

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
MAY 21, 2013**

CALL TO ORDER

Council President Hedges called the 2150th meeting of the Milwaukie City Council to order at 7:19 p.m. in the City Hall Council Chambers.

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

Excused: Mayor Ferguson

Staff present: City Manager Bill Monahan, Engineering Manager Jason Rice, Finance Director Rina Byrne, Building Official Tom Larsen, and Public Works Director Gary Parkin

PLEDGE OF ALLEGIANCE

Councilor Hedges announced an amendment to the agenda. Item 6.C., Habitat Development Agreement with Wildlands, was removed from the agenda.

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Milwaukie High School Student of the Month

Council President Hedges and Councilors recognized Samantha Hobson as the Milwaukie High School Student of the Month for May 2013.

CONSENT AGENDA

It was moved by Councilor Miller and seconded by Councilor Gamba to approve the consent agenda as presented:

- A. Resolution 42-2013: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing John Fox to the Audit Committee;
- B. Resolution 43-2013: A Resolution of the City Council of the City of Milwaukie, Oregon, to Extend the North East Sewer Discount Program to June 30, 2013;
- C. An OLCC Application for Gaucho's Argentine Cuisine, 2037 SE Jefferson Street

Motion passed with the following vote: Councilors Gamba, Miller, and Churchill and Council President Hedges voting "aye." [4:0]

AUDIENCE PARTICIPATION

Kim Keehner, Downtown Milwaukie Business Alliance, discussed issues with construction downtown and the hardship placed on businesses having to close. She had heard that one of the businesses had to close their doors because their customers could not access the business. Parking is at a premium due to construction. She is concerned that people will not continue to fight to get to Downtown to support businesses. She would like to know why the City allows construction to happen on all four streets at the same time.

CITY COUNCIL REGULAR SESSION – MAY 21, 2013

APPROVED MINUTES

Page 1 of 7

Councilor Hedges asked Mr. Monahan if he and someone from the staff who coordinates construction could meet with the business owners to address this problem.

Mr. Monahan replied that Stacy Bluhm and Jason Rice coordinated TriMet and City projects and could set up a meeting.

Ms. Keehner asked that those business owners and citizens who don't have direct contact with the people who are giving out notices be notified somehow. She noticed that many of the email addresses that the City has on file for businesses are out of date.

Councilor Hedges said that Council was going on a tour with TriMet and would discuss the communication issue with them.

Councilor Churchill has been walking through Downtown on a regular basis. He has been approached with questions about the construction in downtown.

Councilor Miller has been hearing lately about lack of communication and that overall revenue has dropped dramatically for businesses. People who have an alternative to the businesses Downtown are choosing not to come Downtown. There are certain things that Council can do and certain things that TriMet can do, but Council wants to do what is best for businesses. He thanked Ms. Keehner for her efforts.

Councilor Hedges encouraged citizens to make the effort to come Downtown and spend their money supporting local businesses.

Shalina Havens, Havens Acupuncture. She received a notice from the City that the project would take two weeks. She has been looking at a piece of machinery in front of her business for a month. She has been talking with flaggers to get information to communicate to her patients. She discussed changing parking from 2hrs to 4hrs and asked what the process is for changing those hours.

Mr. Monahan replied that discussions are happening for parking but no decisions have been made. A parking study will be done in September 2015. She will be involved in that discussion.

Councilor Hedges replied that there is a discussion currently happening with the Historic Milwaukie neighborhood and others about Downtown parking and discouraging people from long term parking while using light rail.

Greg/Frank Hemer manager at Milwaukie Lumber. He expressed concerns regarding limited access points to Milwaukie Lumber. He discussed concerns with the City and when there is a problem it is quickly resolved or an agreeable solution has been found. For the majority, he has been notified 3 days ahead of time. He suggested that all affected areas be informed at least 3 days before work begins. He is a member of the Portland Milwaukie Light Rail Citizens Advisory Committee and offered that Downtown businesses are welcome to come into Milwaukie Lumber any time to discuss concerns. He also mentioned that there are regular City of Milwaukie meetings every third Monday. He feels that the coordination between TriMet and the City projects is lacking a bit.

Councilor Hedges thanked Mr. Hemer for offering to speak with the community and mentioned that Trimet has a 1-800 number that people can call to speak their concerns.

Councilor Churchill asked if it was a coordination or communication issue between TriMet and the City.

Mr. Hemer believed that the City and TriMet were not always aware of timelines.

Nikki Hoff president of the Friends of the Ledding Library. Construction is hurting business on Fridays and Saturdays when the bookstore is open. Last Friday the

CITY COUNCIL REGULAR SESSION – MAY 21, 2013

APPROVED MINUTES

Page 2 of 7

bookstore only earned \$17.50. Normally they would earn \$100-150 on weekends. They want to support the construction and improvements but still have to survive and she wants to know that there is an end in sight. They are considering closing on Fridays but hate to break the consistency that they have developed.

Councilor Hedges thanked Ms. Hoff for the work that she is doing. He asked Mr. Monahan to address the parking situation in front of the Pond House.

Mr. Monahan said that he would discuss the issue with Public Works to work on signage and reserve those spots in front of the Pond House for the bookstore.

Councilor Churchill suggested Engineering direct contractors to not stage vehicles in front of the Pond House.

Kathy Lyle downtown Milwaukie business owner and Milwaukie Public Safety Foundation Board. She stated that she has never been contacted by the City or TriMet about construction except by the water department at the City who has done an excellent job at communicating with local businesses.

Ms. Lyle discussed the 9K for K9 event to raise money for the Police K9 unit. This year the event has moved from downtown Milwaukie to Milwaukie Marketplace. Raffle tickets can be purchased at 2035 SE Washington. The dog walk is on July 27th.

Judy Johnston downtown Milwaukie business owner. She has customers that come from many other cities and want to shop around downtown, but business has been hampered due to parking and construction. She has had issues with flaggers and a front load driver that drives too fast. Also when the movie pilot was being made, the notice was given to her that day. There was a day that her business had to close down for an entire day. She is disappointed that notice happens 24 hours before things happen. Most of her clients are booked far out and she needs more notice to let her clients know.

Councilor Hedges was sorry that Ms. Johnston had to close her business for a day and felt that it was unacceptable. Council will do what they can to help her and will exert what pressure they can.

Councilor Gamba suggested something that might be helpful would be a scheduling matrix that shows when streets are going to be closed and open and end dates for the projects and get it out to the downtown businesses.

Mr. Monahan explained that what the City gets from TriMet is a 4 week schedule that is constantly changing. We will try to make that information available although we don't know how we will do that yet. We can put the best information we have out there.

Councilor Churchill has been a strong advocate of a master schedule of dates from TriMet and the City. Both need to work on better communication with downtown businesses.

Councilor Miller encouraged people to come back and let Council know what is going on with their businesses and their ability to get around town. The only way Council can be of help is to be aware of what is going on. He has seen a collective group of people coming together to represent businesses.

Mr. Monahan mentioned that there is a project page on the city website that is updated weekly.

Councilor Hedges suggested putting links on the website prominently on the homepage.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

A. Walk Safely Milwaukie Program Report

Mr. Rice introduced Don Wiley Public Safety Advisory Committee (PSAC) chair and Rina Byrne. He recapped the previous discussions with Council and gave a brief history of the completed projects including Home Avenue Sidewalk, Stanley Avenue Sidewalk and Crosswalk, and River Road Sidewalk and Crosswalk. Each neighborhood received \$500 to fund a small Awareness and Education Project. NDA's provided crossing guard equipment to the elementary schools, emergency safety kits for Lewelling Elementary, and a \$1,650 donation to Public Safety. One of the future projects is a Washington Street Crosswalk that provides linkage between a church and school that share parking lots. It has an estimated cost of \$60,000. Another future project is the Harrison Street Crosswalk which would provide additional visibility at an unmarked crosswalk.

