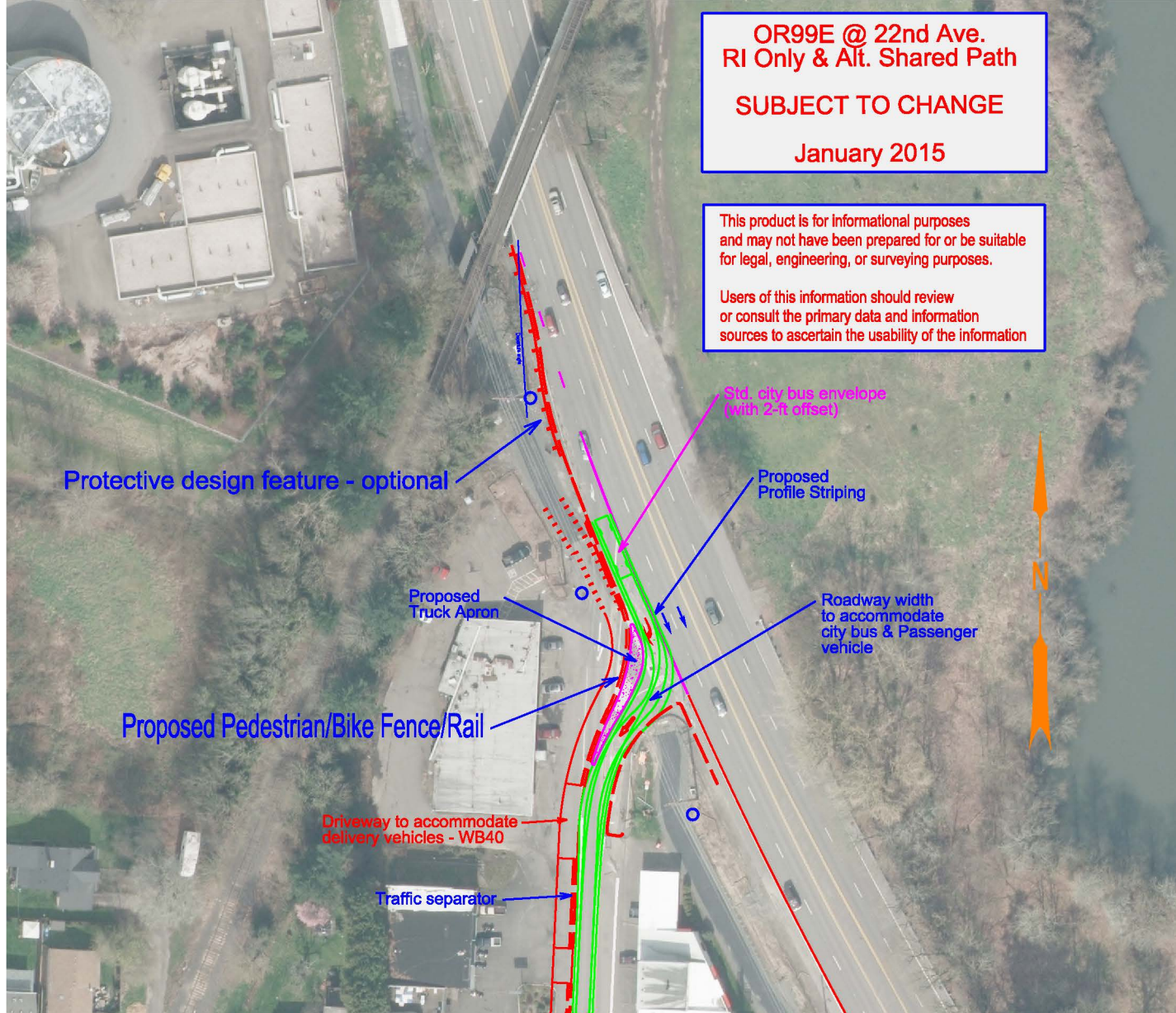
**OR99E @ 22nd Ave.  
RI Only & Alt. Shared Path**

**SUBJECT TO CHANGE**

**January 2015**

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes.

Users of this information should review or consult the primary data and information sources to ascertain the usability of the information



Protective design feature - optional

Std. city bus envelope  
(with 2-ft offset)

