



**Regular Session**

**RS**

**Milwaukie City Council**



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

**REGULAR SESSION**  
APRIL 5, 2016  
City Hall Council Chambers

**Mayor Gamba called the 2,219<sup>th</sup> meeting of the City Council to order at 6:10 p.m.**

**Council Present:** Council President Lisa Batey and Councilors Scott Churchill, Wilda Parks, and Karin Power

**Staff Present:** City Manager Bill Monahan, City Attorney Peter Watts, City Recorder Pat DuVal, Assistant to the City Manager Mitch Nieman, Library Director Katie Newell, Community Development Directory Alma Flores, Finance Director Casey Camors, Police Chief Steve Bartol, Engineering Director Chuck Eaton, and Sustainability Director Clare Fuchs

**CALL TO ORDER**

Pledge of Allegiance.

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

**A. Ed Zumwalt Volunteer of the Year Award for 2015 Presented to David Aschenbrenner**

Mayor Gamba and the Councilors congratulated **David Aschenbrenner** on his many contributions to the community and presented him with the 2015 Ed Zumwalt Volunteer of the Year Award.

**B. Volunteer Month Proclamation**

**Mayor Gamba** read a proclamation naming the week of April 10 – 16, 2016, as *National Volunteer Week* in the City of Milwaukie and encouraged community members to join in efforts to make Milwaukie a cleaner and healthier place.

**C. National Library Week Proclamation**

**Ms. Newell** read the proclamation naming April 10 – 16, 2016, as *National Library Week* in the City of Milwaukie and encouraged all residents to visit the historic Ledding Library and take advantage of its resources.

**D. Startup in a Day Initiative Proclamation**

**Judy Lao** of the Small Business Administration described the Startup in a Day Program. **Ms. Flores** read the proclamation expressing the City of Milwaukie's commitment to joining the Startup in a Day Initiative.

**E. Child Abuse Prevention Month Proclamation**

**Chief Bartol** discussed the importance of the Clackamas County Children's Center and the services it provided.

**Mayor Gamba** read the proclamation naming the month of April 2016 as *Child Abuse Prevention Month* in the City of Milwaukie and called upon all citizens to participate in efforts to prevent child abuse.

### Funding for Outdoor School

**Mayor Gamba** encouraged people to support Save Outdoor School for All by signing the petitions being circulated to qualify a measure for the November ballot to fully fund the program.

### Celebrate Milwaukie, Inc. (CMI) Check Presentation for Riverfront Park

Representing CMI, **Jim Bernard** and **Dave Aschenbrenner** presented the City Council with a check in the amount of \$5,800 to fulfil the commitment to donate \$15,000 to Riverfront Park. Mr. Bernard thanked the City for making its parking lot available for the Sunday Farmers Market for the past 17 years.

### **F. Air Quality Update**

**Mayor Gamba** provided an update on the air quality monitors installed in the vicinity of Precision Castparts Corp., Inc. (PCC). Department of Environmental Quality (DEQ) representatives are scheduled to make a presentation at the April 19, 2016, regular City Council session.

## **AUDIENCE PARTICIPATION**

**Mayor Gamba** reviewed the audience participation procedures.

**Mr. Monahan** reported there was no audience participation at the March 15, 2016, regular session.

**Charlie Fisher**, Environment Oregon, provided follow up to a City Council presentation made in late February on solarizing Milwaukie. A number of people had stepped up to volunteer for the program, and several joined him at this meeting.

**Rod Weigel**, Aldercrest Rd resident, expressed his support for Environment Oregon and encouraged development of a solar program in Milwaukie.

**Virginia Maxam**, Milwaukie resident, wanted to be involved and do service work in her community. She hoped the City would set a goal to increase the use of solar energy in Milwaukie. She was willing to volunteer for outreach and awareness efforts.

**Ron Whitworth**, Oregon City resident and current president of the Milwaukie Community Club, said he was a retired residential realtor and had become personally interested in solar energy. He encouraged the City Council to consider the Environment Oregon program and offered the Community Club as a meeting site.

**Margi Shindler**, Milwaukie resident and granddaughter of the first Mayor of Milwaukie, urged the City Council to support solar in Milwaukie.

**Vince Alvarez**, Milwaukie resident, installed a solar unit on the roof of his small home and is feeding energy back into the grid. He encouraged Milwaukie to become a leader in solarization.

**Craig Ernst**, Milwaukie resident and Development Director for Oregon Solar Energy Industries Association (OSEIA), said he was willing to use his knowledge and skills as a resource to Environment Oregon and the City of Milwaukie. He encouraged the Milwaukie City Council to support the efforts and initiatives to promote renewable solar technologies in Oregon.

## **CONSENT AGENDA**

**It was moved by Council President Batey and seconded by Councilor Power to approve the consent agenda as presented.**

**A. City Council Meeting Minutes:**

1. March 1, 2016, Regular Session;
2. March 15, 2016, Work Session; and
3. March 15, 2016, Regular Session.

**B. Authorize Temporary Event Permit for Milwaukie Farmers Market****C. Authorize Extension of the Milwaukie Museum Lease****D. Authorize Grant Application for the Business Oregon Brownfields Redevelopment Fund****E. Board, Commission, and Committee (BCC) Appointments:**

1. Resolution 41-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Lauren Loosveldt to the Design & Landmarks Committee (DLC).
2. Resolution 42-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Mike Park as the Historic Milwaukie Representative to the Kellogg Good Neighbor Committee (KGNC).

Motion passed with the following vote: Councilors Batey, Parks, Power, and Churchill and Mayor Gamba voting "aye." [5:0]

**Citycounty Insurance Services (CIS) Training Video**

**Ron Cutter**, Insurance Agent of Record, showed a video describing the services and benefits of being a CIS member. Generally the largest areas of loss for agencies were law enforcement and employment. He added that Milwaukie had an average number of claims with CIS.

**PUBLIC HEARING**

None scheduled.

**OTHER BUSINESS****A. TriMet Intergovernmental Agreement (IGA) to Close Out the Portland-Milwaukie Light Rail (PMLR) Transit Project – Resolution**

**Mr. Monahan** provided the staff report in which the City Council was requested to accept the IGA with TriMet to close out the Portland-Milwaukie Light Rail Transit Project. Milwaukie and TriMet along with their other partners have been working together on the Orange Line since 2008. In the past several months the parties had been working out the final details of closing out the project and reached a conclusion on details of signalization at Washington Street and 21<sup>st</sup> Avenue as well as storm drainage. The City had been working with Clackamas County to determine the final costs of signalization with a not to exceed figure of \$131,000. Staff was waiting on confirmation from Clackamas County. He discussed the Triangle Site that the City would acquire from TriMet and briefly described the method for determining the value. The City will pay 50% of the current value based on a series of points in time when the Federal Transportation Administration (FTA) made allocations plus \$1. The City had been working with TriMet to make sure the amount received for making storm drainage improvements would be sufficient to mitigate the impervious surface impacts and support ongoing activities. Mr. Monahan recommended that the City Council accept the IGA with the knowledge there were outstanding issues. There was still some work to do with the City Attorney on the close out of the Triangle Site prior to entering into a contract for the food cart pod.

**Council President Batey** asked for clarification of the stormwater treatment issues.

**Mr. Monahan** replied that when the settlement agreement was prepared, the City finalized the arrangement with TriMet to pay the City's \$5 million share. At that point in time, there were some deductions from the City's share. Outstanding was one major storm drainage project in the downtown that at the time had not been designed. After design, it was not put in place because it was so late in the process resulting in some impervious surface that had not been addressed by a project. When TriMet designed what would remedy that situation, a fee in lieu of construction was identified. TriMet will pay compensation to Milwaukie, and the Engineering Department can complete a capital project using those funds.

**Mr. Eaton** said the design was mostly completed. TriMet could not satisfy all of its water quality facility requirements so was doing some offsite mitigation using mechanical treatments.

**It was moved by Councilor Parks and seconded by Councilor Power to approve the resolution agreeing to an intergovernmental agreement between TriMet and the City of Milwaukie related to the close-out of the Portland-Milwaukie Light Rail Transit Project. Motion passed with the following vote: Councilors Batey, Parks, Power, and Churchill and Mayor Gamba voting "aye." [5:0]**

**RESOLUTION No. 43-2016:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AGREEING TO AN INTERGOVERNMENTAL AGREEMENT BETWEEN TRIMET AND THE CITY OF MILWAUKIE RELATED TO THE CLOSE-OUT OF THE PORTLAND-MILWAUKIE LIGHT RAIL TRANSIT PROJECT.**

**B. Triangle Site Purchase – Resolution**

**Mr. Monahan** provided the staff report in which the City Council was requested to approve the Resolution authorizing the purchase of the Triangle Site from TriMet and delegating the signing authority to the City Manager once the closing documents were in final form. He pointed out a typographical error in the Resolution available in the Council packet that was corrected in the final document. The purchase price was \$92,203 consistent with FTA guidelines. There were a few remaining details including easements to benefit TriMet related to vibration and stormwater. The property had gone through Phases 1 and 2 appraisals.

**It was moved by Council President Batey and seconded by Councilor Power to approve the resolution approving the purchase of the Milwaukie Triangle Site from TriMet and delegating signing authority to the City Manager to complete the purchase as amended. Motion passed with the following vote: Councilors Batey, Parks, Power, and Churchill and Mayor Gamba voting "aye." [5:0]**

**RESOLUTION No. 44-2016:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE PURCHASE OF THE MILWAUKIE TRIANGLE SITE FROM TRIMET AND DELEGATING SIGNING AUTHORITY TO THE CITY MANAGER TO COMPLETE THE PURCHASE.**

**C. Amendment to Legal Services Agreement for City Attorney Services – Resolution**

**Mr. Monahan** provided the staff report in which the City Council was requested to approve the Resolution that amended the Legal Services Agreement with Jordan Ramis

PC. This agreement was the result of a recent City Council review. The agreement included a rate increase would go into effect on July 1, 2016. The last increase was in 2009.

**It was moved by Councilor Power and seconded by Councilor Parks to approve a resolution authorizing the City Manager to sign a legal services agreement with Jordan Ramis, PC. Motion passed with the following vote: Councilors Batey, Parks, Power, and Churchill and Mayor Gamba voting “aye.” [5:0]**

**RESOLUTION No. 45-2016:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN A LEGAL SERVICES AGREEMENT WITH JORDAN RAMIS PC.**

**D. Award 5-Year On-Call Survey Contract – Resolution**

**Mr. Eaton** withdrew this item from the agenda, and he would not pursue the 5 year on call contract but rather address projects on a case by case basis.

**E. Street Surface Maintenance Program (SSMP)**

**Mr. Eaton** provided the 9<sup>th</sup> annual SSMP update that highlighted completed projects, program status, overall condition report, revenue summary, fee comparison, proposed projects, and program challenges, opportunities, and alternatives. This year's projects included base and surface reconstruction of Railroad Avenue and slurry and crack sealing of various streets to increase pavement life. The Pavement Condition Index (PCI) was raised from 54 to 97 on Railroad Avenue which raised the overall collector system from 64 to 68 PCI. Because of its length, the Railroad Avenue project had an overall positive impact on the network. The only unforeseen outcome was the work the railroad did on its ditches, so the system now functions as it should. The slurry and crack sealing project was on 37<sup>th</sup> Avenue between Hwy 224 and Lake Road that resulted in raising the PCI in that area from 75 to 83. Next year was the 10<sup>th</sup> year of the Program.

**Mr. Eaton** reviewed those projects originally identified in the 10 year program. He discussed the effectiveness of crack sealing below a certain PCI. If funding levels continued at the current rate, some projects would be 15 to 20 years out. Arterials were currently at a PCI of 72 and collectors and residential at 70 and 45 respectively. He discussed the importance of keeping up with residential repairs so the streets would not have to be rebuilt. One section of Lake Road was in really bad condition which pulled the arterial PCI down. He reviewed the overall condition report along with graphs showing the condition categories by year and the historical network PCI. He showed a slide that indicated the remaining service life of the City's roads which was encouraging for arterials with the exception of Lake Road. Collectors had increased dramatically, and the residential streets showed decline although the low vehicular traffic made the conditions more favorable.

**Mr. Eaton** discussed revenues collected from the street maintenance fee and the local gas tax but not the privilege tax in order to more effectively compare Milwaukie with other jurisdictions. He noted that funding was steadily declining, particularly the gas tax as people drove less and purchased more fuel efficient vehicles. He discussed the fee comparison with other cities in the region, and noted that Milwaukie did not index its street fee to address inflation as other cities had.

**Mr. Watts** said if the City wished to increase its gas tax, then it would have to go to a public vote.

The group discussed the upcoming County advisory vote on funding County road maintenance. The City of Happy Valley was currently considering a street maintenance fee. Street fees, similar to systems development charges (SDC), applied to residential

and commercial and were related to the number of vehicle trips generated. **Mr. Eaton** added that Milwaukie's SDC fees had not been updated recently and would be reviewed for adequacy.

**Mayor Gamba** asked if there could be a calculation to determine the amount of money it would take to drive the CPI curve in the opposite direction. **Mr. Eaton** replied various scenarios could be programmed in the software to estimate those types of projections. **Mayor Gamba** would also like information on how to keep the streets, including slurry sealing, at a 70+ PCI, for example, and what that would equate to in a 20 year bond.

**Mr. Eaton** discussed the relative success of overlays on residential streets in other cities. He commented on making residential streets a little wider to help prevent deterioration on the edges of the pavement. He hoped in the next budget cycle to fund a reevaluation of the CPI.

**Councilor Power** wanted information on an accelerated timeline and a dollar figure to bring the PCI up to 75.

**Mr. Eaton** reviewed the proposed projects including the revised timeline for Lake Road and the slurry seals. He showed slides of 42<sup>nd</sup> Avenue from Railroad Avenue to Monroe Street which needed a lot of work. 42<sup>nd</sup> Avenue from Monroe Street to King Road and 43<sup>rd</sup> Avenue from King Road to Howe Street were both in relatively good condition. The total budget for the FY 2017 projects was \$1.4 million. Lake Road was estimated to be \$1 million, and that was only surface work and did not include curbs and bike lanes. The group discussed the conditions on 42<sup>nd</sup> Avenue and Lake Road and locations of Americans with Disabilities Act (ADA) ramps and storm drains. The Public Safety Advisory Committee (PSAC) had suggestions related to Lake Road repaving, bike lanes, sidewalks, and Safe Routes to Schools.

**Mr. Eaton** discussed code language related to the SSMP. To date, the focus has been on arterial and collector streets and upgrading ADA ramps. The group discussed the types of projects that could be built. **Mr. Eaton** added that the Engineering Department and Neighborhood District Associations (NDA) were responsible for an annual assessment of the project list. The City of Tigard recently amended its code to remove some of the ambiguity related to what types of projects were allowed.

**Council President Batey** said at the time the SSMP was adopted staff made it clear that collectors and arterials would be repaired first followed by residential streets.

**Mr. Eaton** reviewed the challenges that included a lack of residential street improvements and the lack of buying power with the rates fixed at 2006 levels. It was currently estimated that the 10 year plan would take 15 years to complete at the current funding levels. As written, the code would allow expanding the SSMP to residential streets, and he discussed neighborhood needs. Both the Citizens Utility Advisory Board (CUAB) and PSAC recommended that the program be expanded to residential streets since collectors and arterials were stable.

The group discussed Lake Road and the increased usage because of light rail and the benefits of prioritizing that street. **Mr. Eaton** said delaying Lake Road would not cost that much more; he provided an update on 17<sup>th</sup> Avenue improvements.

**Council President Batey** favored increasing the maintenance fee and to look at bonding against future revenues.

It was consensus that as **Mr. Eaton** provided updated statistics on what it would take to get to a PCI of 75 or 80, and that some weight be given to collectors and arterials to acknowledge traffic volumes. **Mr. Eaton** recommended additional weight in the near term to help save residential streets before repairs became more costly.

**Mayor Gamba** thought the next logical step would be to answer the bonding question.

## F. Council Reports

**Mayor Gamba** made a number of announcements including storefront improvement grants; Food for Fines at the Ledding Library; Pond House gardening classes; Earth Day Volunteer Event and Arbor Day Celebration; Public Safety Foundation drug turn in and document shred event.

**Councilor Power** said bond measure materials were approved for circulation by the Secretary of State and were posted on the Library website. She discussed her concerns with no cause evictions.

**Council President Batey** was concerned about people riding bikes in Spring Park and Elk Rock Island which was prohibited. She announced upcoming events including the Sunday Farmers Market, First Friday, and community plant sales including the Ledding Library.

**Councilor Churchill** attended the Downtown Milwaukie Business Association (DMBA) event with County Commissioner Martha Schrader. He also attended the Greater Portland, Inc. open house.

## ADJOURNMENT

**It was moved by Councilor Power and seconded by Councilor Parks to adjourn the regular session. Councilors Batey, Parks, Power, and Churchill and Mayor Gamba voting "aye." [5:0]**

Mayor Gamba adjourned the regular session at 9:02 p.m.

Respectfully submitted,



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Pat DuVal, Recorder

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MILWAUKIE CITY COUNCIL  
*Office of the City Recorder*

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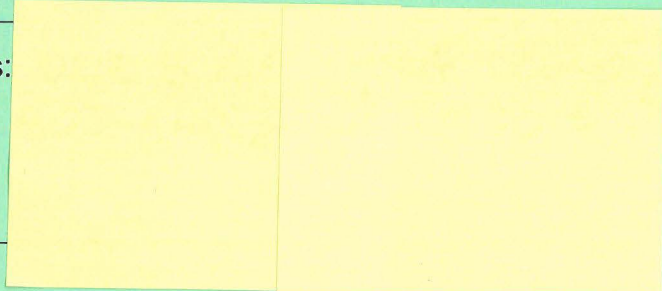
## Speaker Registration

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Name: DAVE BERWARD CMI  
Organization:

Address:  
Phone:  
Email:

Meeting Date:



### Topic to Discuss:

Agenda Item You Wish to Speak to:

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

You are Speaking...

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

Comments:



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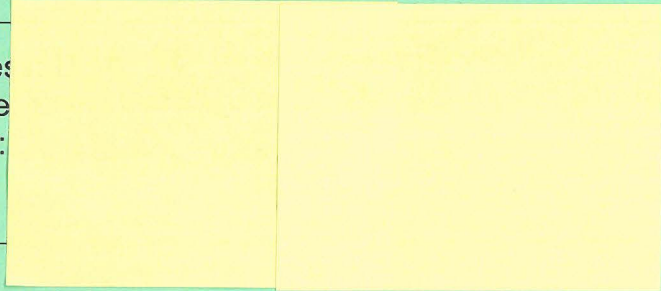
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Name: *Charlie Fisher*  
Organization: *Environment Oregon*

Address:  
Phone:  
Email:



Meeting Date:

### Topic to Discuss:

Agenda Item You Wish to Speak to:

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- #6 Other Business

You are Speaking...

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

Comments:



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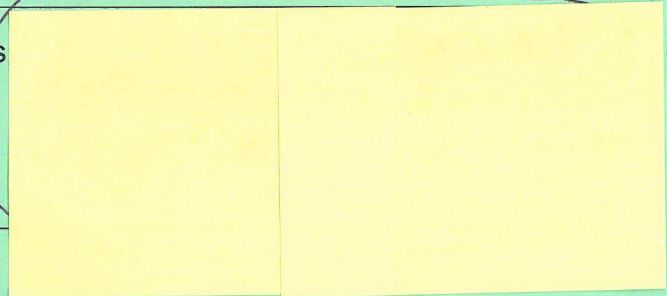
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Name:  
Organization:

Rod Wergel

Address  
Phone:  
Email:



Meeting Date: 4-5-16

### Topic to Discuss:

Agenda Item You Wish to Speak to:

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

You are Speaking...

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

Comments:



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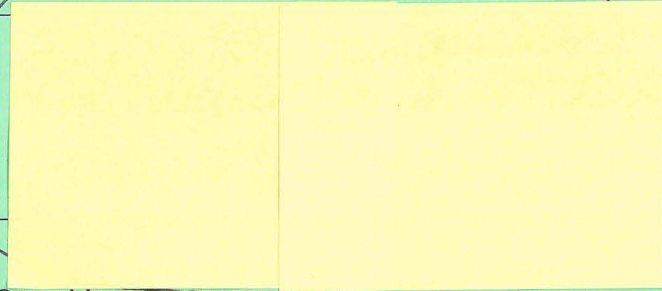
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Name: *Virginia Makam*  
Organization:

Address:  
Phone:  
Email:



Meeting Date:

### Topic to Discuss:

Agenda Item You Wish to Speak to:

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

You are Speaking...

- in Support *of solarize Program*
- in Opposition
- from a Neutral Position
- to ask a Question

Comments:



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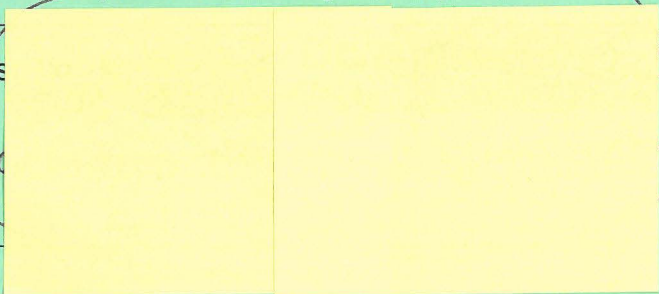
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Name: *Ron Whitworth*  
Organization: *Milwaukie Community Club 42nd & Jackson St.*

Address:  
Phone:  
Email:



Meeting Date:

### Topic to Discuss:

Agenda Item You Wish to Speak to:

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

You are Speaking...

- in Support *Environmental Oregon*
- in Opposition
- from a Neutral Position
- to ask a Question

Comments:

*meetings can be at their facility*



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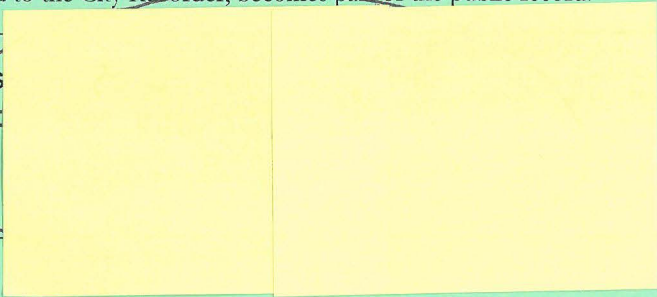
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Name: *Margi Shindler*  
Organization:

Address:  
Phone:  
Email:



Meeting Date:

### Topic to Discuss:

Agenda Item You Wish to Speak to:

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

You are Speaking...

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

Comments:

*Long history  
grand dad was Mayor*



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Name:

Vincent ~~Alvarez~~

Organization:

Alvarez

Address:

Phone:

Email:

Meeting Date:

### Topic to Discuss:

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- #6 Other Business

You are Speaking...

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- from a Neutral Position
- to ask a Question

Comments:



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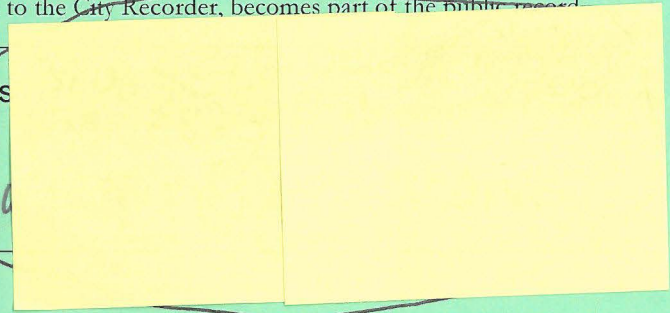
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Name: *Craig Ernst*  
Organization: *OSEIA + Citizen*  
 **Meeting Date:**

Address:  
Phone:  
Email:



### Topic to Discuss:

Agenda Item You Wish to Speak to:

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- #5 Public Hearing
- #6 Other Business

You are Speaking...

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- from a Neutral Position
- to ask a Question

**Comments:**

**Stauffer, Scott**

---

**From:** DuVal, Pat  
**Sent:** Friday, April 08, 2016 2:12 PM  
**To:** Stauffer, Scott  
**Cc:** Fuchs, Clare  
**Subject:** FW: I support going solar in milwaukie!

For the record.

-----Original Message-----

**From:** Crista Joy [<mailto:joy4ahike@yahoo.com>]  
**Sent:** Friday, April 08, 2016 2:09 PM  
**To:** \_City Council  
**Subject:** I support going solar in milwaukie!

Dear city council members,

I am a Milwaukie resident and I support increasing the ease and cost of going solar! I couldn't come to the City council meeting so I am saying so now. Thanks for listening and I hope you consider supporting Milwaukie going solar and join us in being environmental leaders in Oregon!

Crista Whittington  
9311 se Stanley ave.



MILWAUKIE CITY COUNCIL  
REGULAR SESSION

City Hall Council Chambers  
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www.milwaukieoregon.gov

**REVISED AGENDA**

**APRIL 5, 2016**

(1<sup>st</sup> Revision March 31, 2016)

(2<sup>nd</sup> Revision April 1, 2016)

2,219<sup>th</sup> Meeting

**1. CALL TO ORDER**

**Page #**

Pledge of Allegiance.

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

**A. Ed Zumwalt Volunteer of the Year Award for 2015 Presented to David Aschenbrenner**

Introduced by Mayor Mark Gamba

**B. Volunteer Month Proclamation**

**2**

**C. National Library Week Proclamation**

**3**

**D. Startup in a Day Initiative Proclamation**

**4**

**E. Child Abuse Prevention Month Proclamation**

**8**

**F. Citycounty Insurance Services (CIS) Training Video**

Introduced by Casey Camors, Finance Director

**G. Air Quality Update**

Introduced by Mayor Mark Gamba

[Presentation by Nina DeConcini, Oregon Department of Environmental Quality (DEQ) Northwest Region Administrator, will be rescheduled]

(Presenter information revised March 31, 2016)

**3. CONSENT AGENDA**

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

**A. City Council Minutes** **10**

1. March 1, 2016, Regular Session

2. March 15, 2016, Work Session

3. March 15, 2016, Regular Session

**B. Authorize Temporary Event Permit for Milwaukie Farmers' Market** **24**

**C. Authorize Extension of the Milwaukie Museum Lease** **37**

**D. Authorize Grant Application for the Business Oregon Brownfields Redevelopment Fund** **39**

**E. Board, Commission, and Committee (BCC) Appointments – Resolutions** **66**

1. Appointing Lauren Loosveldt to the Design and Landmarks Committee (DLC)

2. Appointing Mike Park as the Historic Milwaukie Representative to the Kellogg Good Neighbor Committee (KGNC)

**4. AUDIENCE PARTICIPATION**

The presiding officer will call for citizen statements regarding City business. Pursuant to Milwaukie Municipal Code (MMC) Section 2.04.140, 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 submit it to the City Recorder. Pursuant to MMC Section

2.04.360, "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 presiding officer may limit testimony.

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. TriMet Intergovernmental Agreement (IGA) to Close Out the Portland-Milwaukie Light Rail (PMLR) Transit Project – Resolution** 70  
Staff: Bill Monahan, City Manager

**B. Triangle Site Purchase – Resolution** 89  
Staff: Bill Monahan, City Manager

**C. Amendment to Legal Services Agreement for City Attorney Services – Resolution** 93  
Staff: Bill Monahan, City Manager

**D. Award 5 Year On-Call Survey Service Contract – Resolution** 101  
Staff: Chuck Eaton, Engineering Director  
(Added to the Agenda on April 1, 2016)

**E. Street Surface Maintenance Program (SSMP)** 121  
Staff: Chuck Eaton, Engineering Director  
(Moved from the April 5, 2016, Work Session Agenda and added to the April 5, 2016, Regular Session Agenda on April 1, 2016)

**F. Council Reports**

## 7. INFORMATION

## 8. ADJOURNMENT

### Public Notice

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 may attend 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 and they are closed to the public.

The Council requests that mobile devices be set on silent or turned off during the meeting.

The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities Act. For special accommodations, please call 503-786-7502 or email [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov) at least 48 hours prior to the meeting.



**Regular Session  
Agenda Item No.**

**2**

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



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

**PROCLAMATION**

**WHEREAS**, an engaged community can inspire action that changes the world; and

**WHEREAS**, an inspired community relies upon countless volunteers to provide service opportunities through government agencies and non-profit organizations; and

**WHEREAS**, National Volunteer Week is a dedicated time when many service projects will be conducted and many volunteers will be recognized for their commitment; and

**WHEREAS**, on Saturday, April 23, 2016, the Milwaukie community will have an opportunity to come together for the annual Earth Day and Arbor Day event featuring the dedication of the Kellogg Lake Bicycle and Pedestrian Bridge.

**NOW, THEREFORE**, I, Mark Gamba, Mayor of the City of Milwaukie, a municipal corporation in the County of Clackamas, in the State of Oregon, do hereby proclaim **April 10-16, 2016** as **National Volunteer Week** in the City of Milwaukie, and do encourage all members of our community to join in our efforts to make Milwaukie a cleaner and healthier place.

**IN WITNESS WHEREOF**, and with the consent of the City Council of the City of Milwaukie, I have hereunto set my hand on this 5<sup>th</sup> day of April, 2016.

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Mark Gamba, Mayor

ATTEST:

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Pat DuVal, City Recorder

**Celebrate**   
**Service**  
National Volunteer Week  
April 10-16, 2016

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POINTS OF LIGHT



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

**PROCLAMATION**

**RS 2. C.**

**April 5, 2016**

**WHEREAS**, libraries transform communities through the power of knowledge; and

**WHEREAS**, libraries empower the community with information available on constantly evolving platforms and technologies; and

**WHEREAS**, libraries come to life through the work of dedicated librarians who provide innovative programing that promotes the power of reading and social interaction; and

**WHEREAS**, libraries support democracy and effect social change by providing equitable access to information for all regardless of race, creed, ability, sexual orientation, gender identity or socio-economic status; and

**WHEREAS**, librarians and friends of libraries are celebrating National Library Week; and

**WHEREAS**, the Milwaukie City Council has adopted Resolution 19-2016 establishing a Library Fine Amnesty Week in honor of National Library Week.

**NOW, THEREFORE**, I, Mark Gamba, Mayor of the City of Milwaukie, a municipal corporation in the County of Clackamas, in the State of Oregon, do hereby proclaim **April 10-16, 2016**, to be **National Library Week** in the City of Milwaukie, and I encourage all residents to visit the historic Ledding Library to take advantage of the many wonderful resources available.

**IN WITNESS WHEREOF**, and with the consent of the City Council of the City of Milwaukie, I have hereunto set my hand on this 5<sup>th</sup> day of APRIL, 2016.

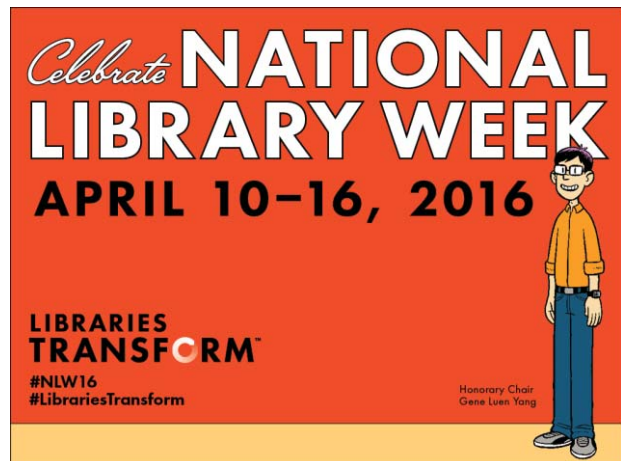
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Mark Gamba, Mayor

ATTEST:

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Pat DuVal, City Recorder





MILWAUKIE CITY COUNCIL  
**STAFF REPORT**

Agenda Item: **RS 2. D.**  
Meeting Date: April 5, 2016

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

Subject: **Proclamation—Startup in a Day Initiative**

From: Alma Flores, Community Development Director

Date: March 17, 2016

**ACTION REQUESTED**

Proclaim that effective April 5, 2016 the city will accept the challenge to be a Startup in a Day community.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

There are no prior actions and discussions on this topic.

**BACKGROUND**

The City of Milwaukie's Community Development Department would like to invite the Mayor and Council to support a proclamation taking the Startup in a Day pledge. The aim of this initiative from the Small Business Administration (SBA) is to make it easier for entrepreneurs to start a business by reducing the amount of time it takes to register and apply for permits and licenses at the local level. The Startup in a Day initiative challenges cities to develop, implement, and streamline online tools that will let entrepreneurs learn about the business startup process in their area, including how to register and apply for all required local licenses and permits – all in one day or less.

Over 80 cities and towns across the U.S. have pledged to make the startup process easier for entrepreneurs, including Beaverton, Tualatin, and Oregon City. Taking the pledge means that the City will work towards creating an online tool and streamlined online permitting system, as well as share best practices with other program participants. The SBA will provide participating communities with a connection to resources as well as a platform to connect with other communities to learn best practices, access webinars, and an online discussion board.

**CONCURRENCE**

City Manager and Community Development Director agree that this is an important initiative for economic development in Milwaukie. It means that the city is interested in improving current practices and maximizing innovation by working with other cities. We are confident the goal is achievable.

