



CITY OF MILWAUKIE

COUNCIL RESOLUTION No. 8-2018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO SIGN TO AN INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY AND THE CITY OF MILWAUKIE RELATED TO THE MONROE STREET GREENWAY CONCEPT PLAN.

WHEREAS, the City Council directed staff to conduct additional modeling of traffic data and coordinate with other agencies to test the diverters proposed in the Monroe Street Greenway Concept Plan; and

WHEREAS, the City and County have been working together to further the development of both the City of Milwaukie Greenway Concept Plan and the Clackamas County Neighborhood Street Design Plan; and

WHEREAS, an intergovernmental agreement has been negotiated that defines roles, shares resources and determines financial commitments of both the County and the City as they relate to the Monroe Street Greenway and Neighborhood Street Concept Plans.

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

Section 1. The Milwaukie City Council agrees to the terms of the intergovernmental Agreement with Clackamas County related to the Monroe Street Greenway Concept Plan.

Section 2. the Mayor is authorized to sign the Intragovernmental Agreement on behalf of the City of Milwaukie.

Introduced and adopted by the City Council on **February 6, 2018.**

This resolution is effective on **February 6, 2018**

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Scott S. Stauffer, City Recorder

Peter O. Watten
City Attorney

AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT
Between
CLACKAMAS COUNTY and CITY OF MILWAUKIE
Related to
THE MONROE STREET DESIGN PLAN

This is an amendment to the Intergovernmental Agreement (the "Amendment") between the City of Milwaukie ("City") and Clackamas County ("County").

RECITALS

This Amendment is made and entered into by the City and the County as an amendment to the Intergovernmental Agreement between the parties, which was fully executed on March 22, 2018, and relates to the Monroe Street Design Plan (the "Agreement").

During the course of the Project, the City increased the amount of survey work it wanted completed in connection with the Project. The City and County now desire to clarify the City's responsibility for the increased costs associated with the additional survey work.

AGREEMENT

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.
2. **Amendments to Agreement.**

The following RECITALS in the Agreement shall be deleted in their entirety:

WHEREAS, the City shall be responsible for eleven percent (11%) of the costs associated with the Survey Work identified in Exhibit B, and its contribution shall not exceed \$7,377.00; and

WHEREAS, the County shall be responsible for eighty-nine percent (89%) of the costs associated with the Survey Work identified in Exhibit B, and its contribution shall not exceed \$59,683.00.

The deleted RECITALS shall be replaced with the following:

WHEREAS, the City shall be responsible for fifteen percent (15%) of the costs associated with the Survey Work identified in Exhibit B, and its contribution shall not exceed \$10,060.00; and

WHEREAS, the County shall be responsible for eighty-five percent (85%) of the costs associated with the Survey Work identified in Exhibit B, and its contribution shall not exceed \$57,000.00.

Section 2.D of the Agreement shall be deleted in its entirety and replaced with the following:

The County shall submit an invoice to the City for reimbursement of costs billed to the Project within thirty (30) days from the date the Survey Work is complete. Notwithstanding any provision herein which may be construed to the contrary, the total compensation provided to the County by the City under this Agreement shall not exceed \$10,060.00 without prior written amendment of this Agreement executed by the County and the City.

The County shall submit its invoice(s) to the City at the following address:

City of Milwaukie
 Attention: Finance
 6101 SE Johnson Creek Blvd.
 Milwaukee, OR 97206

A copy of County invoices may be emailed to: finance@milwaukieoregon.gov

Section 3.C of the Agreement shall be deleted in its entirety and replaced with the following:

The City shall reimburse the County for fifteen percent (15%) of the costs associated with the Survey Work, which have been incurred by the County. The City shall issue payment to the County for approved costs within 30 days of receipt of invoices submitted by the County. Notwithstanding any provision herein which may be construed to the contrary, the total compensation provided to the County by the City under this Agreement shall not exceed \$10,060.00 without prior written amendment of this Agreement executed by the County and the City.