Proposed  
Profile Striping

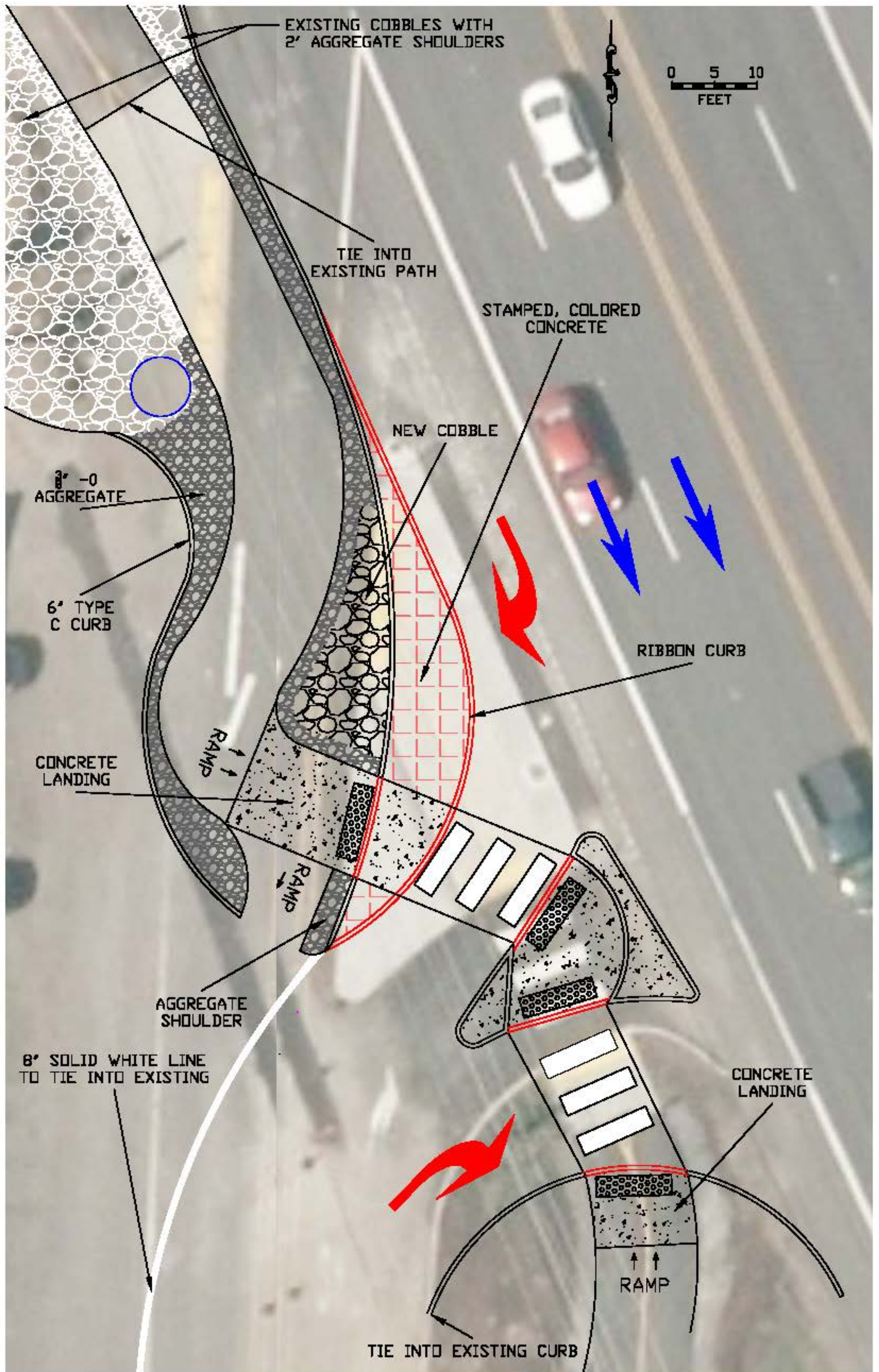
Proposed  
Truck Apron

Roadway width  
to accommodate  
city bus & Passenger  
vehicle

Proposed Pedestrian/Bike Fence/Rail

Driveway to accommodate  
delivery vehicles - WB40

Traffic separator



## COMPARISON OF EXISTING TROLLEY TRAIL VS. 22ND & BLUEBIRD ON-STREET PATH

COMMENT	EXISTING TROLLEY TRAIL BETWEEN 22ND AND BLUEBIRD	22ND TO BLUEBIRD ON-STREET PATH
1	Pedestrians & bicyclists need to yield to right-turning traffic coming off 99E but with the intersection re-aligned, traffic will be making this movement more slowly, path users will be re-oriented to a better viewing angle of conflicting traffic, and there will now be a discernable right-turn lane.	Crossing 22nd at Bluebird makes it easier for pedestrians and bicyclists to see their conflicting southbound vehicular traffic.
2	The trolley trail is the most direct connection between 22nd & Bluebird.	This route creates out-of-direction travel; pedestrians and bicyclists do not like out-of-direction travel and may forge their own direct path under the LRT bridge anyway (or bikes may hop into the 99E shoulder).
3	Crossing 22nd at 99E allows pedestrians and bicyclists to only have to look for traffic in one direction before crossing.	Crossing 22nd at Bluebird will require pedestrians and bicyclists to look for traffic on all three approach legs (although there would be few vehicles turning from Bluebird to 22nd).
4	The existing trolley trail between 22nd & Bluebird is access controlled.	Drivers pulling in and out of driveways on the west side of 22nd will not be expecting two-way pedestrian and bicycle traffic on the west shoulder.
5	-	The tight right-angle turns at 22nd & Bluebird and at Bluebird & 99E are not conducive to bicycle travel. Users would be more tempted to not cross at the signalized crossing at 99E.
6	The trolley trail has been overlaid with new asphalt.	Pavement along the west side of 22nd and on the north side of Bluebird is severely deteriorated (reconstruction is likely required).
7	The trolley trail has new pedestrian-scale lights.	22nd only has two lights and both are on the east side of the street (one south of 99E and one on the NE corner of Bluebird/22nd). There is no lighting on Bluebird other than the light on 22nd at the corner. Additional lighting would be recommended.
8	No impact to existing businesses (although our intersection reconfiguration may impact some parking spaces that the River Roadhouse expected to have restored).	Business & property owners will be unhappy with the removal of parking in front of their businesses and the limited access. The River Road House highly valued their on-street parking because the parking within their property is quite constrained. The business on Bluebird also relies on their on-street parking.
9	The overhead LRT bridge provides cover for path users.	-
10	Cost is solely for the intersection reconfiguration and 99E right-turn pocket widening.	Very expensive alternative; realigned intersection and 99E right-turn pocket widening, pavement reconstruction/rehabilitation on 22nd & Bluebird (which may kick in stormwater treatment requirements), new curbs and separators along 22nd & Bluebird, new driveway approaches on west side of 22nd, additional lighting, removal of some of the existing landscaped island, removal of the newly repaired trolley trail and lighting between 22nd & Bluebird, replacement of the trolley trail path with cobblestone, etc.)

City of Milwaukie - January 15, 2015



Agenda Item: **RS 6. E.**  
Meeting Date: **2/3/15**

## **COUNCIL AGENDA ITEM SUMMARY**

**Issue/Agenda Title:** Amendment to TriMet-Milwaukie Betterments Intergovernmental Agreement (IGA)

**Prepared By:** Stacy Bluhm, Light Rail Construction Manager

**City Manager Approval:** Bill Monahan

**Reviewed by City Manager:**

### **ISSUES BEFORE THE COUNCIL**

Staff requests that Council authorize the City Manager to execute an Amendment to the *TriMet-City of Milwaukie Betterments Intergovernmental Agreement* that was effective on September 18, 2012.

### **STAFF RECOMMENDATION**

Staff recommends Council authorize the City Manager to execute the IGA Amendment.