**FISCAL IMPACTS**

None

**WORK LOAD IMPACTS**

Some staff time will be required to coordinate existing online platforms and identify gaps in order to meet the goals of the initiative.

**ALTERNATIVES**

Reject this initiative.

**ATTACHMENTS**

1. The Startup in a Day Proclamation
2. SBA Pledge



**PROCLAMATION**

**WHEREAS**, the Small Business Administration (SBA) and the White House launched the Startup in a Day Initiative in 2015 to encourage local jurisdictions to streamline and consolidate all of the processes required to start a business into one easy-to-use online tool, to enable America’s entrepreneurs to discover and apply for all licenses and permits required to start a business in 24 hours or less; and

**WHEREAS**, nationally, more than half of Americans either own or work for a small business, and they create two out of every three new jobs in the U.S. each year and employ more than half of the private sector workforce. Small businesses are the backbone of our economy and we must work to ensure that our city recovers and rebuilds not only from the top down, but also from the bottom up and the middle out; and

**WHEREAS**, in the City of Milwaukie, 95 percent of businesses are small businesses with 500 or fewer employees, defined as a small business by the SBA; The City of Milwaukie offers assistance to small businesses through programs in the Economic Development Division of Community Development Department, and strives to continue improving our processes to facilitate increased small business growth and development; and

**WHEREAS**, removing barriers to and streamlining processes for small business creation is the most effective way to support business startup and development

**STARTUP IN A DAY**

The City of Milwaukie commits to join the Startup in a Day Initiative by providing resources that allow entrepreneurs to identify and apply within one day for all requirements to launch a business in our community.

**NOW, THEREFORE, I**, Mark Gamba, Mayor of the City of Milwaukie, do hereby proclaim Milwaukie a Startup in a Day City.



## Startup in a Day Pledge

President Barack Obama continues to ask cities and Native American communities across America to take the Startup in a Day Pledge to support entrepreneurs. Several cities have already taken the pledge.

### *The Pledge...*

“Our cities and communities are committed to making it easier for every entrepreneur to start a business. We believe an entrepreneur’s time is best spent developing innovative products and services, creating jobs, and growing local economies—not navigating red tape. While fair zoning rules, licenses, and permits are important to ensuring public safety and fair competition, it should not take more than a day for an entrepreneur to identify and apply, ideally through a single online tool, for all the licenses and permits they need in order to responsibly launch a business.

Accordingly, we resolve to:

1. Create a “Startup in a Day” online tool within 12 months: we will develop within a year a website or application that lets most entrepreneurs identify and apply within one day for all requirements to launch a business in our respective communities.
2. Develop a streamlined, business-friendly, online permitting system: Our pledge is a first step in a larger effort to streamline, simplify, and bring online those regulatory requirements that have traditionally been fragmented across multiple agencies and handled through a paper-based process. Our ultimate goal is for small business owners to be able to manage and complete most of their regulatory obligations within a single easy-to-use online system.
3. Share best practices: In an effort to encourage other municipalities to join us in this effort, we are joining a community of practice administered by the National League of Cities, and commit to sharing best practices, publicizing key learnings, highlighting tangible outcomes, supporting smart regulatory simplification, and providing visibility into our actions.”



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

**PROCLAMATION**

**WHEREAS**, child abuse is a community tragedy that impacts the well-being of all; and

**WHEREAS**, child abuse prevention programs require strong community partnerships; and

**WHEREAS**, child abuse prevention requires a public commitment to create safe and nurturing environments for parents and guardians to raise their children; and

**WHEREAS**, this community recognizes that children are our most valuable and vulnerable resources and are key to our prosperity and quality of life; and

**WHEREAS**, by providing a healthy environment for our children, free of violence, abuse and neglect, we can help ensure that Milwaukie's children will grow to their full potential.

**NOW, THEREFORE, BE IT RESOLVED**, I, Mark Gamba, Mayor of the City of Milwaukie, a municipal corporation in the County of Clackamas, in the State of Oregon, do hereby proclaim the Month of **April 2016** as **Child Abuse Prevention Month** in the City of Milwaukie and do call upon all citizens to participate in efforts to prevent child abuse.

**IN WITNESS WHEREOF**, and with the consent of the City Council of the City of Milwaukie, I have hereunto set my hand on this **5<sup>th</sup>** day of **April, 2016**.

\_\_\_\_\_  
Mark Gamba, Mayor

ATTEST:

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





**Regular Session  
Agenda Item No.**

**3**

# **Consent Agenda**



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

**REGULAR SESSION**  
MARCH 1, 2016  
City Hall Council Chambers

**Mayor Gamba called the 2,217<sup>th</sup> meeting of the City Council to order at 6:12 p.m.**

Council Present: Council President Lisa Batey and Councilors Scott Churchill, Wilda Parks, and Karin Power

Staff Present: City Manager Bill Monahan, City Attorney Tim Ramis, City Recorder Pat DuVal, Assistant to the City Manager Mitch Nieman, and Sustainability Director Clare Fuchs

**CALL TO ORDER**

Pledge of Allegiance.

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

**A. Welcome Home Vietnam Veterans Day Proclamation**

**Jerry Craig**, American Legion Post 180 1<sup>st</sup> Vice Commander, was present on behalf of the Legion and commented on Police Officers Week in May. **Mayor Gamba** read a proclamation naming March 30, 2016, as *Welcome Home Vietnam Veterans Day* in the City of Milwaukie.

**CONSENT AGENDA**

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

**A. City Council Meeting Minutes:**

1. February 2, 2016, Work Session;
2. February 2, 2016, Regular Session;
3. February 16, 2016, Work Session;
4. February 16, 2016, Regular Session; and
5. February 18, 2016, Study Session.

Motion passed with the following vote: Councilors Power, Churchill, Batey, and Parks and Mayor Gamba voting "aye." [5:0]

**AUDIENCE PARTICIPATION**

**Nina DiConcini**, Administrator, and **David Monro**, Air Quality Manager, Department of Environmental Quality (DEQ) Northwest Region, reported to the Milwaukie City Council on the rapidly developing issues related to air quality in the Portland area. Ms. DiConcini announced that DEQ Director Dick Pederson had resigned effective today. She said at this time DEQ would delay renewing Precision Castparts Corporation's (PCC) Air Contamination Discharge Permit. She gave a brief summary of the DEQ rulemaking process currently underway and discussed the moss sampling program. The data had not yet been validated with the Forest Service. PCC had approached DEQ to implement additional pollution control devices with the intent to reduce emissions beyond what was required by the program. PCC's current permit was still in place and enforceable.

**Councilor Power** asked Ms. DiConcini if, to the best of her knowledge, there was currently an issue in Milwaukie.

**Ms. DiConcini** replied additional monitoring was likely and added that the regulatory relationship would not change if the permit was not issued.

**Mr. Monro** commented that the permit renewal would incorporate any new rules.

**Ms. DiConcini** expected robust public involvement in the rulemaking process and added information would be posted on the Secretary of State's website.

**Council President Batey** expressed concern that there was no regular testing near PCC.

**Ms. DiConcini** explained that the ambient air monitors had regulatory triggers and commented on the gap between federal and local air quality standards. There were four air toxic monitors statewide.

**Council President Batey** discussed the Environmental Protection Agency (EPA) right to know (RTK) mapping.

**Mr. Monro** responded that the EPA program contained rough data. He commented on DEQ's Portland Air Toxics Solutions project that works with local communities to develop air toxics reduction strategies for the Portland region, including portions of Multnomah, Washington and Clackamas Counties. The primary documents for Air Toxic Solutions can be found on the Oregon DEQ website.

**Ms. DiConcini** said the moss data would be evaluated as soon as possible to determine what the issues were. She added that good science takes time and stressed the importance of accurate front end work.

**Mr. Monro** discussed periodic and continuous sampling approaches and development of emission factors. States may write more stringent rules than those of the federal government.

**Mayor Gamba** noted that DEQ was badly underfunded, and **Ms. DiConcini** responded that it will take a concerted effort by all parties to make the regulatory changes.

**Council President Batey** commented on groundwater sampling, and **Ms. DiConcini** discussed water sampling.

**Mayor Gamba** reviewed the Audience Participation process.

**Mr. Monahan** provided follow up to public comments made at the February 16, 2016, City Council regular session. Staff was looking Charles Bird's proposal to construct a path across Kronberg Park. Terry Finch raised an issue about no cause eviction, and several organizations had reached out to him. Kelli Keehner and Ed Zumwalt reported on plans for the First Friday and the involvement of the Downtown Milwaukie Business Association (DMBA) this season. Pam and Milo Denham requested further modification to the standards for the 19<sup>th</sup> Avenue improvement project, and a follow up meeting will be scheduled. Staff is working with Kirin das Bala and Waste Management to resolve the issues between the two parties.

**Jacob Sherman**, Portland, Brentwood-Darlington Neighborhood Association. He discussed the sizable nickel hotspot that straddled Multnomah and Clackamas County lines and suggested the creation of a local air authority. He encouraged the Milwaukie City Council and Milwaukie residents to get involved.

**Charles Snyder**, Milwaukie resident. He lived in the Lewelling Neighborhood and expressed concern about emissions from PCC and McClure Industries' release of styrene into the atmosphere. He discussed nuisance odor complaints to which DEQ had not responded.

**Sally Tez**, Portland resident. She lived in the Bullseye Glass ring. She wanted safety for her children as a basic human right for quality air.

**Jennifer Jones**, Portland resident. She wanted to hold DEQ responsible and encouraged the Milwaukie City Council to make sure DEQ did everything it said it would. Attorneys had been contacted to look at affected parties' legal rights that included consumer advocate Erin Brokovich.

**Shawn Ingersoll**, Milwaukie resident. He encouraged Milwaukie to move away from the status quo and consider what the City can do to hold polluters responsible. He recommended creation of an air quality commission.

**Greg Segal**, Milwaukie resident. He was primarily concerned that air quality should be closely monitored. He wanted to know that his children were safe and that his property values were protected. He urged DEQ to go public with its funding issues.

**Glen Perice**, Portland resident. He expressed concern that PCC could change its figures when self-reporting. His first question was what kinds of emissions were coming out of these places. He also questioned the concerns about DEQ funding.

**Lou Taylor**, Portland resident. He thought the air quality should be monitored at the source of the discharge.

**Debora Taeves**, Portland resident. She wanted to know the risks and if PCC was a nickel hotspot. There had been no recommendations of what individuals could do, and she thought an air shed agency was a good idea. She had contacted DEQ about her neighbor's wood smoke but did not get any help.

**Heather Sparks**, Milwaukie resident. She had contacted DEQ about the odor coming from McClure Industries but did not get a response. She was a nursing mother and was concerned about chromium in her blood. She was also very concerned about the quality of Milwaukie's water supply.

**Mr. Monahan** discussed Milwaukie water quality. Water quality analysis indicated that Milwaukie's tap water was as safe as any water supply in the nation. The City's water meets or exceeds water quality standards established by various regulating agencies.

**Angie Hungerford**, Milwaukie resident. She said she can smell McClure Industries in her neighborhood. She felt there should be independent verification and not simply rely on self-reporting. Pollution should not be a part of our business plan.

**Jody Beyle**, Milwaukie resident and Eastside Portland Air Coalition member. She said the more the public finds out about the public health emergency, the less we trust DEQ. It could have made health based rules much earlier. DEQ needs good leadership, and she respectfully asked that Ms. DiConcini and Mr. Monro step down from their positions.

**Steve Meyer**, Portland resident. He had worked at the PCC titanium plant and commented on safety issues.

**Shana Canote**, Portland resident. She felt DEQ should monitor air quality now and said she did not believe self-reporting was working. She wanted PCC to make its budget public. DEQ recommended today that since there were toxins in the air that people should eat healthy and not smoke. She felt there needed to be a board made up of scientists to deal with these issues.

**Kyle Cohen**, Milwaukie resident. He commented on the McFarland property contamination and suggested that people get more houseplants.

**Ben Burtle**, Portland resident. He said the 2011 release from PCC was caused by an electrical problem because the plant did not have backup generators, and he understood it still did not have any. Does PCC have an emergency plan?

**Elise Erickson**, Milwaukie resident. The science was not fully understood, and people sometimes needed to respect what they did not know.

**Lisa Arkin**, Executive Director, Beyond Toxics, Eugene. She reported Lane County and the City of Eugene have a local air agency and addressed the need for a cultural

change. DEQ needed to put some teeth in its toxic use reduction plan and ambient air monitoring.

**Mayor Gamba** suggested getting input from the Health Department about potential risks.

**Joseph Salas**, Milwaukie resident. He discussed the impacts of neonicotinoids and expressed concern for future generations.

**Kelsey Kopec**, Center for Biological Diversity, Portland. She supported the ban on the use of neonicotinoids on public properties and noted that studies indicated that the ban helped other species, groundwater, and streams.

**Eleanore Hunter**, Oak Grove resident. She discussed library funding and what would happen to tax dollars if Oak Grove incorporated.

## **PUBLIC HEARING**

None scheduled.

## **OTHER BUSINESS**

### **A. Riverfront Park Operations and Maintenance**

**Mr. Nieman** introduced the issues and was joined by Riverfront Task Force (RTF) Chair **Dave Green** and Park and Recreation Board (PARB) Chair **Lisa Gunion-Rinker**. Mr. Nieman reported that the goose management strategy with Geese Guys was proving effective, and he discussed how continuation of the program could be funded. He discussed interim plantings at Riverfront Park and impacts of winter flooding.

**Council President Batey** thought an interim planting plan would be inconsistent with the Master Plan.

**Mr. Green** discussed the status of the eroded area. The planting plan would not move forward without coordination. He discussed identifying smaller projects in Phase 3 that could be quickly achievable and make the Park more usable for the public. He felt that was something the RTF could take on and suggested joint meetings of the RTF and PARB.

**Ms. Gunion-Rinker** looked at it from the perspective that PARB was working on the mitigation and planting elements.

**Mayor Gamba** commented on developing a conceptual planting plan that cut down on sight lines, and the Council's giving input on what was financially feasible.

**Councilor Power** said Riverfront Park was Milwaukie's most visible park, and it was important that it served the community well.

**Council President Batey** recommended a bigger discussion of the vision for the Park.

**Councilor Power** thought having a rough draft of a few elements was a great place to start along with some of the bigger projects like the bridge.

**Ms. Gunion-Rinker** had heard good feedback on the Park and stated that the current goose mitigation efforts seemed to be working well. **Mr. Green** agreed.

**Gary Barth**, North Clackamas Parks and Recreation District (NCPRD) Director expressed his support for maintaining the City's assets. NCPRD staff had a lot of expertise and could provide recommendations so that maintenance would not be impeded. He discussed Master Plan capital projects and criteria. He commented on the importance addressing the governance matter.

### **B. Council Input to Legislative, County, or Regional Issues**

**Mr. Monahan** said there were no issues to discuss at this time.

### **C. Council Reports**

**Councilor Power** provided a report on recent wastewater treatment meetings.

**Mayor Gamba** announced a number of upcoming community events including the Friends of the Ledding Library native plant sale, Cultural Forum guest local author Matt Love, the First Saturday Music Series at the Ledding Library, the annual Johnson Creek Watershed Wide volunteer event, the Harmony Community Campus Open House, and the American Legion Post 180 and Milwaukie Public Safety Foundation 2015 Officers of the Year recognition dinner.

**Council President Batey** announced the Milwaukie Academy of the Arts (MAA) open house and the March for Meals fundraising campaign.

### **ADJOURNMENT**

**It was moved by Councilor Power and seconded by Council President Batey to adjourn the regular session. Motion passed with the following vote: Councilors Power, Churchill, Batey, Parks, and Mayor Gamba voting “aye.” [5:0]**

**Mayor Gamba** adjourned the regular session at 8:38 p.m.

Respectfully submitted,

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Pat DuVal, Recorder



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

**WORK SESSION**  
MARCH 15, 2016  
City Hall Conference Room

**Council President Lisa Batey called the Work Session to order at 4:17 p.m.**

Council Present: Councilors Scott Churchill, Wilda Parks, and Karin Power

Excused: Mayor Mark Gamba

Staff Present: City Manager Bill Monahan, City Recorder Pat DuVal, Assistant to the City Manager Mitch Nieman, Planning Director Denny Egner, Associate Planner Vera Koliass, Community Development Director Alma Flores, Engineering Director Chuck Eaton, Public Works Director Gary Parkin, and Stormwater/Streets Supervisor Kenny Hill

**Council President Batey** noted the Work Session agenda items would be reordered.

**Riverfront Park Bridge Update**

**Mr. Eaton** reported on the status on the bridge replacement and noted that he would return to Council on May 3 for the design build contract award. There was only one bid on the temporary fix and it was \$339,000 over the engineer's estimate. This meant there was no short term solution to get the bridge open. The bridge would likely not be open by the start of fishing season. He noted that the award for the design build contract on May 3 would require an extension of the emergency declaration. Temporary park access would open in July 2016 while a permanent bridge was being built. The group discussed different approaches to the problems surrounding repair and access.

**Revisions to Resolution Authorizing Purchase of TV Van**

**Mr. Hill** and **Mr. Parkin** reported on the purchase of the TV van for the Stormwater Department and Resolution revisions. The changes included the cost and the process for the City Manager's signature. The group discussed the process of revising the resolution. **Mr. Hill** said this was a replacement of a 30-year old van, and it would improve productivity.

**Land Bank Authority Presentation on Enabling Legislation**

**Ms. Flores** introduced **David Rabinno** of Tonkon Torp LLP, and **Seth Otto** of Maul Foster Alongi. **Mr. Rabinno** discussed brownfields and environmental impacts. There are 74 known brownfield sites comprising 142.5 acres in the City of Milwaukie. He also discussed cleanup challenges and possibilities. He explained the abilities of a Land Bank Authority (LBA) to redevelop and restore brownfield properties. **Mr. Rabinno** described the powers and limitations of LBAs and how they interact with local and state governments.

**Councilor Power** asked about land ownership in relation to LBA. **Mr. Rabinno** believed LBAs had to take ownership of the property in order to initiate cleanup activities. **Mr. Otto** added that state and federal cleanup funding required money for cleanup to go to the property owner.

**Mr. Rabinno** noted LBAs were separate legal entities, and discussed liabilities as well as funding. He also noted no LBAs had been setup previously as the legislation was quite recent.

**Council President Batey** asked about obligations and the pace of operation if an LBA were created. **Mr. Rabinno** explained that the process was fairly open to the LBA.

**Councilor Churchill** asked about the required annual report to the Governor. **Mr. Rabinno** responded the statute required a report to the Governor, but it did not give the Governor recourse over telling the LBA what to do. It was a vehicle to give the public information about the LBA.

**Councilor Churchill** asked about the fee structure and the mechanism for a municipality like Milwaukie to set up an LBA. **Mr. Rabinno** noted he would be happy to further elaborate on the details.

**Councilor Power** was curious about the brownfields in Milwaukie, and if a good amount of the lands were in the North Industrial Area. **Ms. Flores** commented that the North Industrial Area did have a number of brownfields, and noted this LBA information was meant to serve as an informational session about another tool that could be used.

**Ms. Flores** clarified that, if interested, Council could adopt a resolution and did not need to establish a Land Bank Authority until the structure and other details were figured out.

**Councilor Churchill** wanted to see an analysis on a sample parcel that included the fees involved and other details of the potential scenario, such as a pro forma. **Councilor Power** wanted to see details on the 142.5 acres of brownfields in the City.

### **Short Term and Vacation Rentals**

**Mr. Egner** noted a public hearing was scheduled before the City Council on April 19 to receive the recommendation from the Planning Commission on code changes related to short term and vacation rentals. He asked Council if there were other types of information staff should pull together prior to the hearing. He explained that on February 23, the Planning Commission voted unanimously (5-0) to recommend a set of code amendments for approval. Short term rentals, such as Airbnb, included both hosted and unhosted rentals, which were distinct from vacation rentals. During the Council goal setting process, there were complaints about enforcement, and Council had directed staff to move forward with a process to legitimize these. As a short term solution, staff allowed Airbnbs to continue to operate, but only rent once in every 30 days.

**Mr. Egner** brought attention to the table on page 3 of the report, which summarized the changes moving forward. The Planning Commission proposed allowing short term rentals as a home occupation in a dwelling unit, with two hosted guest parties. Unhosted rentals could only occur for 95 days of the year, with primary residents living there the other 270 days. He discussed vacation rentals and bed and breakfasts that would require a conditional use. The assumption was that a bed and breakfast was generally a hosted situation. There were no changes to how boarding houses were treated. As part of the process, Mr. Egner explained the desire to establish a lodging operator's license, similar to business registrations, to allow building and fire code inspections. He discussed a lodging tax that could be put in place. He noted that this was a land use ordinance that required a process, and a lodging tax could be a code amendment.

**Mr. Egner** pointed out that the table on page 4 addressed changes to zones. Short term rentals and vacation rentals were added to every zone where there was potential to have a residence. It was proposed that bed and breakfasts be added as a conditional use in low density zones and added as a permitted use in Mixed Use zones. It was also proposed to change bed and breakfasts from conditional use to permitted use in both limited commercial and general commercial zones. Hotels / motels had no changes proposed in the low and medium density zones, but a proposed removal from conditional use in high density residential zones, with a continuation to have it as a conditional use in the R-1-B zone. Hotels / motels would have no change in mixed use and commercial zones, except for making it a permitted use from a conditional use in the general commercial zone. He addressed the home occupation process to deal with

complaints. At the Planning Commission, the issue of parking came up, and Mr. Egner discussed the Commission's decision to not put in additional parking requirements. The Planning Commission decided that it would be appropriate to allow two rooms to be rented to different parties in hosted situations.

**Council President Batey** was interested in the tax and thought they should be taxed. She suggested a 1099 form to assess the tax. She thought maybe the tax should come together with the land use.

**Councilor Parks** suggested the County lodging tax. **Councilor Power** noted that the County did not regulate short term rentals.

### **Annual Renewal of Parklets**

**Mr. Egner** discussed the parklet situation and handed out an email from Mayor Gamba.

**Councilor Churchill** understood a signature of approval was needed from the property owner of the business that has the parklet, but asked about an adjacent business that the parklet might be in front of, due to diagonal parking. **Mr. Egner** believed it only involved the business where the parking space came up to the curb.

**Mr. Egner** said the issue was the form, and Jesse Canelos had some concerns about getting the property owner's signature annually.

**Councilor Power** suggested an affidavit with the property owner's original signature that delegated authority to tenants until ownership changed, with revocable consent.

**Councilor Parks** said the goal was to encourage parklets, and **Council President Batey** agreed, noting for scrutiny the first time and then to make renewal simple.

**Councilor Churchill** did not want the property owner to be excluded from the process. He saw the benefits of requiring an annual signature.

**Council President Batey**, **Councilor Parks**, and **Councilor Power** were not in favor of an annual signature. **Councilor Parks** suggested having letters sent every year to ensure the property owner was in the loop.

**Mr. Egner** heard Council direction from the majority to move forward with that suggestion.

**Council President Batey** noted that the Milwaukie Museum Lease and the Farmers Market Event Permit and Traffic Control Plan would be discussed during the March 15, 2016, Regular Session.

**Council President Batey adjourned the Work Session at 5:48 p.m.**

Respectfully submitted,

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Amy Aschenbrenner, Administrative Specialist II



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

**REGULAR SESSION**  
MARCH 15, 2016  
City Hall Council Chambers

**Council President Lisa Batey called the 2,218<sup>th</sup> meeting of the City Council to order at 6:14 p.m.**

**Council Present:** Councilors Scott Churchill, Wilda Parks, and Karin Power

**Excused:** Mayor Mark Gamba

**Staff Present:** City Manager Bill Monahan, City Attorney Dan Olsen, City Recorder Pat DuVal, Assistant to the City Manager Mitch Nieman, Code Compliance Coordinator Tim Salyers, and Sustainability Director Clare Fuchs.

**CALL TO ORDER**

Pledge of Allegiance.

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

**A. Milwaukie High School (MHS) Outstanding Student Achievement Award for March 2016 presented to Lucille Polich**

**MHS Principal Mark Pinder** introduced Lucille Polich and highlighted her achievements at the Milwaukie Academy of the Arts notably in the areas of graphic design, ceramics, and conservation. Council President Batey and the Councilors congratulated Ms. Polich on her selection as the Outstanding Student Achievement Award recipient for March 2016.

**CONSENT AGENDA**

It was moved by Councilor Parks and seconded by Councilor Power to approve the consent agenda as amended with the removal of Item C.

**A. City Council Meeting Minutes of the March 1, 2016, Work Session**

**B. Resolution 19-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, establishing a library fine amnesty week from April 10, 2016, through April 16, 2016, in recognition of National Library Week.**

~~**C. A Resolution of the City Council of the City of Milwaukie, Oregon, to purchase a TV inspection van for the Stormwater Division through the Cooperative Purchasing Program of the Houston-Galveston Area Council at a cost of \$207,000.**~~ (item pulled for individual consideration)

**D. Resolutions Making Board, Commission, and Committee Appointments:**

- 1. Resolution 20-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, appointing Chris Davis to the Arts Committee;**
- 2. Resolution 21-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Denise Emmerling-Baker to the Arts Committee;**
- 3. Resolution 22-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Chris Haberman to the Arts Committee;**

4. Resolution 23-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Lars Campbell to the Arts Committee;
5. Resolution 24-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Troy Reichlein to the Audit Committee;
6. Resolution 25-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Vince Alvarez to the Citizens Utility Advisory Board (CUAB);
7. Resolution 26-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Kevin Hasey to the CUAB;
8. Resolution 27-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Joel Bergman to the CUAB;
9. Resolution 28-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Sherry Grau to the Milwaukie Design and Landmarks Committee (DLC);
10. Resolution 29-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing James Fossen to the DLC;
11. Resolution 30-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Gary Klein to the Kellogg Good Neighbor Committee (KGNC);
12. Resolution 31-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Charles Bird to the KGNC;
13. Resolution 32-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Neil Hankerson to the KGNC;
14. Resolution 33-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Erin Lee to the Milwaukie Library Board;
15. Resolution 34-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Ryan Healy to the Milwaukie Library Board;
16. Resolution 35-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Krista Downs to the Milwaukie Library Board;
17. Resolution 36-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Linda Blue to the Park and Recreation Board (PARB);
18. Resolution 37-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Erin Willett Holcomb to the PARB;
19. Resolution 38-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Shaun Lowcock to the Milwaukie Planning Commission;
20. Resolution 39-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Sine Adams to the Milwaukie Planning Commission.

Motion passed with the following vote: Councilors Churchill, Parks, and Power and Council President Batey voting “aye.” [4:0]

#### **Resolution Authorizing Purchase of a TV Van**

**Mr. Monahan** said this item was pulled from the Consent Agenda for modifications that were reviewed by the City Council during the work session. Language was added that authorized the City Manager to purchase the van and adjusted the dollar amount from \$207,000 to \$207,174.

It was moved by Councilor Power and seconded by Councilor Churchill to approve a Resolution to purchase a TV inspection van for the Stormwater Division through the Cooperative Purchasing Program of the Houston-Galveston

Area Council at a cost of \$207,174, as amended. Motion passed with the following vote: Councilors Churchill, Parks, and Power and Council President Batey voting “aye.” [4:0]

#### RESOLUTION NO. 40-2016:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO PURCHASE A TV INSPECTION VAN FOR THE STORMWATER DIVISION THROUGH THE COOPERATIVE PURCHASING PROGRAM OF THE HOUSTON – GALVESTON AREA COUNCIL AT A COST OF \$207,174.

#### AUDIENCE PARTICIPATION

**Council President Batey** reviewed the Audience Participation process and noted that no one had signed up to speak.

**Mr. Monahan** provided follow up to public comments made at the March 1, 2016, City Council regular session regarding air quality issues related to the Department of Environmental Quality (DEQ) and to Precision Castparts Corporation (PCC). DEQ was addressing the environmental issues. Several people expressed their support for the potential ban of neonicotinoids on public property which will be considered at the April 5, 2016, Council regular session. One participant discussed library funding and what would happen to tax dollars if Oak Grove incorporated.

#### PUBLIC HEARING

None scheduled.

#### OTHER BUSINESS

##### **Museum Lease [Moved from March 15, 2016, Work Session Agenda]**

**Mr. Nieman** sought Council direction on the lease renewal with the Milwaukie Historical Society for the Milwaukie Museum building located at 3737 SE Adams Street. He provided a brief overview of the agreement and the responsibilities of the City and the Historical Society. The current lease was executed April 16, 1996 and is scheduled to end on April 16, 2016.

The City Council discussed the term of the lease, renewal periods, and adding a reporting schedule. **Councilor Power** was interested in cleaning up the language in the lease along with a review of any stipulations.

**Councilor Churchill** favored a 5 or 10 year lease with 5 year renewal periods. **Councilor Power** thought it would be a good idea to clearly outline the maintenance responsibilities. She suggested an extension of the current lease and that staff work with Milwaukie Historical Society to draft the new lease. It was agreed to extend the current contract for 90 days.

##### **A. Amend Milwaukie Municipal Code (MMC) Section 10.20.090 Violation – Citation – Ordinance**

**Mr. Salyers** said this was a minor amendment to the code resulting from the implementation of an electronic parking citation device that calculated violations based on a rolling 365 day period rather than a calendar year as the previous model had. People receiving four citations for overtime violations were charged more when the fifth citation was issued, and the slate would not be wiped clean at the beginning of each calendar year with the new device.

**It was moved by Councilor Power and seconded by Councilor Parks to approve the first and second readings by title only and adoption of the ordinance amending section 10.20.090 of the Milwaukie Municipal Code language to change**

the time frame for escalation related to 5 or more parking violations from one calendar year to a rolling 365-day timeframe. Motion passed with the following vote: Councilors Churchill, Parks, and Power and Council President Batey voting “aye.” [4:0]

Mr. Monahan read the ordinance two times by title only.

Ms. DuVal polled the Council: Councilors Churchill, Parks, and Power and Council President Batey voting “aye.” [4:0].

**ORDINANCE No. 2114:**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING SECTION 10.20.090 OF THE MILWAUKIE MUNICIPAL CODE LANGUAGE TO CHANGE THE TIME FRAME FOR FINE ESCALATION RELATED TO 5 OR MORE PARKING VIOLATIONS FROM ONE CALENDAR YEAR TO A ROLLING 365-DAY TIMEFRAME.**

**B. Amend MMC Chapter 2.24 Public Safety Advisory Committee (PSAC) – Ordinance**

Mr. Nieman noted the changes based on earlier City Council direction and the evolving role of the Committee.

Mr. Monahan added that the PSAC chair had reviewed the amendments and concurred with the changes that better reflected PSAC’s vision.

It was moved by Councilor Parks and seconded by Councilor Power to approve the first and second readings by title only and adoption of the ordinance amending Milwaukie Municipal Code Chapter 2.24 Public Safety Advisory Committee, revising Sections 2.24.010 Purpose and 2.24.020 Membership-Qualifications. Motion passed with the following vote: Councilors Churchill, Parks, and Power and Council President Batey voting “aye.” [4:0]

Mr. Monahan read the ordinance two times by title only.

Ms. DuVal polled the Council: Councilors Churchill, Parks, and Power and Council President Batey voting “aye.” [4:0].

**ORDINANCE No. 2115:**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 2.24 PUBLIC SAFETY ADVISORY COMMITTEE, REVISING SECTIONS 2.24.010 PURPOSE AND 2.24.020 MEMBERSHIP-QUALIFICATIONS.**

**C. Amend Milwaukie Municipal Code Chapter 16.32 – Tree Cutting – Ordinance**

Mr. Nieman reviewed the background of the proposed code amendment that would meet the Tree City USA application guidelines for future designation in Fall 2016. The Ordinance applied only to public rights of way and to City owned properties. Further, it would trigger formation of a City Tree Board with oversight responsibilities that included an annual Arbor Day Event, clarified the role of the permitting department, and established professional planting standards and tree designations. He discussed compliance with Title 19, the Zoning Ordinance.

Councilor Power thanked the Park and Recreation Board (PARB) for its hard work to draft this code amendment and to residents like Dion Shepard for their foresight and dedication to developing a tree program in Milwaukie.

Council President Batey hoped the next project would be to consider a Heritage Tree program.

It was moved by Councilor Churchill and seconded by Councilor Power to approve the first and second readings by title only and adoption of the ordinance amending Milwaukie Municipal Code Chapter 16.32 Tree Cutting. Motion passed with the following vote: Councilors Churchill, Parks, and Power and Council President Batey voting “aye.” [4:0]

Mr. Monahan read the ordinance two times by title only.

Ms. DuVal polled the Council: Councilors Churchill, Parks, and Power and Council President Batey voting “aye.” [4:0].

ORDINANCE No. 2116:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, MILWAUKIE MUNICIPAL CODE CHAPTER 16.32 TREE CUTTING.

#### D. Council Input to Legislative, County, or Regional Issues

Mr. Monahan briefly discussed the housing measures that had been considered during the short legislative session. This item will be removed from the City Council agenda until the next legislative session.

#### Farmers Market Event Permit and Traffic Control Plan [Moved from March 15, 2016, Work Session Agenda]

Council President Batey recused herself as a Celebrate Milwaukie, Inc. (CMI) Board Member, and Councilor Parks took over as the presiding officer.

Mr. Nieman said the City Council asked staff to bring back the 2016 event permit for additional review related to the closure of Main Street between Harrison and Jackson Streets on Market days. He discussed parking patterns and signage.