Ms. Byrne discussed materials brought to Council in 2010 when the program first started. There was a change in the way the state gas tax was going to be collected and remitted to the City and that there would be an increased level of funding. Over 4 years, the City has received almost half a million dollars less than was originally anticipated. There were five priorities for the use of the excess in the gas tax fund: fee in lieu of reserve, \$25,000 per year for emergency capital, \$25,000 per year for markings, \$135,000 per year for pavement repairs, and Walk Safely Milwaukie was the balancing account. Currently the state gas tax fund is negative.

Mr. Rice said that in working through this program, we've come a long way and created a relationship with the public. No one is questioning the importance of the program but there is a concern for the funding source. He would like direction from Council on how they feel the program is going and where they would like it to go.

Councilor Hedges was very unhappy. He wanted to know when the City knew about the financial issues.

Ms. Byrne was not aware until this week that the program was based on identifying excess.

Councilor Hedges wanted to know why our prediction was so far above ODOT's. He wanted to know why we still have \$144,000 to spend if we're currently in the hole. In November of last year, City staff came to Council and told them that part of the money match would be \$100,000 over three years from the WSMP but the money was never there.

Councilor Churchill felt that the recent formation of the Audit Committee and change in auditors will hopefully uncover these types of challenges.

Councilor Hedges said that PSAC was told that \$150,000 would be used for projects that the money hadn't been identified for. Before they make a decision he would like to know that the money is not actually there. He wanted to know if we spend the money on the WSMP, what we are not going to fund.

Ms. Byrne said that June 4th there is a joint session with the Budget Committee and she planned to bring it up then but would also like to discuss it when Councilor Hedges has returned at the meeting after that.

CITY COUNCIL REGULAR SESSION – MAY 21, 2013

APPROVED MINUTES

Page 4 of 7

Councilor Miller recalled that there was an established program called funds in lieu of. The high school paid \$83,000 into that fund 4-5 years ago. He wanted to know what happened to the money that was collected. His understanding was that the money was supposed to go back to that neighborhood.

Ms. Byrne replied that when funds in lieu are paid to the City, they expire in 10 years and the City may have to pay it back. The City does not own that money and is only holding it for the neighborhoods. Currently Finance has a list of all of those monies and Engineering is aware of all of those monies. It is not included in the budget because it is a liability. If there is a project that will use those funds, that project will be listed in the budget.

Mr. Rice added that Engineering holds a spreadsheet that shows the breakdown of those monies.

Councilor Miller said that when he was on the Budget Committee, the City was not tracking funds in lieu of. He was concerned that the money may sit and have to get sent back. He asked if there is a plan to use that money.

Mr. Rice replied that yes, there is a plan but there are conversations that need to take place before that money is budgeted. Mr. Rice and Mr. Butler have begun discussions with historic Milwaukie for a project.

Ray Bryan had done some research and would like to know what has happened with the local gas tax.

Ms. Byrne replied that the local gas tax is actually dedicated to the SSMP.

Mr. Bryan wanted to show his support for the program. It provided small projects that increase livability in Milwaukie and made a large impact.

Councilor Gamba asked if we think about WSMP as a process through which we can funnel funds, what does it cost the city to keep the process alive.

Mr. Rice didn't think it would cost anything. There is no cost to wait to generate revenue.

Councilor Gamba asked if the process could still work until another source of income is identified.

Mr. Rice wanted to be clear that Engineering is monitoring the funds in lieu of and have identified projects for those monies. There are some situations where the funds are directly tied to particular properties and it is more difficult to find projects for those specific properties.

Councilor Hedges needed more information on what projects will be effected if the program is kept running.

Mr. Rice would hold off on bidding out the Washington Street crosswalk until he could answer their questions.

Councilor Hedges asked that staff speak with PSAC at one of their meetings.

Council supported a continuance of this issue.

B. Milwaukie Municipal Code Title 15 and Title 12 Amendments - Ordinance

Tom Larsen Building Official. He talked about five changes have been proposed, uniform code for abatement of dangerous buildings, amending sections of the code that

have already been adopted by the state and other cities, public works standards moved to title 12, and expiration of permits.

It was moved by Councilor Gamba and seconded by Councilor Miller for the first and second readings by title only adoption of the ordinance amending Title 15 buildings and construction, and Title 12 streets, sidewalks & public places. Motion passed with the following vote: Councilors Gamba, Miller, and Churchill and Council President Hedges voting "aye." [4:0]

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

Ms. Wells polled the City Council: Councilors Gamba, Miller, and Churchill and Council President Hedges voting "aye." [4:0]

ORDINANCE 2068:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 15 BUILDINGS AND CONSTRUCTION, AND TITLE 12 STREETS, SIDEWALKS & PUBLIC PLACES.

D. Initiate Street Vacation 44th Avenue and Monroe Street – Resolution

Mr. Parkin discussed the street vacation that was discussed with Council in a prior Work Session. Council had agreed at that time and wanted something official from the Neighborhoods. At the April NDA meeting, they made a motion that passed unanimously for accepting the street vacation.

Councilor Miller discussed an issue that came up with a sliver of land behind Pietro's that has no value to the City but might have a value to the adjacent property owner. He asked why we hold onto those properties.

Mr. Monahan replied that the City currently does not have a program in place and this property brought this issue to light. It's something for the City to look at.

Councilor Gamba asked what the City's cost to initiate the street vacation.

Mr. Parkin recalled that it would be approximately \$1,500 or less.

It was moved by Councilor Miller and seconded by Councilor Churchill to adopt the resolution authorizing the City initiated vacation of a portion of the street right-of-way for 44th Avenue south of Monroe Street. Motion passed with the following vote: Councilors Gamba, Miller, Churchill, and Council President Hedges voting "aye." [4:0]

RESOLUTION NO 44-2013:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY INITIATED VACATION OF A PORTION OF THE STREET RIGHT-OF-WAY FOR 44TH AVENUE SOUTH OF MONROE STREET.

E. Council Reports

Councilor Churchill discussed active participation in the NDA outreach for the TSP. He participated with Councilor Gamba and thanked staff for their efforts. He attended the Regional Solutions group and heard a report on the outlook for job recovery for Clackamas County is dismal and would like to hear from them in a Council meeting to see what Council and the City can do to help. He did daily site walks downtown and discussed heaving of sidewalks.

Councilor Gamba also attended the NDA outreach meeting and reported that it was a very effective meeting. He also attended the Metro Policy Advisory Committee meeting and they are working on the Climate Safe Communities Project.

Councilor Miller reported that the North Clackamas Parks and Recreation District has lost some key people and are looking at a possible change in structure to make them more accountable to the public and other entities. He thanked Mr. Monahan for making sure that the City is a key player in that issue. He attended North Clackamas Urban Watershed Council. He also attended the Lake Rd NDA meeting which centered on what's going on around Lake Rd and recognized Mr. Rice and Mr. Butler for doing a great job.

Councilor Hedges attended multiple NDA meetings. He attended the first Farmers' Market at the City booth. He also attended the River Health Advisory Board meeting and thanked Gary Parkin for his support and JoAnn Herrigel for her presentation. He also discussed upcoming events.

ADJOURNMENT

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

Council President Hedges adjourned the regular session at 9:45 p.m.