### **KEY FACTS & INFORMATION SUMMARY**

As per the *TriMet-City of Milwaukie Betterments Intergovernmental Agreement*, the Kellogg Multi-Use Trail and Bridge Structure is funded by a \$1,200,000 grant from FTA (to TriMet) and the City had committed \$200,000 in funds towards the project as well. The agreement stipulates that the City of Milwaukie will be responsible for costs that exceed the original \$1,400,000 funds. It is estimated that \$256,000 in additional funds are needed to connect the north end of the steel bridge structure to Lake Road and to connect the south end of the bridge structure to a landing in Kronberg Park. This amendment authorizes these additional funds.

### **OTHER ALTERNATIVES CONSIDERED**

The idea of delaying the bridge connection work was considered, but not completing the connections could result in the loss of federal funding. Also, having TriMet include the work in their contract is expected to result in a savings to the City, and TriMet has staff that are experts in structural design and construction so having their engineers provide oversight of the work is advantageous to the City.

### **CITY COUNCIL GOALS**

Not applicable.

### **ATTACHMENT LIST**

1. Amendment 1 TriMet-City of Milwaukie Betterments IGA and Resolution (to follow)
2. Memo from Finance Director regarding Funding Options

### **FISCAL NOTES**

The City is to provide \$256,000 in additional funds that were not budgeted.

**RS92**



MILWAUKIE CITY COUNCIL  
STAFF REPORT

Agenda Item: **RS 6. E.**  
Meeting Date: **Feb 3, 2015**  
**Added 1/29/2015**

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Amendment to TriMet-Milwaukie Betterments IGA**

From: Stacy Bluhm, Light Rail Construction Manager

Date: Jan 27, 2015

### **ACTION REQUESTED**

Authorize the City Manager to execute an amendment to the *Tri-Met City of Milwaukie Betterments Agreement* to commit an additional \$256,000 in City funds and clarify the scope of work that is to be completed in Phase Two of the project.

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

The City of Milwaukie and the Tri-County Metropolitan Transportation District of Oregon (TriMet) approved a Betterments Intergovernmental Agreement in September of 2012 that allowed some city infrastructure improvements that were not part of the light rail project (but were in the vicinity of the light rail alignment) to be constructed by TriMet's contractor. Part of the rationale for undertaking Betterments in this fashion is the realization of cost savings from not having to mobilize a separate construction contractor and not having to coordinate two contractors doing work at the same time in the same location. The Kellogg Multi-Use Trail and Bridge Structure was one such betterment covered under this agreement.

### **BACKGROUND**

The Kellogg Multi-Use Trail and Bridge Structure project was expected to install a trail and a bridge over Kellogg Lake to provide a connection between Lake Road and McLoughlin Boulevard. This project is funded in part by a \$1,200,000 grant from FTA (to TriMet) and the City had committed \$200,000 in funds to the project as well. The Betterments IGA stipulates that the City of Milwaukie will be responsible for costs that exceed the original \$1,400,000 in funds. Having completed the installation of the weathered steel truss bridge structure that spans over Kellogg Lake, we find that we have \$356,000 in remaining funds to apply to the bridge connections.

It is estimated that the City will need \$612,000 to connect the north end of the steel bridge structure to Lake Road and to connect the south end of the bridge structure to a landing in Kronberg Park. Thus, given the remaining funds of \$356,000; an additional \$256,000 is needed to complete those connections at this time.

Meanwhile, it was also specified in the Betterments IGA that the City would complete a trail connection from the bridge to McLoughlin Boulevard by September of 2015. However, the park planning process for Kronberg Park is not yet finalized so the City is not prepared to complete the design of this park connection at this time. Nor do they have the funds to design and build that connection now.

The IGA is to be amended to authorize additional funding for the bridge landings and to clarify that the Kronberg Park trail connection to McLoughlin Boulevard will not be constructed at this time.

#### **CONCURRENCE**

The City Attorney has reviewed and approved the proposed IGA Amendment.

#### **FISCAL IMPACTS**

See Memo on funding by Milwaukie's Finance Director, Casey Camors.

#### **WORK LOAD IMPACTS**

Because TriMet is agreeing to provide design and construction inspection oversight, this agreement reduces the work load on City staff.

#### **ALTERNATIVES**

The alternative of delaying the bridge connection work was considered, but not completing the connections at this time could result in the loss of the FTA grant funding. Also, having TriMet include the work in their contract is expected to result in a savings to the City on construction contract cost. And because TriMet has staff that are very experienced in structural design and construction, having them provide oversight of the work is not only expected to save money but is also advantageous to the City because the City does not have engineers on staff that are structural experts.

#### **ATTACHMENTS**

1. Amendment 1 TriMet-City of Milwaukie Betterments IGA and Resolution
2. Memo from Finance Director regarding Funding Options

# Attachment 1

## AMENDMENT 1

### TriMet-City of Milwaukie Betterments Intergovernmental Agreement

#### TriMet Contract No. GH130302LE

#### Recitals

A. The City of Milwaukie (“City”) and the Tri-County Metropolitan Transportation District of Oregon (“TriMet”) (collectively the “Parties”) are partners in the Portland-Milwaukie Light Rail Project (“Project”).

B. The Parties entered into an Intergovernmental Agreement (“Agreement”) dated September 18, 2012 which created a framework for identifying and performing certain City Betterment Work that is related to the Project, but not part of the Project work scope, including a Betterment that in the Agreement is referred to as the Kellogg Multi-Use Trail and Bridge Structure (“Bridge Betterment”).

C. The Bridge Betterment was to be funded by a \$1,200,000 grant from FTA to TriMet (Project ID OR-95-X044-00) (“FTA Grant”) and \$200,000 in City general funds (“Original City Funds”), for a total original budget of \$1,400,000 for the Bridge Betterment work (“Original Budget”).

D. Phase One of the Bridge Betterment, as described in the Agreement, has been completed. The Parties desire to enter into this Amendment to modify Phase Two of the Bridge Betterment work, and the Bridge Betterment project budget, as set out in this Amendment.