Councilor Churchill felt it would still be advisable to close Main Street and expressed his concerns about pedestrian safety.

Councilor Power asked Councilor Churchill if he thought the City should absorb the costs related to the street closure.

Councilor Churchill felt safety took precedence and suggested sharing the costs with CMI.

Councilor Parks thought having Main Street open during the Market had worked satisfactorily over the years.

Dave Aschenbrenner, CMI Board member, was concerned about controlling the space and maintaining vendor access for set up and tear down of their booths. Some vendors need access during the Market to bring in additional produce. Shutting down Main Street at that point would put vehicles in direct conflict with buses. The CMI Board would have to consider the question of sharing the costs. The Farmers Market did not wish to close Main Street and take on the additional burden. Any issues would have to be negotiated.

Councilor Churchill reiterated that his main concern was safety.

Councilor Power did not want to put the burden on the Market.

Mr. Monahan discussed the costs if City staff were deployed to the Market when it opened and closed.

Mr. Nieman added that there would be additional costs to police the area.

Councilor Power thought the closure of Main Street sounded onerous for existing vendors and the Market. Given this information, she was not in favor of closing Main Street during the Market. She suggested budgeting for a pilot in the next biennium.

**Mr. Monahan** will schedule approval of the event permit for the April 5, 2016, City Council Regular Session consent agenda. CMI and staff will work on a plan for the 2017 season.

### **E. Council Reports**

**Councilor Churchill** announced that the Downtown Milwaukie Business Association (DMBA) was hosting Clackamas County Commissioner Martha Schrader to talk about business challenges in Milwaukie. It would be held at the Pond House on March 16.

**Councilor Parks** commented on the importance of getting information on the upcoming primary and urged people to attend upcoming forums.

**Council President Batey** encouraged people to show their support for the Milwaukie Sunday Farmers Market by participating in the OregonLive poll. Other announcements included the Metro Storefront Improvement Grant Program, the 2016 Milwaukie Earth Day Volunteer Event, the Clackamas Community College open house at the Harmony Campus, the Airing of the Quilts at the Milwaukie Center, the Meals on Wheels fundraiser, the Gardening Class series at the Pond House, the Elders in Action Fraud Prevention Panel, and the Dogwood Dash on April 2.

### **ADJOURNMENT**

**It was moved by Councilor Parks and seconded by Councilor Power to adjourn the regular session. Motion passed with the following vote: Councilors Churchill, Parks, and Power and Council President Batey voting “aye.” [4:0]**

**Council President Batey** adjourned the regular session at 7:41 p.m.

Respectfully submitted,

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Pat DuVal, Recorder



MILWAUKIE CITY COUNCIL  
STAFF REPORT

Agenda Item: **RS 3. B.**  
Meeting Date: **April 5, 2016**

To: Mayor and City Council

From: Mitch Nieman, Asst. to City Manager

Through: Bill Monahan, City Manager

Subject: **Farmers' Market Event Permit**

Date: **April 5, 2016**

### **ACTION REQUESTED**

Direct Staff to issue the 2016 Sunday Farmers' Market temporary event permit.

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

April 21, 2015 – City Council approved execution of an 18-month lease and six-month temporary event permit with Celebrate Milwaukie, Inc. for use of City and Metro-owned parking lots (Block 14) to operate the Sunday Farmers' Market from May 1, 2015 through October 31, 2016.

March 15, 2016 – City Council discussed specifics of the Market's temporary event permit and directed Staff to place it on the April 5, 2016, Consent Agenda for consideration of approval.

### **DISCUSSION**

In addition to permit discussions on March 15, 2016, City Council asked Staff to research costs and right-of-way responsibilities and programming associated with closing Main Street between Jackson and Harrison during the 2017 Farmers' Market season, respectively. Staff agreed to provide Council with an analysis of such at a future City Council meeting.

### **FISCAL AND WORK LOAD IMPACTS**

There is no cost to the City to issue the 2016 temporary event permit. Also, there is no cost to the applicant to receive a permit to operate the Market.

### **ALTERNATIVES**

1. Direct staff to issue the permit subject to conditions required in the permit
2. Direct staff to not issue the permit and identify new conditions for the permit

### **ATTACHMENTS**

1. Farmers' Market Temporary Event Permit

City of Milwaukie - City Hall  
 Attn: Jason Wachs  
 10722 SE Main Street  
 Milwaukie, OR 97222  
 (503) 786-7568 PH  
 wachsj@MilwaukieOregon.gov



## Temporary Event Application for Permit

- ◆ The City of Milwaukie appreciates your interest in organizing an event in the City. Submitting and following the conditions of this application puts you in touch with resources and ensures the event is approvable, safe, and is considerate of your neighbors.
- ◆ The review period can be from 30 to 90 days, depending on the size and nature of the event. Events are scheduled on a first come, first served basis. You are encouraged to submit your application as early as possible to ensure that enough time is available to review your application. Your application may be denied if it is determined that not enough time is available to thoroughly review your request and work through issues and concerns.
- ◆ Permit, if issued, authorizes the applicant to conduct the temporary event that is described herein paying close attention to any conditions of approval that are attached.
- ◆ The City of Milwaukie will review your request and determine if there is a need to attach any fees for services rendered including staff time, police services, etc.

### I. Applicant Information

Applicant Name: David Aschenbrenner

Contact Person (If differs from applicant): \_\_\_\_\_

Applicant Organization/Business (If any): Celebrate Milwaukie Inc.

Mailing Address: 2036 SE Washington St City: Milwaukie State: OR Zip: 97222

Phone: \_\_\_\_\_ Business Phone: 503-804-3837

Cell phone during event: 503-407-0956

Address of Event: City Parking Lot Main St and Jackson St.

Email: business@celebratemilwaukie.org or Info@celebratemilwaukie.org

## II. Event Information

This event is a (check all that apply):

Parade  Festival  Concert  Sales Event  Other Farmers Market  
 Competition  Vendors (food, beverage, merchandise, etc.)

Name of event: Milwaukie Sunday Farmers market

Purpose of event: To provide local fresh produce and other goods to the community

Date/s of Event: Sundays, May to OCT. Starting Time: 5 AM Ending Time: 4 PM

Event Web site: www.milwaukiefarmersmarket.com

Is this a recurring event?  Yes  No Day (s) of week Sundays

Setup date(s): Late April Take down date(s): Early Nov.

Estimated attendance per day: 1000

Does your event involve the use of a park? Yes  No

If so, what is the name of the park and where is it located? \_\_\_\_\_

Most of Milwaukie's parks are managed and maintained by the North Clackamas Parks & Recreation District (NCPRD). You can reserve spaces at North Clackamas Park, Stringfield Park, the Milwaukie Center and the Sara Hite Memorial Rose Garden. All other NCPRD parks are available on a first-come, first served basis. If your event is requesting the use of a park please visit NCPRD's Web site at [www.NCPRD.com](http://www.NCPRD.com) or call (503) 742-8013 to learn more about what is available.

## III. Site Layout, Traffic Control, & Parking

Will event require closure of public streets? Yes  No

Will event require use of sidewalks or other public right of way? Yes  No

**Note:** Public right of way refers to a type of easement that is reserved over the land for public use such as the area between the sidewalk and road.

**All applicants must attach a Site Layout Plan and Traffic Control Plan to this application, but the components required will vary by event.**

**Site Layout Plans** include, at a minimum, the location of tents, stages, portable restrooms, fencing, food booths, alcoholic and non-alcoholic beverage booths, and any other components of the event.

**Traffic Control Plans** include, at a minimum, the location of barricades, directional signs, certified flaggers, course marshals, assembly and/or production facilities, emergency access routes, aid and first aid stations, trash and recycling receptacles, parking, and any other components of the event. Traffic control devices such as barricades may be rented or purchased from local companies. Please search the internet for "flagging companies and/or

barricades Portland Oregon" or look in the telephone yellow pages under the heading "Flagging or Barricades."

Has applicant attached a Site Layout Plan? Yes  No   
Has applicant attached a Traffic Control Plan? Yes  No   
Will event require police resources? Yes  No  Not sure

**Note:** Approved temporary events that require police or other city resources may require fees, which will be assessed on a case by case basis.

Do you intend to use a city-owned parking lot?  Yes  No  
If yes, please give the location Main St and Jackson St.

Are you requesting to close public parking stalls anywhere in the city?  Yes  No  
(**Note:** Public parking stalls refer to on-street parking.)

If you answered yes, what type of parking stalls are you requesting?  Angled or  Parallel  
Number of stalls requested 4 Spaces on Main St at the City's request

Are all spaces requested directly in front of your business?  Yes  No

If not, the other business owner/s with affected stalls must agree in advance to the closures by signing here:

Name of Business: \_\_\_\_\_

Business Owner/Representative (Print or Type): \_\_\_\_\_

Business Owner/Representative (Signature): \_\_\_\_\_

Name of Business: \_\_\_\_\_

Business Owner/Representative (Print or Type): \_\_\_\_\_

Business Owner/Representative (Signature): \_\_\_\_\_

Name of Business: \_\_\_\_\_

Business Owner/Representative (Print or Type): \_\_\_\_\_

Business Owner/Representative (Signature): \_\_\_\_\_

Name of Business: \_\_\_\_\_

Business Owner/Representative (Print or Type): \_\_\_\_\_

Business Owner/Representative (Signature): \_\_\_\_\_

How will you block off the spaces? (e.g. orange cones, stanchions, barricades, etc.) \_\_\_\_\_

**Diagram of parking stalls requested for closure.** Please include signage, lighting, and other safety precautions: (Attach further documentation to this form if necessary.)

Is a county or state owned street or road affected by your event?

Yes  No  Not sure

**If so, you must contact the Clackamas County Dept. of Transportation at 503-650-3452 and/or the Oregon State Dept. of Transportation at 503-653-3086.**

#### IV. Further Considerations

1. Will food be served or prepared at your event? Yes  No

**If so, you or the food provider must obtain a Food Handler's License from Clackamas County by calling (503) 650-3659. Provide a copy to the City of Milwaukie no less than 3 days prior to the start of the event.**

2. Will alcoholic beverages be available at your event? Yes  No

**If so, you or the alcoholic beverage provider must obtain an OLCC (Oregon Liquor Control Commission) permit by calling (503) 872-5000 or visit [www.oregon.gov/OLCC/docs/liquor\\_license\\_and\\_license\\_process/tsl\\_app\\_form.pdf](http://www.oregon.gov/OLCC/docs/liquor_license_and_license_process/tsl_app_form.pdf) Provide a copy to the City of Milwaukie no less than 3 days prior to the start of the event.**

3. Will there be any live or amplified entertainment or noise be generated at your event? Yes  No

If so, please complete a noise variance form, which is attached to this application in section VI.

4. Will additional electrical wiring be installed for your event? Yes  No

5. Will your event require restroom facilities? Yes  No  The City recommends following the minimum guidelines for temporary restrooms as shown in the table below. Temporary restrooms may be rented from local companies. Please search the internet for "portable restrooms Portland Oregon" or look in the telephone yellow pages.

	1 hr	2 hrs	3 hrs	4 hrs	5hrs	6hrs	7hrs	8hrs	9hrs	10 hrs
50	1	1	1	1	2	2	2	2	2	2
100	2	2	2	2	3	3	3	3	4	4
250	3	3	3	4	4	4	5	5	6	6
500	4	4	5	5	6	6	7	7	8	8
1000	6	7	8	8	9	9	10	10	11	12
2000	9	12	15	16	17	17	18	18	19	19
3000	12	18	22	24	25	26	27	28	29	30
4000	16	24	29	32	34	35	37	38	39	40

6. Have you arranged for security at your event? Yes  No

If so, who will be providing security: event Staff and Milwaukie Police if needed

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Details of security plan: \_\_\_\_\_

\_\_\_\_\_

7. Describe your plans for Emergency Medical Services (Includes first aid stations, first aid kits, emergency medical equipment such as an IED, etc.): \_\_\_\_\_

First Aid kits are located in our trailer Some market staff have first aid training

The City recommends at least one trained emergency services provider (Minimum Certification – Emergency Medical Technician 1) be present on-site throughout the temporary event.

8. Describe your plans for trash minimization and removal. Include information as to the number, types and locations of all trash receptacles, a schedule for monitoring and emptying trash receptacles, and plans for cleaning up debris not placed in trash receptacles. Include information on any persons or entities who will be providing trash related services. (Attach additional sheets if needed)

We provide trash cans and recycling on the site. We have a rented dumpster and service on the site for the season

**V. Applicant is responsible for obtaining all additional permits, licenses, and insurance certificates required upon the issuance of this Temporary Event Permit. Please fulfill all of the obligations listed below before submitting this application. Once all of these obligations are complete you must place your initials in all of the designated areas marked with a ( ) and then sign and date at the bottom.**

**CLEAN UP:** Applicant agrees to promptly clean up all paper or debris caused by applicant's use of the area and understands that if such clean up is not promptly undertaken the City reserves the right to do the cleaning itself and to charge the applicant for the actual time and expense incurred. The City reserves the right to deny future Temporary Event Permit requests should applicant not fulfill all conditions of this permit application.

**INSURANCE:** Applicant agrees to provide a policy of liability insurance. This insurance shall provide coverage for not less than \$1,000,000 for personal injury to each person, \$1,000,000 for each occurrence involving property damage; or a single limit policy of not less than \$2,000,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. This insurance shall be without prejudice to coverage otherwise existing and shall name as additional insured the City of Milwaukie and its officers, agents, and employees. The sponsor agrees to maintain continuous coverage for the duration of the permit.

**INDEMNITY:** Applicant agrees to defend, indemnify and hold the City of Milwaukie and NCPRD if the event is held in a park or facility owned or managed by the District, harmless from and against all claims, losses, and liability arising out of personal injuries, including death, and damage to property which are caused by applicant, or arising out of or in any way connected with the activities conducted pursuant to this application. The last page of this application contains an agreement form that you must sign and date before this application is reviewed.

**CITY CODES/PERMITS:** Applicant agrees to obtain all City permits and licenses that may be required, and shall comply with all other City laws and other conditions that the City Manager determines necessary, including NCPRD park and facility rules or regulations. The Noise Control Variance form that is attached must be completed to fulfill this obligation. The Police Department will determine if such a variance is necessary after reviewing the variance application.

**CONDUCT/NUISANCES:** Applicant understands that if the outdoor activity is conducted in such a way as to create a nuisance for any business or resident of the area, future permits may be denied for that reason alone. Applicant will be notified as soon as practical that the activity engaged in created a nuisance and may ask for a review of such determination.

**SITE /TRANSPORTATION MAP: This application will not be processed unless a site map is included.** Indicate location of tents, stages, portable restrooms, fencing, food booths, alcoholic and non-alcoholic beverage booths, etc. Transportation/route maps should include: location of barricades, directional signs, certified flaggers and course marshals, assembly and/or production facilities, emergency access routes, aid and first aid stations, port-a-potties, trash and recycling receptacles, parking, etc.

**SIGNAGE PLAN: This application will not be processed unless a sign plan is provided with details of sign size and location.**

I have read all information contained within the City of Milwaukie's Temporary Event Permit Application Packet and agree to abide by the terms and conditions contained herein.

**Applicant's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**VI. Indemnification Agreement for Temporary Event Permit**

**Note: All applicants must sign this Indemnification Agreement.**

Grantee acknowledges and agrees as follows:

In consideration of the City's approval of this application for a temporary event permit, applicant accepts responsibility for the event and agrees to indemnify, defend and hold harmless the City of Milwaukie, and if necessary NCPRD, its officials, employees, agents, volunteers, and assigns from and against any and all claims, suits, liabilities and expenses (including but not limited to, damages, attorney fees, and costs) that may be asserted against the City of Milwaukie arising out of or in any way related to the temporary event for which permission is sought.

Applicant acknowledges that applicant has carefully read the foregoing and understands its contents. Applicant warrants that applicant is authorized to sign this document and does so freely and without reservation.

**Applicant Name** (print or type): David Aschenbrenner

**Applicant Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## VI. Noise Control Variance

If your event includes live or amplified entertainment or is expected to generate noise you may be asked to obtain a noise variance. The Milwaukie Police Department will review the entire application and determine if a Noise Variance is required. If a variance is not necessary it will be noted on this application and reported to the event applicant. If a variance is necessary it will be noted on this application and reported to the event applicant along with an explanation of why it was or was not approved.

### **Variance Information**

Reason for the variance: Live Amplified Music

The time and duration of the emitted sound: 8AM to 3 PM

### **For Police Use Only**

The physical characteristics of the emitted sound:

The geography, zone and population density of the affected area:

Residential  Commercial  Industrial  Noise-sensitive

Population density: Light  Medium  Heavy

Is the public health and safety endangered by the noise: Yes  No

Does the sound source predate the receiver: Yes  No

Does the compliance with the standard(s) from which the variance is sought produce hardship without equal or greater benefit to the public:

Yes  No

Is a Noise Variance Required for this Event: Yes  No

(Note: If a Variance is required please complete the rest of the application, if not please sign on the next page where it reads "Authorized by" and return with other department recommendations.)

If a Noise Variance is required, is it granted: Yes  No

Yes, but with conditions to follow

Please provide a brief description of why this application was approved or denied and if it is approved with conditions please list the conditions below:

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Authorized by:

**FOR OFFICE USE ONLY Department Recommendations**

Name of event/purpose: \_\_\_\_\_

**Note: Please review and respond to this proposal by sending an email to Jason Wachs in the City Manager's Office at [wachs@MilwaukieOregon.gov](mailto:wachs@MilwaukieOregon.gov).**

In your response please include your department/organization name, the name of the person who reviewed the application, whether or not it is approved or denied, and any conditions of approval. Call (503) 786-7568 with any questions.

This is a city-sponsored or supported activity.  This is an independent event.

**City of Milwaukie:**

Building

Engineering

Facilities

Planning

Police

Streets

Other (As applicable) \_\_\_\_\_

**Regional and State Partners (If applicable):**

Oregon Department of Transportation (ODOT)

North Clackamas Fire District #1

North Clackamas Parks & Recreation District (NCPRD)

TriMet

Other \_\_\_\_\_

# Milwaukie Sunday Farmers Market

McLoughlin Boulevard																														
		Planter														97	98	99	100	101	102	103	104	105	106	107	108	109		
J a c k s o n  R S & T r e e	P l a n t D i v i d e r	Drive up / Pick Up No Parking	Path						Path																					
			90	91	92				Trailer						93	94	Path	95	96											
			83	84	85	Path			Market Info Booth						86	87		88	89											
			Path					Path																						
			82		81				Demo Booth		Tent	Tent			Path		80		Path							79	Water			
	Trash				Path							Path											78							
	Porta potties	67	Path		68	69	70	Path	71	72	73	74 ATM	Tree	Path	75	76	77													
	Plant Divider				Plant Divider					Plant Divider						Plant Divider														
		10		Path	22	23	24	Path	Music	42	43	44		Path	66	65														
		9							Path																		64			
		8			21		25					41															63			
		7	Path	11 Face Painter	20		26		Tent			40		Path													62			
		6			19		27	Path	Tent			39			47		55										61			
		5		12 City Booth	Path	18			Tent			38			48											Path	60			
		4			17		29		Tent			37			49		54										59			
		3			16		30					36			50												58			
		2		13		15		31		33		35			51	Path	53										57			
		1			14		32					34			52												56			
					Main St			No Parking [1]			Main St			No Parking [1]			Main St													
Notes																														
	[1]	No Parking on West side of Main Street[ 4 parallel spaces] Per Past Agreement between City Manager and Market Business Manager																												

Harrison Street

Plant Divider

Plant Divider

Plant Divider

Jacksonton RS&T Tree

Plant Divider

Water

			This is to improve visibility of pedestrians walking along Main Street from Harrison to Jackson Streets																		
			It also provides visibility for driver to see pedestrians along Main St that other wise would be hidden by parked cars.																		
	[2]	East side of Main Street diagonal parking [7 spaces, not handicapped space] will be used by venders and market staff to prevent the																			
		Possibility of people backing out into traffic along Main street during to the poor visibility and the amount of traffic on Main Street during the Farmers Market																			
	[3]	City will contact TriMet as to the closure of Main Street to busses from 8 AM to 3 PM each Sunday during the Farmers Market.																			
		City will also ask for a contact phone number to report busses that use Main St during the Closures.																			

RS35

# Milwaukie Sunday Farmers Market

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## Sign Placement 2016

### Downtown Streets

1. South side Jackson between 99E & Main between entrances to parking lot behind Chopsticks
2. West side SE 21<sup>st</sup>. between Jackson & Monroe between Key Bank lot entrances of their north lot
3. North side Jackson between 21<sup>st</sup>. & Main @ west side of entrance to City Hall parking lot
4. North side Harrison between 99E & Main @ east side of entrance to credit union parking lot
5. Northeast corner of 99E & Jefferson adjacent to Arco station
6. Northeast corner of 99E & Jackson
7. Southeast corner of 99E & Harrison
8. Southwest corner of 99E & Harrison/17<sup>th</sup>.
9. Northwest corner of 99E & Harrison/17<sup>th</sup>.
10. Southeast corner of Washington & Main
11. Southwest corner of Harrison & Main
12. Northeast corner of Monroe & 21<sup>st</sup>.
13. East end of Adams St. Connector.
14. West end of Adams St. Connector.

### Signs on posts along 99E

- 1A. NW corner 99E & Harrison on "crosswalk closed" pole
- 2A. West side 99E @ Jefferson boat ramp entrance on "crosswalk closed" pole
- 3A. On Empress tree on W. side 99E across from funeral home
- 4A. NW corner of 99E & Millport St

### Signs on posts along 224

- 1B. East side 224 between Oak & Monroe on pole at end of dead end street
- 2B. East side 224 between Oak & Monroe on "City Center" pole
- 3B. East side 224 between Monroe & Harrison on "Harrison Next Signal" pole
- 4B. West side 224 between Monroe & Harrison on "Monroe Next Signal" pole
- 5B. Oak St. and Washington on "No Thru Trucks" pole

### 17<sup>th</sup> Ave

- 1C. West side of 17th Ave just south of Ochoco St.

Signs for the Farmers Market will be up between 7:00 AM and 3:00 PM on Sundays starting in May. and ending the end of October. 2016.



MILWAUKIE CITY COUNCIL  
STAFF REPORT

Agenda Item: **RS 3. C.**  
Meeting Date: **April 5, 2016**

To: Mayor and City Council  
From: Mitch Nieman, Asst. to City Manager  
Through: Bill Monahan, City Manager

Subject: **Museum Lease Extension**

Date: **April 5, 2016**

**ACTION REQUESTED**

Authorize the city manager to extend the City's lease with The Milwaukie Historical Society for sixty (60) days. The Historical Society agrees with the need for an extension to complete negotiation of a long-term lease.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

April 16, 1996 – City executed a 20-year lease with Milwaukie Historical Society for use of real property located on 3737 Adams Street. Said lease expires on April 16, 2016.

March 15, 2016 – City Council directed staff to prepare an extension of said lease for sixty (60) days to accommodate preparation and negotiation of a new lease for execution by all parties before June 15, 2016.

**FISCAL AND WORK LOAD IMPACTS**

There are no financial or work load impacts other than Staff time to write and process a 60-day extension of said lease.

**ALTERNATIVES**

1. Authorize the city manager to execute a lease extension for 60 days
2. Do not authorize the city manager to execute a lease extension
3. Authorize the city manager to execute a lease extension for a different period of time

**ATTACHMENTS**

1. Lease Extension Letter



April 5, 2016

Mr. David Aschenbrenner  
President  
Milwaukie Historical Society  
3737 SE Adams Street  
Milwaukie, OR 97222

**RE: Lease Extension - 3737 SE Adams Street**

Dear Mr. Aschenbrenner,

This letter serves as an extension to the lease for the rented property located at 3737 SE Adams Street in Milwaukie, Oregon, which is currently occupied by the Milwaukie Museum and Milwaukie Historical Society.

The lease for said property is due to expire on April 16, 2016.

On March 15, 2016, City Council agreed to extend the lease for 60 days to give the City and Historical Society time to prepare and negotiate a new lease for execution before June 15, 2016.

Extended lease period: April 16, 2016 through June 15, 2016. All terms and conditions remain per the lease dated April 16, 1996.

Thank you for continuing to comply with terms and conditions set forth in said lease during this 60-day extension period.

Respectfully,

Bill Monahan  
City Manager

cc: Scott Barbur, Milwaukie Historical Society



MILWAUKIE CITY COUNCIL  
**STAFF REPORT**

Agenda Item: **RS 3. D.**  
Meeting Date: April 5, 2016

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Business Oregon Brownfields Redevelopment Fund Grant Award**

From: Alma Flores, Community Development Director

Date: March 18, 2016

**ACTION REQUESTED**

Approval for the City Manager, Bill Monahan to sign on behalf of the city for receipt of the Business Oregon Brownfields Redevelopment Fund Grant in the amount of \$60,000.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

There are no prior actions and discussions on this topic.

**BACKGROUND**

The City of Milwaukie's Community Development Department applied for a Business Oregon Brownfields Redevelopment Fund Grant on December 24, 2015 to perform environmental assessments (Phase I and possibly Phase II assessments) on the co-owned Metro/City site known as the Texaco Site (renamed City Block 14) and the city-owned Cash Spot site. These two publicly-owned sites in downtown Milwaukie have been identified as development "opportunity sites" through planning efforts conducted from 2012-2014 and are located at key "gateways" to downtown Milwaukie.

City Block 14 is a publicly-owned full-block site located in a key location at the northern end of downtown Milwaukie along McLoughlin Blvd. The City and Metro acquired the western half of the site (the "Texaco" site) in 2005; the City has owned the eastern half of the site since 1969. The western half of the site was previously occupied by a gas station; the eastern half of the site formerly housed a lumber yard. The status of contamination of the site is unknown.

The "Cash Spot" site: This publicly-owned site is located at a key location on the southern end of downtown Milwaukie along McLoughlin Blvd. The City acquired the site and demolished the building on the site in 2006 as part of the McLoughlin Blvd/Hwy 99E widening project. The status of contamination of the site is unknown.

The City is planning to issue RFPs for mixed-use development on both sites. However, the current status of site contamination is unknown, and contamination has the potential to significantly increase the cost of site development. The City would like additional information about existing contamination in order to work with potential developers to establish a development process and possible remediation agenda.

The grant allows the City to perform necessary site analysis to prepare the site for sale. The scope of work to be performed under the grant can be completed by no later than June 2016. The City may be able to issue a Request for Qualifications on one or both of the sites as early as September 2016.

Attached is the contract that Business Oregon has provided and the scope of work is below.

**Scope of Work:**

The grant provides funding for the following tasks to be performed for both sites:

1. Completion of a Phase One Environmental Site Assessment to ASTM Standard 1527-13;
2. Completion (if determined necessary) of a Phase Two Environmental Site Assessment to current standard.
3. Recipient shall submit documentation to DEQ for review and approval.

**CONCURRENCE**

City Manager, Community Development Director and Planning Director

**FISCAL IMPACTS**

The grant is on a reimbursement basis. The city will front the costs and be reimbursed by the State for the monies expended.

**WORK LOAD IMPACTS**

Management of the consultants conducting the scope of work.

**ALTERNATIVES**

Reject this grant and not conduct this due diligence items for properties owned by the city.

**ATTACHMENTS**

1. Business Oregon Grant Application
2. Business Oregon Grant Contract



APPLICATION - General

Oregon Business Development Department  
 Attn: Karen Homolac  
 775 Summer St. NE, Suite 200  
 Salem, Oregon 97301-1280  
 (503) 986-0191  
[karen.homolac@oregon.gov](mailto:karen.homolac@oregon.gov)

**Applicant:** City of Milwaukie/Metro

**Project Name:** Two Properties: City Block 14 and City-owned "Cash Spot" site--Brownfields Analysis

Applicant Information		
<b>Applicant's Organization Type:</b>		
<input checked="" type="checkbox"/> City	<input type="checkbox"/> Special District, organized under ORS	<input type="checkbox"/> For-Profit, organized as a _____
<input type="checkbox"/> County	<input type="checkbox"/> Port District, organized under ORS _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Tribe	<input type="checkbox"/> Non-profit, organized as a _____	

<b>Contact Name:</b> Alma Flores	<b>Phone:</b> 503-786-7652
	<b>Fax:</b> 503-774-8236
<b>Title:</b> Community Development Director	<b>Email:</b> floresa@milwaukieoregon.gov
	<b>Mailing Address:</b> Same
<b>Street Address:</b> City of Milwaukie 6101 SE Johnson Creek Blvd Milwaukie, OR 97206	

**Applicant's Federal Tax ID No:** 93-6002212

Project Budget			
Budget Line Item	OBDD Funding	Other Funds	Total
Phase I ESA – Block 14	\$15,000	NA	\$15,000
Phase I ESA –Cash Spot Site	\$15,000	NA	\$15,000

Project Budget			
Phase II ESA – Block 14	\$15,000	NA	\$15,000
Phase II ESA – Cash Spot Site	\$15,000	NA	\$15,000
<b>Totals</b>	<b>\$60,000</b>	NA	<b>\$60,000</b>

Source of Other Funds	Amount	Status Committed, Application Submitted, Application Invited, or Potential Source
NA		
<b>Total</b>		

Problem/ Opportunity
<p>This application is for two publicly-owned sites in downtown Milwaukie; both have been identified as development "opportunity sites" through planning efforts conducted from 2012-2014 and are located at key "gateways" to downtown Milwaukie.</p> <p>Block 14: This publicly-owned full-block site is located in a key location at the northern end of downtown Milwaukie along McLoughlin Blvd. The City and Metro acquired the western half of the site (the "Texaco" site) in 2005; the City has owned the eastern half of the site since 1969. The western half of the site was previously occupied by a gas station; the eastern half of the site formerly housed a lumber yard. The status of contamination of the site is unknown.</p> <p>"Cash Spot" site: This publicly-owned site is located at a key location on the southern end of downtown Milwaukie along McLoughlin Blvd. The City acquired the site and demolished the building on the site in 2006 as part of the McLoughlin Blvd/Hwy 99E widening project. The status of contamination of the site is unknown.</p> <p>The City is planning to issue RFPs for mixed-use development on both sites. However, the current status of site contamination is unknown, and contamination has the potential to significantly increase the cost of site development. The City desires information about existing contamination in order to work with potential developers to establish a development process and program.</p>

Response to Problem/ Opportunity
<p>The City intends to conduct Phase I and II environmental site assessments to determine the current status of contamination for both sites in order to more fully understand potential mitigation and/or remediation requirements related to development of the sites.</p>

**Detailed project description**

Once Phase I and II environmental site assessments are conducted, the City will move forward, either independently or in partnership with a developer selected through the RFP process, to mitigate/remediate any contamination located on the site.

**If interim financing is needed – indicate the source(s)**

N/a

**Project Work Plan**

Activity	Estimated Start Date	Estimated Completion Date
Phase I ESA – Block 14 and Cash Spot Site	January 25, 2016	February 29, 2016
Phase II ESA – Block 14 and Cash Spot Site	March 4, 2016	April 15, 2016
Estimated First Draw Date (dd/mm/yy): March 1, 2016		

**General Certification:**

I certify that to the best of my knowledge all information contained in this document and any attached supplements, is valid and accurate. I further certify that, to the best of my knowledge:

- 1) The application has been approved by the governing body or is otherwise being submitted using the governing body’s lawful process, and
- 2) If signed by an official, other than the highest elected official, documentation is attached that verifies the official’s authority to sign on behalf of the applicant. Such documentation can include a resolution, ordinance, order, governing body meeting minutes, or charter.

  
Signature

(must be highest elected or authorized official)

William A. Monahan, City Manager  
Printed Name & Title

12/24/15  
Date

This information may be found at: <http://www.leg.state.or.us/index.html>

State Senator Name: Diane Rosenbaum      District Number: 21

State Representative Name: Kathleen Taylor      District Number: 41

**FOR OBDD USE ONLY**

Intake approval date: \_\_\_\_\_

**Project Type**

- Environment Site Assessment ( i.e. Phase One, Phase Two)
- Brownfields Related Planning Activities (i.e. PPA)
- Integrated Planning Project
- RI/FS
- Cleanup

## Instructions for Application Form:

- **Applicant:** Entity that will be the applicant for Division assistance and will manage the project.
- **Project Name:** Name of the applicant and project (e.g., Somewhere Brownfields Cleanup Project).
- **Applicant's Organization Type:** Check the applicable applicant organizational type, and if a special district or port, identify the applicable ORS organizing authority, or identify other type.
- **Information for Contact Person:** Information for the person we should contact if we have questions about the project.
- **Detailed Project Budget:** List individual project budget line items with requested budgeted amounts by OBDD funding sources and other sources. Change the respective budget column labels to identify the specific requested OBDD funding sources.
- **Source of Other Funds:** List all sources, amounts and status of funds other than those requested from OBDD.
- **Problem/Opportunity:** Briefly describe the problem or opportunity facing the applicant.
- **Response to Problem/Opportunity:** Briefly describe the major alternatives considered by the applicant to address the problem or opportunity facing the applicant.
- **Detailed Project Description:** Clearly describe the proposed project work to be accomplished.
- **Interim Financing (if any):** Identify any interim financing needed by the applicant and list any committed or potential sources of interim financing.
- **Project Work Plan:** List project activity milestones with estimated start and completion dates. Identify estimated date of first cash draw.
- **Signature:** Must be highest elected official or authorized official. (Such documentation may include a resolution, ordinance, order, governing body meeting minutes, or charter).