Respectfully submitted,



Hannah Wells (Administrative Specialist III)

REGULAR SESSION

AGENDA
MILWAUKIE CITY COUNCIL
REGULAR SESSION
MAY 21, 2013

MILWAUKIE CITY HALL
10722 SE Main Street

2150th MEETING

- | | |
|---|---------------|
| 1. CALL TO ORDER | Page # |
| Pledge of Allegiance | |
|
 | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | |
| A. Milwaukie High School Student of the Month for May 2013 | |
| Samantha Hobson | |
|
 | |
| 3. CONSENT AGENDA <i>(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)</i> | |
| A. Appoint John Fox to the Audit Committee – Resolution | 2 |
| B. Extend North East Sewer Discount Program to June 30, 2013 – Resolution | 4 |
| C. OLCC Application for Gaucho's Argentine Cuisine, 2037 SE Jefferson Street | 15 |
|
 | |
| 4. AUDIENCE PARTICIPATION <i>(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)</i> | |
|
 | |
| 5. PUBLIC HEARING <i>(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)</i> | |

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. | Walk Safely Milwaukie Program Report
Staff: Engineering Manager Jason Rice | 17 |
| B. | Milwaukie Municipal Code Title 15 and Title 12 Amendments – Ordinance
Staff: Building Official Tom Larsen | 28 |
| C. | Habitat Development Agreement with Wildlands – Resolution
Staff: City Manager Bill Monahan | 57 |
| D. | Initiate Street Vacation 44th Avenue and Monroe Street – Resolution
Staff: Public Works Director Gary Parkin | 103 |
| E. | Council Reports | |
7. **INFORMATION**
8. **ADJOURNMENT**

Public Information

- Executive Session: The Milwaukie City Council may meet in executive session immediately following adjournment pursuant to ORS 192.660(2).
- All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

3.

CONSENT AGENDA

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING JOHN FOX TO THE MILWAUKIE AUDIT COMMITTEE.

WHEREAS, the City Council of the City of Milwaukie believes that it is critical to ensure that audits of the City’s financial statements are completed annually in accordance with Oregon state law; and

WHEREAS, City Council initially created the Milwaukie Audit Committee by Resolution 43-2012 and revised the compilation by Resolution 10-2013; 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, John Fox currently serves on the Milwaukie Budget Committee and possesses the necessary qualifications to serve on the Milwaukie Audit Committee,

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

SECTION 1: That the Audit Committee shall consist of one member of the City Council and one member of the City Budget Committee each appointed by the Council for two-year staggered terms and two citizen members with an interest in City government financial operations, with preferences first given to Certified Public Accountants residing within City limits and second to Certified Public Accountants with City affiliation, also for a two year term.

SECTION 2: That John Fox is appointed to the Milwaukie Audit Committee for the remainder of the term for position 3.

SECTION 3: That his term of appointment shall commence immediately and shall expire on March 31, 2015.

SECTION 4: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on **May 21, 2013**.

David Hedges, Council President

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Resolution No. _____



Agenda Item: 3.B.
Meeting Date: 5/21/2013

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Extension of the NESE Installment Payment Plan to Properties that Annexed Prior to March 15, 2013

Prepared By: Jason Rice, Engineering Manager

Dept. Head Approval: Steve Butler, Interim Community Development Director

City Manager Approval: Bill Monahan

Reviewed by City Manager: 5/13/13

ISSUE BEFORE THE COUNCIL

A Resolution to extend the installment payment plan to June 30, 2013 related to the Northeast Sewer Extension Reimbursement District cost shares for those properties that annexed to the City of Milwaukie prior to March 15, 2013.

STAFF RECOMMENDATION

Staff recommends extension of the deadline because it was brought to Council's attention that newly annexed residents experienced trouble with mail delivery at the time the last notices were sent out that the program was expiring.

KEY FACTS & INFORMATION SUMMARY

Council passed Resolution 37-2010 in which that the City created a financing program to assist property owner to connect to the NE Sewer Extension Project within two years of completion of the project to pay their reimbursement district cost share in twenty semi-annual installments at no interest, provided they make all other required payments, comply with City requirements, and provide security for the total value of the cost share in the form of a lien.

A member of the public has requested that Council extend the assistance program to allow properties that annexed into the City prior to the program's deadline be included in the installment payment program.

OTHER ALTERNATIVES CONSIDERED

Not extending the financing program.

CITY COUNCIL GOALS

No Council goals apply to this report.

ATTACHMENT LIST

1. Resolution 37-2010 in which the ground rules for establishing the financing program was approved by Council on May 5, 2010. Including the original expiration date of “two years from the date of project completion”.
2. Resolution 33-2011 in which the expiration date was adjusted to March 15, 2013 to coincide with the 2 year anniversary date for completion.
3. Draft Resolution extending the expiration date set forth by Resolution 33-2011 to July 1, 2013.

FISCAL NOTES

By allowing the program to extend to June 30, 2013, this will give Staff the ability to record agreements with a potential 36 properties for the repayment of their NESE Reimbursement Fees, fees that the City will eventually receive, but might not in the near future. Without the extension, the City is still obligated to make its payment to DEQ for the ARRA Loan that paid for the construction of the sewer system in the NESE Area.



To: Mayor and City Council

Through: Bill Monahan, City Manager
Steve Butler, Interim Community Development Director

From: Jason Rice, Engineering Manager

Subject: Extension of the NESE Installment Payment Plan to Properties that Annexed Prior to March 15, 2013

Date: May 21, 2013 Regular Session

ACTION REQUESTED

Extend the deadline for taking advantage of the City's Zero Interest Financing Program to June 30, 2013 for annexed properties within the Northeast Sewer Extension (NESE) project area.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

March 2011: City Council adopts Resolution 33-2011 which clarifies and extends the deadline for the installment payment plan (previously adopted under Resolution 37-2010) to March 15, 2013.

September 2010: Council authorizes the creation of the NE Sewer Extension Reimbursement District (Res. 78-2010).

May 2010: Council approved installment payment incentive (Res. 37-2010) and an annexation incentive program (Res. 38-2010) and established a discount program structure (Res. 40-2010) for the repayment of the future reimbursement District.

April 2010: Work session on reimbursement approach and possible incentives.

February 2010: Council approved adding sewer work, replacing mains on King Road and Brookside Drive, to the contract for the NE Sewer Extension (NESE) project.

January 2010: Council annexed rights-of-way in the project area (Ord. 2010).

December 2009: Council awarded the contract for construction of the project to K & R Plumbing Construction Co. Inc., in the amount of \$2,653,257.05 (Res. 78-2009).

October 2009: Council approved an IGA with Clackamas Development Agency for payment to the City of urban renewal contributions to the project (Res. 64-2009); and requested the County transfer jurisdiction of rights-of-way in the area (Res. 66-2009).

September 2009: Council initiated annexation of the rights-of-way in the NESE Project Area by resolution (Res.58-2009). Council approved an updated Clean Water State Revolving Fund Loan Agreement for the NESE Project (Res. 57-2009).

August 2009: Staff briefed Council on project status and need to annex rights-of-way.

June 2009: Council awarded a contract to Right-of-Way Associates Inc. for easement and appraisal services within the NESE Project Area. Council adopted an Ordinance allowing the City to extend the life of reimbursement districts beyond fifteen years.

February 2009: Council authorized the City Manager to enter into a contract with Century West for engineering services to design the project.

December 2008: Council approved a loan agreement from CWSRF (Res.94-2008).

October 2008: Council approved moving forward with the extension of the City's sewer system into Dual Interest Area "A" including: entering into an IGA with Clackamas County for engineering services; applying for a DEQ loan needed to fund the sewer extension; and moving forward with public information efforts (Res.81-2008).

September 2008: Staff briefed Council at a work session on the proposed sewer extension project. Council requested additional information prior to acting.