Therefore, it is agreed:

#### Terms

1. The following is hereby added as Section 2(e) of the Agreement:

e. TriMet is responsible for providing the design of Phase Two of the Bridge Betterment work as set out in this Amendment. TriMet will contract with KPFF to design Phase Two.

2. The following is hereby added as Section 10(b)(9)(F) of the Agreement:

F.

(1) Phase One of the Bridge Betterment work has been completed. Due to budget constraints, Phase Two of the Bridge Betterment is being changed by this Amendment to remove the trail connection from the south landing of the bridge to Highway 99E. Funding for the

updated Phase Two Bridge Betterment work will come from two sources. One source is the \$356,000 remaining from the Original Budget. The second source is approximately \$256,000 in additional funds from the City of Milwaukie, above and beyond the Original City Funds.

(2) The total budget of the Bridge Betterment work is now approximately \$1,656,000. The total budget for Phase Two of the Bridge Betterment work is now approximately \$612,000, which is based on conceptual cost estimates provided by TriMet for a concrete structure and block wall connection to Lake Road.

(3) The City of Milwaukie will be responsible for all land use approvals and all permitting for the Phase Two work.

(4) TriMet and the City will work in good faith to cause Phase Two of the Bridge Betterment work to be designed, permitted and built within the \$612,000 budget. TriMet will provide regular cost updates and construction cost estimates to the City to assist with managing the budget. TriMet and the City agree to work closely to engineer the design of Phase Two to minimize the risk of cost overruns. The City will be responsible for costs that exceed the \$612,000 budget, including those costs that are placed on the Project as a result of land use conditions or other permitting processes.

(5) Exhibit C contains drawings depicting Phase Two of the Bridge Betterment work. Exhibit C is attached hereto and incorporated into this Amendment by this reference. Exhibit D is the Cost Estimate for the Phase Two work. Exhibit D is attached hereto and incorporated into this Amendment by this reference. As depicted in Exhibit D, the estimated cost of the Bridge Landings alone is \$510,000. A 20 percent contingency amount of \$102,000 is also authorized with this Amendment. TriMet will manage the construction of the Phase Two work. City will be responsible for all land use and permitting conditions, processes and approvals. The Parties will strive to complete all Phase Two work by September 2015.

(6) Due to budget constraints, Phase Two of the Bridge Betterment is being changed by this Amendment to remove a portion of the trail connection from the south landing of the bridge to Highway 99E. The Parties understand that the FTA Grant application states that the “multi-use structure will directly link downtown Milwaukie with neighborhoods south of Kellogg Creek and Highway 99E...” The City agrees to work in good faith toward completion of the remaining Phase Two multi-use trail connections set out in the Agreement but not being constructed by the City at this time, as permitted by the City budgeting process.

3. Section 11(a) of the Agreement is hereby replaced with the following:

(a) Refer the dispute to Stacy Bluhm, City Project Manager, and Leah Robbins, TriMet Project Manager, who shall make a good faith effort to resolve it;

4. Section 14 of the Agreement is hereby deleted in its entirety and replaced with the following:

14. Indemnification. Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the parties shall hold harmless, indemnify and defend the other and its officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent acts or omissions of the indemnitor, its officers, employees, or agents. Furthermore, the City agrees to hold harmless, indemnify and defend TriMet against all claims, demands, penalties, causes of action, and complaints which result from or are related to any changes to Phase Two of the Bridge Betterment work made by this Amendment, including the deferral of construction of multi-use trail connections that were set out in the Agreement but are not being constructed by the City at this time.

5. Unless changed by this Amendment, all terms and conditions of the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement effective the final date hereinafter written.