## Application Supplement for Brownfield Redevelopment Funds

### Property Acquisition/Ownership/Operation

**Who currently owns the property?**

Block 14 is jointly owned by the City and Metro. The Cash Spot Site is owned by the City.

**Who will own the property once the project is completed?**

Ownership will remain the same.

**Did the applicant purchase the site through the Oregon Department of Environmental Quality's Prospective Purchaser Program? If negotiations are currently underway, describe the status.**

Metro purchased the western half of Block 14 through a PPA in 2005.

**When was property purchased? (Estimate is OK if exact date is unknown.)**

Block 14: 2005 (western half), 1969 (eastern half). Cash Spot Site: 2006.

### Liability

**Is the applicant and/or current owner of the project site currently or ever been under an order from the Department of Environmental Quality for the project site? If yes, provide a detailed explanation, including dates and actions taken.**

No.

**Is the applicant and/or current owner of the property potentially liable for the release of contamination at the site (according to ORS Chapter 465)? If no, cite the appropriate liability exception.**

We would assume so.

### Additional Program Requirements/Project Information

**What is the physical location of project? (If street address is not available, use township, range, section, tax lot, etc. or geographic coordinates.)**

Block 14:  
Tax Lot IDs 1S1E35AA01000 and 00900

Cash Spot Site:  
Tax Lot IDs 1S1E35AD01100, 01300, 01301, and 01302

**Explain how real or perceived contamination of the site prevents the property from being fully utilized.**

Perceived contamination of the site prevents development due to uncertainty about the additional costs of remediation or mitigation of potential site contamination.

**Is the proposed site receiving oversight or other consultation by the Oregon Department of Environmental Quality? If yes, please indicate which program(s) apply: Voluntary Cleanup Program, Independent Cleanup Pathway, Site Response, Prospective Purchaser Agreement, Underground Storage Tanks, Orphan Site, Targeted Brownfield Assessment, Other;**

A PPA is in place for the western half of Block 14. There is no oversight or consultation by DEQ of the eastern half of Block 14 or the Cash Spot Site.

**Describe any likely additional environmental actions anticipated for this property in the future (such as vapor or groundwater monitoring).**

TBD by Phase I and II environmental site assessments

**Describe any proposed institutional or engineering controls (such as deed restrictions or vapor barriers).**

TBD by Phase I and II environmental site assessments

**If the project includes site characterization, explain how the project will contribute or lead to a remediation plan or a No Further Action Determination by the Oregon Department of Environmental Quality. ("Site characterization" means determining and delineating the boundaries of the plume(s) of contamination and/or determining the status of the contamination such as whether it is migrating or crossing from one media to another, such as from soil to water, at the site.)**

The Phase I and II ESAs are expected to lead to either a remediation plan or NFA determination.

**If the project includes a remedial or removal action or plan, either identify the proposed redevelopment use or whether the project is to build capacity.**

The proposed redevelopment use for both sites is mixed use commercial and residential.

**If the project includes a remedial or removal action or plan, explain how the project will contribute to the proposed redevelopment.**

Remediation or removal of identified contaminants will increase the range of redevelopment options for the sites.

**If the project includes a remedial or removal action or plan, explain how the redevelopment is attainable (such as: the proposed use is consistent with the local and use plan; adequate infrastructure exists or will exist at the site for the proposed use) and describe the progress made to date towards achieving the proposed redevelopment (such as: status of financing negotiations, permit applications, contracts or negotiations for the transfer in ownership of the site, and preparation of a business plan or articles of incorporation.)**

The proposed mixed use development is consistent with the local land use plan and zoning. The sites are infill sites and adequate infrastructure exists to support the proposed development (or will be required as a condition of development). City staff is in the process of preparing a request for qualifications for development of both sites; a formal request for proposals is pending an evaluation of the status of site contamination.

**If the project includes a remedial or removal action or plan, describe the progress made to date towards achieving the proposed redevelopment (such as: status of financing negotiations, permit applications, contracts or negotiations for the transfer in ownership of the site, and preparation of a business plan or articles of incorporation.)**

Both sites are publicly-owned and the City intends to make them available for development pending an evaluation of the status of site contamination.

**If the project includes a remedial or removal action, describe how the action will comply with state cleanup law**

Any actions taken on site will comply with applicable State laws.

### Financial Information

**What is the anticipated source of repayment for the loan?**

NA

**Is other debt serviced or secured by those revenues? If yes, is it described in the applicant's audit reports? If no, please describe:**

NA

**Has the applicant ever defaulted on a debt? If yes, provide a complete summary of the circumstances related to the default.**

No.

**Is there pending litigation that could impair the applicant's ability to repay debt?**

No.

**If funding for the project includes a private loan, will the lender subordinate its security interest in the collateral?**

NA

**Additional Budget Information**

**Who prepared the cost estimates for the project? Name, title, company, phone, and date.**

Alma Flores, Community Development Director, City of Milwaukie, 503-786-7652, 12/24/15

**Identify the private funding sources explored for the project and explain why they are not considered viable/appropriate for the project.**

The City is seeking grant assistance for these activities because there are no dedicated funds for the environmental site assessment or any identified remediation/mitigation included in the City budget.

**Attachments**

<b>Municipal</b>	<b>Non – Profit Organization</b>	<b>Private</b>	<b>Attachment Label (please do not change)</b>	<b>Description of Attachment</b>
			<b>A</b>	If applicant is a city or county, attach list of the ten largest property tax payers in the applicant's jurisdiction, their type of business, total taxes, and current assessed value.
			<b>B</b>	An endorsement (statement of zoning compliance) of the project from the local government that has jurisdiction over the site.
			<b>C</b>	If the owner is currently under an enforcement order from the Oregon Department of Environmental Quality, attach documentation that the proposed project will facilitate a transfer in ownership of the site to an entity not under enforcement.
			<b>D</b>	If the applicant or owner caused or contributed to the contamination of the property, attach documentation of a past, present or planned financial contribution from the applicant or owner.
			<b>E</b>	If the applicant is a Prospective Purchaser, attach documentation of a valid option to buy the site.
			<b>F</b>	If applicant is not the current owner, attach proof of site access authorization.
			<b>G</b>	Map(s) showing the location of the project, including tax lots/parcels and road widths, etc.
			<b>H</b>	Any environmental assessment/study/ report/testing which has been completed for the property.
			<b>I</b>	Applicant's current adopted budget.
			<b>J</b>	Applicant's last three audit reports. <i>For businesses these may be the most recent three years' historical financial statements (including balance sheets and</i>

				<i>income statements); tax returns for existing business and/or individuals ( these may be treated as business confidential – please indicate on documents if this is to be the case). For individual applicants please include a personal financial balance sheet.</i>
			K	Copies of any ordinances that establish debt that is supported by the source of repayment for this loan.
			L	Business Plan if applicable (must include business description, products or services, business production plan, market analysis or marketing plan, organizational/management plan, and financial plan.
			M	Projected financial statements for two (2) years (including balance sheets and income statements) representing the new property usage
			N	Copy of most recent property appraisal.
			O	Applicant’s Articles of Incorporation.



December 28, 2015

Oregon Business Development Department  
Attn: Karen Homolac  
775 Sumner St NE, Suite 200  
Salem, OR 97301-1280

RE: Zoning Confirmation for City of Milwaukie/Metro Brownfields Analysis Application

Dear Ms. Homolac:

This letter serves as confirmation that the City Block 14 and "Cash Spot" sites are zoned Downtown Mixed Use DMU, which permits a broad range of development and uses, including the mix of uses proposed for these sites.

Sincerely,

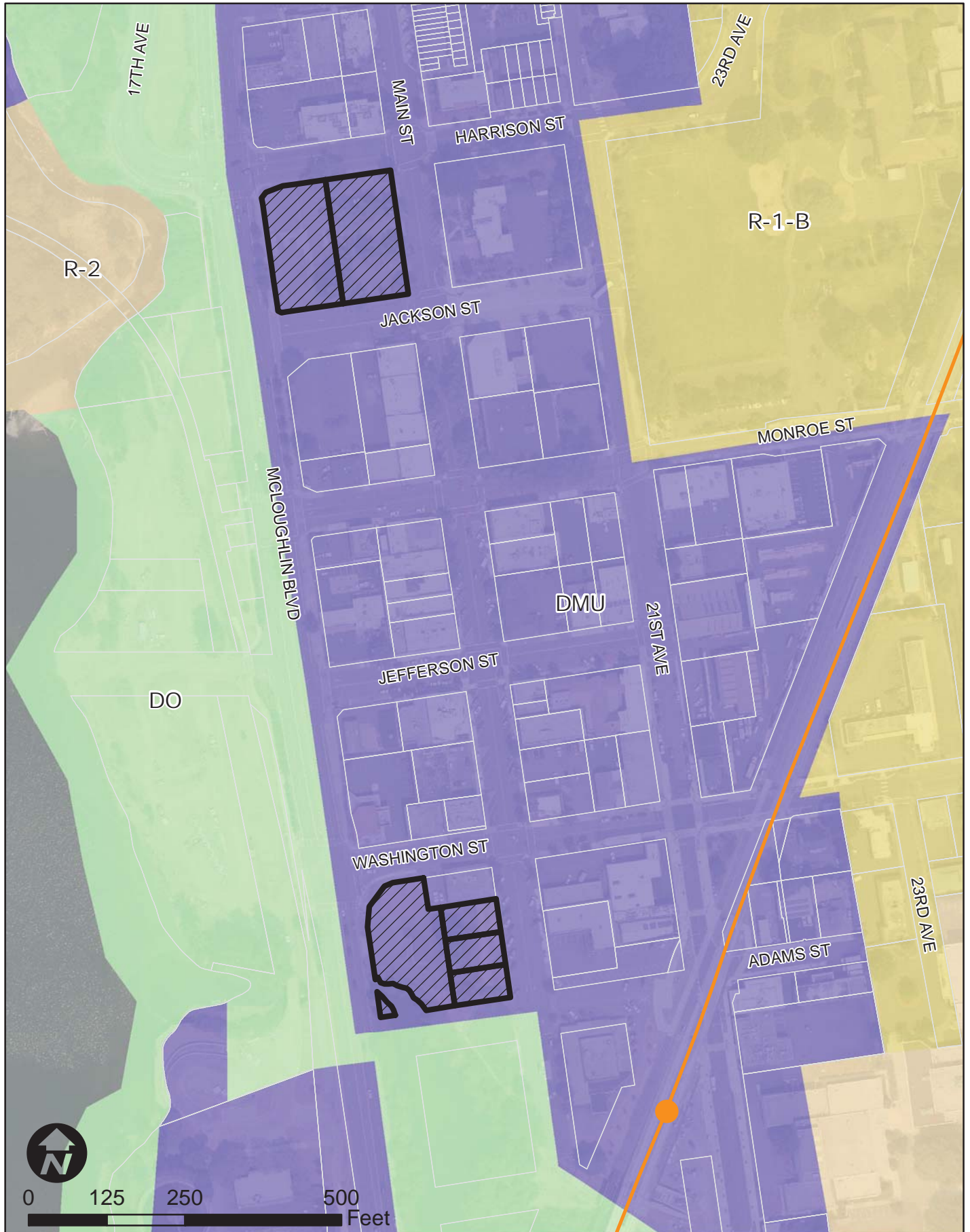
Li Alligood, AICP  
Senior Planner  
City of Milwaukie Planning Department  
503-786-7627  
alligoodl@milwaukieoregon.gov

Enclosure(s)

1. Zoning map

# Zoning Map

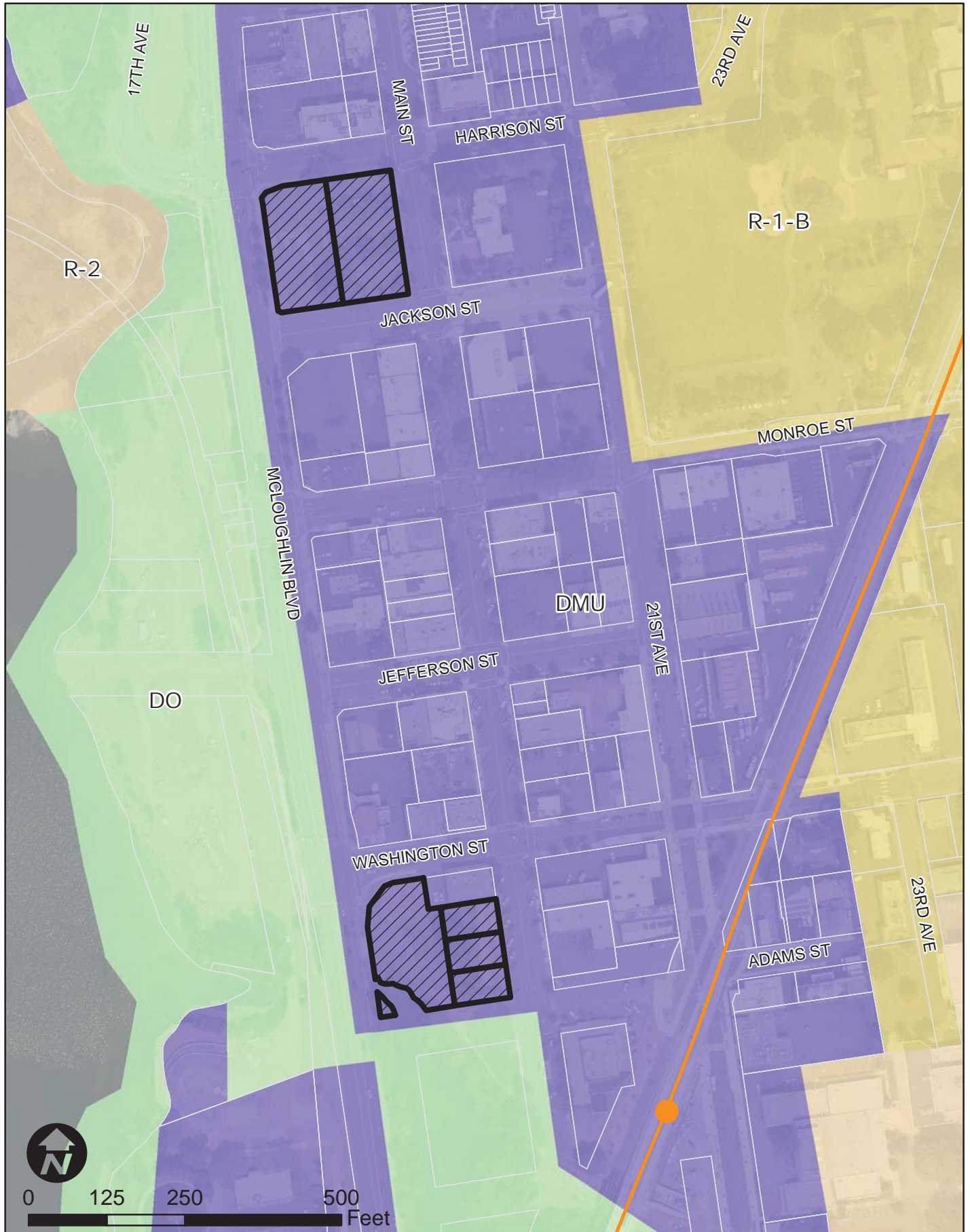
## Block 14 and "Cash Spot" Site Brownfields Analysis



**RS51**

# Zoning Map

## Block 14 and "Cash Spot" Site Brownfields Analysis



RS52

# Location Map

## Block 14 and "Cash Spot" Site Brownfields Analysis



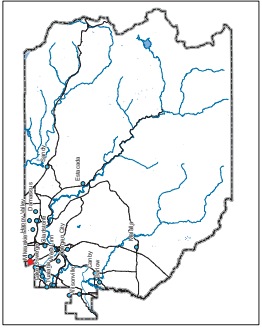
1 1 E 35AA  
MILWAUKIE  
CLACKAMAS COUNTY  
N.E. 1/4 N.E. 1/4 SEC. 35 T. 1 S. R. 1 E. W.M.  
1" = 100'

D. L. C.  
LOT WHITCOMB NO. 38  
WILLIAM MEEK NO. 50

Cancelled Taxlots

600
1000A1
2000
3000
4000
5000
6000
7000
8000
9000
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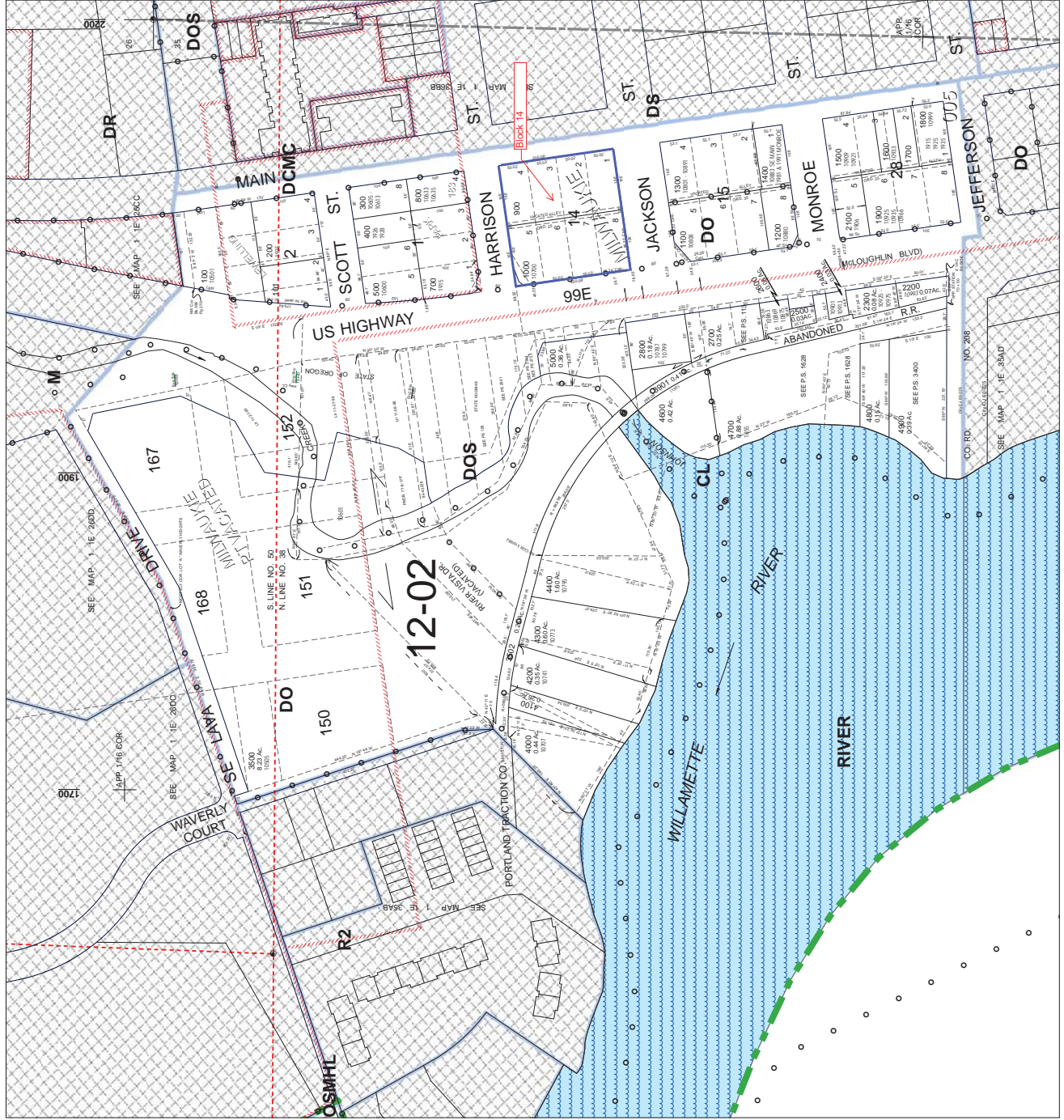
- Parcel Boundary
- Private Road ROW
- Historical Boundary
- Railroad Centerline
- Tax Code Lines
- Map Index
- Water Lines
- Land Use Zoning
- Plats
- Water
- Corner
- Section Corner
- 1/16th Line
- Govt Lot Line
- R.C. Line
- Miscellaneous Line
- PLSS Section Line
- Historic Corridor 40'
- Historic Corridor 20'



THIS MAP IS FOR ASSESSMENT  
PURPOSES ONLY

1 1 E 35AA  
MILWAUKIE

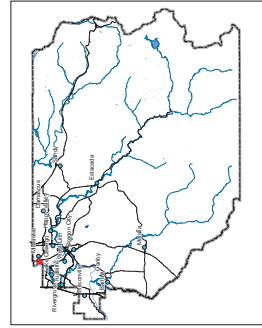
6/20/2015



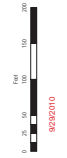
1 1 E 35 AD  
MILWAUKIE  
SE: 1/4 N.E.: 1/4 SEC. 35 T. 1 S. R. 1 E. W.M.  
Clackamas County  
1" = 100'

Cancelled Taxlots  
300  
600  
1800A1

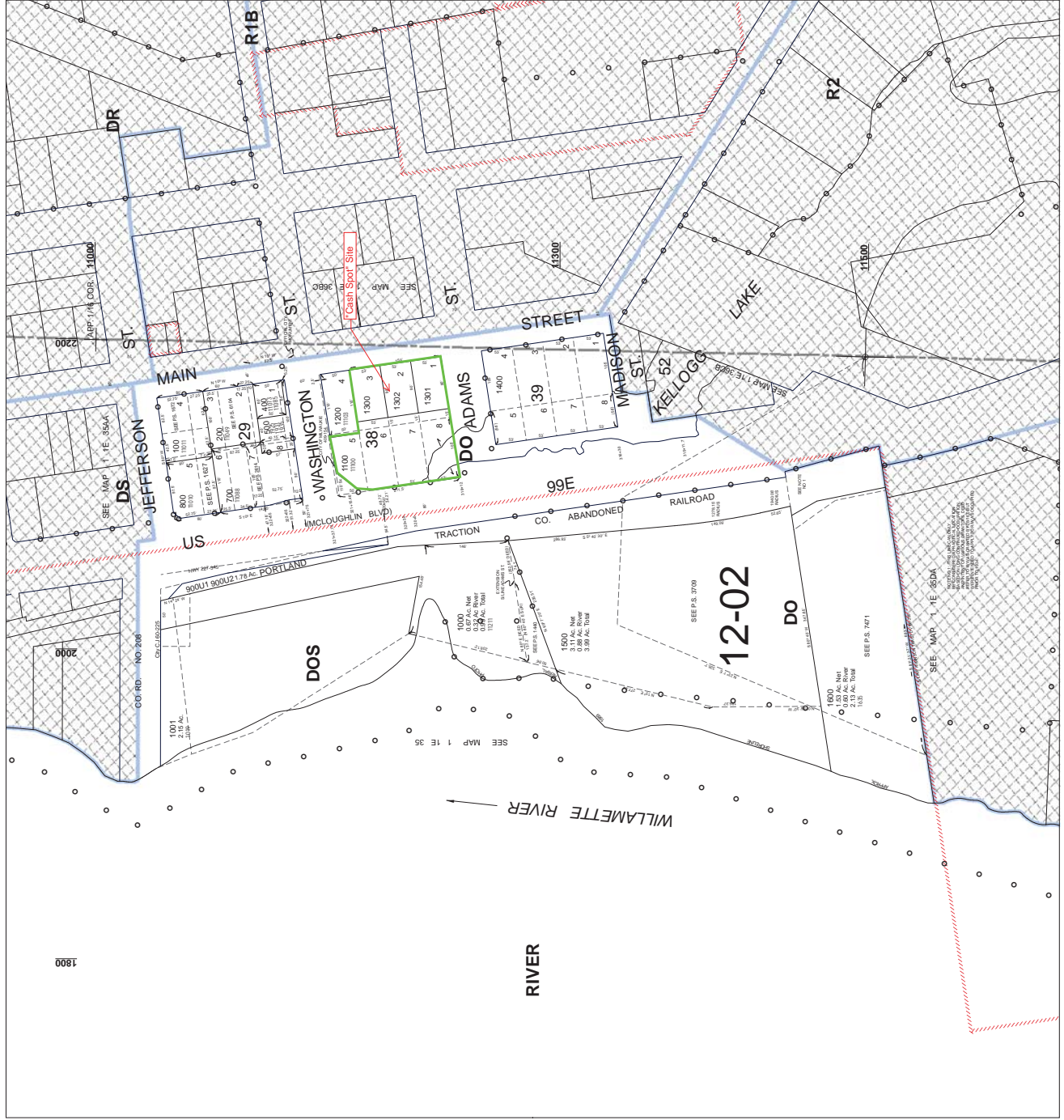
- Parcel Boundary
- Private Road ROW
- Historical Boundary
- Railroad Centerline
- Tax Code Lines
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- Corner
- Section Corner
- 1/16th Line
- Govt Lot Line
- R.C. Line
- Meadow Line
- PLSS Section Line
- Historic Corridor 40'
- Historic Corridor 20'



THIS MAP IS FOR ASSESSMENT  
PURPOSES ONLY



1 1 E 35 AD  
MILWAUKIE



## ATTACHMENT 2

OREGON BUSINESS DEVELOPMENT DEPARTMENT  
BROWNFIELDS REDEVELOPMENT FUND  
GRANT CONTRACT

Project Name: Milwaukie Cash Spot & City Block 14 Assessment Project

Project Number: N16006

This financing contract (“Contract”), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through its Oregon Business Development Department (“OBDD”), and the City of Milwaukie (“Recipient”) for financing of the project referred to above and described in Exhibit B (“Project”). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

Exhibit A	General Definitions
Exhibit B	Project Description
Exhibit C	Project Budget

### SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

“Estimated Project Cost” means \$60,000.

“Grant Amount” means \$60,000.

“Project Closeout Deadline” means 90 days after the earlier of the actual Project Completion Date or the Project Completion Deadline.

“Project Completion Deadline” means 24 months after the date of this Contract.

### SECTION 2 - GRANT AWARD

The OBDD shall provide Recipient, and Recipient shall accept from OBDD, financing for the Project specified as a grant (the “Grant”) in an aggregate amount not to exceed the Grant Amount.

Notwithstanding the above, the aggregate total of the Grant disbursed under this Contract cannot exceed the Costs of the Project.

### SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Grant will be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Grant on an OBDD-provided or OBDD-approved disbursement request form (“Disbursement Request”).
- B. Financing Availability. The OBDD’s obligation to make, and Recipient’s right to request, disbursements under this Contract terminates on the Project Closeout Deadline.

#### SECTION 4 - CONDITIONS PRECEDENT

- A. Conditions Precedent to OBDD's Obligations. The OBDD's obligations are subject to the receipt of the following items, in form and substance satisfactory to OBDD and its Counsel:
- (1) This Contract duly signed by an authorized officer of Recipient.
  - (2) Such other certificates, documents, opinions and information as OBDD may reasonably require.
- B. Conditions to Disbursements. As to any disbursement, OBDD has no obligation to disburse funds unless all following conditions are met:
- (1) There is no Default or Event of Default.
  - (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
  - (3) The OBDD, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
  - (4) The OBDD (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, releases, satisfactions or other signed statements or forms as OBDD may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
  - (5) The Recipient shall demonstrate, to the satisfaction of OBDD, that it has obtained all other funds that are necessary to complete the Project.
  - (6) The Recipient has delivered documentation satisfactory to OBDD that any requested pre-award expenditures meet all programmatic eligibility requirements, including, but not limited to, the nature of the activity, when the activity took place, and cost.
  - (7) Any conditions to disbursement elsewhere in this Contract or in the other Financing Documents are met.

#### SECTION 5 - USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Recipient shall use the Grant only for the activities described in Exhibit B and according to the budget in Exhibit C. The Recipient may not modify line items or amounts in the budget without the prior written consent of OBDD. Recipient will not use the Grant moneys to retire any debt.
- B. Costs of the Project. The Recipient shall apply the Grant to the Costs of the Project in accordance with the Act and Oregon law, as applicable. The Grant cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project.
- C. Costs Paid for by Others. The Recipient may not use any of the Grant to cover costs to be paid for by other financing for the Project from another State of Oregon agency or any third party.

## SECTION 6 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to OBDD:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in section 1, and the Project is fully funded.
- B. Organization and Authority.
- (1) The Recipient is a municipality, validly organized and existing under the laws of the State of Oregon.
  - (2) The Recipient has all necessary right, power and authority under Oregon law to (a) execute and deliver this Contract, (b) incur and perform its obligations under this Contract, and (c) receive financing for the Project.
  - (3) This Contract has been duly executed by Recipient, and when executed by OBDD, is legal, valid and binding, and enforceable in accordance with its terms.
- C. Full Disclosure. The Recipient has disclosed in writing to OBDD all facts that materially adversely affect the Project, or the ability of Recipient to make all payments and perform all obligations required by this Contract. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract is true and accurate in all respects.
- D. Pending Litigation. The Recipient has disclosed in writing to OBDD all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to perform all obligations required by this Contract.
- E. No Defaults.
- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract.
  - (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to perform all obligations required by this Contract.
- F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract will not: (i) cause a breach of any agreement or other instrument to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.
- G. Governmental Consent. The Recipient has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract for the financing and undertaking and completion of the Project.

## SECTION 7 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify OBDD of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to perform all obligations required by this Contract.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract, and the Project. In particular, but without limitation, Recipient shall comply with the following, as applicable:
- (1) State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.
  - (2) State labor standards and wage rates found in ORS chapter 279C.

These laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

- C. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty.
- D. The Recipient shall comply with regulatory oversight through the appropriate Oregon Department of Environmental Quality Program.
- E. Notifications. The Recipient shall reasonably acknowledge in some public fashion, such as in promotional materials, on its web site and in public statements, that the Project was funded in part with Oregon State Lottery Funds administered by the Oregon Business Development Department.

These laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

- F. Project Completion Obligations. The Recipient shall:
- (1) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by OBDD in writing.
  - (2) Within thirty (30) days after completion of the Project, but no later than the Project Closeout Deadline, provide OBDD with a final project completion report on a form provided by OBDD.

- G. Financial Records. The Recipient shall keep accurate books and records and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. The Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.

- H. Inspections; Information. The Recipient shall permit OBDD and any party designated by OBDD: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as OBDD may reasonably require.

- I. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Grant for a minimum of three years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Closeout Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.

- J. Economic Benefit Data. The OBDD may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion Date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by OBDD.
- K. Minority, Women & Emerging Small Business. ORS 200.090 requires all public agencies to “aggressively pursue a policy of providing opportunities for available contracts to emerging small businesses...” The OBDD encourages Recipient in any contracting activity to follow good faith efforts as described in ORS 200.045. Additional resources are provided by the Governor’s Policy Advisor for Economic and Business Equity. Also, the Certification Office for Business Inclusion and Diversity at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.
- L. Notice of Default. The Recipient shall give OBDD prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.
- M. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OBDD and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys’ fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.

**SECTION 8 - DEFAULTS**

Any of the following constitutes an “Event of Default”:

- A. Any false or misleading representation is made by or on behalf of Recipient, in this Contract or in any document provided by Recipient related to this Grant or the Project.
- B. Recipient fails to perform any obligation required under this Contract, other than those referred to in subsection A of this section 8, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by OBDD. The OBDD may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

**SECTION 9 - REMEDIES**

- A. Remedies. Upon any Event of Default, OBDD may pursue any or all remedies in this Contract and any other remedies available at law or in equity to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to any one or more of the following:
  - (1) Terminating OBDD’s commitment and obligation to make the Grant or disbursements under the Contract.
  - (2) Barring Recipient from applying for future awards.
  - (3) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract, including as provided in ORS 285B.449; however, this provision is not to be construed in a way that Recipient’s obligations would constitute debt that violates Section 10, Article XI of the Oregon Constitution.

- (4) Requiring repayment of the Grant and all interest earned by Recipient on those Grant funds.
- B. Application of Moneys. Any moneys collected by OBDD pursuant to section 9.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by OBDD; then, as applicable, to repay any Grant proceeds owed; then, to pay other amounts due and payable under this Contract, if any.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to OBDD is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The OBDD is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 8 of this Contract.
- D. Default by OBDD. In the event OBDD defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of OBDD's obligations.

## SECTION 10 - MISCELLANEOUS

- A. Time is of the Essence. Recipient agrees that time is of the essence under this Contract.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
  - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
  - (3) This Contract will be binding upon and inure to the benefit of OBDD, Recipient, and their respective successors and permitted assigns.
  - (4) Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract without the prior written consent of OBDD. The OBDD may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to OBDD, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of OBDD's Counsel. Any approved assignment is not to be construed as creating any obligation of OBDD beyond those in this Contract, nor does assignment relieve Recipient of any of its duties or obligations under this Contract.
  - (5) Recipient hereby approves and consents to any assignment, sale or transfer of this Contract that OBDD deems to be necessary.
- C. Disclaimer of Warranties; Limitation of Liability. The Recipient agrees that:
- (1) The OBDD makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
  - (2) In no event are OBDD or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.