The following portion of Exhibit B to the Agreement shall be deleted in its entirety:

Task	Estimated Cost	Assumptions/Comments
ROW Survey	\$67,060.00	Surveying includes work Identified in above Scope of Work
Less County Share	\$59,683.00	
Subtotal	\$7,377.00	Total City Cost

The deleted portion of Exhibit B to the Agreement shall be replaced with the following:

Task	Estimated Cost	Assumptions/Comments
ROW Survey	\$67,060.00	Surveying includes work Identified in above Scope of Work
Less County Share	\$57,000.00	
Subtotal	\$10,060.00	Total City Cost

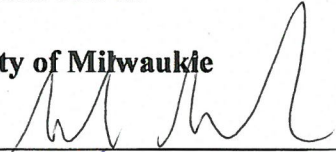
- 3. Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. The City and County certify that the representations, warranties, and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

The Parties, by execution of this Amendment, hereby acknowledge that their signing representatives have read this Amendment, understand it, and agree to be bound by its terms and conditions.

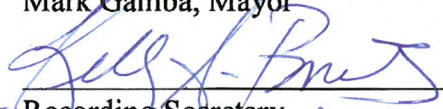
In witness hereof, the parties have executed this Amendment by the date set forth opposite their names below.

City of Milwaukie



Mark Gamba, Mayor

Date: 1-17-19



For Recording Secretary, Assistant City Manager,
in witness

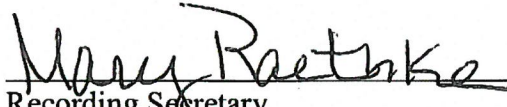
**Clackamas County
Board of County Commissioners**



Name:

Date: 12-20-18
B.I.

Title: Chair of the Board of County Commissioners



Recording Secretary

**INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY
AND THE CITY OF MILWAUKIE
RELATED TO THE MONROE STREET DESIGN PLAN**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("COUNTY"), a corporate body politic, and the City of Milwaukie ("CITY"), an Oregon municipality, pursuant to ORS Chapter 190 (Cooperation of Governmental Units), collectively referred to as the "Parties" and each a "Party."

RECITALS

WHEREAS, authority is conferred upon local governments under ORS 190.010 to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform;

WHEREAS, Monroe Street is an important regional active transportation connection linking downtown Milwaukie and the Willamette River Multiuse Path and the Clackamas Regional Center and the I-205 Multiuse Path;

WHEREAS, the City of Milwaukie's Transportation System Plan ("TSP") identifies Monroe Street as a significant neighborhood greenway and the County's Active Transportation Plan ("ATP") identifies Monroe Street a Principle Active Transportation ("PAT") Route;

WHEREAS, the Monroe Street corridor is located within the Milwaukie city limits and unincorporated Clackamas County;

WHEREAS, the City Resolution R107-2015 adopted a concept plan for the Monroe Street Neighborhood Greenway and directed staff to conduct additional modeling of traffic data and then coordinate with other agencies as needed;

WHEREAS, the County has prepared a Neighborhood Street Design Plan for the section of Monroe Street from the Monroe Street-Linwood Avenue Intersection to the Clackamas Town Center;

WHEREAS, on October 10, 2016 the Clackamas County Planning Commission voted against approving the Monroe Street Neighborhood Design plan due, in part, to a desire for more refined traffic analysis and right-of-way study;

WHEREAS, the City and County agree that Monroe Street requires the work set forth in Exhibit "A" and Exhibit "B," which is attached hereto and incorporated herein and, which generally includes traffic modeling services and right-of-way surveying (the "Project");

WHEREAS, the County would like to engage the City to perform the work set forth in Exhibit "A" and the City (through contract with private entity) is willing to perform the work;

WHEREAS, the City would like to engage the County to perform the work set forth in Exhibit "B" and the County is willing to perform the work;

WHEREAS, the City estimates that the total cost of the work associated with the portion of the Project identified in Exhibit A (the "Traffic Impact Analysis Work") will not exceed \$70,000.00;

WHEREAS, the City shall be responsible for seventy-five percent (75%) of the costs associated with the Traffic Impact Analysis Work identified in Exhibit A, and its contribution shall not exceed \$52,500.00;

WHEREAS the County shall be responsible for twenty-five percent (25%) of the costs associated with the Traffic Impact Analysis Work identified in Exhibit A, and its contribution shall not exceed \$17,500.00;

WHEREAS, the County estimates that the total cost of the work associated with the portion of the Project identified in Exhibit B (the "Survey Work") will not exceed \$67,060.00;

WHEREAS, the City shall be responsible for eleven percent (11%) of the costs associated with the Survey Work identified in Exhibit B, and its contribution shall not exceed \$7,377.00; and

WHEREAS, the County shall be responsible for eighty-nine percent (89%) of the costs associated with the Survey Work identified in Exhibit B, and its contribution shall not exceed \$59,683.00.