**Tri-County Metropolitan Transportation  
District of Oregon**

**City of Milwaukie**

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

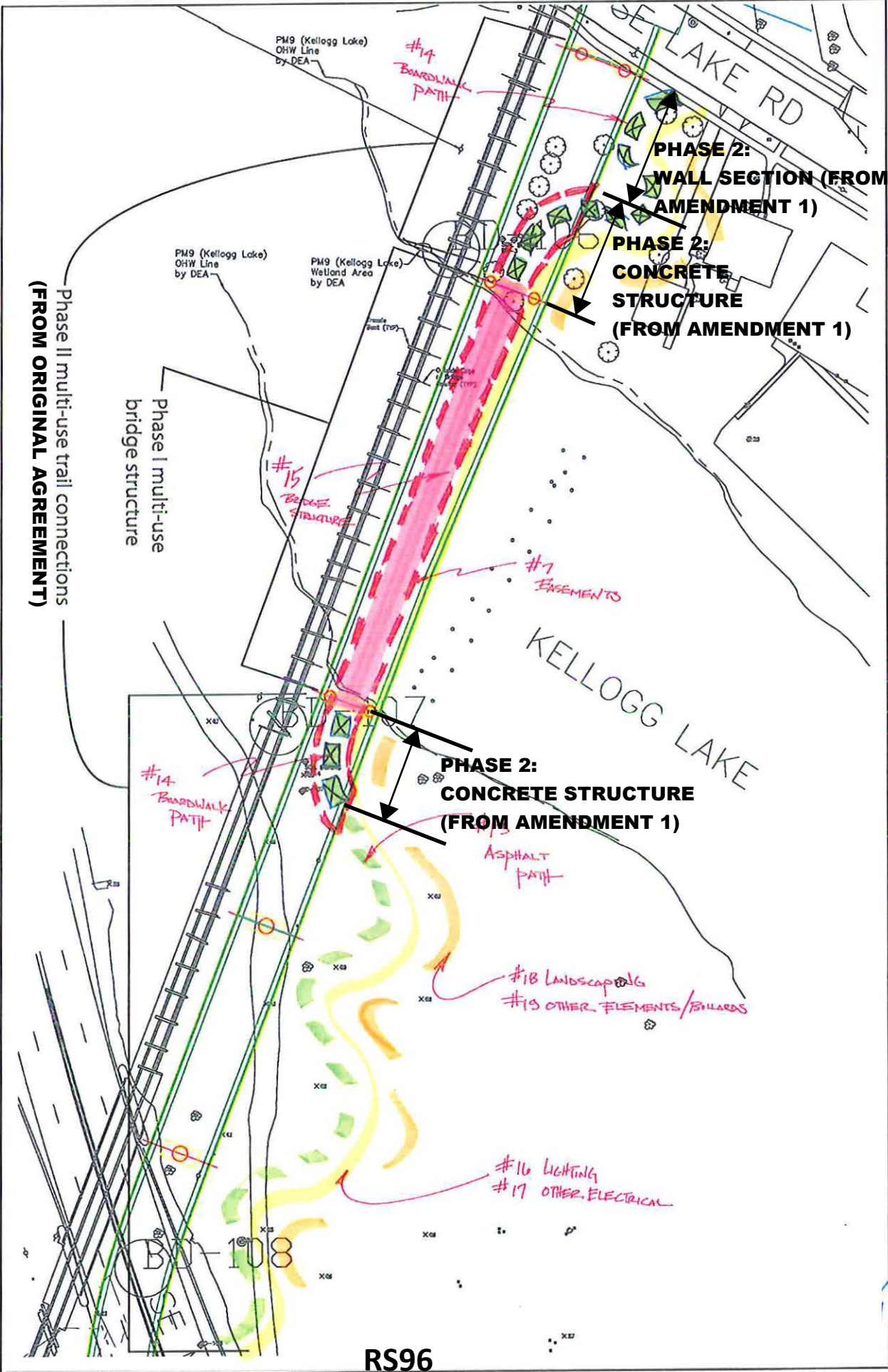
Date: \_\_\_\_\_

**Approved as to form:**

**Approved as to form:**

\_\_\_\_\_  
TriMet Legal Department

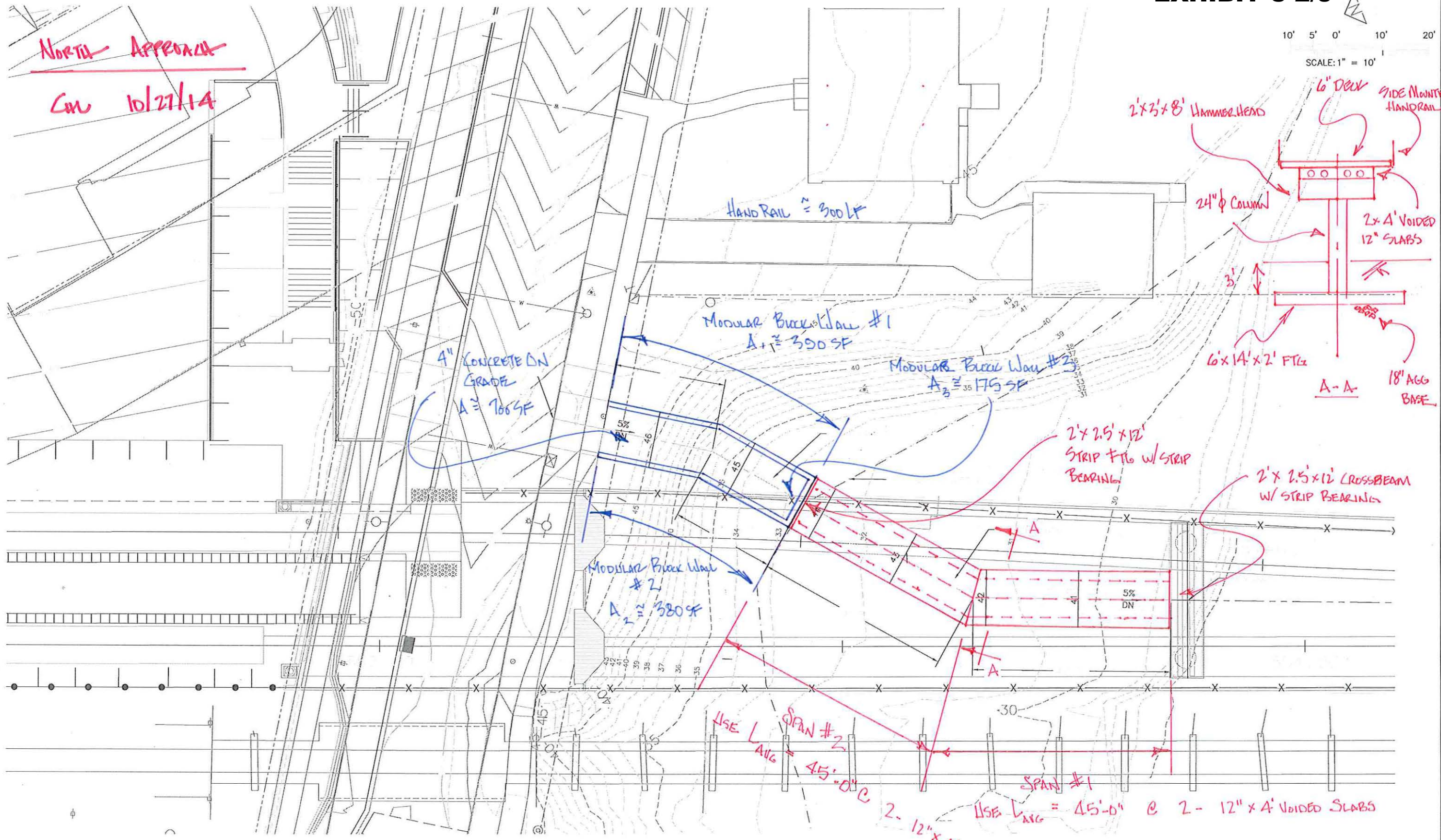
\_\_\_\_\_  
City Attorney



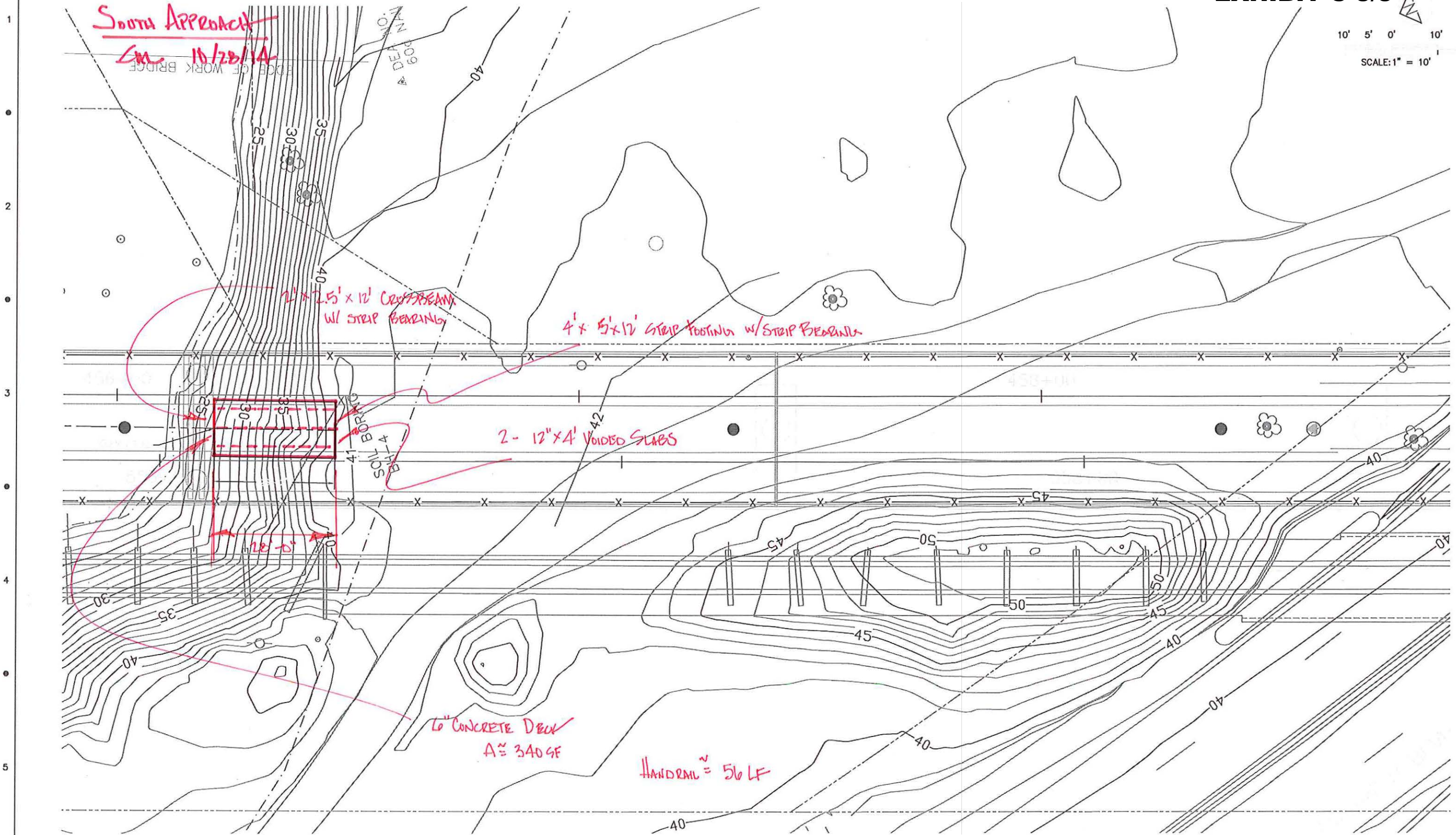
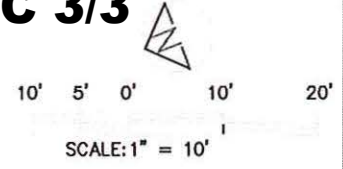
**Exhibit A Kellogg multi-use trail and bridge structure**

*North Approach*

*CON 10/27/14*



DESIGNED		DATE	<p>TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON</p> <p>CAPITAL PROJECTS DIVISION</p> <p><b>TRI MET</b></p>	PORTLAND TO MILWAUKIE LRT	
DRAWN		DATE		EAST SEGMENT	
CHECKED		DATE		CIVIL	
APPROVED		DATE		KELLOGG PEDESTRIAN BRIDGE	
				NORTH APPROACH	
NO. DATE BY APPD. REVISIONS			RS97	APPROVED:	DATE:
CHK.					
				SCALE:	DRAWING NO.:
				1"=10'	KPB-NORTH
				CONTRACT NO.:	SHEET NO.:



1  
2  
3  
4  
5

NO. DATE BY APPD. REVISIONS CHK.		DESIGNED DATE DRAWN DATE CHECKED DATE APPROVED DATE	TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON	CAPITAL PROJECTS DIVISION	PORTLAND TO MILWAUKIE LRT EAST SEGMENT CIVIL KELLOG PEDESTRIAN BRIDGE SOUTH APPROACH				
		<b>RS98</b>	SUBMITTED:	APPROVED:	DATE:	SCALE: 1"=10'	DRAWING NO.: KPB-SOUTH	CONTRACT NO.:	SHEET NO.:

## FAIR COST ESTIMATE

### Summary Sheet



To: Calvin Lee

Project: PMLR East

**PC - Concrete Option Kellogg Ped Bridge Approaches**  
 New Modular block walls will extend from McLoughlin towards ped bridge, then continue to precast beam slabs with concrete deck before connecting to the already installed pedestrian bridge. Followed by a separate section on the other side. Full railing on both sides for the entire length.

Est. # 14463

By: MJW

**Notes/Clarifications**  
 - Included GC mark up on subcontracted work  
 - See Back Up for additional details

Date: 11/13/2014

Item	Description	Quantity	Units	Unit price	Total
1	Alan Block Modular Wall w/ Slab on grade	945	sf	\$80.54	\$76,106
2	Concrete Footing	1	ea	\$7,910.44	\$7,910
3	Column, Hammerhead, Crossbeams	1	ls	\$66,331.71	\$66,332
4	Precast Beams and Concrete Deck	1	ls	\$210,605.26	\$210,605
5	Galv. Railing	360	lf	\$253.75	\$91,350
6	General Conditions	1	ls	\$57,267.98	\$57,268

Total Cost **\$509,572**

Proofed:



**General Notes:**

- This FCE includes Contractor Markup. The 'S' on the backup sheet denotes Subcontracted work.
- STS, stands for 'small tools and supplies' and includes other consumables incidental to completing the work.
- Labor rates are all prevailing wage and include a Foreman in each crew type.
- Equipment rates are combined ownership and operating rates based on 8 hour days.