D. Notices. All notices to be given under this Contract must be in writing and addressed as shown below, or to other addresses that either party may hereafter indicate pursuant to this section. Notices may only be delivered by personal delivery or mailed, postage prepaid. Any such notice is effective five calendar days after mailing, or upon actual delivery if personally delivered.

If to OBDD: Assistant Director for Infrastructure Finance Authority  
Oregon Business Development Department  
775 Summer Street NE Suite 200  
Salem OR 97301-1280

If to Recipient: Community Development Director  
City of Milwaukie  
6101 SE JOHNSON CREEK BLVD  
Portland OR 97206-0641

E. No Construction against Drafter. This Contract is to be construed as if the parties drafted it jointly.

F. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.

G. Amendments, Waivers. This Contract may not be amended without the prior written consent of OBDD (and when required, the Department of Justice) and Recipient. This Contract may not be amended in a manner that is not in compliance with the Act. No waiver or consent is effective unless in writing and signed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.

H. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to OBDD by its attorneys.

I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

J. Integration. This Contract (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.

K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

The Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



**STATE OF OREGON**  
acting by and through the  
Oregon Business Development Department



**CITY OF MILWAUKIE**

By: \_\_\_\_\_  
Chris Cummings, Assistant Director

By: \_\_\_\_\_  
William A. Monahan, City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:**

Not Required per OAR 137-045-0030

- Exhibit A: General Definitions
- Exhibit B: Project Description
- Exhibit C: Project Budget

## EXHIBIT A - GENERAL DEFINITIONS

As used in this Contract, the following terms have the meanings below.

“Act” means ORS 285A.185 through 285A.188, as amended.

“Award” means the award of financial assistance to Recipient by OBDD dated 1 March 2016.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Grant under applicable state or federal statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, OBDD or Recipient.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“ORS” means the Oregon Revised Statutes.

“Project Completion Date” means the date on which Recipient completes the Project.

## EXHIBIT B - PROJECT DESCRIPTION

Recipient will complete the following activities for both the “City Block 14” property located at 10700 SE McLoughlin Boulevard, Milwaukie, Oregon (Tax Lots #1S1E35AA01000 and 00900) and for the “Cash Spot” property located at 11100 SE McLoughlin Boulevard, Milwaukie, Oregon (Tax Lots #1S1E35AD01100, 01300, 01301, and 01302). Both properties are located in Clackamas County.

1. Completion of a Phase One Environmental Site Assessment to ASTM Standard 1527-13;
2. Completion (if determined necessary) of a Phase Two Environmental Site Assessment to current standard.

Recipient shall submit documentation to DEQ for review and approval.

**Exhibit C: Project Budget**

	<b>OBDD Funds</b>	<b>Other / Matching Funds</b>
Activity	Approved Budget	Approved Budget
Phase One ESA Block 14 Property	\$7,250	
Phase One ESA Cash Spot Property	7,250	
Phase Two ESA Block 14 Property	22,000	
Phase Two ESA Cash Spot Property	22,000	
DEQ Regulatory Oversight	1,500	
<b>Total</b>	<b>\$60,000</b>	



MILWAUKIE CITY COUNCIL  
AGENDA ITEM SUMMARY

Agenda Item: **RS 3. E.**  
Meeting Date: **April 5, 2016**

Title: **Appointments to Boards, Commissions, and Committees**

Prepared By: Jason Wachs, Community Programs Coordinator

Department Approval: Mitch Nieman, Assistant to City Manager

City Manager Approval: Bill Monahan, City Manager

**ISSUES BEFORE COUNCIL**

Recommendation to appoint one new member to the Design and Landmarks Committee and one new member to the Kellogg Good Neighbor Committee.

**STAFF RECOMMENDATION**

Appoint the following new member to the Design and Landmarks Committee as a result of interviews conducted on Monday, February 1, 2016 with Mayor Gamba, Councilor Parks, and Li Alligood:

- Design and Landmarks Committee – Appoint Lauren Loosveldt (Position #1).

Appoint the following new member to the Kellogg Good Neighborhood Committee as a result of the Historic Milwaukie Neighborhood District Association (NDA) vote on Monday, March 14, 2016.

- Kellogg Good Neighbor Committee – Appoint Mike Park (Position #4 – Historic Milwaukie Member).

**KEY FACTS & INFORMATION SUMMARY**

Refer to staff recommendations.

**OTHER ALTERNATIVES CONSIDERED**

NA

**CITY COUNCIL GOALS**

NA

**FISCAL NOTES**

NA

**ATTACHMENTS**

Resolutions for appointments.



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

**Resolution No.**

**A resolution of the City Council of the City of Milwaukie, Oregon appointing Lauren Loosveldt to the Design and Landmarks Committee.**

**WHEREAS,** A vacancy currently exists on the Design and Landmarks Committee; and

**WHEREAS,** Milwaukie Charter Section 26 provides that, "the mayor, with the consent of the council, shall appoint the various committees provided for under the rules of the council or otherwise and fill all vacancies in committees of the council from that body," and

**WHEREAS,** Lauren Loosveldt possesses the necessary qualifications to serve on the Design and Landmarks Committee.

**Now, therefore, the City of Milwaukie, Oregon resolves as follows:**

SECTION 1: That Lauren Loosveldt is appointed to the Design and Landmarks Committee position #1.

SECTION 2: That her term of appointment shall commence April 6, 2016 and shall expire March 31, 2018.

Introduced and adopted by the City Council on **April 5, 2016.**

This resolution is effective immediately.

---

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

---

Pat DuVal, City Recorder

---

City Attorney



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

**Resolution No.**

**A resolution of the City Council of the City of Milwaukie, Oregon appointing Mike Park to the Kellogg Good Neighbor Committee.**

**WHEREAS,** A vacancy currently exists on the Kellogg Good Neighbor Committee; and

**WHEREAS,** Milwaukie Charter Section 26 provides that, "the mayor, with the consent of the council, shall appoint the various committees provided for under the rules of the council or otherwise and fill all vacancies in committees of the council from that body," and

**WHEREAS,** Mike Park possesses the necessary qualifications to serve on the Kellogg Good Neighbor Committee.

**Now, therefore, the City of Milwaukie, Oregon resolves as follows:**

SECTION 1: That Mike Park is appointed to the Kellogg Good Neighbor Committee position #4 (Historic Milwaukie member).

SECTION 2: That his term of appointment shall commence April 6, 2016 and shall expire March 31, 2017.

Introduced and adopted by the City Council on **April 5, 2016**.

This resolution is effective immediately.

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Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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Pat DuVal, City Recorder

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City Attorney



**Regular Session  
Agenda Item No.**

**6**

# **Other Business**



MILWAUKIE CITY COUNCIL  
STAFF REPORT

Agenda Item: **RS 6. A.**  
Meeting Date: **April 5, 2016**

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **TriMet IGA to Close Out the Portland-Milwaukie  
Light Rail Transit Project**

From: Bill Monahan, City Manager

Date: March 29, 2016

### **ACTION REQUESTED**

Accept the Intergovernmental Agreement with TriMet to close-out the Portland-Milwaukie Light Rail Transit Project

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

Milwaukie and TriMet have worked together since 2008 to complete the Milwaukie portion of the Portland-Milwaukie Light Rail Transit Project. The City contributed five million dollars as its funding share.

June 5, 2012 – The City Council passed Resolution 35-2012 approving a settlement agreement with TriMet that legally obligated the City to pay its funding share. The settlement agreement covered all known obligations

### **BACKGROUND**

Since the settlement agreement between the City and TriMet was negotiated and approved in 2012; Milwaukie and TriMet completed the project to the extent that service began on September 12, 2015. There were some issues that remained, including storm water mitigation in the project area, traffic signal support and equipment installed at Washington, 21<sup>st</sup>, and Adams Street as part of the project, disposition of the “Milwaukie Triangle” site next to the downtown station, and railroad crossing adjustments.

Through negotiations, TriMet has agreed to the following:

1. Apply for a fee in lieu of construction (FILOC) for storm water mitigation and pay a negotiated amount into the FILOC account,
2. Pay the City \$131,000 as full and final consideration for all costs and expenses related to traffic signals installed for the project,
3. Sell the Milwaukie Triangle site to the City for the federal share of the property cost plus \$1,
4. Pay the City \$50,000 for costs related to railroad crossing adjustments, including all future maintenance costs.
5. Perform punch list final acceptance tasks and compensate the City by paying \$50,000 to satisfy all remaining issues related to the project.

All of the terms of the agreement noted above have been incorporated into an Intergovernmental agreement. Should the agreement be approved, the City will be responsible for carrying out the responsibilities noted in the agreement for which it is being compensated. In addition, the City and TriMet continue to work toward an agreement for the transfer of responsibilities related to eighteen (18) enhancements and benefits that were included in the scope of the project and identified in Exhibit C of the settlement agreement. Staff will continue to work with TriMet to facilitate transfer of responsibility of specific local enhancements and benefits at those times that it is appropriate that transfer of maintenance responsibilities be assumed by the City.

### **CONCURRENCE**

The City Engineer has negotiated the actual payment terms for specific project elements and concurs with the terms of the IGA. The City Attorney has reviewed the IGA and concurs.

### **FISCAL IMPACTS**

The City will receive payments from TriMet for the remaining project elements. The City will assume responsibility for completion of these project components.

### **WORK LOAD IMPACTS**

The city will continue to have responsibility for project work until each of the five project tasks, and transfer of maintenance of the eighteen local enhancements, is complete. Ongoing responsibility will rest with the City for each local enhancement that it retains ownership of.

### **ALTERNATIVES**

1. Reject the intergovernmental agreement and negotiate different terms with TriMet.

### **ATTACHMENTS**

1. Intergovernmental Agreement Between TriMet and the City of Milwaukie Related to the Close-Out of the Portland-Milwaukie Light Rail Transit Project.
2. Resolution authorizing the Mayor to sign the Intergovernmental Agreement on behalf of the City.
3. Resolution No. 35-2012 that approved the settlement with TriMet and listed the eighteen enhancements and benefits that were included in the scope of work.

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN TRIMET AND THE CITY OF MILWAUKIE RELATED TO  
THE CLOSE-OUT OF THE PORTLAND-MILWAUKIE  
LIGHT RAIL TRANSIT PROJECT**

This intergovernmental agreement (“Agreement”), dated \_\_\_\_\_, 2016 (“Effective Date”), is made and entered into by and between the City of Milwaukie (“City”) and the Tri-County Metropolitan Transportation District of Oregon (“TriMet”) (collectively the “Parties”).

**RECITALS**

1. TriMet and the City are authorized to enter into this Agreement with each other pursuant to the provisions of ORS 190.
2. TriMet recently completed the Portland-Milwaukie Light Rail Transit Project (“Project”), which runs from Portland State University in downtown Portland to Park Avenue in unincorporated Clackamas County. The Project runs through Milwaukie, and TriMet and the City were partners in the Project and worked cooperatively to construct the portion of the Project in the City in accordance with several other agreements between the parties, and in compliance with City code requirements.
3. With the Project now complete, the Parties wish to document and resolve several issues that remain regarding the Project.
4. TriMet will pay the City a total of \$351,000 as full and final consideration for and satisfaction of all remaining issues related to the Project.

**NOW, therefore**, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**AGREEMENT**

**A. STORM WATER MITIGATION**

1. The Parties are not in agreement regarding the requirements related to storm water treatment and mitigation, with the City alleging that a treatment area deficit exists. The Parties desire to resolve this disagreement in the manner set out in this section.

2. Within 30 days of the Effective Date, TriMet will submit an application for a “fee in lieu of construction” (“FILOC”) for all storm water management and mitigation requirements. The amount of the FILOC will be \$120,000. City agrees to promptly process and approve the FILOC.

3. Within 30 days of City approval of the FILOC, TriMet shall pay City a total of \$120,000 as full and final satisfaction of all TriMet obligations under any City code requirements, Storm Water Master Plan, or other law, code or regulation related to storm water management or mitigation requirements in the City.

## **B. TRAFFIC SIGNAL SUPPORT AND EQUIPMENT**

1. City was required to perform certain work on new traffic signals installed at Washington, 21<sup>st</sup> and Adams Streets as part of the Project (“Traffic Signals”). Under an agreement between the City and Clackamas County, the County performs all work on the Traffic Signals. The County will perform work totalling approximately \$131,000 for Project-related Traffic Signals work performed for the City. Because this work was required for the Project, TriMet agrees to pay the City \$131,000 as full and final consideration for all costs and expenses related to the Traffic Signals, including any and all future maintenance costs.

2. TriMet shall pay City \$131,000 within 30 days of the Effective Date. TriMet shall have no further responsibility or obligations related to the Traffic Signals.

## **C. “MILWAUKIE TRIANGLE” PROPERTY DISPOSITION**

1. As part of the Project, TriMet purchased property in downtown Milwaukie from the Union Pacific Railroad and the Horton Family Trust. After the property was used for Project purposes, an excess parcel remains. The excess parcel is referred to as the “Milwaukie Triangle” and is shown as “Tract 2” on Exhibit A, which is attached hereto and incorporated by this reference herein.

2. The Parties entered into an Intergovernmental Agreement dated July 14, 2015 “Regarding the Milwaukie Triangle Site,” which sets forth the terms and conditions of the sale of the property to the City. Among other things, that agreement states that the City will pay TriMet the federal share of the property plus \$1.00 for the site. The terms of that agreement shall continue to govern the disposition of the property, including payment from the City to TriMet.

## **D. RAILROAD CROSSING ADJUSTMENTS**

As part of the Project, City will be required to perform certain Railroad Crossing Adjustments work, as set forth below.

1. Existing Crossing Order – 21<sup>st</sup>/Adams/Washington
  - a. TriMet and the City resolved additional striping required to revise the Crossing Order at SE 21<sup>st</sup>/Washington/Adams after significant review by all Parties to the existing Crossing Order.
  - b. TriMet agreed to complete drawings and application for the revised Crossing Order.

2. New Crossing Order – Lake Road
  - a. ODOT Rail requires a new Crossing Order for Lake Road due to the change of operation of the roadway from one-way to two-way traffic. TriMet and the City agree that additional signage identified by ODOT Rail at this crossing is a Project related expense.
  - b. TriMet agreed to complete drawings and application for the new Crossing Order.
3. TriMet agrees to pay the City \$50,000 as full and final consideration for all costs and expenses related to the Railroad Crossing Adjustments, including any and all future maintenance costs. TriMet shall have no further responsibility or obligations related to the Railroad Crossing Adjustments.

**E. RESOLUTION OF REMAINING ISSUES**

1. Punchlist Final Acceptance
  - a. TriMet has completed all construction activity and issued the Certificate of Final Acceptance to its contractor on February 2, 2016. TriMet created a punchlist to remedy minor construction issues before contract closeout (“Punchlist”), which is expected to occur in April 2016. The Punchlist is attached hereto as Exhibit B and incorporated by this reference herein. All Punchlist items were completed as of March 15, 2016
  - b. City agrees that when TriMet’s contractor completes all Punchlist activities, such work is considered accepted for purposes of Permit Closeout.
2. Permit Closeout
  - a. Building Permits
    - i. City agrees to complete all building and engineering inspections related to the Building Permits and finalize all Building Permits by April 30, 2016.
  - b. Land Use Conditions
    - i. All conditions of approval related to the Project that were required prior to Permit Closeout have been met.
3. Completion of Remaining Agreements.
  - i. Both Parties agree to negotiate in good faith and enter into additional agreements and transactions as required by the Project no later than July 1, 2016, including:
    - a. Right of Way Agreement and required real property transactions;

- b. Continuing Control Agreement;
  - c. Maintenance Agreement.
4. Consideration

i. TriMet agrees to pay the City \$50,000 full and final consideration for and satisfaction of all remaining issues related to the Project, whether or not enumerated in this Agreement.

### **GENERAL PROVISIONS**

1. Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
2. The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
3. Milwaukie and TriMet are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are expressly described as intended beneficiaries of the terms of this Agreement.
4. Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
5. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties. The rights and obligations of each Party under this Agreement may not be assigned in whole or in part without the prior written consent of the other Party.

6. This Agreement shall be construed according to the laws of the State of Oregon. TriMet and Milwaukie shall negotiate in good faith to resolve any dispute arising under this Agreement. Should any dispute arise between the parties concerning this agreement that is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this agreement agree to participate in good faith in a non-binding mediation process. The mediation shall take place in Portland, Oregon. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. The mediator's fees and costs shall be borne equally by the parties. In the event mediation is unsuccessful, the Parties are free to pursue any legal remedies that may be available. Any litigation between Milwaukie and TriMet arising under this Agreement or out of work performed pursuant to this Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.
7. If any clause, sentence, or portion of the terms and conditions of this Agreement becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law. All provisions concerning indemnity survive the termination of this Agreement for any cause.
8. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
9. Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
10. 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 directors, 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.
11. All routine correspondence and communication regarding this Agreement shall be between the following representatives of the Parties:

TriMet: Leah Robbins  
1800 SW First Ave, Ste. 300  
Portland, OR 97201

With copy to: TriMet Legal Department  
1800 SW First Ave, Ste. 300  
Portland, OR 97201

City of Milwaukie: Bill Monahan  
10722 SE Main Street  
Milwaukie, OR 97222

14. Either Party may change the foregoing notice address by giving prior written notice thereof to the other Party at its notice address.

15. Each party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a party represents that it has been authorized by that party to execute and deliver this Agreement.

**TRI-COUNTY METROPOLITAN  
TRANSPORTATION DISTRICT OF  
OREGON**

**CITY OF MILWAUKIE**

By \_\_\_\_\_  
Daniel W. Blocher, P.E.

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

Date \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM**

**APPROVED AS TO FORM**

By \_\_\_\_\_  
Lance Erz, TriMet Legal Department

By \_\_\_\_\_  
Milwaukie City Attorney



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

**Resolution No.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AGREEING TO AN INTERGOVERNMENTAL AGREEMENT BETWEEN TRIMET AND THE CITY OF MILWAUKIE RELATED TO THE CLOSE-OUT OF THE PORTLAND-MILWAUKIE LIGHT RAIL TRANSIT PROJECT.**

**WHEREAS**, The City and TriMet worked with their partners the City of Portland and Clackamas County to apply for and receive funding from the United States Government to construct a light rail line linking Portland to Milwaukie and beyond to Park Avenue in Clackamas County; and

**WHEREAS**, whereas funds were contributed by each party to cause construction to occur; and

**WHEREAS**, the light rail line was completed and opened for service as of September 12, 2015, and;

**WHEREAS**, with the project now completed, the parties have worked cooperatively to document and resolve several issues that remain to be completed after opening of the light rail line, and

**WHEREAS**, an intergovernmental agreement has been negotiated that details the settlement of remaining issues.

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

Section 1: The Milwaukie City Council agrees to the terms of the Intergovernmental Agreement with TriMet to close-out the Portland-Milwaukie Light Rail Transit Project.

Section 2: The Mayor is authorized to sign the Intergovernmental Agreement on behalf of the city of Milwaukie.

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

This resolution is effective on April 5, 2016..

\_\_\_\_\_  
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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

**RESOLUTION NO. 35 -2012**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE,  
OREGON, APPROVING A SETTLEMENT AGREEMENT WITH TRIMET AND  
AUTHORIZING THE COUNCIL PRESIDENT TO SIGN THE AGREEMENT**

**WHEREAS** on December 16, 2008, TriMet and the City (the “Parties”) entered into an Intergovernmental Funding Agreement ( “Funding IGA”) obligating the City to pay Five Million and No/100 (\$5,000,000.00) dollars (“Funding Share”) for its share of TriMet’s installation of the Portland-Milwaukie Light Rail Transit Project (the “Project”);

**WHEREAS**, under paragraph 2 of the section entitled “Milwaukie Obligations” in the Funding IGA, the City is required to pay its Funding Share to TriMet in full within 90 days of Federal Transit Authority (“FTA”) approval of the Full Funding Grant Agreement (“FFGA”) for the Project (“Due Date”);

**WHEREAS**, The City agrees it is legally obligated to fulfill its obligations in the Funding IGA, but is unable to maintain its current service levels to its citizens if it were to provide the full amount of its Funding Share to TriMet by the Due Date;

**WHEREAS**, the City code requires payment of certain land use, construction, filing, review, inspections, other associated fees, and system development charges by TriMet to allow it to install the Project within the City (“Permit Fees and Charges”);

**WHEREAS**, ORS 30.395 provides authority for the settlement of claims and the appropriation of money in payment of claims against and between municipal corporations; and

**WHEREAS**, the Parties desire to reach a settlement that permits the City to pay TriMet its Funding Share in a manner that maintains city service levels and provides TriMet certainty with regard to Permit Fees and Charges, and further streamlines the process for payment of obligations between the Parties, and

**WHEREAS**, the City and TriMet have developed a Settlement Agreement and the City shall pay its obligation to TriMet consistent with the terms and conditions of the Settlement Agreement, and

**WHEREAS**, the City Council desires to place a bond measure before the voters to consider whether an alternative method of financing the City’s funding share will be made available.

**Now, therefore, the City of Milwaukie, Oregon, resolves as follows:**

- Section 1: That the City Council of the City of Milwaukie agrees to the terms of the Settlement Agreement with TriMet.
- Section 2: The Council President is authorized to sign the Settlement Agreement on behalf of the City of Milwaukie.

Section 3: The City Council will take steps to file a measure to be put before the voters of the City in May 2013 to authorize general obligation bonds to include payment of the City's debt related to the Portland-Milwaukie Light Rail Transit Project.

Section 4: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on <sup>PAD June</sup> ~~May~~ 5, 2012.

By: Greg Chaimov  
Council President Greg Chaimov

APPROVED AS TO FORM  
Jordan Ramis PC

ATTEST:

Pat DuVal  
Pat DuVal, City Recorder

Scott V. Harris  
City Attorney

Exhibit A

**Total Debt Service:**

	<b>Principal</b>	<b>Interest</b>	<b>Debt Service</b>	<b>Balance</b>
7/1/2012				\$ 3,650,000
7/1/2013	9,500	182,500	192,000	3,640,500
7/1/2014	19,500	182,025	201,525	3,621,000
7/1/2015	29,500	181,050	210,550	3,591,500
7/1/2016	39,500	179,575	219,075	3,552,000
7/1/2017	130,000	177,600	307,600	3,422,000
7/1/2018	146,500	171,100	317,600	3,275,500
7/1/2019	161,500	163,775	325,275	3,114,000
7/1/2020	176,500	155,700	332,200	2,937,500
7/1/2021	191,500	146,875	338,375	2,746,000
7/1/2022	206,500	137,300	343,800	2,539,500
7/1/2023	221,500	126,975	348,475	2,318,000
7/1/2024	236,500	115,900	352,400	2,081,500
7/1/2025	251,500	104,075	355,575	1,830,000
7/1/2026	266,500	91,500	358,000	1,563,500
7/1/2027	281,500	78,175	359,675	1,282,000
7/1/2028	296,500	64,100	360,600	985,500
7/1/2029	311,500	49,275	360,775	674,000
7/1/2030	326,500	33,700	360,200	347,500
7/1/2031	347,500	17,375	364,875	-
	<b>\$ 3,650,000</b>	<b>\$ 2,358,575</b>	<b>\$ 6,008,575</b>	

## SETTLEMENT AGREEMENT

**BETWEEN:** The City of Milwaukie, Oregon, a municipal corporation (“City”)

**AND:** TriMet, a municipal corporation (“TriMet”)

**CONCERNING:** Agreement on payment of City funding share, permit fees and development charges, and other obligations associated with the Portland-Milwaukie Light Rail Transit Project, (“Settlement Agreement”)

**DATED:** May \_\_\_\_, 2012 (“Effective Date”)

### RECITALS

**WHEREAS** on December 16, 2008, TriMet and the City (the “Parties”) entered into an Intergovernmental Funding Agreement ( “Funding IGA”) obligating the City to pay Five Million and No/100 (\$5,000,000.00) dollars (“Funding Share”) for its share of TriMet’s installation of the Portland-Milwaukie Light Rail Transit Project (the “Project”);

**WHEREAS**, TriMet has included in the scope of the Portland-Milwaukie LRT Project all of the local enhancements and benefits described in attached Exhibit C;

**WHEREAS**, under paragraph 2 of the section entitled “Milwaukie Obligations” in the Funding IGA, City is required to pay its Funding Share to TriMet in full within 90 days of FTA approval of the Full Funding Grant Agreement (“FFGA”) for the Project (“Due Date”);

**WHEREAS**, The City agrees it is legally obligated to fulfill its obligations in the Funding IGA, but is unable to maintain its current service levels to its citizens if it were to provide the full amount of its Funding Share to TriMet by the Due Date;

**WHEREAS** the City code requires payment of certain land use, construction, filing, review, inspections, other associated fees, and system development charges to install the Project within the City (“Permit Fees and Charges”);

**WHEREAS**, ORS 30.395 provides authority for the settlement of claims and the appropriation of money in payment of claims against and between municipal corporations; and

**WHEREAS**, the Parties desire to reach a settlement that permits the City to pay TriMet its Funding Share in a manner that maintains city service levels and provides TriMet certainty with regard to Permit Fees and Charges, and further streamlines the process for payment of obligations between the Parties.

## SETTLEMENT AGREEMENT

NOW, THEREFORE, based on the foregoing and in consideration of the mutual promises and covenants contained herein, the adequacy of which is hereby acknowledged, the parties agree as follows:

**1. Scope.** The provisions of this Settlement Agreement, made pursuant to ORS 30.395(1), amend the Funding IGA by replacing in its entirety paragraph 2 of the section entitled Milwaukie Obligations in the Funding IGA.

### **2. Consideration for Settlement.**

**2.1 Payment of Permit Fees and Charges.** The City agrees that under its code the total amount of Permit Fees and Charges for the Project will be exactly Nine Hundred Eighty-Nine Thousand Nine Hundred One and No/100 (\$989,901.00) dollars, as detailed in Exhibit A. The City agrees to pay this amount of Permit Fees and Charges through inter-fund transfers on behalf of TriMet and TriMet agrees that such payments by the City shall be part of the City's payment of its Funding Share. TriMet agrees that it will obtain permits for and include in the scope of the Portland-Milwaukie LRT Project the local enhancements and benefits described in attached Exhibit C.

**2.1.1 No Added Permit Fees and Charges.** In the event the City determines that additional Permit Fees or Charges beyond those shown in Exhibit A are required, the City may reallocate the amounts shown in Exhibit A to cover such additional fees or charges, but in no event shall the sum of Permit Fees and Charges exceed Nine Hundred Eighty-Nine Thousand Nine Hundred One and No/100 (\$989,901.00) dollars as provided for in Section 2.1.

**2.1.2 Payment Transaction.** The City shall document its payment of the Nine Hundred Eighty-Nine Thousand Nine Hundred One and No/100 (\$989,901.00) dollars described in Section 2.1 above in a manner that will qualify as a local match under Federal Transit Administration (the "FTA") regulations as set forth in Section 3, below.

**2.1.3 Reimbursement of Permit Fees and Charges Previously Paid by TriMet.** The City further agrees that as of the date on which this Settlement Agreement is executed TriMet has paid a total of \$131,115.62 in Permit Fees and Charges. The City agrees to reimburse TriMet for these payments as part of payment due to TriMet under Section 2.2, below.

**2.2 Initial Payment to TriMet.** On or before ninety (90) days from the date on which the FTA executes the Full Funding Grant Agreement for the Project, the City will convey to TriMet Three Hundred Sixty Thousand Ninety-Nine and No/100 (\$360,099.00) dollars.

**2.2.1** In addition, by the date described in Section 2.1 the City will also convey to TriMet \$131,115.62 as reimbursement for Permit Fees and Charges paid by TriMet, as set forth in subsection 2.1.3.

**2.3 Balance of Payments by City to TriMet.** The primary principal obligation of Five Million and No/100 (\$5,000,000.00) dollars of the City after application of the payments in Sections 2.1 and 2.2 above will result in the City owing TriMet a principal amount of Three Million Six Hundred Fifty Thousand and No/100 (\$3,650,000.00) dollars, said principal amount to be paid to TriMet by the City in annual installments as follows: Beginning on July 1, 2013, and annually thereafter until paid in full on July 1, 2031, the City shall make payments to TriMet of the remaining total principal amount plus interest at the rate of Five Percent (5%) in accordance with the payment schedule attached hereto as Exhibit B.

**3. Permit and System Development Fee Documentation.** The City shall prepare and provide to TriMet standard documentation for any and all Permit Fees and Charges as they are issued or incurred. Such documentation shall indicate the cost of each charge or permit issued and shall state "*Paid by City pursuant to Section 2.1 of the Settlement Agreement.*" The City shall also provide such additional documentation of payment of such Permit Fees and Charges as TriMet may reasonably request to comply with FTA and audit requirements.

**4. Appropriation of Funds.** As a Settlement Agreement under ORS 30.395(1), the City shall appropriate funds as required to fulfill its obligations to make annual payments to TriMet under subsection 2.3. The Parties may utilize the provisions of ORS 30.395(2) and ORS 30.295 to satisfy the liabilities herein.

**5. Remedies for Breach.** The parties may remedy any material breach under this Settlement Agreement in accordance with Oregon law. In the event of a breach for nonpayment when due of any amounts required by Section 2.2 or 2.3, interest will continue to accrue on the overdue principal and interest amounts at an interest rate of five (5) percent per annum until paid. In the event of a second or subsequent nonpayment when due of any principal or interest amounts required by Section 2.2 or 2.3, time being of the essence, TriMet may declare the entire principal sum required by Section 2.2 and 2.3 plus any interest payments then unpaid immediately due and payable.

**6. Agreement Made With Advice of Counsel.** The Parties have been represented and advised by independent counsel of their own choice, or have been given the opportunity to be represented and advised by independent counsel, throughout all negotiations that preceded the execution of this Settlement Agreement, and with respect to the execution of this Settlement Agreement.

**7. No Other Representations.** The Parties acknowledge that no other party, nor agent, nor attorney of any other party, has made any promise, representation or warranty, express or implied, not contained in this Settlement Agreement concerning the subject matter of this Settlement Agreement to induce this Settlement Agreement, and the Parties acknowledge that they have not executed this Settlement Agreement in reliance upon any such promise, representation or warranty not contained in this Settlement Agreement.

**8. No Prepayment Penalty.** The City may prepay the total principal plus accrued interest then owing under subsection 2.3 at any time without penalty and TriMet shall accept

such prepayment in full satisfaction of the total principal plus accrued interest then owing.


**9. Severability.** If any provision of this Settlement Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of the remaining provisions of this Settlement Agreement shall not be in any way impaired.

**10. Resolution of All Controversies.** This Agreement resolves and releases all disputes between the Parties arising from and related to payment of the City's \$5 million obligation to TriMet and TriMet's payment of Permit Fees and Charges to the City.

**11. Counterparts.** This Settlement Agreement may be executed in counterparts, each of which, when taken together, shall constitute fully executed originals. Facsimile and e-mail (scanned) signatures shall operate as original signatures with respect to this Settlement Agreement.