May 2008: Staff briefed Council specifically with regard to relevant City and County policies, State law regarding annexation, and service delivery and governance issues.

March 2008: Staff briefed Council on the need for sewer service in Dual Interest Area "A," discussions with Clackamas County, and outreach efforts to owners and residents.

September 2006: Staff briefed Council on state statute and City Comprehensive Plan policy regarding island annexations.

November 2002: Council directed the City Manager to sign a CDBG grant application to subsidize connection costs for low-income residents in Dual Interest Area "A".

July 1990: Clackamas County Order No 90-726 established an Urban Growth Management Agreement (UGMA) in which the City and County agreed to coordinate the future delivery of services. With respect to Dual Interest Area "A", the agreement states: *"The City shall assume a lead role in providing urbanizing services."*

BACKGROUND

The NE Sewer Extension (NESE) project was undertaken to provide wastewater sewer service to the City's Dual Interest Area "A", which was a priority as the lack of service caused the area to suffer economically and the environment to be adversely impacted.

The construction of the sewer system was deemed complete March 15, 2011, making service available to 261 properties.

The funding source for the project was an American Reinvestment and Recovery Act (ARRA) Loan distributed by the Department of Environmental Quality (DEQ) in the amount of approximately \$4 million. Half was forgiven upon completion of the project, leaving approximately \$2 million to be paid back over 20 years. The loan is interest free; however, a small fee based on the balance of the loan will be applied each year.

To repay the DEQ loan, the City established a reimbursement district in which every property that benefited from the sewer installation was to reimburse the City. This reimbursement fee was calculated for each of the properties and was documented within the Engineering Director Report that was used to establish the district.

Recognizing a hardship that properties within this area would still need to pay for on-site connections to this system after the reimbursement fee was paid, the City established a financing program that assisted these properties by allowing agreements to be signed by the property owners to make payments in installments along with no interest fees. At the time this program was set up, it was agreed that by setting a deadline for the program to expire, it would create an incentive for property owners to take advantage of connecting. Along with this incentive, the Planning Department also created an assisted annexation program to help property owners join the City, which in turn would create the ability for these annexed properties to connect to the newly installed system.

After the last of four batch annexations was officially recorded by the State on February 22, 2013, announcements were sent to each of the owners of properties letting them know that they were now in the City and that per previous mailings, they were able to take advantage of City of Milwaukie services such as connecting to sewer. It was later brought to the attention of City Council that some people within this area may have had issues with mail delivery at that time and that owners may not have understood that the deadline (March 15, 2013) for taking advantage of the Installment Payment Plan was soon approaching. The deadline has passed and it appears as though 36 property owners may not have fully understood that their ability to finance this large reimbursement fee under the original 0% interest program has passed. Therefore, Staff proposes to extend the deadline to June 30, 2013 in order to communicate one more time with these 36 properties in order to be positive that it is in fact the property owners desire to not take advantage of the program. However, if the property owners do wish to take advantage of the program, Staff would like the ability to record agreements with the owners.

CONCURRENCE

Community Development and the Finance Department have coordinated closely on the decision to recommend extending the financing program.

FISCAL IMPACT

Extension of the zero-interest financing program to 36 previously annexed properties has the potential for adding up to \$230,000 in payment installment agreements that would be paid back over the next 10 years.

If it is decided to not extend the deadline, these same 36 properties would still approach the City to pay their fees if the on-site septic systems were to fail. However, individual system failures could occur as much as 30 years from now.

WORK LOAD IMPACTS

If the financing program is to be extended, Community Development Staff would notify each of the remaining 36 properties that have already annexed. This notification will take approximately 4 hours to process. Each of the properties that decide to take advantage of the extension will also take approximately 1 hour of Staff time to generate an agreement and process the document through the County Recorder's Office.

The Engineering Department currently tracks reimbursement district payments and amounts owed using existing software maintained by the City. If a property owner chooses to finance their share under provisions set forth by extending Resolution 37-2010, the Finance Department will track these payments through the City's billing software.

ALTERNATIVES

1. Not extending the NESE Installment Payment Plan to Properties that Annexed Prior to the March 15, 2013

ATTACHMENTS

1. Resolution 37-2010 in which the ground rules for establishing the financing program was approved by Council on May 5, 2010. Including the original expiration date of "two years from the date of project completion".
2. Resolution 33-2011 in which the expiration date was adjusted to March 15, 2013 to coincide with the 2 year anniversary date for completion.
3. Resolution extending the expiration date set forth by Resolution 33-2011 to June 30, 2013.

RESOLUTION NO. 37-2010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO ENACT AN INSTALLMENT PAYMENT PLAN RELATED TO REIMBURSEMENT DISTRICT COST SHARES FOR THOSE PROPERTIES THAT CONNECT TO THE NE SEWER EXTENSION PROJECT WITHIN TWO YEARS OF PROJECT COMPLETION.

WHEREAS, the City will establish a reimbursement district based on the actual cost of design, right-of-way acquisition, and construction of the NE Sewer Extension Project; and

WHEREAS, the City wants to encourage property owners to connect to sewer in the NE Sewer Extension Project Area expeditiously; and

WHEREAS, the City has received excellent financing terms for project costs; and

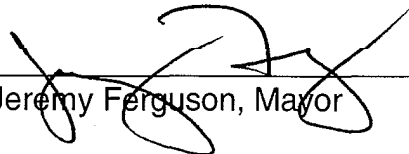
WHEREAS, the City is not obligated to offer installment payments or financing for reimbursement district costs.

NOW, THEREFORE, BE IT RESOLVED that the City shall allow property owners that connect to the NE Sewer Extension Project within two years of completion of the project or November 2012 (whichever occurs later) to pay their reimbursement district cost share in twenty semi-annual installments at no interest, provided they make all other required payments, comply with City requirements, and provide security for the total value of the cost share in the form of a lien.

BE IT FURTHER RESOLVED that the City Council may modify, adjust, or terminate this program in the future.

Introduced and adopted by the City Council on May 4, 2010.

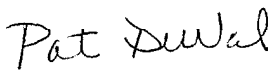
This resolution is effective on May 5, 2010.



Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC



Pat DuVal, City Recorder



City Attorney

RESOLUTION NO. 33-2011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, CLARIFYING DEADLINES AND APPLICABILITY OF DISCOUNTS AND INCENTIVES FOR THE NORTH EAST SEWER EXTENSION PROJECT.

WHEREAS, the City has constructed a sanitary sewer collection system extension serving the area immediately east of the City known as Dual Interest Area "A"; and

WHEREAS, the City has established a Reimbursement District to collect costs for the project as provided for under Milwaukie Municipal Code Chapter 13.30, pre Resolution 78-2010; and

WHEREAS, the City Council believes it to be in the best interest of the City, the environmental health of the area, and the area residents to encourage early and timely connections to the new system; and

WHEREAS, the City has excellent financing terms from the Environmental Protection Agency, through the Oregon Clean Water State Revolving Fund; and

WHEREAS, the City has previously established sewer connection incentives under Resolution 37-2010 and Resolution 40-2010; and

WHEREAS, completion of the project occurred later than anticipated in the timeline given under those resolutions; and

WHEREAS, aligning all cost changes on one uniform date will make the discounts easier to administer and understand; and

WHEREAS, the City is also obligated to offer financing of System Development Charges;

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

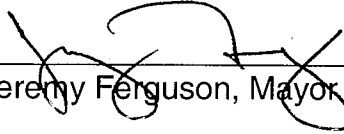
Section 1: Sets the deadline for receiving "zero percent" financing for Reimbursement Fees available under Resolution 37-2010 to those properties that connect to the system by March 15, 2013.