AGREEMENT

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:

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or June 30, 2018, whichever is sooner.
2. **Rights and Obligations of the County.**
 - A. The County agrees to complete the Survey Work associated with the Project, as more specifically described in Exhibit "B."
 - B. The County will coordinate with the City in the Survey Work and the Traffic Impact Analysis Work associated with the Project.
 - C. The County shall reimburse the City for twenty-five percent (25%) of the costs associated with the Traffic Impact Analysis Work, which have been incurred by the City. The County shall issue payment to the City for approved costs within 30 days of receipt of invoices submitted by the City. Notwithstanding any provision herein which may be construed to the contrary, the total compensation provided to the City by the County under this Agreement shall not exceed \$17,500.00 without prior written amendment of this Agreement executed by the County and the City.
 - D. The County shall submit an invoice to the City for reimbursement of costs billed to the Project within thirty (30) days from the date the Survey Work is complete. Notwithstanding any provision herein which may be construed to the contrary, the total compensation provided to the County by the City under this Agreement shall be \$7,377.00 without prior written amendment of this Agreement executed by the County and the City.

The County shall submit its invoice to the City at the following address:

City of Milwaukee
 Attention: Finance
 6101 SE Johnson Creek Blvd.
 Milwaukee, OR 97206

A copy of County invoices may be emailed to: finance@milwaukieoregon.gov

- E. Clackamas County is self-insured for workers' compensation, and general, auto and professional liability, in accordance with the provisions of ORS 30.272 (Tort Claims Act) and ORS 656.403 (Workers' Compensation). The County maintains an insurance fund from which to pay all costs and expenses relating to claims for which it is self-insured. The County's exposure for general, auto and professional liability is limited by ORS 30.272.

3. Rights and Obligations of the City.

- A. The City agrees to complete the Traffic Impact Analysis Work associated with the Project, as more specifically described in Exhibit "A."
- B. The City will coordinate with the County in the Traffic Impact Analysis Work and the Survey Work associated with the Project.
- C. The City shall reimburse the County for eleven percent (11%) of the costs associated with the Survey Work, which have been incurred by the County. The City shall issue payment to the County for approved costs within 30 days of receipt of invoices submitted by the County. Notwithstanding any provision herein which may be construed to the contrary, the total compensation provided to the County by the City under this Agreement shall not exceed \$7,377.00 without prior written amendment of this Agreement executed by the County and the City.
- D. The City shall submit an invoice to the County for reimbursement of costs billed to the Project within thirty (30) days from the date the Traffic Impact Analysis Work is complete. Notwithstanding any provision herein which may be construed to the contrary, the total compensation provided to the City by the County under this Agreement shall be \$17,500.00 without prior written amendment of this Agreement executed by the County and the City.

The City shall submit its invoice to the County at the following address:

Clackamas County
 Attention: Laura Kitts
 150 Beaver Creek Road
 Oregon City, OR 97045

A copy of City invoices may be emailed to: LKitts@clackamas.us

- E. The City of Milwaukie is self-insured for workers' compensation, and general, auto and professional liability, in accordance with the provisions of ORS 30.272 (Tort Claims Act) and ORS 656.403 (Workers' Compensation). The City maintains an insurance fund from which to pay all costs and expenses relating to claims for which it is self-insured. The County's exposure for general, auto and professional liability is limited by ORS 30.272.

4. Work Plan and Project Schedule.

- A. It is the desire of both Parties to complete the Project as soon as practicable, if possible prior to May 31, 2018.
- B. In the event any part of the Project is unable to be completed by May 31, 2018, the Parties may mutually agree in writing to adjust the Project timeline and this Agreement, or modify or terminate the Project as necessary. In the event of alterations to the Project, other terms of this Agreement shall remain in effect except for mutually agreed upon changes. In no event shall either Party claim any damages, monetary or otherwise, resulting from the other Party's failure to complete the Project by May 31, 2018.

5. Termination.

- A. The County and the City, by mutual written agreement, may terminate this Agreement at any time.
- B. Either the County or the City may terminate this Agreement in the event any part of the Project is unable to be completed by May 31, 2018.
- C. Either the County or the City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of

termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.