**CITY**

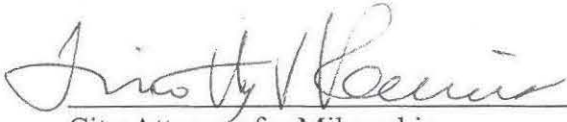
**TRIMET**

By:   
Name: Greg Chaimov  
Title: President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM

APPROVED AS TO FORM

  
City Attorney for Milwaukie

\_\_\_\_\_  
Attorney for TriMet

Exhibit A

PORTLAND / MILWAUKIE LIGHT RAIL PERMIT FEE & CHARGES ESTIMATE				
Description	Engineering Fee	Planning Fee	Building Fee	Sub-Total
Planning Fees [CSUs, PLAs, Variances etc.]		\$ 27,000.00		\$ 27,000.00
Planning Review [Signs, Building & Demolition Permits]		\$ 10,750.00		\$ 10,750.00
Elevated Structures [\$15M]			\$ 120,000.00	\$ 120,000.00
Retaining Walls [\$1.3M]			\$ 13,000.00	\$ 13,000.00
Grading [200,000 Cu. Yds]			\$ 6,000.00	\$ 6,000.00
Miscellaneous Structures [\$1M]			\$ 9,243.00	\$ 9,243.00
Demolitions [80,000 sf]			\$ 5,000.00	\$ 5,000.00
Miscellaneous utility reconnections / relocations 24 +/-properties to change connection			\$ 2,975.00	\$ 2,975.00
Erosion Control [15 acres]	\$ 2,500.00			\$ 2,500.00
Right of Way plan review and inspections [\$12M]	\$ 660,000.00			\$ 660,000.00
Impervious Surface SDC [52 ESU]	\$ 59,200.00			\$ 59,200.00
Wastewater SDC [1 EDU for Park Ave Station]	\$ 893.00			\$ 893.00
Water SDC & Connections [20 services for irrigation and maintenance]	\$ 73,340.00			\$ 73,340.00
<b>TOTAL</b>	<b>\$ 795,933.00</b>	<b>\$ 37,750.00</b>	<b>\$ 156,218.00</b>	<b>\$ 989,901.00</b>

Exhibit B

Annual Installment Schedule

	Principal	Interest	Total	Balance
7/1/2012				\$3,650,000
7/1/2013	9,500	182,500	192,000	3,640,500
7/1/2014	19,500	182,025	201,525	3,621,000
7/1/2015	29,500	181,050	210,550	3,591,500
7/1/2016	39,500	179,575	219,075	3,552,000
7/1/2017	130,000	177,600	307,600	3,422,000
7/1/2018	146,500	171,100	317,600	3,275,500
7/1/2019	161,500	163,775	325,275	3,114,000
7/1/2020	176,500	155,700	332,200	2,937,500
7/1/2021	191,500	146,875	338,375	2,746,000
7/1/2022	206,500	137,300	343,800	2,539,500
7/1/2023	221,500	126,975	348,475	2,318,000
7/1/2024	236,500	115,900	352,400	2,081,500
7/1/2025	251,500	104,075	355,575	1,830,000
7/1/2026	266,500	91,500	358,000	1,563,500
7/1/2027	281,500	78,175	359,675	1,282,000
7/1/2028	296,500	64,100	360,600	985,500
7/1/2029	311,500	49,275	360,775	674,000
7/1/2030	326,500	33,700	360,200	347,500
7/1/2031	347,500	17,375	364,875	-
	<b>\$3,650,000</b>	<b>\$2,358,575</b>	<b>\$6,008,575</b>	

## Exhibit C

The following local enhancements and benefits are included in the scope of the Portland-Milwaukie LRT Project:

- Enhance the Milwaukie LRT station by including a unique railing treatment and a shelter at the station
- Provide an aesthetic treatment of retaining walls in Downtown Milwaukie
- Tubular steel enhancements to the Kellogg Bridge structure
- Reconstruct and widen sidewalks at SE Mailwell, SE Harrison, SE Monroe, SE Washington and SE 21<sup>st</sup> Avenue
- Rebuild intersections along alignment; include new light standards, crosswalks, and curbs
- Provide quiet zone improvements along the alignment at SE Mailwell, SE Harrison, SE Monroe, and SE Washington/21<sup>st</sup> Avenue
- Underground utilities along alignment in portion of downtown
- Provide supplemental tree mitigation at Kronberg Park
- Replace existing water and sewer pipes at intersections along the alignment that are relocated as part of the project with new pipes
- Construct the Trolley Trail between SE River Road and SE Park Avenue.
- Provide vibration mitigation along alignment adjacent to impacted resources
- Provide public art at stations
- Realign SE Lake Road to allow for better bicycle access.
- Develop multi use path on west side of SE 21<sup>st</sup> Avenue between SE Lake and SE Washington
- Remove derelict piles in Kellogg Lake
- Remove invasive species on Kellogg Lake and Milwaukie Presbyterian church property
- Provide habitat mitigation at Crystal Creek
- Provide up to \$1 million for City Staff assigned to the Project



MILWAUKIE CITY COUNCIL  
STAFF REPORT

Agenda Item: **RS 6. B.**  
Meeting Date: **April 5, 2016**

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Approval of a resolution authorizing purchase of the Milwaukie Triangle Site from TriMet and delegation of signing authority to the City Manager to complete the purchase.**

From: Bill Monahan, City Manager

Date: March 29, 2016

### **ACTION REQUESTED**

Approval of a resolution authorizing purchase of the Milwaukie Triangle Site from TriMet and delegation of signing authority to the City Manager to complete the purchase.

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

On the April 5, 2016 City Council Agenda, the Milwaukie City Council will consider the approval of an Intergovernmental Agreement (IGA) with TriMet to close-out the Portland-Milwaukie Light Rail Transit Project.

### **BACKGROUND**

Section C. of the IGA with TriMet to close-out the Portland-Milwaukie Light Rail Transit Project IGA provides for the purchase of the Milwaukie Triangle site under terms agreed to in an earlier IGA dated July 14, 2015. The City Attorney and TriMet's attorney have been working out details to execute the purchase of the triangle site. The City Attorney reports that a few remaining details (including easements to benefit TriMet related to vibration and stormwater) remain to be finalized. In addition, the City Attorney needs to finalize review of the appraisal and transaction instruments. and

An acquisition price of \$92,203 has been established consistent with Federal Transportation Authority guidelines. The Community Development Director has solicited qualified proposals from food cart operators in an effort to lease the property to bring a business presence to the site during the summer of 2016. Completing the transaction will facilitate the lease of the property.

The final details of the transaction will be worked out by the City Attorney. The City Council through adoption of the attached resolution (upon completion of all necessary easements and closing documents acceptable in form by the City Attorney) will authorize the City Manager to take all appropriate steps to complete the land purchase.

### **CONCURRENCE**

The City Attorney has reviewed the IGA and has been working with TriMet's attorney to finalize transaction documents. Continuing efforts are underway to expedite the transaction after April 5.

**FISCAL IMPACTS**

The City will pay the FTA share of the land value plus \$1 to purchase the triangle site. That amount is \$92,203.

**WORK LOAD IMPACTS**

The City Attorney will have some work to do to complete the transaction.

**ALTERNATIVES**

The City and TriMet signed an IGA on July 14, 2015 that provides for the purchase of the Milwaukie Triangle site under terms consistent with the present proposal. Therefore, there is no alternative to finalizing the sale other than to negotiate different final terms.

**ATTACHMENTS**

1. Draft resolution of the Milwaukie City Council approving purchase of the Milwaukie Triangle Site from TriMet and delegating signing authority to the city Manager to complete the purchase.



**CITY OF MILWAUKIE**

*"Dogwood City of the West"*

**Resolution No.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE PURCHASE OF THE MILWAUKIE TRIANGLE SITE FROM TRIMET AND DELEGATING SIGNING AUTHORITY TO THE CITY MANAGER TO COMPLETE THE PURCHASE.**

**WHEREAS**, the Milwaukie City Council has approved an Intergovernmental Agreement (IGA) with TriMet to close-out the Portland-Milwaukie Light Rail Transit Project; and

**WHEREAS**; section C. of the IGA provides for the purchase of the Milwaukie Triangle site under terms agreed to in an earlier IGA dated July 14, 2015, and

**WHEREAS**, the City Attorney and TriMet's attorney are working out remaining details including easements to benefit TriMet related to vibration and stormwater, and

**WHEREAS**, an acquisition price of \$92,203 has been established consistent with Federal Transportation Authority guidelines, and

**WHEREAS**, the Community Development Department is working toward a lease of the property in order to bring business onto the site during the summer of 2016, and

**WHEREAS**, completing the transaction will facilitate the lease of the property.

**Now, Therefore, be it Resolved**

Section 1: The Milwaukie City Council approves the purchase price of the Milwaukie Triangle site,

Section 2: The Milwaukie City Council delegates to the City Attorney authority to negotiate easements with TriMet necessary for the light rail transit project acceptable to the Attorney,

Section 3: Upon completion of all necessary easements and closing documents acceptable in form by the City Attorney, the City Manager is authorized to take all appropriate steps to complete the land purchase including making mpayment to TriMet from the City's general fund,

Section 4: The City Manager is directed to initiate a supplemental budget amendment reflecting the receipt of funds paid to the City by TriMet in this fiscal year and the source of funds for the City payment to TriMet authorized by this Resolution.

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

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

---

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

---

Pat DuVal, City Recorder

---

City Attorney



MILWAUKIE CITY COUNCIL  
STAFF REPORT

Agenda Item: **RS 6. C.**  
Meeting Date: **April 5, 2016**

To: Mayor and City Council  
Through: Bill Monahan, City Manager  
Subject: **Amendment to Legal Services Agreement for City Attorney Services**  
From: Bill Monahan, City Manager  
Date: March 28, 2016

### **ACTION REQUESTED**

Approve a resolution that amends the Legal Services Agreement for City Attorney legal services with Jordan Ramis PC.

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

February 16, 2016 – City Council met with the City Attorney and conducted a review. Council directed that a new agreement should be brought forth for approval.

January 15, 2016 – Tim Ramis, City Attorney, submitted a letter to the City requesting consideration of revised charges for city attorney services and a performance review.

January, 2009 – Tim Ramis, City Attorney, then with the Jordan, Schrader Ramis PC law firm requested and was granted attorney and paralegal rate increases. The rate increases marked the first increases granted in several years. The origin of the contract for city attorney services goes back to 1988 when the then O'Donnell, Ramis and Crew firm was initially contracted to perform legal services on a temporary basis. The firm was formally appointed as city attorney in 1989.

July, 23, 1998 – A Legal Services Agreement was executed between the City and Tim Ramis' law firm. That agreement, as amended four times, has remained in full effect.

1988 – Tim Ramis was appointed as interim City Attorney for the City of Milwaukie.

### **BACKGROUND**

Tim Ramis, of Jordan Ramis, PC, has served as City Attorney for the City of Milwaukie since July, 1988. Atty. Ramis has been retained as the primary city attorney for the City since 1988 while his law firm, named as the Contractor in each legal services agreement and amendment since then, has undergone numerous staffing and name changes. Periodically, the law firm has requested adjustments to the rates of attorneys as well as paralegals.

The last rate increase was granted in January, 2006, seven years ago. Pursuant to the legal services agreement, Atty. Ramis submitted a letter on January 15, 2016, requesting a rate increase and a performance review. The City Council conducted a review of the City Attorney's performance on February 16 and expressed satisfaction with the work performed, with direction that it would entertain a rate increase consistent with the January 15, 2016 request.

A resolution has been prepared authorizing the City Manager to sign the agreement, accepting a new Legal Services Agreement that includes rate adjustments effective July 1, 2016. Either party may terminate the agreement upon thirty days' written notice of termination. Future rate increases may be submitted as proposed modifications to the agreement.

### **CONCURRENCE**

The City Manager's Office requested that Atty. Ramis prepare a complete Legal Services Agreement to replace the earlier agreement that had been in effect as amended since 1998. The new agreement brings the agreement up to date and outlines the hourly rates proposed by the firm and found to be acceptable by the City Council. The agreement includes description of when higher specialty rates will apply.

### **FISCAL IMPACTS**

An increase in rates is expected to result in an increase in rates of 11.1% for routine work and higher for specialty work. Overall, the cost of city attorney services is based upon volume of work performed. If the same number of hours of routine work is performed in future years, the cost will increase by 11.1 %. Specialty work, if needed, will be billed at a higher rate.

### **WORK LOAD IMPACTS**

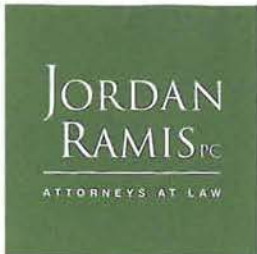
None

### **ALTERNATIVES**

1. Deny a rate increase, the first requested since January, 2009.
2. Consider alternative delivery of legal services.

### **ATTACHMENTS**

1. Letter of January 15, 2016 from Tim Ramis
2. Letter of March, 25, 2016 and Legal Services Agreement
3. Resolution authorizing the City Manager to sign a legal services agreement on behalf of the City.



Lake Oswego  
Two Centerpointe Dr., 6th Floor  
Lake Oswego, OR 97035  
503-598-7070  
www.jordanramis.com

Vancouver  
1499 SE Tech Center Pl., #380  
Vancouver, WA 98683  
360-567-3900

## Attachment 1

Bend  
360 SW Bond St., Suite 510  
Bend, OR 97702  
541-550-7900

January 15, 2016

William A. Monahan  
City of Milwaukie  
10722 SE Main St  
Milwaukie OR 97222

Re: **City Attorney Rates**  
*City of Milwaukie / General*  
Our File No. 49979-36738

Dear Bill:

As you are aware we have kept the rates which our firm charges for legal services unchanged since 2009. Over the past six years, our costs to provide high quality lawyers and staff have increased. I am therefore writing to propose a rate increase. I would also appreciate the opportunity to meet with the Council to review our performance and to discuss the City's legal needs going forward.

Pursuant to our Legal Services Agreement with the City, we have provided services at the rates of \$180/hr. for attorneys and \$145/hr. for paralegals since 2009 without an annual rate increase. We propose that our rates be increased effective July 1, 2016, to \$200/hr. for attorneys on municipal law issues and \$170/hr. for paralegals. Attorney rates for specialized work such as litigation, construction, employment, water law and environmental law be billed at \$250/hour. We also propose to amend the agreement to reflect that the relationship is ongoing and recognize how we currently manage the provisions of legal service.

If these proposed rates are acceptable, please sign the enclosed amendment and return it to us in the envelope provided.

I would like the opportunity to discuss with the Council their view of the future legal needs of the City. We have impressions of those needs from the legal practitioner's point of view, but want to test those against the City's assessment so that we can best align our personnel assignments with the City's actual needs.

If you wish to discuss this matter further, please feel free to give me a call.

Sincerely,

JORDAN RAMIS PC

Timothy V. Ramis  
Admitted in Oregon  
tim.ramis@jordanramis.com  
OR Direct Dial (503) 598-5573

Enclosure

RS95



**Lake Oswego**  
Two Centerpointe Dr., 6th Floor  
Lake Oswego, OR 97035  
503-598-7070  
[www.jordanramis.com](http://www.jordanramis.com)

**Vancouver**  
1499 SE Tech Center Pl., #380  
Vancouver, WA 98683  
360-567-3900

## Attachment 2

**Bend**  
360 SW Bond St., Suite 510  
Bend, OR 97702  
541-550-7900

March 25, 2016

William A. Monahan  
City Manager  
City of Milwaukie  
10722 SE Main St  
Milwaukie OR 97222

Re: **Legal Services Agreement**  
*General/Council*  
Our File No. 49979-36738

Dear Bill:

Enclosed is our revised proposed legal services agreement. The rates are as discussed with the City Council. Regarding the issue of triggering specialty services, we have included a requirement that litigation rates do not begin until an actual case gets filed, and perhaps most importantly, we have put in a provision that requires us to obtain approval from the City prior to opening a file with the specialty services rates.

Sincerely,

JORDAN RAMIS PC

Timothy V. Ramis  
*Admitted in Oregon*  
[tim.ramis@jordanramis.com](mailto:tim.ramis@jordanramis.com)  
OR Direct Dial (503) 598-5573

Enclosures

## LEGAL SERVICES AGREEMENT

THIS LEGAL SERVICES AGREEMENT ("Agreement") is made and entered into by and between the City of Milwaukie, an Oregon municipal corporation ("City") and Jordan Ramis PC, a professional corporation ("Firm") as of July 1, 2016 ("Effective Date").

### RECITALS

- A.** The City is in need of legal services and the Firm is qualified and prepared to provide such services.
- B.** It is the purpose of this Agreement to establish the services to be provided by the Firm and the compensation for such services.

### AGREEMENT

- 1. Engagement.** The City hereby engages the Firm as its counsel and the Firm accepts such engagement. The Firm shall be an independent contractor for all purposes. Tim Ramis shall be the lead attorney primarily responsible for provision of services, but will refer certain matters to other lawyers or paralegals in the Firm depending on the need for specific skills and availability.
- 2. Scope of Services.** The duties of the Firm shall be as follows:
- a. Attendance at City meetings upon request.
  - b. Provision of legal advice and assistance to City Staff and City Council at the request of the City Council or the City Manager.
  - c. Preparation of legal documents, or review and approval of such documents prepared by others, as needed for City operation.
  - d. Representation of the City in negotiations, meetings, or hearings pertaining to City operation, as needed.
  - e. Representation of the City in administrative proceedings, civil litigation and appeals, or supervision of same, pertaining to City operation, as needed.
  - f. Other duties as may be prescribed by the City.
- 3. Compensation.** The Firm shall provide the services outlined above, and shall be compensated on the following basis:
- a. As of the Effective Date, for other than specialty services, defined in subsection (b) below, the Firm shall be compensated on an hourly basis at the rate of \$200 per hour for attorney time, \$170 per hour for paralegal time, and \$75 per hour for project assistant time.
  - b. Notwithstanding this section, the Firm will charge higher rates for provision of services provided by attorneys with specialties other than municipal law, including but not limited to matters relating to environmental law, water and natural resources law, and litigation (all fees incurred after commencement of action), including administrative hearings. The Firm shall confirm with the City that a file is approved to be opened and that the specialty services rates apply, before charging fees at the specialty services rates. The Firm shall be compensated at \$250 per hour for attorney time for specialty services. When work on a matter

partially involves general municipal law tasks, that portion of the work will be billed at non specialty rates.

**4. Costs and Fees.** In addition to the compensation provision set out in Section 3, Firm shall collect actual out-of-pocket expenses including but not limited to filing and service fees, government agency fees, postage, facsimile, copying, long distance phone, messenger service, courier, travel, search fees, delivery charges, recordation fees, public notices, trial and reporter fees, deposition transcripts, blueprints and photography, computer legal research, database access, and expert witness fees. Such expenses shall be recovered from the City at Firm's actual cost.

**5. Term.**

a. This Agreement shall commence as of the Effective Date, and shall continue until terminated pursuant to this Agreement.

b. Either party may terminate this Agreement upon thirty (30) days' written notice of termination provided to the other party. Upon such termination, the City shall pay the Firm for expenses actually incurred in performance of this Agreement prior to termination.

**6. Payment.** The Firm shall make and keep reasonable records of work performed and expenses incurred pursuant to this Agreement and shall provide detailed monthly billings to the City. Billings for fees and expenses shall be paid in full within thirty (30) days of receipt thereof.

**7. Insurance.**

a. Firm shall maintain professional liability insurance insuring Firm against errors or omissions in the amount and on the conditions required by the Professional Liability Fund of the Oregon State Bar.

b. Firm shall maintain commercial and automobile liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence.

**8. Records.** Firm, upon City's request, shall allow the City to examine and copy any record or document pertinent to this Agreement or generated pursuant to this Agreement.

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

CITY : City of Milwaukie  
Attn.: City Manager  
10722 SE Main St.  
Milwaukie, OR 97222

FIRM: Jordan Ramis PC  
Attn: Tim Ramis  
Two Centerpointe Drive, 6<sup>th</sup> Floor  
Lake Oswego, OR 97035-8608

When so addressed, such notices, bills and payments shall be deemed given upon deposit in the United States mail, postage prepaid.

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

**11. Waiver.** A waiver by a party of any breach by the other shall not be deemed to be a **waiver** of any subsequent breach.

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

**13. Governing Laws.** This Agreement shall be governed by the laws of the State of Oregon. Venue shall be in the Circuit Court for Clackamas County, Oregon. The Firm shall adhere to all applicable federal, state and local laws and rules in performance of this Agreement.

**14. Counterparts.** This Agreement may be executed in counterparts. For the purpose of obtaining signatures on this document, original signatures, once affixed, may be transmitted among the parties by facsimile or electronic transmission, and signatures thus transmitted shall be deemed to be original signatures for the purpose of this Agreement.

**15. Severability.** If any term or condition stated herein is found void, invalid, or otherwise unenforceable under the laws of the State of Oregon, such provision shall be stricken and all other terms will remain in full force and effect.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned agents and Firm has executed this Agreement on the Effective Date.

CITY OF MILWAUKIE

JORDAN RAMIS PC

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

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



**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 A LEGAL SERVICES AGREEMENT WITH JORDAN RAMIS PC.**

**WHEREAS**, Tim Ramis has served as the City of Milwaukie’s City Attorney since 1988; and

**WHEREAS**, the City Council recently conducted a review of the performance of the City Attorney and expressed satisfaction with the services received and gave staff direction that it would entertain a rate increase for legal services consistent with the request submitted by Jordan Ramis PC on January 15, 2016 and

**WHEREAS**, a new Legal Services Agreement is before the City Council that updates the arrangement for services and establishes new rates that will be effective July 1, 2016.

**Now, Therefore, be it Resolved**

1. The City Council expresses satisfaction with the performance of Jordan Ramis, PC as City Attorney for the City, and
2. The City Council authorizes the City Manager to execute a revised Legal Services Agreement prepared by Jordan Ramis PC replacing the 1998 agreement that had been modified four times.

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

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

\_\_\_\_\_  
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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



MILWAUKIE CITY COUNCIL  
STAFF REPORT

Agenda Item:  
Meeting Date:

**RS 6. D.**  
**April 5, 2016**

To: Mayor and City Council  
Through: Bill Monahan, City Manager  
Charles Eaton, Engineering Director

**Added to Agenda**  
**April 1, 2016**

Subject: **Award 5-yr On-Call Survey Contract**

From: Geoff Nettleton, Civil Engineer

Date: March 29, 2016

### **ACTION REQUESTED**

Authorize the City Manager to execute a contract with Harper Houf Peterson and Regallis, inc for On-Call surveying services.

### **BACKGROUND**

The Engineering Department has an ongoing need for licensed professional survey services for a variety of projects. The fundamental requirement for the design of a new project is to have an understanding of existing conditions. A licensed professional surveying consultant will utilize the latest technology to determine and establish right-of-way and property boundaries, submit required survey maps to the county as required by ORS 209.40, 209.150, and 209.155, and deliver a CAD file to engineering staff to utilize in the design of Capital Improvement Projects. The Survey Consultant will also provide professional judgment in advising the City of legal survey requirements as required by the above mentioned ORS.

Types of services that the Survey Consultant will provide are as follows:

- Pre/Post Records of Survey
- Monument Recovery Survey
- ALTA/Plat Surveys
- Topographic Survey
- FEMA Elevation Certificates
- As-built Surveys

The Engineering Division advertised the RFQ for this contract on January 5<sup>th</sup>, 2016 and received proposals from eight (8) surveying consultants. Engineering staff put together a team of three (3) raters who read and evaluated each proposal and ranked them based on the content of each proposal with a scoring system. Using the weighted averages of the scores, the firm with the highest score was considered the most qualified for the job. HHPR scored the highest.

Individual task orders will be issued with specific scope, schedule and fee for each identified project. Engineering staff has been working with HHPR in identifying scope of the initial 4 task orders projected for FY2017. The recommended contract value below reflects these negotiations.

The Engineering Department estimates that the 4 task orders for FY 2017 would total about \$150,000. In accordance with the City of Milwaukie Purchasing Policy procedures 70.015 a total Not to Exceed (NTE) contract of \$250,000 over the next 5 years is recommended.

#### **FISCAL IMPACTS**

None; All work will be associated with an identified capital improvement project and be billed to the appropriate budget for the project.

#### **WORK LOAD IMPACTS**

None.

#### **ALTERNATIVES**

1. Advertise and award a separate RFP each project in which survey is needed.
2. Add a registered Surveyor on Staff to perform these services

#### **ATTACHMENTS**

1. ORS 209.140, 209.150 & 209.155
2. Resolution
3. On-Call services Contract

## **209.140**

### **Necessary interference with corners**

- **prior notice to county surveyor required**
- **exception for emergency**
- **fees**

(1) Any person or public agency that finds it necessary to interfere with or pave over any established public land survey corner or accessories for any reason, shall notify the county surveyor prior to the interference, who shall lower and witness the monument, or place another monument and witness over the existing monument or reference and replace or set a witness monument, as the case may demand, and record the proceedings in the record of permanent surveys. The county surveyor may charge a fee in an amount that will reimburse the county for the work performed.

(2) When an emergency exists and the county surveyor is unavailable, the person or public agency causing the interference shall cause a registered professional land surveyor to preserve the monument as required in subsection (1) of this section. The registered professional land surveyor referencing the monument shall notify the county surveyor of the references within two business days after the references or interference, whichever occurs first. [Amended by 1979 c.653 §9; 1985 c.582 §8; 1989 c.394 §11]

## **209.150**

### **Removal or destruction of monument**

- **notice to county surveyor**
- **replacement of monument**
- **exception**

(1) Any person or public agency removing, disturbing or destroying any survey monument of record in the office of the county surveyor or county clerk shall cause a registered professional land surveyor to reference and replace the monument within 90 days of the removal, disturbance or destruction. The registered professional land surveyor referencing and replacing the monument shall do so in the same manner that is provided for public land survey corners according to ORS [209.140 \(Necessary interference with corners\)](#) and shall notify the county

surveyor of that action within two business days. The costs of referencing and replacing the survey monument shall be paid by the person or public agency causing the removal, disturbance or destruction.

(2) Notwithstanding subsection (1) of this section, a county surveyor may, upon written request and written notice to an affected property owner, provide written authorization to a registered professional land surveyor to remove a survey monument other than a public land survey corner as defined in ORS [209.005 \(Definitions\)](#). A county surveyor may require that the position of the removed monument be referenced to another survey monument and noted on a survey map filed in accordance with ORS [209.250 \(Survey by registered land surveyor\)](#). [Amended by 1979 c.653 §10; 1989 c. 394 §12; 1991 c.339 §2; 1997 c.336 §3; 1997 c.489 §10]

## 209.155

# Removal or destruction of monument during road construction

- **survey map in lieu of replacement**
- **delineation of newly defined right of way**

(1) Notwithstanding ORS [209.150 \(Removal or destruction of monument\)](#), when a recorded survey monument, other than a public land survey corner, is removed, destroyed or disturbed as a result of construction or reconstruction of a public road, the survey monument does not have to be replaced if:

(a) The original location of the recorded survey monument is within the new right of way; and

(b) The person or public agency responsible for the construction or reconstruction causes a registered professional land surveyor to locate any survey monuments that are subject to removal, destruction or disturbance and to file a map, prior to the beginning of construction, with the county surveyor that identifies all existing recorded monuments, the existing right of way and controlling centerline and the survey control used to comply with this section.

(2) The newly defined right of way may be delineated by either of the following methods:

(a) All control points that define the right of way centerline are monumented or referenced with monuments. The right of way boundary is monumented at all angle points, points of curve, points of tangency and at least every 1,000 feet on long curves and tangents. A survey that identifies the survey control and the new right of way and controlling centerline shall be filed with the county surveyor within 180 days after completion of construction.

(b) A permanent survey control point network is established referencing the new right of way and controlling centerline. The network shall consist of at least three control monuments and must span the length of the project. Each control monument shall be intervisible with at least two other control monuments. At least two monuments on the network must be part of the original control used to locate the monuments described in subsection (1)(b) of this section. A map identifying the control network and the new right of way and controlling centerline shall be filed with the county surveyor within 180 days after completion of construction.

(3) The types of monuments shall be as described in ORS [92.060 \(Marking subdivision, partition or condominium plats with monuments\)](#).

(4) The survey maps required by this section shall comply with ORS [209.250 \(Survey by registered land surveyor\)](#) and any other requirement of law.

(5) For the purpose of complying with subsection (1)(b) of this section, locating a survey monument may consist of establishing coordinates on the monument using the Oregon Coordinate System pursuant to ORS [93.312 \(Oregon Coordinate System\)](#), Local Datum Plane coordinates that scale Oregon State Plane coordinates of the Oregon Coordinate System to a plane close to the ground elevation of a survey project or other coordinates compatible with those coordinates shown on the survey.

(6) For the purpose of complying with this section, the date of completion of construction is deemed to be the date when all substantial road improvements are completed. [1997 c.336 §2; 2011 c.179 §3]



**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 EXECUTE A CONTRACT WITH HARPER, HOUF, PETERSON AND RIGHELLIS, INC. FOR ON-CALL SURVEYING SERVICES.**

**WHEREAS**, The Milwaukie Capital Improvement Plan identifies projects requiring the services of a professional Land Surveyor; and

**WHEREAS**, 8 proposals were received to perform surveying on-call services; and

**WHEREAS**, the proposals were reviewed by a three-person panel and Harper Houf Peterson and Reghallis, Inc. was selected by this panel as the best firm for this work; and

**Now, Therefore, be it Resolved** that the City of Milwaukie authorizes the City Manager to sign a contract for On-Call surveying services with Harper Houf Peterson and Reghallis, Inc. for a not to exceed amount of \$250,000 over the next five years.

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

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

\_\_\_\_\_  
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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



**SURVEYING SERVICES AGREEMENT  
WITH THE CITY OF MILWAUKIE, OREGON  
FOR ON-CALL SURVEYING SERVICES (2016-2021)**

**THIS AGREEMENT**, made and entered into this 5th day of April, 2016, by and between the City of Milwaukie, a municipal corporation, hereinafter referred to as the "City," and Harper Houf Peterson Righellis, Inc, whose authorized representative is Pat Gaylord, and having a principal being a registered surveyor of the State of Oregon, hereinafter referred to as the "Surveyor."

**RECITALS**

**WHEREAS**, the City's Fiscal Years 2016 through 2021 budget provides for the services of a licensed on-call land surveyor; and

**WHEREAS**, the accomplishment of the work and services described in this Agreement is necessary and essential to the public works improvement program of the City; and

**WHEREAS**, the City desires to engage the Surveyor to render professional surveying services for the project described in this Agreement, and the Surveyor is willing and qualified to perform such services;

**THEREFORE**, in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

**1. Surveyor's Scope of Services**

The Surveyor shall perform professional surveying services relevant to the Project in accordance with the terms and conditions set forth herein, and as provided in Exhibit A, which is attached hereto and by this reference made a part of this Agreement. All work under this agreement is non-exclusive and the city reserves the right to procure services through any other means as it deems necessary.

**2. Effective Date and Duration**

This agreement shall become effective upon the date of execution by the City and shall expire, unless otherwise terminated or extended, on completion of the work or June 30, 2021, whichever comes first. All work under this Agreement shall be completed prior to the expiration of this Agreement.

**3. Surveyor's Fee**

**A. Basic Fee**

**1)** As compensation for Basic Services as described in Exhibit A of this Agreement, and for services required in the fulfillment of Paragraph 1, the Surveyor shall be paid on an hourly rate based upon the "Schedule of Rates" in Exhibit B of this agreement or in accordance with approved task orders, which shall constitute full and complete payment for said services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement. The Basic Fee shall not exceed the amount of Two Hundred Fifty Thousand dollars over the 5 year period (\$250,000) without prior written authorization.

**2)** The parties hereto do expressly agree that the Basic Fee is based upon the Scope of Services provided in Exhibit A and is not necessarily related to the estimated construction cost of the Project. In the event that the actual construction cost differs

from the estimated construction cost, the Surveyor's compensation will not be adjusted unless the Scope of Services changes and is authorized and accepted by the City.

**B. Payment Schedule for Basic Fee**

Payments shall be made upon receipt of billings based on the work completed. Billings shall be submitted by the Surveyor periodically, but not more frequently than monthly. Payment by the City shall release the City from any further obligation for payment to the Surveyor for service or services performed or expenses incurred as of the date of the statement of services. Payment shall be made only for work actually completed as of the date of invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

**C. Payment for Special Services**

Only when directed in writing by the City, and signed by both parties as an addendum to this Agreement, the Surveyor shall furnish or acquire for the City the professional and technical services based on the hourly rate schedule as described in Exhibit B of this contract for minor project additions and/or alterations.

**D. Certified Cost Records**

The Surveyor shall furnish certified cost records for all billings pertaining to other than lump sum fees to substantiate all charges. For such purposes, the books of account of the Surveyor shall be subject to audit by the City. The Surveyor shall complete work and cost records for all billings in accordance with generally accepted accounting principles.

**E. Contract Identification**

The Surveyor shall furnish to the City its employer identification number, as designated by the Internal Revenue Service, or social security number, as the City deems applicable.

**F. Payment – General**

- 1)** Surveyor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 2)** Surveyor shall pay employees at least time and a half pay for all overtime worked in excess of 40 hours in any one week except for individuals under the contract who are excluded under ORS 653.010 to 653.261 or under 29 USC sections 201 to 209 from receiving overtime.
- 3)** Surveyor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Surveyor or all sums which Surveyor agrees to pay for such services and all moneys and sums which Surveyor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- 4)** The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.
- 5)** Surveyor shall make payments promptly, as due, to all persons supplying services or materials for work covered under this contract. Surveyor shall not permit any lien or claim to be filed or prosecuted against the City on any account of any service or materials furnished.
- 6)** If Surveyor fails, neglects or refuses to make prompt payment of any claim for labor, materials, or services furnished to Surveyor, sub-consultant or subcontractor by any person as such claim becomes due, City may pay such claim and charge the amount of

the payment against funds due or to become due to the Surveyor. The payment of the claim in this manner shall not relieve Surveyor or its surety from obligation with respect to any unpaid claims.

**4. Ownership of Plans and Documents: Records**

- A. The field notes, design notes, and original drawings of the construction plans, as instruments of service, are and shall remain, the property of the Surveyor; however, the City shall be furnished, at no additional cost, one set of previously approved reproducible drawings, on 3 mil minimum thickness mylar as well as diskette in "DWG" or "DXF" format, of the original drawings of the work. The City shall have unlimited authority to use the materials received from the Surveyor in any way the City deems necessary. Any use, re-use or alteration of any materials other than as contemplated by the applicable Scope of Services shall be at the City's sole risk, unless written permission has been received from Surveyor prior to any such use.
- B. The City shall make copies, for the use of and without cost to the Surveyor, of all of its maps, records, laboratory tests, or other data pertinent to the work to be performed by the Surveyor pursuant to this Agreement, and also make available any other maps, records, or other materials available to the City from any other public agency or body.
- C. The Surveyor shall furnish to the City, copies of all maps, records, field notes, and soil tests which were developed in the course of work for the City and for which compensation has been received by the Surveyor at no additional expense to the City except as provided elsewhere in this Agreement.