# EXHIBIT D 2/2

## FAIR COST ESTIMATE BACK UP

Estimate #

14463

Date: 11/13/2014

Project:

PMLR East

ACTIVITY	MATERIAL					STS	LABOR		EQUIPMENT			Σ \$\$	Sub.		
	Activity Description	Qty	Units	Material	Qty	Units	Matl. Cost	STS Cost	MH's	Labor Cost	Equipment	EH's		Eqpt. Cost	Line Total
Excavation For Wall	42.6	cy						\$72	12.8	\$781	CAT 345	4	\$1,138	\$1,990	S
Disposal of Material	42.6	cy	Trucking, Dis. Fee		42.6	cy	\$906							\$906	S
Install Modular Blocks	945.0	sf	Alan Block		1890.0	ea	\$8,467	\$1,058	189.0	\$11,550	CAT 320	47	\$5,477	\$26,553	S
Modular Blocks Tops	236.3	ea	Topper Blocks		236.3	ea	\$794	\$265	47.3	\$2,887	CAT 320	12	\$1,369	\$5,315	S
Geo Grid - Layers	191.7	sy	Strata 200		191.7	sy	\$429	\$107	19.2	\$1,171	Telehandler	6	\$499	\$2,207	S
Block Fill	26.3	cy	Granular Fill		52.5	ton	\$1,294	\$176	31.5	\$1,925	CAT 320	8	\$913	\$4,308	S
Wall Gravel Backing	52.5	cy	Granular Fill		78.8	ton	\$1,764	\$221	39.4	\$2,406	CAT 345	13	\$3,506	\$7,897	S
Wall Infill	170.4	cy	Granular Fill		340.7	ton	\$8,396	\$477	85.2	\$5,206	CAT 345	28	\$7,585	\$21,663	S
Concrete on Grade	575.0	sf	Concrete		8.4	cy	\$1,889	\$94	16.9	\$1,031	Pump Truck - CY	8	\$2,253	\$5,267	S
Footing Excavation	12.4	cy						\$11	2.0	\$122	BH w/ aug	1	\$55	\$189	S
Footing Subgrade Prep	6.2	cy	3/4 minus gravel		12.4	ton	\$307	\$35	6.2	\$380	BH w/ aug	2	\$172	\$894	S
Footing Forms	160.0	sf	Light Forms		80.0	sf	\$448	\$179	32.0	\$2,273				\$2,900	S
Footing Rebar	840.0	lb	Rebar		840.0	lb	\$612	\$94	16.8	\$1,355				\$2,060	S
Footing Concrete	6.2	cy	Concrete		6.2	cy	\$767	\$105	12.4	\$760	Pump Truck - CY	6	\$235	\$1,867	S
Column	1.0	ea	Conc. Reb. Forms		1.5	cy	\$1,303	\$239	44.7	\$3,450	RT & Tele	9	\$1,982	\$6,974	
Bent Hammerhead	1.8	cy	Conc. Reb. Forms		1.8	cy	\$1,435	\$264	49.4	\$3,816	RT & Tele	10	\$2,203	\$7,718	
Crossbeam	4.4	cy	Conc. Reb. Forms		4.4	cy	\$4,166	\$725	135.6	\$10,474	RT & Tele	27	\$6,014	\$21,379	
Footing North	2.2	cy	Conc. Reb. Forms		2.2	cy	\$1,291	\$242	45.3	\$3,498	RT & Tele	9	\$2,063	\$7,095	
Footing South	8.9	sf	Conc. Reb. Forms		1920.0	cy	\$4,137	\$789	147.5	\$11,398	RT & Tele	30	\$6,841	\$23,166	
2'x4' Voided 12" Slabs	236.0	lf	24"by48" pc beam		236.0	lf	\$60,794	\$538	96.0	\$7,434	RT & Tele	19	\$4,161	\$72,926	S
Bridge Deck	1180.0	sf	F/W Forms		1180.0	sf	\$26,432	\$2,974	531.0	\$31,162	RT & Tele	106	\$23,016	\$83,583	S
Bridge Deck conc, rebar	52.4	cy	Conc. Rebar		52.4	cy	\$16,564	\$2,308	274.8	\$19,347	RT & Tele	55	\$15,876	\$54,096	S
Cust. Galv Railing	360.0	lf	Galv Railing		360.0	lf	\$84,672	\$403	72.0	\$4,400	Telehandler	24	\$1,875	\$91,350	S
Job Superintendant	1.0	ls							190.7	\$14,746	F-150	191	\$4,565	\$19,310	S
Proj. Manager	6.0	wk	Proj. Manager		6.0	wk	\$19,581				F-150	240	\$5,563	\$25,144	
Blue rooms	10.0	wk	Bluerooms		10.0	wk	\$1,070							\$1,070	
Mobilization	30.0	hr	Outside Trucking		30.0	hr	\$3,528	\$427	76.3	\$4,663				\$8,618	S
Gravel Access ramp (in/out)	27.8	cy	Open Gravel		55.6	ton	\$1,427	\$89	16.7	\$986	CAT 320	6	\$624	\$3,126	



Total Cost **\$509,572**

Σ Material **\$252,472**  
 Σ STS **\$11,893**  
 Σ MH's **2,190**  
 Σ Labor **\$147,221**

Σ Equip. **\$97,986**



MJW

**RS100**



**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 amendment to the TriMet-City of Milwaukie Betterments Intergovernmental Agreement to provide additional funds for the Kellogg Multi-Use Bridge connections and clarify what improvements shall be constructed with those funds.**