Section 2: Extends the same "zero percent" financing terms available under Resolution 37-2010, for the same period of time, to applicable sanitary sewer System Development Charges for new sewer connections in the area.

Section 3: The initial reduction in discounts made available under Resolution 40-2010 shall be amended to follow the same schedule: the "general" and "limited" discounts shall be available in full to those that connect prior to March 15, 2013; those discounts shall be reduced to 75% of their original value as of March 15, 2013. Those discounts

shall be reduced to 50% of their original value as of March 15, 2016 and reduced to 25% of their original value on March 15, 2021.

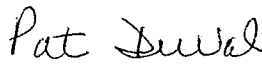
Introduced and adopted by the City Council on March 15, 2011.
This resolution is effective on March 15, 2011.



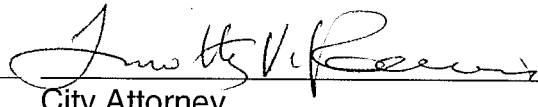
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC



Pat DuVal, City Recorder



City Attorney

ATTACHMENT 3

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO EXTEND THE INSTALLMENT PAYMENT PLAN RELATED TO THE NORTHEAST SEWER EXTENSION REIMBURSEMENT DISTRICT COST SHARES FOR THOSE PROPERTIES THAT ANNEXED TO THE CITY PRIOR TO MARCH 15, 2013.

WHEREAS, the City established a reimbursement district based on the actual cost of design, right-of-way acquisition, and construction of the NE Sewer Extension Project; and

WHEREAS, the City wants to encourage property owners to connect to sewer in the NE Sewer Extension Project Area expeditiously; and

WHEREAS, the City has received excellent financing terms for project costs; and

WHEREAS, the City is not obligated to offer installment payments or financing for reimbursement district costs.

WHEREAS, Council passed Resolution 37-2010 in which that the City created a financing program to assist property owner to connect to the NE Sewer Extension Project within two years of completion of the project or November 2012 (whichever occurred later) to pay their reimbursement district cost share in twenty semi-annual installments at no interest, provided they make all other required payments, comply with City requirements, and provide security for the total value of the cost share in the form of a lien.

WHEREAS, a member of the public has requested that Council extend the assistance program to allow properties that annexed into the City prior to the program's deadline.

NOW, THEREFORE, BE IT RESOLVED that the NE Sewer Extension installment payment plan deadline set forth by Resolution 33-2011 to be adjusted to June 30, 2013 for properties that annexed to the City prior to the previous deadline of March 15, 2013.

BE IT FURTHER RESOLVED that the City Council may modify, adjust, or terminate this program in the future.

Introduced and adopted by the City Council on May 21, 2013.

This resolution is effective on May 21, 2013.

David Hedges, Council President

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney



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

From: Bob Jordan, Chief of Police

Date: May 6, 2013

Subject: **O.L.C.C. Application – Gaucho’s Argentine Cuisine – 2037 SE
Jefferson Street**

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Gaucho’s Argentine Cuisine - 2037 SE Jefferson Street.

Background:

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

6.
OTHER BUSINESS



Agenda Item: 6.A.
Meeting Date: 5/21/13

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Walk Safely Milwaukie Program Update

Prepared By: Jason Rice, Engineering Manager

Dept. Head Approval: Stephen Butler, Interim Community Development Director

City Manager Approval: Bill Monahan

Reviewed by City Manager: 5/13/2013

ISSUE BEFORE THE COUNCIL

After an update to Council regarding the Walk Safely Milwaukie Program, Staff will seek direction from Council on how to proceed with the Walk Safely Milwaukie Pilot Program following its expiration on June 30th, 2013.

STAFF RECOMMENDATION

While the program has performed well in terms of how the funds were spent, Staff has found that funding this program has made it difficult to keep up with normal street operation maintenance included within the State Gas Tax Fund. At a minimum, Staff recommends finding additional funding sources to maintain the program.

KEY FACTS & INFORMATION SUMMARY

Three projects have been constructed in three different neighborhoods as a result of this programs funding. As a result of these projects, the program has been left with a fund balance of \$144,000. A portion of this balance has been dedicated to two additional other projects that are slated for construction in the coming months. Program contributions to Milwaukie's Public Safety Foundation and all of the elementary schools in Milwaukie have also been made.

This report also raises concerns regarding program funding if the pilot program is to be continued.

OTHER ALTERNATIVES CONSIDERED

1. Continuing the Walk Safely Milwaukie Program after identifying supplemental funding sources through the next budget
2. Allowing the Walk Safely Milwaukie Program to lapse at the pilot's culmination

CITY COUNCIL GOALS

No Council goals apply to this program.

ATTACHMENT LIST

1. Program Finance Tracker

FISCAL NOTES

If the WSMP program were to be extended, either other financial revenues would need to be created or the reallocation of some of salaries or electricity costs out of the State Gas Tax division and over to the SSMP division would be necessary.



To: Mayor and City Council
Through: Bill Monahan, City Manager
From: Jason Rice, Engineering Manager
Subject: Walk Safely Milwaukie Program Update
Date: May 21, 2013 Regular Session

ACTION REQUESTED

Staff seeks direction from Council on how to proceed with the Walk Safely Milwaukie Pilot Program following its expiration on July 1st, 2013.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

March 2012: An informal report was provided to Council regarding the second project to be constructed under the pilot program.

October 2011: Council approved a contract for the construction of sidewalks on Home Avenue.

November 2010: Council approved resolution # 83-2010 to update the original program to expand the Public Safety Advisory Committee's role in the project selection process.

June 2010: Council approved Resolution # 65-2010 to initiate a three-year pilot phase of the Walk Safely Milwaukie Program.

May 2010: Council provided staff neighborhood feedback regarding the proposed WSMP and requests staff revisit expected revenues and refine program elements.

February 2010: Staff introduced WSMP concept to Council and requested Council direction for use of new revenues expected under HB 2001B.

BACKGROUND

In June of 2010 Council approved a Resolution that initiated a three-year pilot program in an attempt to empower Milwaukie's neighborhoods to identify and implement local projects and other citizen-led activities to make walking in Milwaukie a more comfortable and commonplace experience. This program, formally known as Walk Safely Milwaukie, helps address a suggestion found within Chapter 11 of the City's current Transportation System Plan (TSP) for the funding of a Neighborhood Pedestrian and Traffic Safety Program.

Later that year, as Staff began to roll out the program as adopted by Council, members of the Public Safety Advisory Committee (PSAC) raised concerns with staff regarding the program in terms of the level of PSAC's involvement, the transparency of the project selection process, and what was perceived to be an adversarial approach to project selection. Staff met with PSAC at their September 23, 2010 meeting to better understand their concerns. Staff returned to PSAC on October 28, 2010 with proposals to make adjustments to the program in the following four areas:

1. Capital Project Scoring

- Provide opportunity for PSAC to review project proposals and preliminary technical scores, with an opportunity for PSAC to suggest changes to scores.
- Re-define the "Integrates Education and Outreach" criteria to more closely tie to WSMP efforts and be more objective.

2. Awareness & Education Project Scoring

- Create a small, non-competitive category: one small awareness & education project per NDA (up to \$500 per NDA).
- Add "3 NDA rule" – if a project is jointly sponsored by three or more NDAs, it would automatically be funded.

3. Project Selection

- Require PSAC approval of selected slate of projects (an "up or down" vote).
- If PSAC votes no, a mini-committee (made up of the CD/PW Director, the Chair of PSAC, and a City Council designee) would develop a revised recommendation, which would be brought back to PSAC.

4. Joint Review

- Include the opportunity for PSAC to make a joint report to City Council with staff, as part of the annual program review, with an assessment of program design, concerns, recommendations, etc.