**5. Assignment/Delegation**

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

**6. Surveyor is Independent Contractor**

- A. The City's project manager, or designee, shall be responsible for determining whether Surveyor's work product is satisfactory and consistent with this agreement, but Surveyor is not subject to the direction and control of the City. Surveyor shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Section 3 of this Agreement.
- B. Surveyor is an independent contractor and not an employee of City. Surveyor acknowledges Surveyor's status as an independent contractor and acknowledges that Surveyor is not an employee of the City for purposes of workers compensation law, public employee benefits law, or any other law. All persons retained by Surveyor to provide services under this contract are employees of Surveyor and not of City. Surveyor acknowledges that it is not entitled to benefits of any kind to which a City employee is entitled and that it shall be solely responsible for workers compensation coverage for its employees and all other payments and taxes required by law. Furthermore, in the event that Surveyor is found by a court of law or an administrative agency to be an employee of the City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Surveyor under the terms of the agreement, to the full extent of any benefits or other remuneration Surveyor receives (from City or third party) as a result of said finding and to the full extent of any

payments that City is required to make (to Surveyor or to a third party) as a result of said finding.

- C. The undersigned Surveyor hereby represents that no employee of the City or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from the Surveyor, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.
- D. If this payment is to be charged against Federal funds, Surveyor certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his/her normal charge for the type of service provided.
- E. Surveyor and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
- F. Surveyor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- G. Surveyor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

## 7. Indemnity

- A. The City has relied upon the professional ability and training of the Surveyor as a material inducement to enter into this Agreement. Surveyor represents to the City that the work under this contract will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of the surveying profession under similar conditions and circumstances as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Surveyor's work by the City shall not operate as a waiver or release. Acceptance of documents by City does not relieve Surveyor of any responsibility for negligent or wrongful design deficiencies, errors, or omissions.
- B. Claims for other than Professional Liability. Surveyor shall defend, save and hold harmless the City of Milwaukie, its officers, agents, and employees from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, of whatsoever nature, including intentional acts to the extent resulting from or arising out of the activities of Surveyor or its subcontractors, sub-consultants, agents or employees under this contract. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.
- C. Claims for Professional Liability. Surveyor shall defend, save and hold harmless the City of Milwaukie, its officers, agents, and employees from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, to the extent arising out of the professional negligent acts, errors or omissions of Surveyor or its subcontractors, sub-consultants, agents or employees in performance of professional services under this agreement. Any design work by Surveyor that results in a design of a facility that is not readily accessible to and usable by individuals with disabilities shall be considered a professionally negligent act, error or omission.
- D. As used in subsections B and C of this section, a claim for professional responsibility is a claim made against the City in which the City's alleged liability results directly from the quality of the professional services provided by Surveyor, regardless of the type of claim made against the City. A claim for other than professional responsibility is a claim made against the City in

which the City's alleged liability results from an act or omission by Surveyor unrelated to the quality of professional services provided by Surveyor.

## 8. Insurance

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

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

### A. Commercial General Liability Insurance

Surveyor shall obtain, at Surveyor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract and Product and Completed Operations. Such insurance shall be primary and non-contributory. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$3,000,000
Products-Completed Operations Aggregate	3,000,000
Personal & Advertising Injury	3,000,000
Each Occurrence	2,000,000
Fire Damage (Any one fire)	500,000
Medical Expense (Any one person)	5,000

### B. Professional Liability

Surveyor shall obtain, at Surveyor's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent act. Combined single limit per occurrence shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$3,000,000 and filed on a "claims-made" form.

### C. Commercial Automobile Insurance

Surveyor shall also obtain, at Surveyor's expense, and keep in effect during the term of the contract Commercial Automobile Liability coverage on an "occurrence" form including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

### D. Workers' Compensation Insurance

The Surveyor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract who are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers that complies with ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

- E. Additional Insured Provision**  
The Commercial General Liability Insurance Policy and Automobile Policy shall include the City its officers, directors, and employees as additional insureds with respect to this contract. Coverage will be endorsed to provide a per project aggregate.
- F. Extended Reporting Coverage**  
If any of the aforementioned liability insurance is arranged on a “claims made” basis, Extended Reporting coverage will be required at the completion of this contract to a duration of 24 months or the maximum time period the Surveyor’s insurer will provide such if less than 24 months. Surveyor will be responsible for furnishing certification of Extended Reporting coverage as described or continuous “claims made” liability coverage for 24 months following contract completion. Continuous “claims made” coverage will be acceptable in lieu of Extended Reporting coverage, provided its retroactive date is on or before the effective date of this contract. Coverage will be endorsed to provide a per project aggregate.
- G. Notice of Cancellation**  
There shall be no cancellation, material change, or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The 30 days’ notice of cancellation provision shall be physically endorsed on to the policy.
- H. Insurance Carrier Rating**  
Coverage provided by the Surveyor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- I. Certificates of Insurance**  
As evidence of the insurance coverage required by the contract, the Surveyor shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. A renewal certificate will be sent to the address below ten days prior to coverage expiration.
- Certificates of Insurance should read “Insurance certificate pertaining to contract for (Name of project) . The City of Milwaukie, its officers, directors and employees shall be added as additional insureds with respects to this contract. Insured coverage is primary” in the description portion of certificate.
- J. Primary Coverage Clarification**  
The parties agree that Surveyor’s coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.
- K. Cross-Liability Clause**  
A cross-liability clause or separation of insureds clause will be included in general liability.

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

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

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

Such policies or certificates must be delivered prior to commencement of the work. Thirty days cancellation notice shall be provided City by mail to the name at the address listed above in event of cancellation or non-renewal of the insurance.

The procuring of such required insurance shall not be construed to limit Surveyor's liability hereunder. Notwithstanding said insurance, Surveyor shall be obligated for the total amount of any damage, injury, or loss to the extent caused by negligence or wrongful acts in the performance of services with this contract.

**9. Termination Without Cause**

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

**10. Termination With Cause**

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

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

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

**B.** City, by written notice of default (including breach of contract) to Surveyor, may terminate the whole or any part of this Agreement:

- 1)** If Surveyor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2)** If Surveyor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten days or such other period as City may authorize.

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

If City terminates this Agreement under paragraph (B), Surveyor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Surveyor bear to the total services otherwise required to be performed for such total fee; Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

**11. Non-Waiver**

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

**12. Method and Place of Giving Notice, Submitting Bills and Making Payments**

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

<b>City</b>	<b>Contractor</b>
City of Milwaukie	Company: HHPR, Inc
Attn: Accounts Payable	Attn: (insert contract manager's name)
10722 SE Main Street Milwaukie, Oregon 97222	Address: 205 SE Spokane Street, Suite 200 Portland, OR 97202
Phone: 503-786-7523	Phone: (503) 221-1131
Fax: 503-786-7528	Fax: (503) 221-1171
Email Address: finance@milwaukieoregon.gov	Email Address: patg@hhpr.com

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

**13. Merger**

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

**14. Force Majeure**

Neither City nor Surveyor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided

that the parties so disabled shall within ten days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

**15. Non-Discrimination**

Surveyor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statues, rules, and regulations. Surveyor also shall comply with the Americans with Disabilities Act of 1990, as amended, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

**16. Errors**

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

**17. Extra (Changes) Work**

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

**18. Governing Law**

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

**19. Compliance With Applicable Law**

Surveyor shall comply with all applicable federal, state, local laws and ordinances, including but not limited to ORS 279B.020, 279B.220, 279B.225, 279B.230, and 279B.235, which are incorporated herein. If Surveyor is a foreign contractor as defined in ORS 279A.120, Surveyor shall comply with that section and the City must satisfy itself that the requirements of ORS 279A.120 have been complied with by Surveyor before City issues final payment under this agreement. Surveyor shall not provide or offer to provide any appreciable pecuniary or material benefit to any officer or employee of City in connection with this Agreement in violation of ORS chapter 244...

**20. Conflict Between Terms**

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

**21. Access to Records**

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

**22. Audit**

Surveyor shall maintain records to help assure conformance with the terms and conditions of this Agreement, and to help assure adequate performance and accurate expenditures within the contract period. Surveyor agrees to permit City, the State of Oregon, the federal government, or their duly

authorized representatives to audit all records pertaining to this Agreement to help assure the accurate expenditure of funds.

**23. Severability**

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

**24. Complete Agreement**

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

**IN WITNESS WHEREOF**, City has caused this Agreement to be executed by its duly

authorized undersigned officer and Surveyor has executed this Agreement on the date hereinabove first written.

**CITY OF MILWAUKIE**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Date

**SURVEYOR**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Date

## **EXHIBIT A Scope of Work**

All work under this agreement shall be completed under the direction of and sealed by a registered Oregon Professional Land Surveyor. The work shall be conducted using equipment, personnel and procedures that will ensure compliance with these specifications. The consultant(s) shall assume responsibility for quality, performance, and completion of all services outlined in the work orders.

### **Task 1 – Project Management**

#### **A. Project Administration**

Consultant shall provide a Project Administration Plan to direct, coordinate, and monitor the activities of the project with respect to budget, schedule, and contractual obligations. The Project Administration Plan shall be updated as requested, but not more often than biweekly.

#### **B. Coordination Meetings**

Consultant shall provide a minimum of biweekly conference calls and/or meetings between the Consultant and City personnel to review project progress, discuss project challenges and findings, and review early study results. Consultant shall ensure that the City personnel and Consultant team members maintain a shared understanding regarding study direction, objectives, and deliverables.

#### **C. Quality Assurance and Quality Control Review**

Consultant shall conduct internal Quality Assurance and Quality Control meetings and follow-up with technical experts as necessary during the course of the project.

### **Task 2 – Data Gathering**

#### **A. Kickoff Meeting and Project Overview**

Consultant shall initiate the project kickoff meeting. Consultant shall prepare an agenda for the kickoff meeting, invite necessary attendees, collect data, and discuss the schedule of the project.

#### **B. Conduct Interviews**

Consultant shall conduct interviews with City personnel familiar with the requested type of work to collect information necessary for the Project.

#### **C. Collect and Review Current Data**

Consultant shall submit a list of information to be collected and provided by the City. The provided information shall be reviewed by the Consultant to determine if it is sufficient for completion of the project objectives.

### **Task 3 – Topographic Survey**

The scope of work to be performed by the selected consultant(s) may include, but are not limited to typical on-call survey services as described below:

- Contact Utility Notification Center of Oregon at least forty-eight (48) hours prior to any surveying activities. All existing underground utilities within the proposed survey area shall be clearly marked.

- Coordinate with property owners to arrange access to private property.
- The survey shall reference the NAD 83 horizontal datum and NAVD 88 vertical datum in International feet for the relative zone in the appropriate State Plane coordinate system. If applicable, provide any combined scale factor and origin used to convert coordinates from grid to ground.
- Record the location and description of all primary horizontal and vertical control benchmarks and provide a monument record for each one found or set.
- Horizontal and vertical data shall be taken at all pavement edges and pads (asphalt, concrete, gravel, etc.), concrete pavement joints, pavement markings (color and width), breaklines, curbs (back, face and pan), utility lines (communications, electrical, gas, sanitary sewer, storm sewer, water, etc.), hand holes, inlet/outlet structures, hydrants, junction boxes, lights, manholes, meters, navigational aids, vaults, fence (height and type), poles/posts (height and type), reflectors, signs, drainage ditches and channels, grade breaks, walls, specific site features, etc. A sufficient number of points shall be taken along all horizontal curves to describe approximate radii. Provide structure rim or grate elevations, inverts, and pipe sizes. Points shall be taken on a twenty-five foot by twenty-five foot (25' x 25') grid on pavements and open terrain areas. Hardscape points shall be accurate to within four-hundredths of a foot (0.04') and terrain points within one-tenth of a foot (0.10') foot accuracy.
- Provide recorded information, i.e. property lines, right-of-way, easements, underground utility sizes, etc.
- Provide any field sketches and/or notes in PDF format (.pdf), if applicable.
- Provide photos (.jpg format) of field conditions, as requested.
- Other survey work as necessary.

#### **Task 4 – Right-of-Way Survey**

The scope of work to be performed by the selected consultant(s) may include, but are not limited to typical on-call survey services as described below:

- Research R/W Monumentation.
- Prepare and File Pre-Construction Record of Survey
- Prepare and File Post-Construction (Monument Replacement) Record of Survey
- Develop legal descriptions.

#### **Task 5 – Construction Survey**

The scope of work to be performed by the selected consultant(s) may include, but are not limited to typical on-call survey services as described below:

- Provide construction staking and monument placement
- Provide record as-built drawings, as requested.

#### **Task 4 – Miscellaneous Survey**

- FEMA Elevation Certificates
- ALTA/Land Title Surveys
- Other survey work as deemed necessary.

### **Survey Deliverable Specifications:**

- An ASCII file containing all survey points in comma delimited, number, northing, easting, elevation and description format (PNEZD).
- AutoCAD release 2013 drawing format (.dwg) or previously released version.
- Surface entity of existing ground topography with all associated points, feature lines, 3D breaklines, etc. used in creating the surface. If the surface was created using AutoCAD Land Development Desktop, provide all points, breaklines and generated Triangulated Irregular Network (.tin) file.
- XML file (.xml) including all alignments, points, surfaces, etc.
- Layer naming convention shall follow the National CAD Standards (NCS).
- Entities shall be separated onto specific layers. Do NOT group dissimilar items together.
- All entities shall be drawn in model view at a scale of 1:1.
- The layer properties of all entities shall be set to BYLAYER.
- Block symbols shall be to scale.
- Full size pdf files of all final products.

If any of these requirements are not met, the deliverable will be considered incomplete. This could present a problem with keeping the project on schedule; consequently, if there are any questions or concerns regarding these requirements, please contact the City of Milwaukie Project Manager

## Harper Houf Peterson Righellis Inc. Standard Billing Rates For 2016

<b>Classification</b>	<b>Standard Rate</b>	
Senior Principal	\$	210.00 /Hr.
Structural Manager	\$	160.00 /Hr.
Project Manager	\$	175.00 /Hr.
Project Engineer	\$	160.00 /Hr.
Construction Manager	\$	160.00 /Hr.
Civil Engineer	\$	140.00 /Hr.
Structural Engineer	\$	130.00 /Hr.
Land Use Planner	\$	140.00 /Hr.
Senior Landscape Architect	\$	140.00 /Hr.
Landscape Architect	\$	120.00 /Hr.
Quality Control Engineer	\$	175.00 /Hr.
Senior Civil Designer	\$	140.00 /Hr.
Civil Designer	\$	115.00 /Hr.
Structural Designer	\$	115.00 /Hr.
Inspector	\$	100.00 /Hr.
BIM Specialist	\$	120.00 /Hr.
CAD Technician	\$	95.00 /Hr.
CAD Technician II	\$	75.00 /Hr.
Survey Manager	\$	160.00 /Hr.
Project Surveyor	\$	140.00 /Hr.
Survey Technician	\$	100.00 /Hr.
Survey Crew (Crew Chief)	\$	110.00 /Hr.
Survey Crew (Instrument Person)	\$	70.00 /Hr.
Senior Clerical	\$	115.00 /Hr.
Graphics Artist	\$	115.00 /Hr.
Clerical	\$	80.00 /Hr.
 <b><u>Expenses</u></b>		
<b>Mileage</b>	\$	0.540 /Mi.
<b>Reimbursables</b>	At Cost With 5% Mark-Up	
<b>Sub-Consultants</b>	At Cost With 5% Mark-Up	



MILWAUKIE CITY COUNCIL  
**STAFF REPORT**

Agenda Item: **RS 6. E.**  
Meeting Date: **April 5, 2016**

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

**Added to the Agenda  
April 1, 2016**

Subject: **SSMP Annual Report**

From: Charles Eaton

Date: March 25, 2016

**ACTION REQUESTED**

Direction on the future of the SSMP program

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

**March 3, 2015:** Staff presented the eighth annual SSMP report to Council

**January 21, 2014:** Staff presented the seventh annual SSMP report to Council

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

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

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

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

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

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

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

**BACKGROUND**

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

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

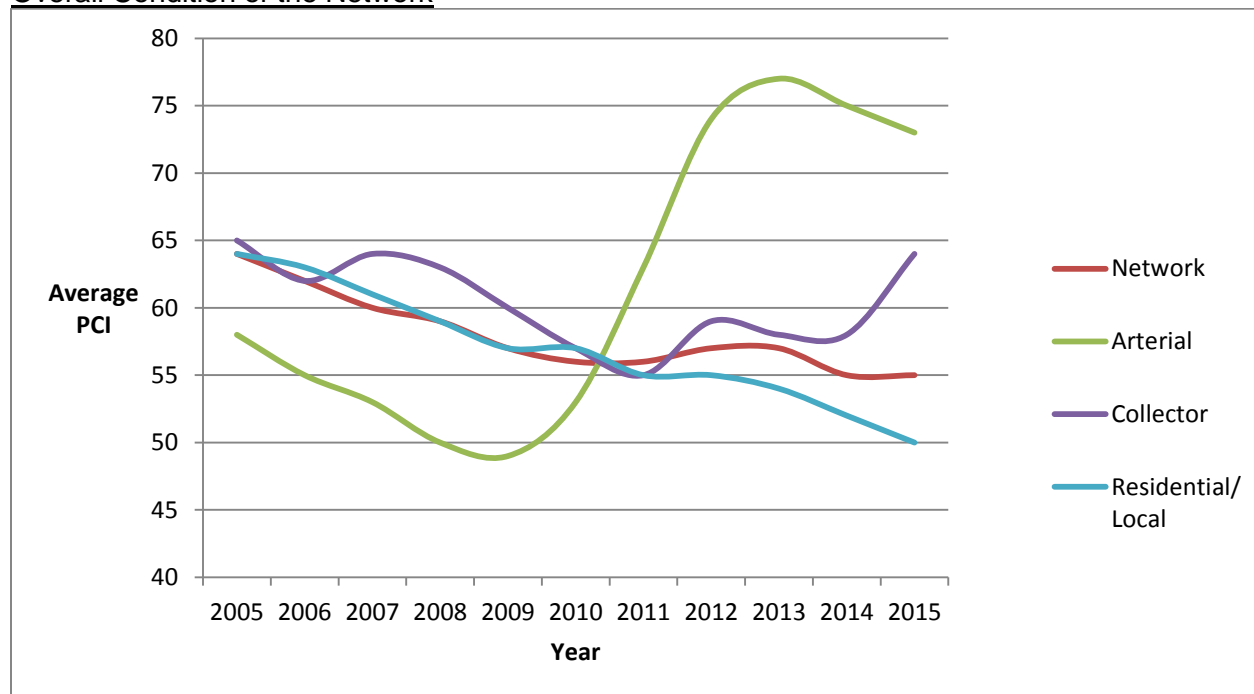
## Completed Projects

During the 2015 program year Railroad Avenue was reconstructed as part of the SSMP program together with a group of Slurry Seal projects in the Lake Road NDA. The work on Railroad Avenue brought the Collector PCI index to 64, up from 58 the previous year. The residential street PCI dropped 2 points to 50.

## Upcoming Projects

Staff has not recommended any changes to the previous Capital Improvement Plan with regards to the streets identified within the SSMP program. Year Nine of the SSMP includes the reconstruction of 42<sup>nd</sup> between Railroad and Harrison, construction of an Inlay of 42<sup>nd</sup> and King from Harrison to 43<sup>rd</sup>, an overlay of 43<sup>rd</sup> from King to Howe and an inlay of 17<sup>th</sup> from McLaughlin to Ochoco.

## Overall Condition of the Network



Our recent focus on collector streets has showed major improvements in the PCI towards the goal of the City's SSMP is to bring all major streets to a point where the cost efficiencies of good preventative maintenance are enjoyed, approximately 75 or above, and maintain them at that level. However the drop in the PCI level for Arterials after only one year is concerning. This is in part due to the remaining arterials have deteriorated at a faster rate than expected. Lake Road for example has deteriorated to a PCI of 19.

It has been 5 years since our last physical rating of the street network and the level of deterioration appears to be less in the field than on the computers. Staff is recommending that we perform a third physical evaluation to better evaluate the program.

## **CONCURRENCE**

The Citizen's Utility Advisory Board (CUAB) received a briefing at their January and February meetings. The board stated approval of the SSMP plan along with a desire to begin incorporating residential streets into the program.

## **FISCAL IMPACTS**

No additional Impacts proposed.

## **WORK LOAD IMPACTS**

The workload to implement and manage SSMP projects is substantial for the Engineering Department. Design of all SSMP projects occurs in-house, and includes surveys, design, and project management. Project design typically begins in the winter months for projects slated to begin in late spring, with additional project design in the spring for summer projects. It can take up to 2 months to complete a bid-ready set of contract documents for each project.

Members of the Engineering, Community Development, and Operation Departments form a SSMP Project team, which coordinates the ten-year paving schedule with the Capital Improvement Plan, Public Improvement Projects, and other City and private projects. Furthermore, coordination within Engineering and between the utilities (Storm, Water, and Sewer) is necessary to make decisions regarding timelines of Capital Improvement Projects prior to paving a particular street. The utilities can then construct respective CIP projects prior to a paving project.

## **ALTERNATIVES**

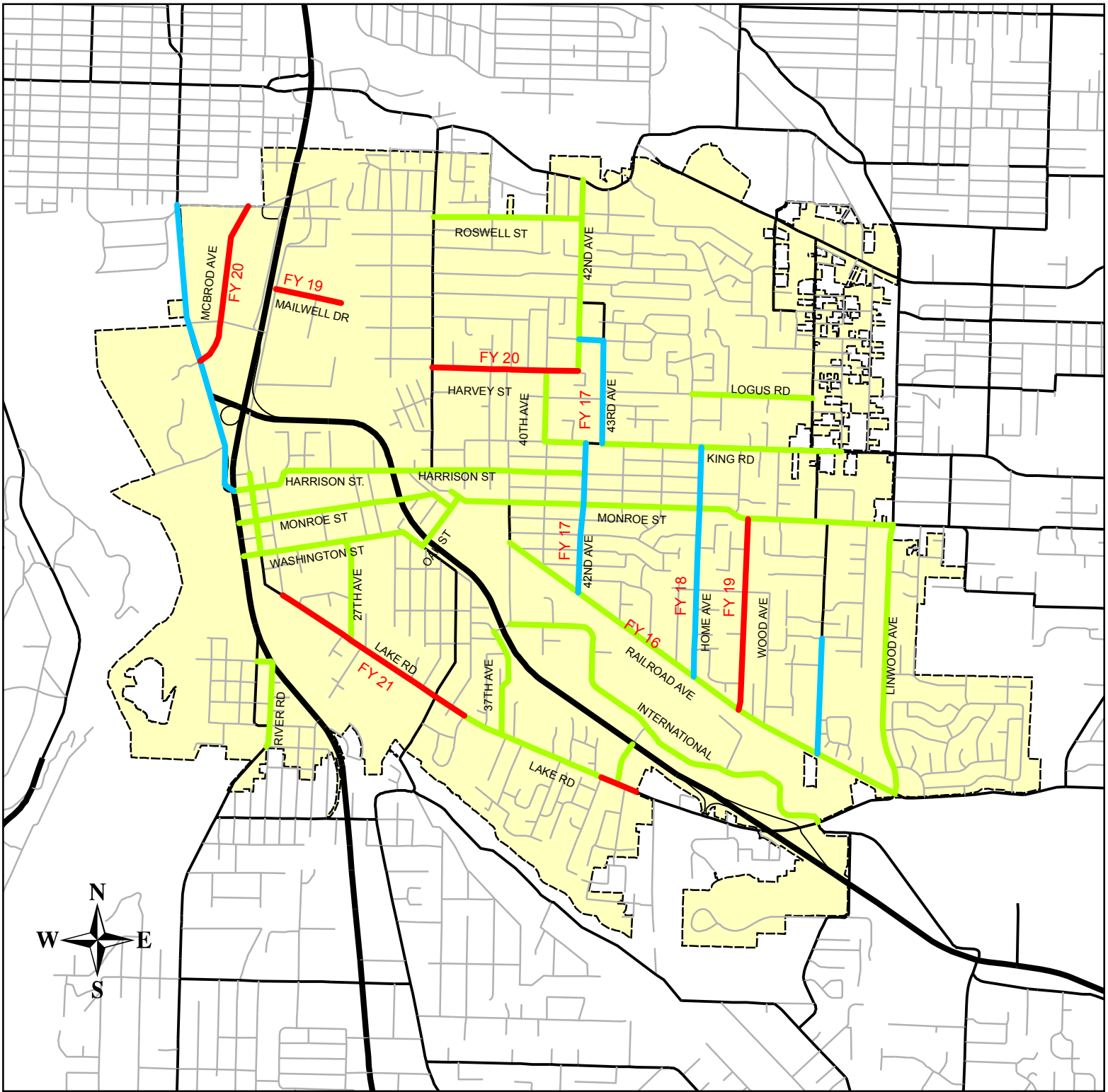
The program goal focuses on major street improvement with only crack sealing and slurry sealing treatment for the non-major streets. An alternative approach for the maintenance of the entire street network would be to focus on those streets with a surface in good condition, regardless of functional class.

The major street focus of the program was adopted as it provides the greatest benefit to City residents as everyone uses major streets. This objective remains an important factor and as most of the major streets are now resurfaced, the program may be able to incorporate some local streets without lessening the major street care.

Slurry seals while extremely beneficial are not helping the overall network gain in the PCI, but merely maintaining the condition of the streets they are being applied on. This is shown by the continued overall decrease in the PCI for residential streets. An alternative would be to begin a low volume street overlay program utilizing the Slurry seal funding or some of the Primary SSMP funding to begin to substantially increase the PCI of the overall network. Slurry Seal work could continue at a less frequent pace.

## **ATTACHMENTS**

1. Street Surface Maintenance Program Map
2. SSMP Slurry Seal Map
3. Composite SSMP Paving and Slurry Seal Map



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Dogwood City of the West

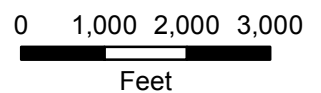
## Street Surface Maintenance Program Map



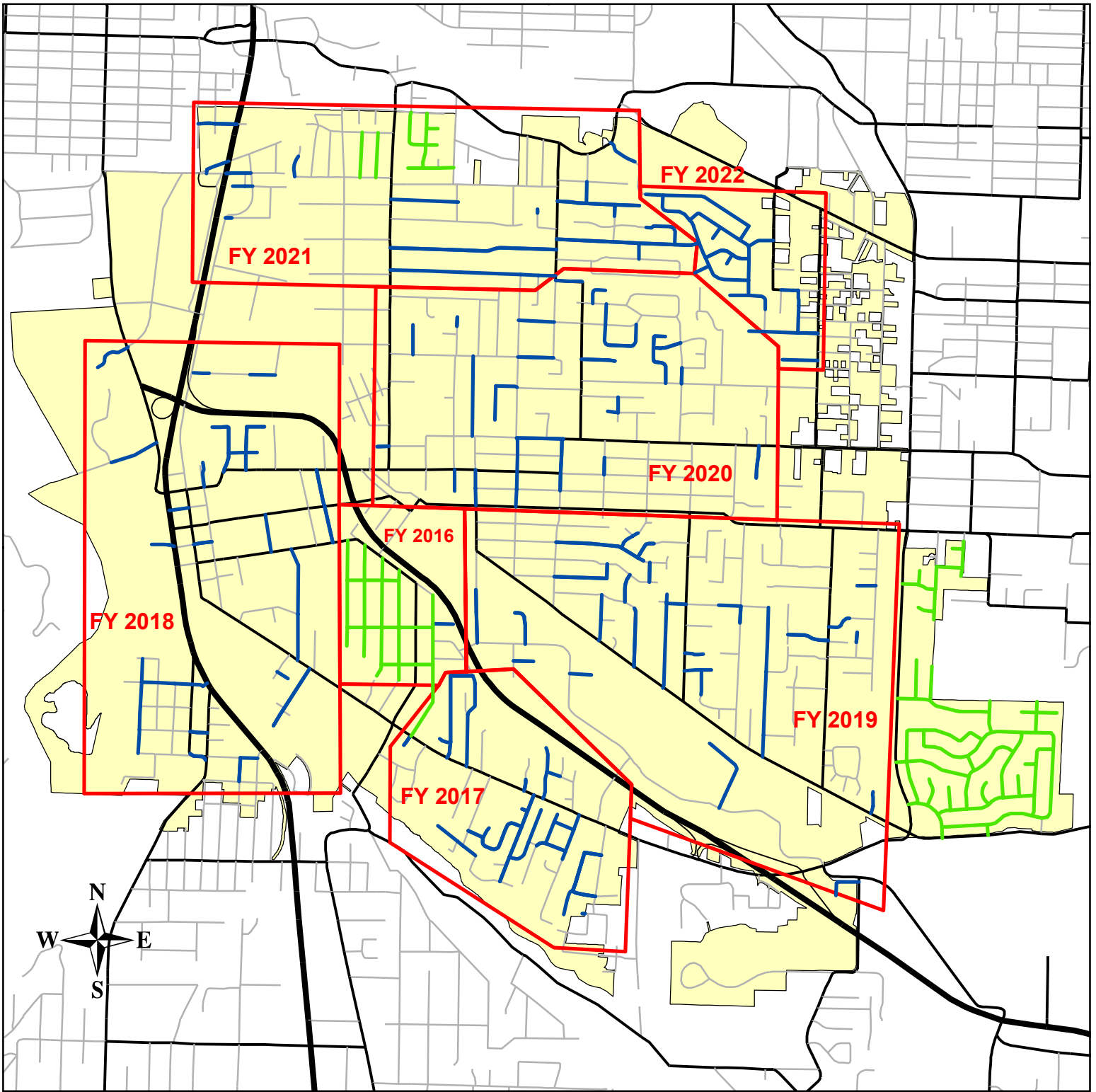
Future Projects

Fiscal Year 2017 & 2018 Projects




Completed Projects



**RS124**

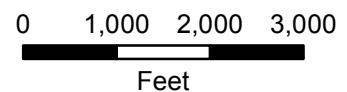


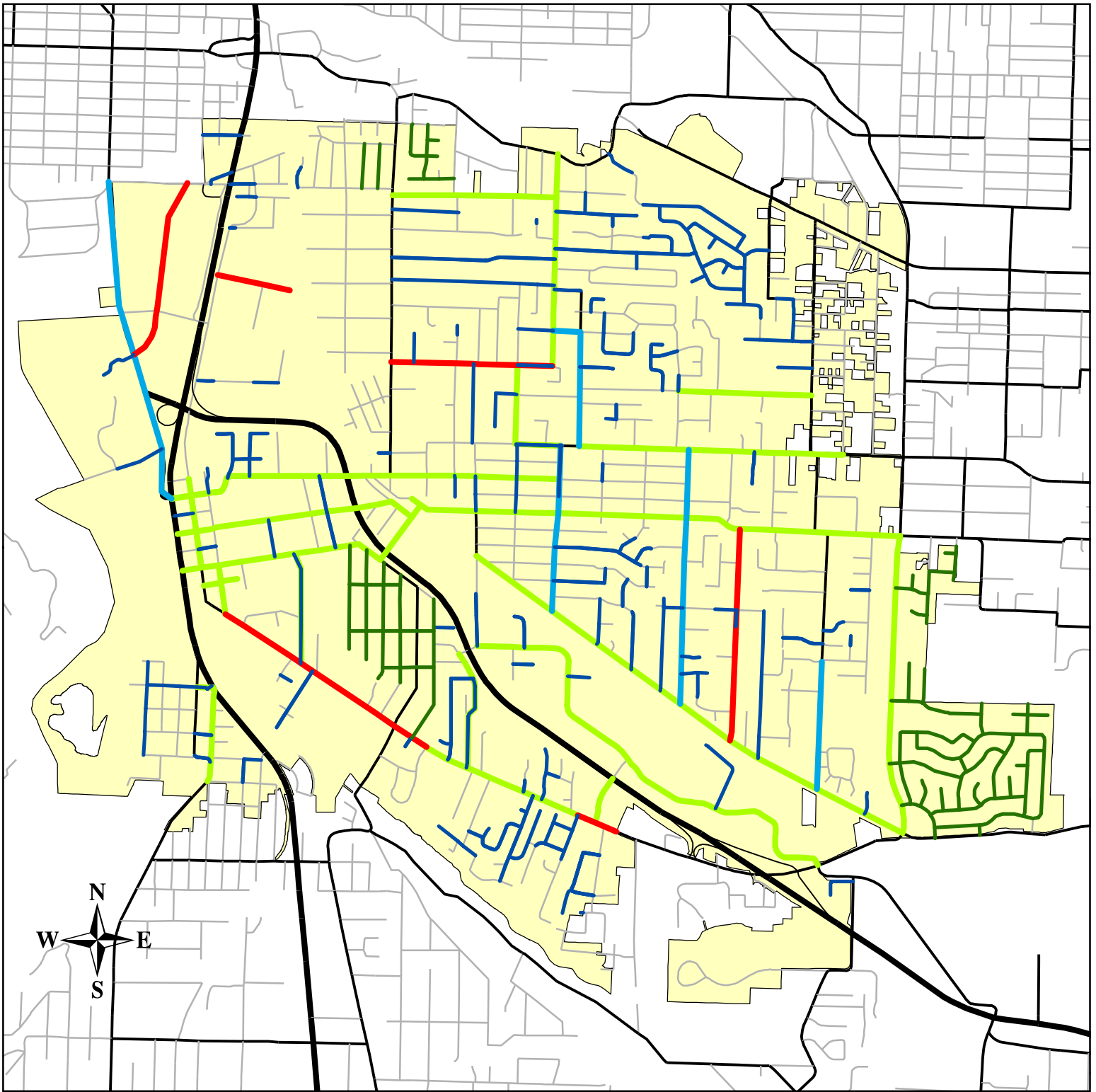
# SSMP Slurry Seal Map



-  Slurry Seal Projects
-  Completed Slurry Seal Projects
-  Fiscal Year to be Completed



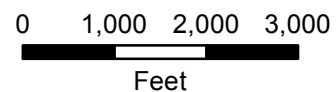
**MILWAUKIE**  
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-  Slurry Seal Projects
-  Completed Slurry Seal Projects
-  Fiscal Year 2017 & 2018 Paving Projects
-  Completed Paving Projects
-  Future Paving Projects

# SSMP Paving & Slurry Seal



RS126



**RS Exhibit**  
**April 5, 2016**

# **Street Surface Maintenance Program**

## **9th Annual Report – April 5, 2016**

**Presented by:**  
**Charles Eaton, Engineering Director**

# Presentation Outline

- Completed Projects
- Program Status
- Overall Condition Report
- Revenue Summary
- Fee Comparison
- Proposed Projects
- Program Challenges/Opportunities/Alternatives



# Recently Completed Projects



# After



## • Railroad Avenue (Phase 1)

- Base and Surface Reconstruction
- 37<sup>th</sup> Ave to Linwood Ave.