**WHEREAS**, the City of Milwaukie and TriMet are collaborating on the Portland-Milwaukie Light Rail Project; and

**WHEREAS**, the City and TriMet entered into an Intergovernmental Agreement in September of 2012 which authorized a city contribution of \$200,000 as match money for the \$1,200,000 in grant funds for the Kellogg Multi-Use Trail and Bridge Structure; and

**WHEREAS**, the TriMet-City of Milwaukie Betterments Intergovernmental Agreement stipulates that the City is responsible for costs exceeding the \$1,400,000 budgeted funds; and

**WHEREAS**, the steel bridge truss over Kellogg Lake has been installed and there are \$356,000 in project funds remaining; and

**WHEREAS**, it is estimated that \$612,000 is required to connect the north end of the bridge truss to Lake Road and connect the south end of the bridge truss to a landing area in Kronberg Park; and

**WHEREAS**, \$256,000 in additional funds are required to construct the bridge connections; and

**WHEREAS**, the Betterments IGA had specified that the City would complete a trail connection from the bridge to McLoughlin Boulevard by September 2015; and

**WHEREAS**, the City is not yet prepared to finalize the design or fund the trail connection thru Kronberg Park but it is advantageous to the City of have TriMet build the bridge landings now.

**Now, Therefore, be it Resolved** that the City Manager is authorized to execute an Amendment to the TriMet-City of Milwaukie Betterments Intergovernmental Agreement to commit an additional \$256,000 in City funds and clarify the scope of work that is to be completed in Phase Two of the project.

Introduced and adopted by the City Council on \_\_\_\_\_.

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

\_\_\_\_\_  
Lisa Batey, Council President

APPROVED AS TO FORM:  
Jordan Ramis PC

ATTEST:

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

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

## Attachment 2



**MILWAUKIE**  
*Dogwood City of the West*

## Memorandum

**To:** Milwaukie City Council

**From:** Casey Camors, Finance Director

**CC:** Bill Monahan, City Manager,  
Stacy Bluhm, Light Rail Construction Coordinator  
Jason Rice, Engineering Director  
Pat DuVal, City Recorder

**Date:** January 27, 2015

**Re:** Kellogg Multi-Use Train and Bridge Structure Connection Funding

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Funding for the Kellogg Multi-Use Trail and Bridge Structure connection work of \$256,000 needs to be defined. When both restricted and unrestricted resources are available for us, it is the City's policy to use restricted resources first, then unrestricted resources as needed. The following options are available for Council review. The Council may utilize any combination of the options below:

- Pay total \$256,000 out of the General Fund with no reimbursement from any other funds (unrestricted funds) – The General Fund currently has sufficient funds to cover this expenditure. In the long-term the City will need to continue to analyze the General Fund to ensure financial health. General Fund dollars may be spent on general projects that benefit the City where as expenditures made in the Transportation Fund, Water Fund, Stormwater Fund or Wastewater Fund must relate directly to those fund's activities. The use of General Fund monies for a transportation project is generally undesirable unless other options are not feasible.
- Pay total \$256,000 out of the Transportation Fund (State Gas Tax Department) with an interfund loan from the General Fund (restricted funds) – Loan terms would likely include a 10 year loan at .10% (current LGIP rate) yielding an annual payment of \$29,000 per year from the General Fund. The Transportation Fund, specifically the State Gas Tax Department, has a deficit fund balance and is not healthy enough to support this type of purchase outright and would therefore require assistance from the General Fund. Most of the revenue in the Transportation Fund is from State Gas Tax money and Franchise Fees from the City's Water, Wastewater and Stormwater Funds and in recent years, these revenues have been insufficient to fund transportation adequately. The City has had to cut judiciously in transportation operations to pave a path to recovery. We do anticipate that the Franchise Fee from our other utility funds will increase in the coming

years to levels that are sufficient to fund payments to an interfund loan, but this is only speculation at this time. Obligating the Transportation Fund to this interfund loan is not recommended until the Fund's State Gas Tax Department has recovered fully and has sufficient funding to return to an adequate operating level.

- Pay \$21,000 out of Fee in Lieu of Construction (FILOC) funds (restricted funds) accumulated for the Island Station Neighborhood with the remaining \$235,000 from other funding sources – FILOC funds are collected when developers and residents undertake certain projects requiring sidewalks or other improvements, but in instances where sidewalk or other improvements wouldn't be appropriate at the time of the project. The City pools these funds together to pay for larger projects that benefit the neighborhood in which they are collected. Of the approximately \$31,000 in transportation FILOC at this time, \$21,000 may be used for this project. FILOC funds are often used by the City as match funding for larger grant driven projects. The drawdown of these funds could have future impacts in the City's ability to attain capital grants. In order to utilize these funds, the City will also need to coordinate with Island Station Neighborhood District Association.
- Pay \$150,000 out of the Systems Development Charges Fund monies dedicated to Transportation (restricted funds) with remaining \$106,000 from other funding sources – Transportation SDC dollars are restricted to use for capital capacity building projects and may be used for this project in adding capacity for bikes and pedestrians, thus reducing vehicular trips. Currently, the City expects to have approximately \$210,000 remaining in this fund for transportation projects once all the budgeted capital improvement projects have been paid for. Should the Council choose to use these funds, ending fund balance at the end of FY 2015 is expected to be \$60,000. Staff does not recommend fully spending down the fund. Additionally, Council should consider that we use SDC monies as match funding for larger grant driven projects. Without this funding source there could be future impacts in the City's ability to attain capital grants.

The following funding mix possibilities represent a few options for the City Council to consider. Finance Staff recommends option #3, which balances consistency with the City's financial policies and the most stable utilization of available funding.

	Option #1	Option #2	Option #3	Option #4	Option #5	Option #6
General Fund	\$ 256,000	\$ 235,000	\$ 85,000			
Transportation Fund (via Loan)				256,000	235,000	85,000
Transportation FILOC		21,000	21,000		21,000	21,000
Transportation SDC			150,000			150,000
	\$ 256,000	\$ 256,000	\$ 256,000	\$ 256,000	\$ 256,000	\$ 256,000