- D. The County or the City shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- E. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- F. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination
- G. Either Party may invoice the other for all work performed as of the date of termination for that portion of the work completed.

6. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.
- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

7. Party Contacts

- A. Karen Buehrig or her designee will act as liaison for the County for the Project.

Contact Information:

Clackamas County- Department of Transportation and Development
 150 Beaver Creek Road
 Oregon City, OR 97045
 (503) 742-4683 or KarenB@clackamas.us

- B. Charles Eaton or his designee will act as liaison for the City for the Project.

Contact Information:

City of Milwaukie
 6101 SE Johnson Road
 Milwaukie, OR 97206
 (503) 786-7605 or eatonc@milwaukieoregon.gov

- C. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

8. General Provisions

- A. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- B. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- C. **Non-Exclusive Rights and Remedies.** 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.
- D. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved
- E. **Access to Records.** 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.
- F. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- G. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.

- H. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. 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.
- I. **Interpretation.** The 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.
- J. **Independent Contractor.** 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.
- K. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the City.
- L. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
- M. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- N. **Authority.** 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.
- O. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

[Signatures on Following Page]

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

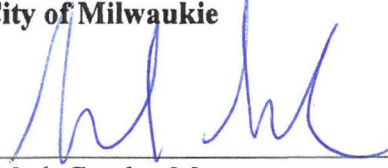


Chair, Board of County Commissioners
(BCC)

2-22-18 B.2.

Date

City of Milwaukie



Mark Gamba, Mayor

3-22-18

Date

Exhibit A

SCOPE OF WORK TO BE COMPLETED BY CITY
Monroe Street Concept Plan

1. Work to include a Traffic Impact Analysis (“Analysis”) to assess the functionality of the Monroe Street corridor and surrounding transportation system. The transportation system shall be assessed for efficiency, capacity and safety. The study area shall be bounded by SE Fuller Road on the east; King Road on the north; Harmony Road on the south and Highway 224 on the west.

Task	Estimated Cost	Assumptions/Comments
Traffic Impact Analysis	\$70,000.00	Modeling includes test diverters at Intersection of Linwood-Monroe and 42 nd Ave. Analysis will model for both An “open gap” and “closed gap” at Monroe and 78 th .
Less City share	\$53,500.00	
Subtotal	\$ 17,500.00	Total County Cost

Exhibit B

SCOPE OF WORK TO BE COMPLETED by COUNTY
Monroe Street Concept Plan

1. Work to include right-of-way surveying utilizing standard surveying practices in accordance with applicable Oregon Revised Statutes. . Extent and location of survey work is as follows::
 - a. Section 1:SE Monroe Street and SE 72nd Avenue from the intersection of SE Monroe Street and SE Linwood Avenue to the western boundary of Whitcomb Elementary School. Cost: \$43,200.00.
 - b. Section 2:SE Thompson Road from the western boundary of Whitcomb Elementary School to SE Fuller Road. Cost \$13,800.00
 - c. Section 3: The intersections of SE 42nd Avenue and SE Monroe Street; SE 47th Avenue and SE Monroe Street and SE Home Avenue and SE Monroe Street. Cost \$10,060.00

Task	Estimated Cost	Assumptions/Comments
ROW Survey	\$67,060.00	Surveying includes work identified in above Scope of Work
Less County Share	\$59,683.00	
Subtotal	\$7,377.00	Total City Cost



CITY OF MILWAUKIE

COUNCIL RESOLUTION No. 8-2018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO SIGN TO AN INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY AND THE CITY OF MILWAUKIE RELATED TO THE MONROE STREET GREENWAY CONCEPT PLAN.

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WHEREAS, the City and County have been working together to further the development of both the City of Milwaukie Greenway Concept Plan and the Clackamas County Neighborhood Street Design Plan; and

WHEREAS, an intergovernmental agreement has been negotiated that defines roles, shares resources and determines financial commitments of both the County and the City as they relate to the Monroe Street Greenway and Neighborhood Street Concept Plans.

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

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Section 2. the Mayor is authorized to sign the Intragovernmental Agreement on behalf of the City of Milwaukie.

Introduced and adopted by the City Council on **February 6, 2018**.

This resolution is effective on **February 6, 2018**

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Scott S. Stauffer, City Recorder

Peter O. Watten
City Attorney