# Before





## Slurry and Crack Sealing

- Inexpensive method for increasing pavement life for “good” streets (PCI >70)



# Program Status



# Original Ten Year Program Projects

Project	Project Year		PCI	
	Plan	Actual	Initial	Current
Oak Street (224-Monroe)	2007	2008	55	68
37 <sup>th</sup> (Lake-Wister)		2007	53	74
Washington (McLoughlin-Oak)		2007	69	75
42 <sup>nd</sup> (Harvey-JCB)		2007	55	82
Logus (Stanley-51 <sup>st</sup> )		2008	60	83
Crack/Slurry/Fog Seals		2010	70+	77
King (43 <sup>rd</sup> -Hollywood)	2008	2008	40	81
Crack/Slurry/Fog Seals		2013	50+	62



# Original Ten Year Program Projects

Project	Project Year		PCI	
	Plan	Actual	Initial	Current
Linwood (Railroad-Monroe)	2009	2009	79	91
Lake (Shell-Where Else) (Where Else-Kuehn)		2010	53	85
Roswell (32 <sup>nd</sup> -42 <sup>nd</sup> )		2010	52	86
Crack/Slurry/Fog Seals		2015	70+	83
Washington (37 <sup>th</sup> -40 <sup>th</sup> )	2010		66	13
27 <sup>th</sup> (Lake-Washington)		2009	72	74
Harrison Phase 1 (McLoughlin-42 <sup>nd</sup> )		2011	44	86
Crack/Slurry/Fog Seals		2017	70+	76



# Original Ten Year Program Projects

Project	Project Year		PCI	
	Plan	Actual	Initial	Current
Pavement Assessment	2011	2011	-	-
Harrison Phase 2 (McLoughlin-42 <sup>nd</sup> )		2013	44	88
Railroad Phase 1 (Harrison-Linwood)		2015	44	97
Crack/Slurry/Fog Seals		2019	70+	74
43 <sup>rd</sup> (King-Howe (to 42 <sup>nd</sup> )	2012	2017	73	51
River (McLoughlin-Lark)		2009	76	83
Railroad Phase 2 (Harrison-Linwood)		2022	44	15
Monroe Phase 1 (224-City Limits)		2012	41	90
Crack/Slurry/Fog Seals		2021	70+	74



# Original Ten Year Program Projects

Project	Project Year		PCI	
	Plan	Actual	Initial	Current
International (37 <sup>th</sup> -Harmony)	2013	2011	70	85
Monroe Phase 2 (224-City Limits)		2013	41	94
Crack/Slurry/Fog Seals		2023	70+	74
Harvey (32 <sup>nd</sup> -42 <sup>nd</sup> )	2014	2020	26	17
Home (Railroad-King)		2018	48	27
Wood (Railroad-Monroe)		2021	48	21
Crack/Slurry/Fog Seals		2025	70+	72



# Original Ten Year Program Projects

Project	Project Year		PCI	
	Plan	Actual	Initial	Current
Pavement Assessment	2015	2017	-	-
McBrod (17 <sup>th</sup> -Ochoco)		2020	27	15
TBD-Monroe (McLaughlin-Hwy224)		2014	12	89
Crack/Slurry/Fog Seals		2027	70+	60
TBD-42 <sup>nd</sup> (Railroad-King)	2016	2017	58	19
Mailwell (Main-Commerce Park)		2021	28	17
Crack/Slurry/Fog Seals		2029	70+	66
TBD-Lake (21 <sup>st</sup> -Shell)	2017	2019	33	19



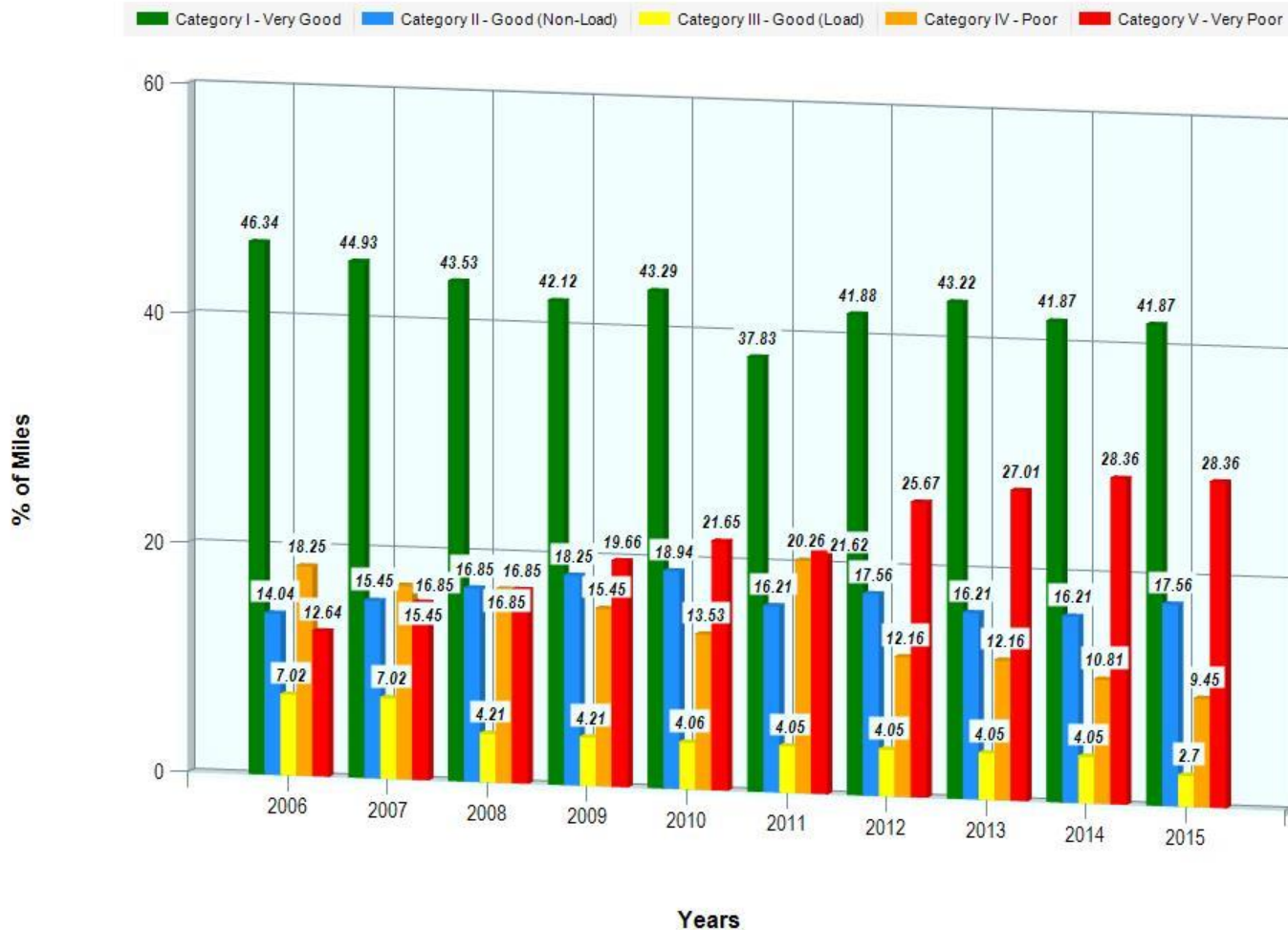
# Overall Condition of the Network

	July 2004	March 2016	2017 Estimated	Program Goal (2017)
Arterials	63	68	72	75
Collectors	69	64	70	
Residential	67	47	45	--



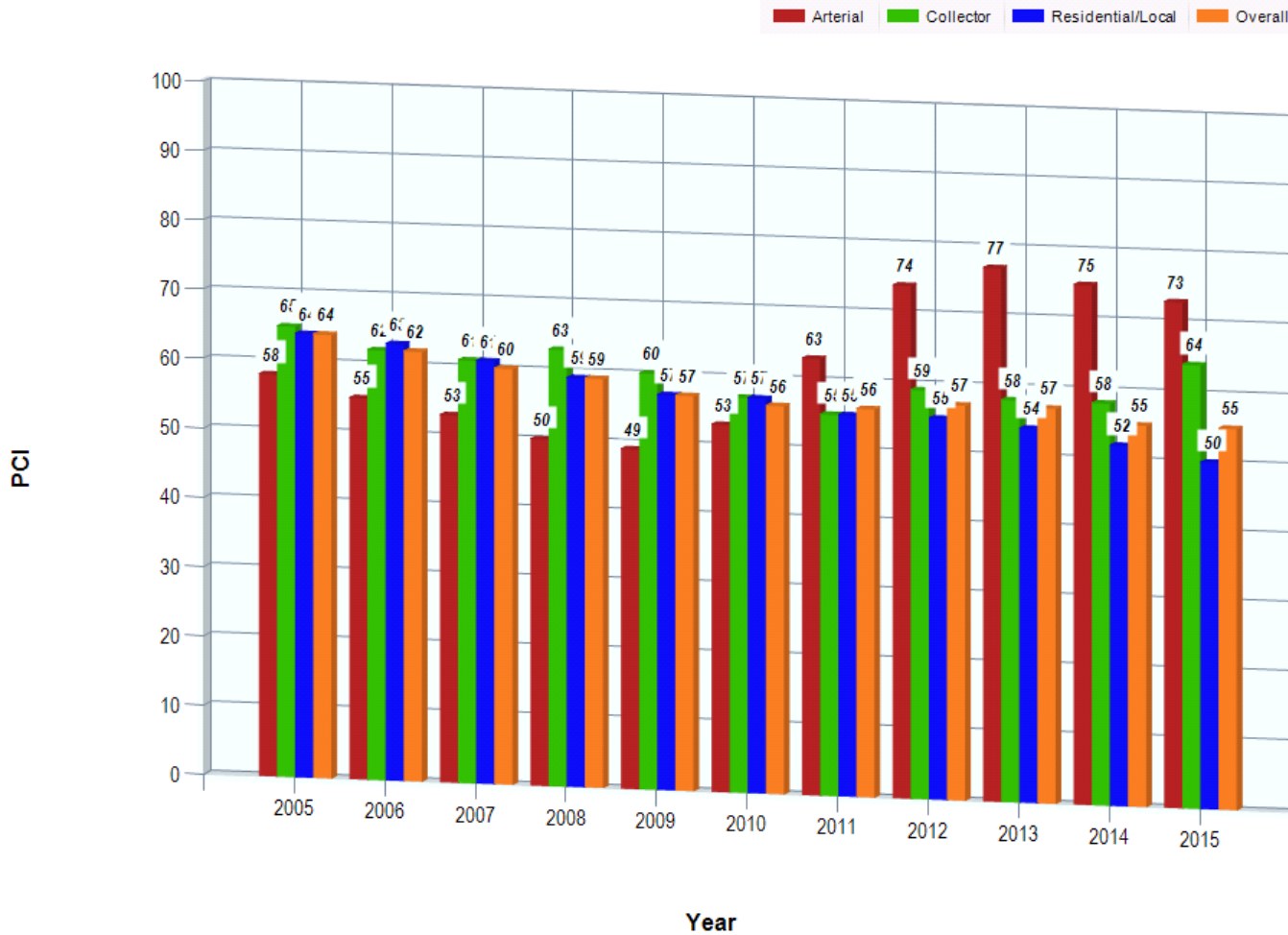
# Overall Condition Report

## Condition Categories by Year



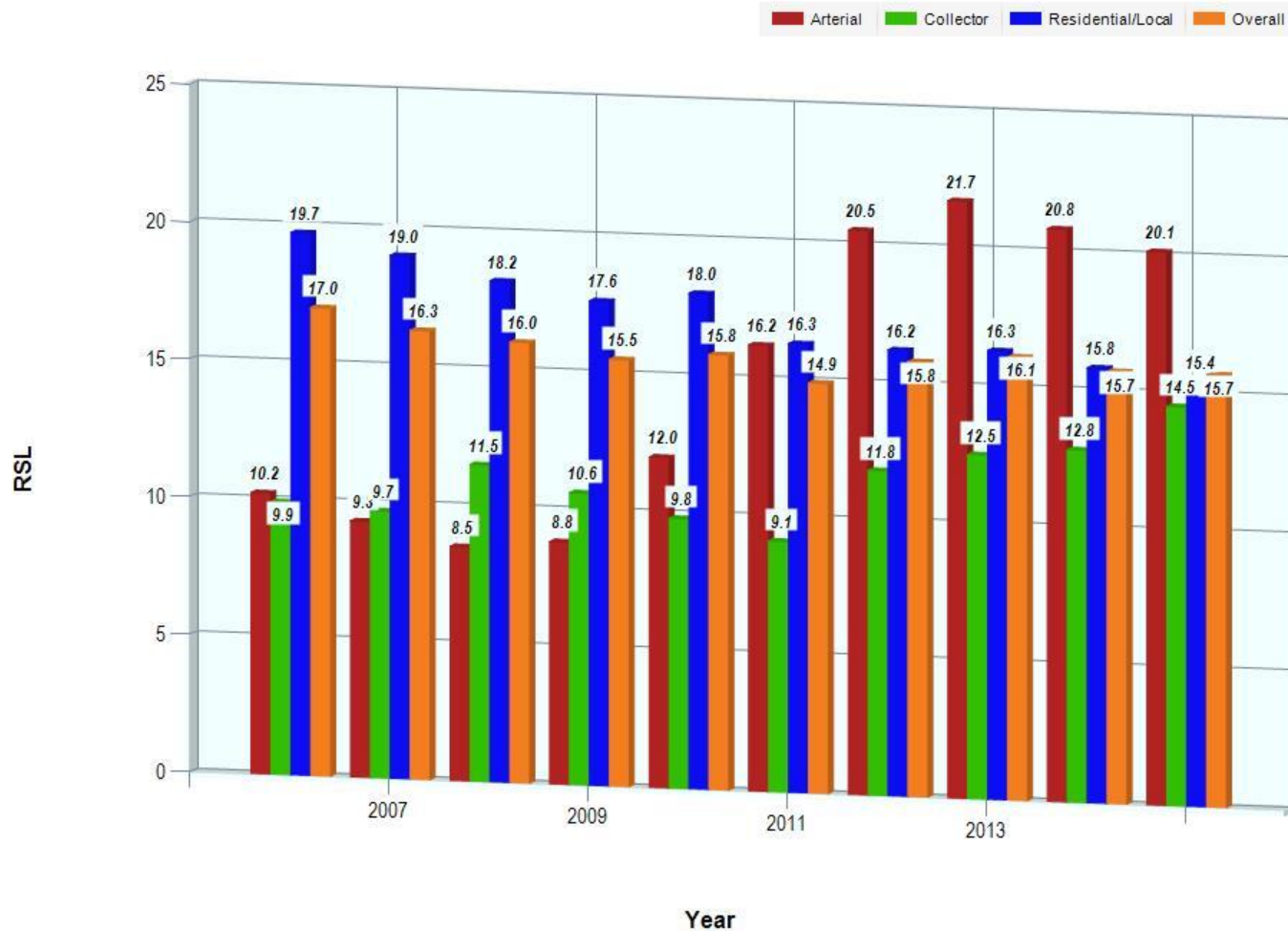
# Overall Condition Report

Historical Network PCI



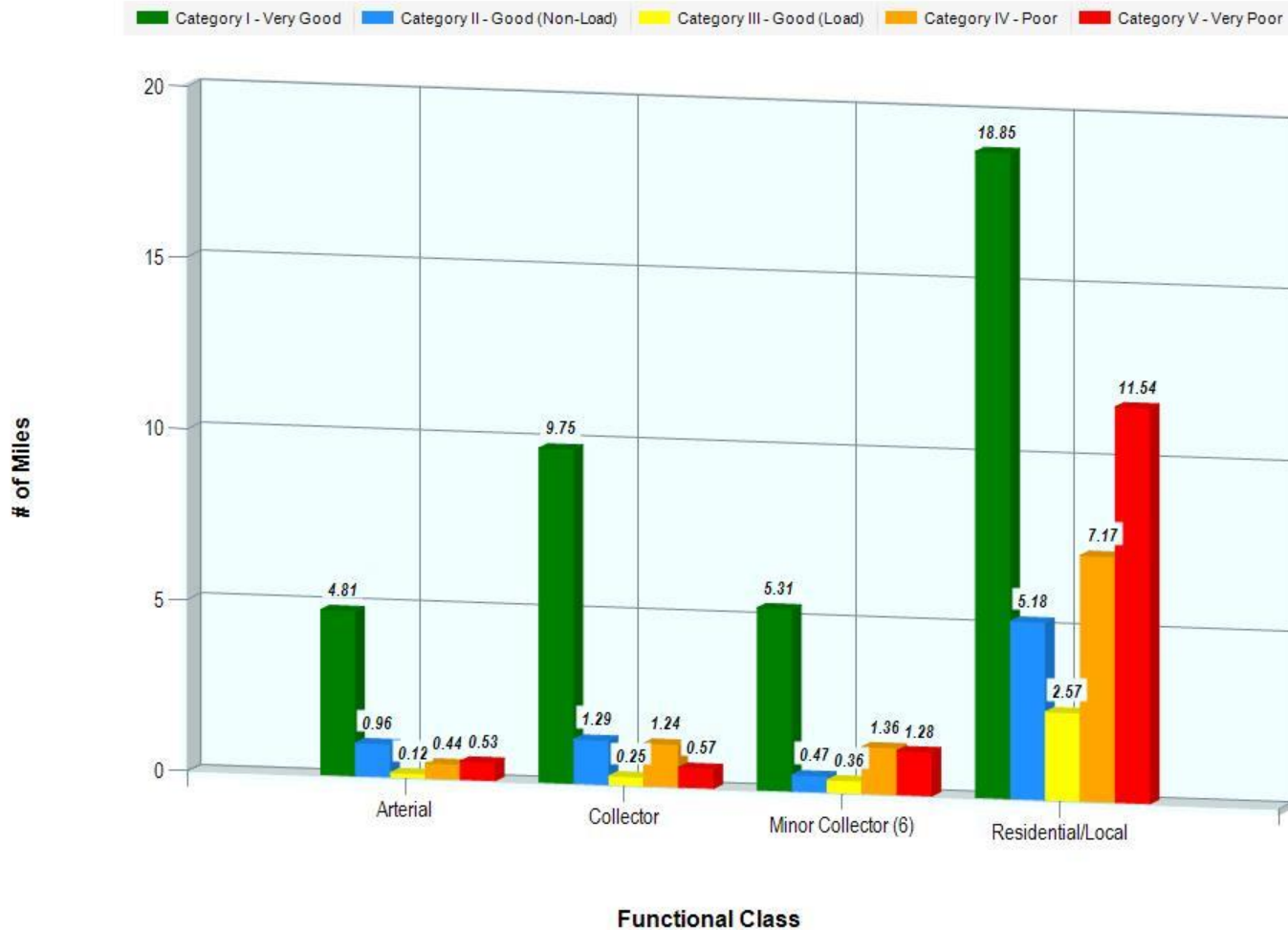
# Overall Condition Report

Historical Network RSL



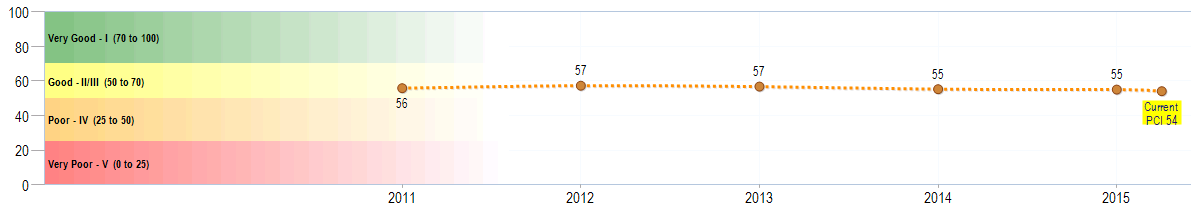
# Overall Condition Report

Condition Categories by Functional Class

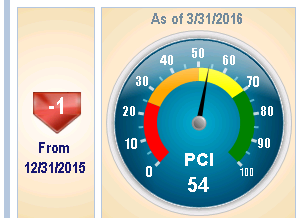


# Current Condition Summary

Historical Pavement Condition Trends



Current PCI



Network Inventory

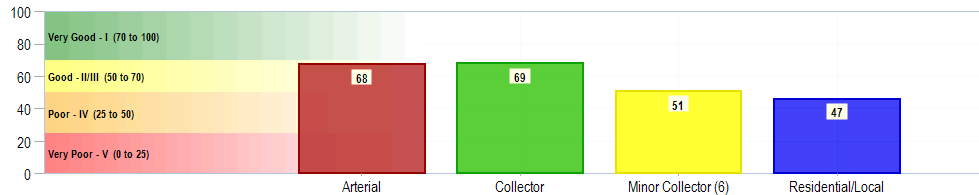
Pavement Area: **0.4**  
*(square miles)*

Miles: **74.4**

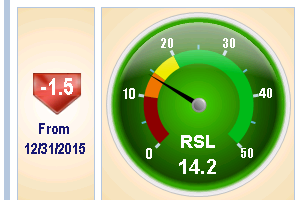
Lane Miles: **148.2**

Sections: **575**

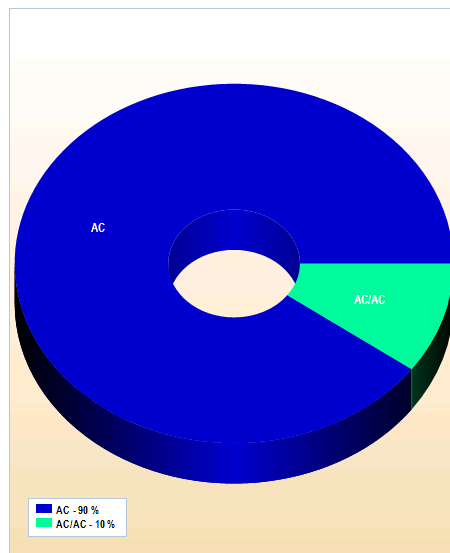
Current PCI by Functional Class



Remaining Service Life (years)



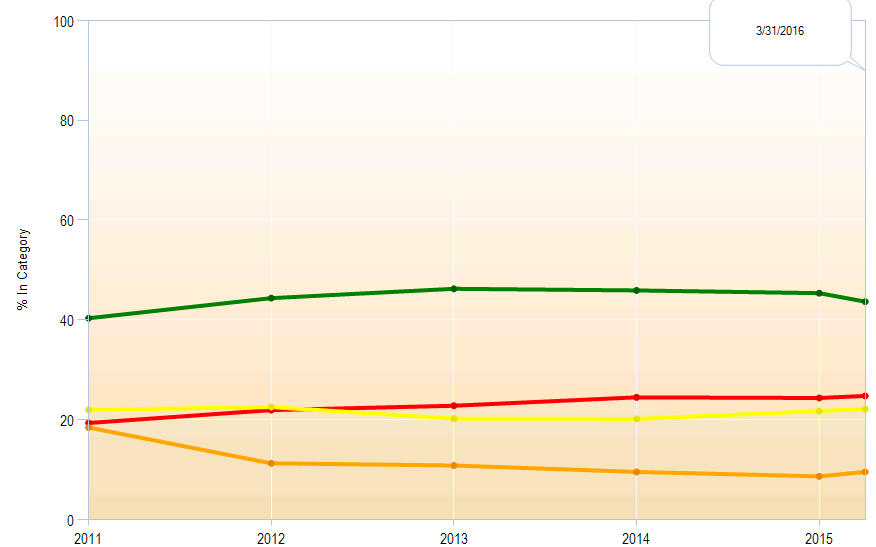
Surface Type



Historical Network Condition Trends

From 12/31/2015

- Very Good: 43% (Change: -2)
- Good: 22% (Change: 0)
- Poor: 10% (Change: +1)
- Very Poor: 25% (Change: +1)



# Revenue Summary

	<b>Street Maintenance Fee</b>	<b>Local Gas Tax</b>	<b>Total</b>
FY 2012-13 Actual	\$612,159	\$219,520	\$831,679
FY 2013-14 Actual	\$616,913	\$166,019	\$782,933
FY 2014-15 Actual	\$621,826	\$167,638	\$789,463
FY 2015-16 Projected	\$625,000	\$140,000	\$765,000



# Fee Comparison

Jurisdiction	Street Fee	Total Collected (Street Fee & Local Gas Tax)	Lane Miles	\$/mile Collected
Canby	\$5.00	\$941,135	112	\$8,403
Lake Oswego	\$8.44	\$2,604,832	366	\$7,117
<b>Milwaukie</b>	<b>\$3.35</b>	<b>\$806,000</b>	<b>148</b>	<b>\$5,446</b>
Oregon City	\$12.26	\$2,540,000	256	\$9,922
West Linn	\$11.37	\$1,575,000	215	\$7,326
<b>Milwaukie</b> (If indexed per CCI as other fees)	<b>\$4.03</b>	<b>\$932,866</b>	<b>148</b>	<b>\$6,303</b>
<b>Milwaukie</b> (Per \$1 increase in current Street fee)	<b>Add</b>	<b>\$186,600</b>	<b>148</b>	<b>\$1,260</b>

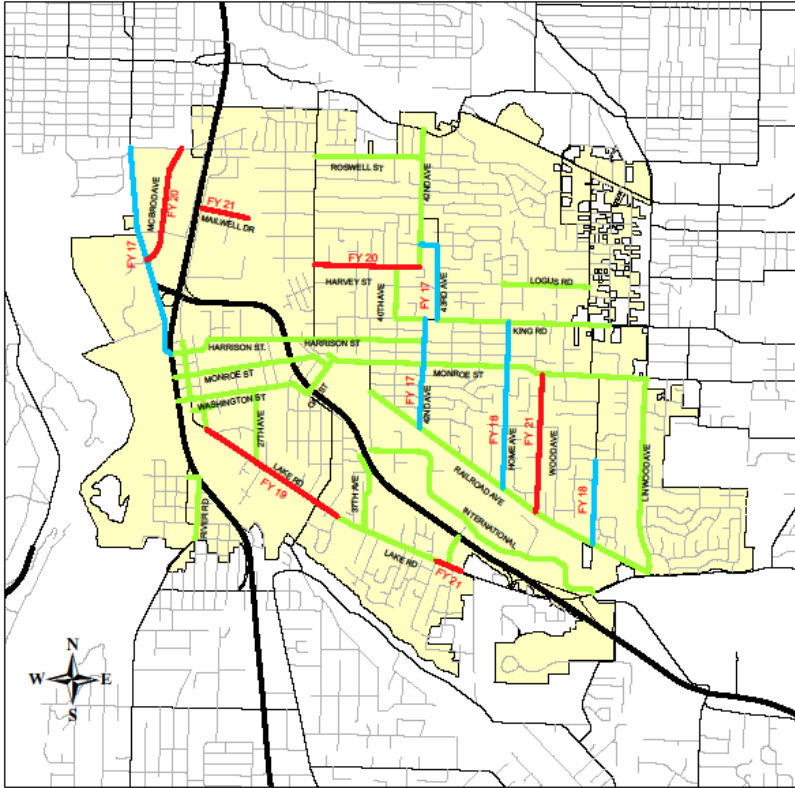


# Proposed Projects



# Proposed Projects

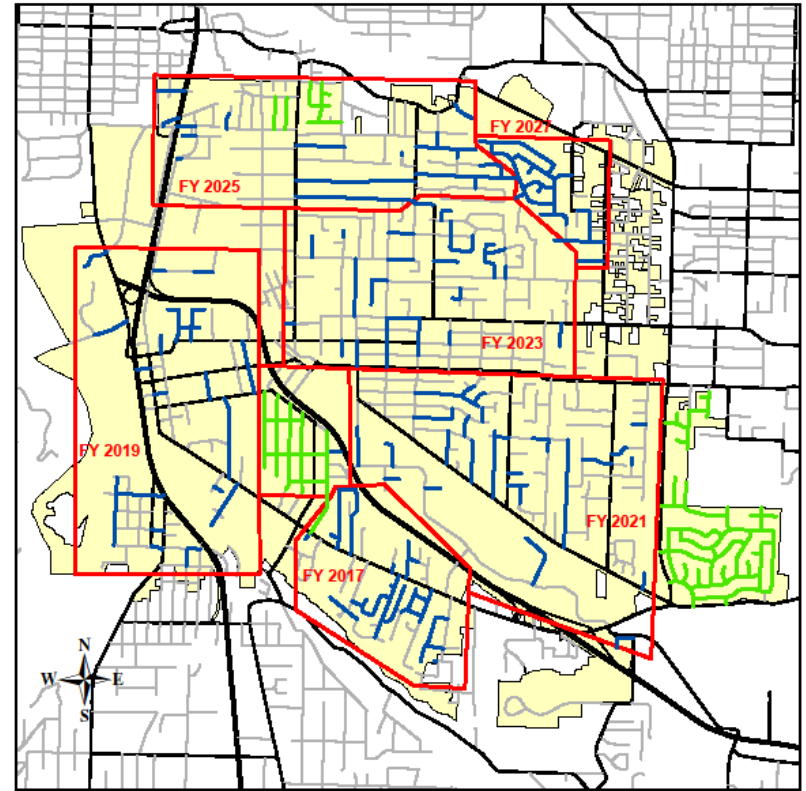
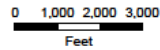
ATTACHMENT 1



**MILWAUKIE**  
Dogwood City of the West

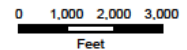
Street Surface Maintenance Program Map

- Future Projects
- Fiscal Year 2017 & 2018 Projects
- Completed Projects



SSMP Slurry Seal Map

- Slurry Seal Projects
- Completed Slurry Seal Projects
- Fiscal Year to be Completed



# FY 2017 Projects

- 42nd Avenue (Railroad to Monroe)
  - Full Depth Asphalt Recycle
  - ADA Ramp Improvements
  - Minor Storm Drainage Revisions



- 42nd Avenue (Monroe to King)
- King Road (42<sup>nd</sup> to 43<sup>rd</sup>)
  - Grind and Inlay
  - ADA Ramp Improvements
  - Minor Storm Drainage Revisions

- 43<sup>rd</sup> Avenue (King to Howe)
- Howe (43<sup>rd</sup> to 42<sup>nd</sup>)
  - 2" Asphalt Overlay



Total Budget \$1,400,000



# SSMP Program Definition

## (MMC 3.25.010)

Maintain, repair, and reconstruct City of Milwaukie streets. Activities include the administration of the street maintenance fee, preventive maintenance, rehabilitation, and reconstruction projects; design and inspection of such projects; street condition monitoring and assessment, including inspection of street repairs; and staff training and consultant services in support of the above activities.



# Current Program

- Focuses on Arterial and Collector Street
  - Goal to increase PCI to 75 by 2017
  - Preset List of projects identified over a 10yr period
  - Upgrade ADA Ramps with asphalt overlays
- Maintenance of Existing Infrastructure
  - Crack/Slurry Seal Residential Streets
  - Increase Remaining Service Life of Network



# Challenges

- Lack of residential improvements
  - Ignoring Residential Streets below PCI 60
  - 61% of Roadways classified as Residential
- Lack of funding's buying power
  - Rate fixed to 2006 levels
  - CCI has increased from 8640.58 in 2006 to 10,398.13 in 2015, 120.34% increase
  - Current estimate that original 10yr Plan will take 15yrs at current funding levels



# Opportunity

- Expand SSMP Paving to Residential Streets
  - Program is not restricted to Arterial and Collector Streets.
  - Including Residential streets will have a larger impact on the overall network PCI and RSL.
  - Cost per mile is less than Arterial or Collector Streets
  - Residential Streets can be saved at a lower PCI
- Expansion of SSMP Paving is recommended by CUAB and PSAC



# Compare Residential to Arterial/Collector



# Alternatives

- Incorporate Residential Streets into current Program
  - Set aside a percentage of SSMP funds for use on Residential Streets.
  - Prioritize all streets and treatments based on the cost and benefit to the overall network
- Increase the available funding
  - Raise the Street Fee to account for inflation
  - Have the Street Fee set to the CCI as other fees



Questions?