These changes were later adopted by Council on November 16th, 2010.

In the spring of 2011, City Staff and the Public Safety Advisory Committee (PSAC) evaluated and scored all the projects, then forwarded a recommendation which the City Council approved in June 2011. The top three projects addressed pedestrian improvement gaps at the following locations:

1. The east side of Home Avenue between Wilma Circle and Hunter Court
2. The intersection of Stanley Avenue and Willow Street
3. The intersection of River Road and Sparrow Street

Project 1 – Home Avenue Sidewalk



Before



After

Prior to this project, pedestrians were forced to walk through grass (pictured above) to avoid poor visibility with southbound vehicular traffic. This posed additional problems, as the grassy area was not always an acceptable place to walk due to varying weather conditions. By completing this stretch of sidewalk (also pictured above), pedestrians now have a much safer and consistent path to walk.

This project included constructing 350 LF of pervious sidewalks, one accessible sidewalk ramp, and three new driveway approaches. The total cost for these improvements came to \$30,000, \$5,000 of which the Hector Campbell Neighborhood contributed from their own funds.

Project 2 – Stanley Avenue Crosswalk and Sidewalk Extension



Before



After

With existing sidewalks running south on Stanley Avenue from Willow Street to King Road, this last bit of sidewalk was needed to allow a safe crosswalk to Ball-Michel Park. The Lewelling Neighborhood noticed this gap in improvements and submitted it to the WSMP as its neighborhood priority.

This project included constructing 120 LF of pervious sidewalks, and two accessible sidewalk ramps. The total cost for these improvements came to \$21,500.

Project 3 – River Road Crosswalk and Sidewalk Extension



Before



After

The Island Station Neighborhood has long awaited the addition of pedestrian safety improvements at the intersection of River Road and Sparrow. River Road travelling north from Oak Grove is notorious for speeders due its long downward grade towards McLoughlin Blvd. Building on these concerns, the neighborhood and PSAC through WSMP was able to create a “refuge” (pictured above) to allow pedestrians the ability to cross this wide intersection. This refuge also acts as a pinch point in which traffic must slowdown in order to maneuver around when accessing River Road.

In addition to the pedestrian refuge, this project was able to construct 200 LF of pervious sidewalk along Sparrow Street towards Spring Park, four accessible ramps, and three driveway approaches.

Neighborhood Safety Awareness and Education

As a part of the funding for WSMP, each Neighborhood District Association (NDA) received \$500 to fund one small Awareness and Education Project. Each of these projects were presented to Staff for review in the form of a proposal. Once Staff received the proposals, compliance with the program’s intent was measured using the following guidelines:

- Promotes Safe Walking
- Calms Traffic
- Community Involvement
- Community Support
- Project Partners
- Planning
- Strong Leadership
- New Leaders
- Documented Success
- Cost

All three Neighborhood Safety Awareness and Education proposals that were presented to Staff for evaluation were approved.

The first proposal included a contribution from each of the seven NDA's purchasing safety equipment for crossing guards at all of the elementary schools in Milwaukie. The purchased safety equipment included: high visibility vests, STOP/SLOW paddles, flashlights, hats, waterproof jackets, and whistles.

The second proposal, sponsored by six of the seven NDA's, involved donation of \$1650 to the Milwaukie Public Safety Foundation. This donation assisted the Milwaukie Police Department in donating additional bicycles and bicycle safety equipment to needy students.

The last application came from the Lewelling NDA donated \$300 to Lewelling Elementary School for emergency safety kits. These safety kits are used in the event that students cannot safely leave the school during an emergency situation. With the addition of \$161 from the Lewelling PTO, the first year pilot program was fully funded.

A total of \$256,000 was dedicated to the pilot program over the three year period: \$56,000 in FY10-11, \$100,000 in FY 11-12 and \$100,000 for FY 12-13. Attachment 1 of this document, is an up-to-date program fund balance tracker in which each program transaction has been accounted for.

Currently there is a balance of \$144,000 available to the program. PSAC plans on spending this money on additional projects and has directed Staff to construct two additional projects.

- The first is a mid-block crosswalk on Washington Street between Milwaukie High School and St. Johns Church. Staff is currently preparing the plan set for this project as well as negotiating with St. Johns for a permanent easement associated with this work. Staff currently expects that this project will be constructed in July with a completion in August. This project is estimated to cost the program approximately \$60,000.
- The second project is a crosswalk at the intersection of Harrison and 26th Ave. This project will be constructed with the Street Surface Maintenance Program's (SSMP) re-construction of Harrison Street in September in an attempt to save money and Staff time. This project is expected to cost the program approximately \$15,000.

CONCURRENCE

Community Development and the Finance Department worked together in creating this report. While Staff agrees that this program has provided the neighborhoods with meaningful and fiscally responsible projects and would most likely continue to do so if

extended, Staff also has major concerns with funding the pilot into future years. It is because of these concerns that Staff recommends postponing continuation of the program until an alternative funding source can be identified.

The Public Safety Advisory Committee has also reviewed this report and realizes that with the current economic conditions the program may not be able to continue. However, if the program were to be suspended, the group hopes that the City will be able to bring back some type of citizen directed project program.

FISCAL IMPACT

The original financial analysis performed in 2009 as a result of House Bill 2001 passing (depicted below), showed an increase in the State tax rate from \$0.24 to \$0.30 per gallon. This analysis projected Milwaukie’s share of the State Gas Tax revenues to increase 51% over four years, sufficient to adequately fund the Walk Safely Milwaukie Program (WSMP) and other City transportation priorities.

State Gas Tax Revenue
Original HB 2001 Analysis vs. Actual

Fiscal Year	Actual	HB 2001 Estimates	Variance	Cumulative Variance
2007-08	\$ 904,071			
2008-09	\$ 799,881			
2009-10	\$ 855,448	\$ 873,590	\$ (18,142)	\$ (18,142)
2010-11	\$ 1,007,889	\$ 1,072,021	\$ (64,132)	\$ (82,274)
2011-12	\$ 1,110,169	\$ 1,272,491	\$(162,322)	\$ (244,596)
2012-13 (estimated)	\$ 1,053,400	\$ 1,319,449	\$(266,049)	\$ (510,645)
Total	\$ 5,730,858	\$ 4,537,551	\$(510,645)	

Actual financial results over this same four year period (FY10 through FY13), show Milwaukie’s share of the State Gas Tax revenues increasing only 23%. This cumulative difference in actual revenue growth over the original projection amounts to -\$510,645, meaning that the State Gas Tax program has a deficit fund balance.

If the WSMP program were to be extended, then either: (a) additional revenue sources would need to be identified; or (b) salaries and electricity costs out of the State Gas Tax Fund would need to be transferred to the SSMP Fund. Either way, this would need to be addressed in the creation of the next biennial budget.

WORK LOAD IMPACTS

Assuming the program continues beyond the pilot, Staff will continue to dedicate approximately 25 hours per month to the Walk Safely Milwaukie Program. However, if the program were to be discontinued, these same 25 hours could be focused towards coverage on other active capital projects.

ALTERNATIVES

1. Direct Staff to continue the Walk Safely Milwaukie Program as approved by Council
2. Direct Staff to continue the Walk Safely Milwaukie Program after identifying supplemental funding sources
3. Direct Staff to end the Walk Safely Milwaukie Program at the end of the Pilot Program's term.

ATTACHMENTS

1. Program Finance Tracker

Walk Safely Milwaukie Program

Neighborhood Education and Awareness

Date	Description	Project ID	Expenditures	Revenues	Fund Balance	Neighborhood Education and Awareness												
						Ardenwald	Hector Campbell	Historic Milwaukie	Island Station	Lake Rd.	Lewelling	Linwood						
7/1/2011	Project Funding Year 1 and 2			\$156,350.00														
8/24/2011	Advertisement for Bids (DJC)	Home Avenue	-\$182.50		\$156,167.50													
10/7/2011	Consulting Services (Wallis Engineering)	Program	-\$951.50		\$155,216.00													
11/22/2011	Survey (AKS)	Stanley Ave. and River Rd.	-\$2,970.00		\$152,246.00													
12/9/2011	Construction (Brown Contracting Inc.)	Home Avenue	-\$29,226.00		\$123,020.00													
12/23/2011	Construction (Brown Contracting Inc.)	Home Avenue	-\$848.00		\$122,172.00													
2/3/2012	School Safety Supplies (Public Works Supply)	Neighborhood Education and Awareness	-\$634.98		\$121,537.02													
2/3/2012	School Safety Supplies (Public Works Supply)	Neighborhood Education and Awareness	-\$775.24		\$120,761.78													
3/16/2012	Advertisement for Bids (DJC)	Stanley Avenue	-\$161.00		\$120,600.78													
3/30/2012	School Safety Supplies (Public Works Supply)	Neighborhood Education and Awareness	-\$139.84		\$120,460.94	-\$317.84	-\$201.46	-\$201.46	-\$317.84	-\$201.46	-\$200.00	-\$110.00						
4/13/2012	Recording Fee (Clackamas County)	Stanley Avenue	-\$57.00		\$120,403.94													
4/27/2012	Milwaukie Public Safety Foundation	Neighborhood Education and Awareness	-\$1,661.68		\$118,742.26													
6/8/2012	Construction (Earthwork Excavation and Construction Inc.)	Stanley Avenue	-\$21,118.25		\$97,624.01													
6/13/2012	Hector Campbell Contribution	Home Ave.		\$5,000.00	\$102,624.01													
6/22/2012	Crosswalk Signs (Traffic Safety Supply Co.)	Stanley Avenue	-\$99.00		\$102,525.01													
6/30/2012	Right-of-Way Acquisition Map (AKS)	River Road	-\$250.00		\$102,275.01													
6/30/2012	Right-of-Way Acquisition Payment (Resident)	River Road	-\$2,304.00		\$99,971.01													
7/1/2012	Project Funding Year 3			\$100,000.00	\$199,971.01													
8/31/2012	Advertisement for Bids (DJC)	River Road	-\$166.75		\$199,804.26													
10/12/2012	Construction (Concrete Works, INC.)	River Road	-\$62,230.12		\$137,574.14													
10/12/2012	Prevailing Wage Fee (BOLI)	River Road	-\$250.00		\$137,324.14													
10/12/2012	Project Materials (Traffic Safety Supply Co.)	River Road	-\$577.50		\$136,746.64													
10/26/2012	Project Materials (Traffic Safety Supply Co.)	River Road	-\$447.45		\$136,299.19													
10/26/2012	Project Materials (Traffic Safety Supply Co.)	River Road	-\$36.00		\$136,263.19													
11/21/2012	Lewelling Project	Neighborhood Education and Awareness	-\$300.00		\$135,963.19													-\$300.00
11/27/2012	Island Station Contribution	River Road		\$10,000.00	\$145,963.19													
12/07/2012	Project Materials (Traffic Safety Supply Co.)	River Road	-\$147.50		\$145,815.69													
12/13/2012	Project Materials Reimbursement (City of Milwaukie)	River Road	-\$1,156.00		\$144,659.69													
Total			-\$126,690.31	\$271,350.00		-\$500.00	-\$500.00	-\$500.00	-\$500.00	-\$500.00	-\$500.00	-\$500.00	-\$500.00	-\$500.00	-\$500.00	-\$500.00	-\$500.00	-\$500.00

Available Balance **\$144,659.69** **\$0.00** **\$0.00** **\$0.00** **\$0.00** **\$0.00** **\$0.00** **\$0.00**



Agenda Item: 6.B.
Meeting Date: 5/21/2013

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Milwaukie Municipal Code Title 15 Amendments

Prepared By: Tom Larsen, Building Official

Dept. Head Approval: Steve Butler, Planning Director & Interim Community Development Director

City Manager Approval:

Reviewed by City Manager:

ISSUE BEFORE THE COUNCIL

Changes to Milwaukie Municipal Code Title 15 Buildings and Construction and Title 12 Streets, Sidewalks and Public Spaces.

STAFF RECOMMENDATION

Adopt the Ordinance as presented.

KEY FACTS & INFORMATION SUMMARY

Some references in Title 15 are outdated or redundant due to changes in the Oregon Specialty Codes.

The Dangerous Building Code, as adopted, has proved to be difficult to enforce.

Chapter 15.36, Public Works Standards, properly belongs in Title 12, Street, Sidewalks, and Public Spaces.

It has been suggested that the 2 year limit on validity of permits may be too onerous.

OTHER ALTERNATIVES CONSIDERED

None.

CITY COUNCIL GOALS

None.

ATTACHMENT LIST

1. Proposed Ordinance
 - Exhibit A: Strikethrough Version
 - Exhibit B: Clean Version

FISCAL NOTES

None



To: Mayor and City Council

Through: Bill Monahan, City Manager

From: Steve Butler, Planning Director & Interim Community Development Director
Tom Larsen, Building Official

Subject: Milwaukie Municipal Code Title 15 and Title 12 Amendments

Date: May 14, 2013, for May 21, 2013, Regular Session

ACTION REQUESTED

Adopt the Ordinance

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

This item was brought before Council at the May 7, 2013 Work Session. No changes were proposed.

BACKGROUND

Periodically, due to changes in the Oregon Specialty Codes, and new information or technologies, it is necessary to amend Milwaukie Municipal Code Title 15, which governs buildings and construction on private property within the city limits.

Five changes are proposed:

1. Amend Section 15.04.180; Dangerous or Unsafe Buildings.

The Uniform Code for the Abatement of Dangerous Buildings, as adopted by the City, is an excellent resource to identify substandard and dangerous buildings, however the administration provisions of the code are very convoluted and difficult to understand and enforce. Failure to enforce this code correctly and consistently could open the City to liability. Since the code is not adopted by the state of Oregon, the City may adopt any standards that it deems necessary to protect its citizens.

This proposed amendment uses most of the definitions and standards outlined in The Uniform Code for the Abatement of Dangerous Buildings (with some minor clarifications), but modifies the administrative provisions to provide for a simpler and more consistent process. It also allows the city to further amend the document to respond to issues specific to Milwaukie.

2. Delete Section 15.04.190; Alternate Materials And Methods.

These provisions are already contained in the various Oregon Specialty Codes that the City has adopted; therefore, inclusion in the Municipal Code is redundant.

3. Amend Section 15.04.200; Plans and Permits.

The various Oregon Specialty Codes that the City has adopted are amended on a three year cycle by the International Code Council and The State of Oregon Building Codes Division. Some language in the Municipal Code is now outdated or is in conflict with the adopted Specialty Codes. Rather than have to change the MMC every time a Specialty Code changes, the new language will now be adopted by reference.

4. Move Chapter 15.36; Public Works Standards to Title 12; Streets, Sidewalks & Public Places.

The Public Works Standards are administered by the Engineering Department; therefore, references to these standards belong in Title 12. No changes are proposed to this Chapter, other than renumbering.

5. Amend Chapter 12.080, and Chapter 15.04.200 Section F (2) and (3).

It has been suggested that limiting the validity of permits to two years may be onerous to citizens who have good reason to need a longer period of time to complete their project. This proposed amendment allows the Building Official to extend permits for two one-year periods, when the applicant can provide sufficient evidence that circumstances beyond their control require additional time. Examples of such circumstances might be military service, illness or financial hardship.

This amendment also changes the expiration date of right-of-way permits to be in line with building permit expirations. The City Engineer would have the authority to extend these permits subject to the same criteria as building permits.

The Planning Department is studying the possibility of adjusting the timelines for land use decisions as well, but any such changes will need to be reviewed by the Planning Commission, so they are not included in this code amendment.

CONCURRENCE

The Interim Community Development Director and the Code Compliance Coordinator have reviewed the proposed changes and indicated their approvals.

The Engineering Manager has approved the relocation of Chapter 15.36 Public Works Standards to Title 12, and the extension of right-of-way permits to be in line with building permits.

The Associate Director of Government & Builder Relations for the Homebuilders Association of Metro Portland has reviewed the proposed changes and has indicated full support.

The City Attorney has reviewed the proposed ordinance.

FISCAL IMPACT

None

WORK LOAD IMPACTS

None

ALTERNATIVES

Approve the amendments as submitted.

Approve the amendments with changes.

Do not approve the amendments.

ATTACHMENT LIST

1. Proposed Ordinance
 - Exhibit A: Strikethrough Version
 - Exhibit B: Clean Version

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 15 BUILDINGS AND CONSTRUCTION, AND TITLE 12 STREETS, SIDEWALKS & PUBLIC PLACES.

WHEREAS, The City of Milwaukie adopts various State Specialty Codes that regulate building and construction on private property; and

WHEREAS, Title 15 of the Milwaukie Municipal Code provides for local administration of the requirements of these codes; and

WHEREAS, periodically, due to changes in the Oregon Specialty Codes, and new information or technologies, it is necessary to amend Milwaukie Municipal Code Title 15; and

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

Section 1. Title 15 Buildings and Construction and Title 12 Streets, Sidewalks and Public Places are amended as described in Exhibit A-underline/strikeout amendments, and Exhibit B-clean amendments.

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

Read the second time and adopted by the City Council on _____.

Signed by the Council President on _____.

David Hedges, Council President

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

EXHIBIT A

TITLE 15 BUILDINGS AND CONSTRUCTION

CHAPTER 15.04 BUILDING CODES

15.04.170 VARIOUS SPECIALTY CODES AND STANDARDS ADOPTED

The following specialty codes, rules, and standards are adopted and incorporated herein by this reference as included in this chapter:

A. Structural Code

The Oregon Structural Specialty Code, as adopted by OAR 918-460-0010 through 918-460-0015, except as modified in this chapter, is enforced as part of this chapter.

B. Mechanical Code

The Oregon Mechanical Specialty Code, as adopted by OAR 918-440-0010 through 918-440-0040, except as modified in this chapter, is enforced as part of this chapter.

C. Plumbing Code

The Oregon Plumbing Specialty Code, as adopted by OAR 918-750-0010, except as modified in this chapter, is enforced as part of this chapter.

D. Electrical Code

The Oregon Electrical Specialty Code, as adopted by OAR 918-290-0010, except as modified in this chapter, is enforced as part of this chapter.

E. Residential Code

The Oregon Residential Specialty Code, as adopted by OAR 918-480-000 through 918-480-0010, except as modified in this chapter is enforced as part of this chapter.

F. Manufactured Dwelling Parks Rules

The Manufactured Dwelling Park and Mobile Home Park Rules adopted by OAR 918-600-0005 through 918-600-0110, except as modified in this chapter, are enforced as part of this chapter.

G. Manufactured Home Installation Rules

The Manufactured Dwelling Rules adopted by OAR 918-500-0000 through 918-500-0500 and OAR 918-520-0010 through 918-520-0020, except as modified in this chapter, are enforced as part of this chapter.

H. Recreational Park and Organizational Camp Rules

The Recreational Park and Organizational Camp Rules adopted by OAR 918-650-0000 through 918-650-0085, except as modified in this chapter, are enforced as part of this chapter.

I. ~~Uniform Code for the Abatement of Dangerous Buildings~~

~~The latest edition of ICBO Uniform Code for the Abatement of Dangerous Buildings is adopted as part of this chapter, except as modified by this jurisdiction.~~

~~J.I.~~ Appendix J of the Oregon Structural Specialty Code is adopted and incorporated in this chapter and shall be enforced as part of this chapter.

~~K.J.~~ Energy Efficiency Specialty Code

~~The Oregon Energy Efficiency Specialty Code, as adopted by OAR 918-460-0500 and through 918-460-0510, except as modified in this chapter, is enforced as part of this chapter.~~

~~L.K.~~ Solar Installation Specialty Code

~~The Oregon Solar Installation Specialty Code, as adopted pursuant to ORS 455010 through 455895, except as modified in this chapter, is enforced as part of this chapter.~~

15.04.180 DANGEROUS OR UNSAFE BUILDINGS

~~A. All buildings or structures regulated by this chapter which are structurally unsafe or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life are, for the purpose of this section, unsafe. Any use of buildings or structures constituting a hazard to safety, health, or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage, or abandonment is, for the purpose of this section, an unsafe use. Parapet walls, cornices, spires, towers, tanks, statuary, and other appendages or structural members which are supported by, attached to, or a part of a building, and which are in deteriorated condition or otherwise unable to sustain the design loads which are specified in the appropriate Oregon Specialty Code or appendages, are unsafe.~~

~~B. All such unsafe buildings, structures, or appendages are declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures set forth in the Dangerous Buildings Code or such alternate procedures as may have been or as may be adopted by this jurisdiction's Building Official. As an alternative, the Building Official, or another employee or official of this jurisdiction as designated by the governing body, may institute any other appropriate action to prevent, restrain, correct, or abate the violation.~~

A. Definitions

For the purposes of this section "building official" means the building official of the City of Milwaukie, or that person's designee.

B. Dangerous buildings

Any building, structure or property, whether improved or unimproved, which has any of the conditions or defects described in this section shall constitute a "dangerous building," provided these conditions or defects exist to and endanger the health, safety or welfare of the public or occupants of the building structure or property in question:

1. Whenever any door, aisle, passageway, stairway, or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or other emergency necessitating evacuation;

2. Whenever the walking surface of any aisle, passageway, stairway, or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or other emergency necessitating evacuation;

3. Whenever the stress in any materials, member or portion thereof, due to all dead or live loads, is more than one-and-one-half times the working stress or stresses allowed in the currently adopted Oregon Specialty Codes for new buildings of similar structure, purpose and location;

4. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, whether natural or human, to the extent that the structural strength or stability is materially less than it was before the catastrophe and is less than the minimum requirements of the currently adopted Oregon Specialty for new buildings of similar structure, purpose or location;

5. Whenever any portion, member or appurtenance thereof is likely to fail, to become detached or dislodged, or to collapse, and potentially injure persons or damage property;

6. Whenever any portion, member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in the building code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the building code for new buildings;

7. Whenever any portion thereof has wracked, warped, buckled or settled to the extent that walls or other structural members have materially less resistance to winds or earthquakes than is required of similar new construction;

8. Whenever any portion, because of (a) dilapidation, deterioration or decay; (b) faulty construction; (c) the removal, movement or instability of any portion of the ground necessary to the support of the building; (d) the deterioration, decay or inadequacy of its foundation; or (e) any other cause, is likely to partially or completely collapse;

9. Whenever, for any reason, any portion thereof is manifestly unsafe for the purpose for which it is being used;

10. Whenever the exterior walls or other vertical structural members list, lean or buckle to the extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base;

11. Whenever a building or structure, exclusive of the foundation, shows thirty-three percent or more damage or deterioration of its supporting member or members, or fifty percent damage or deterioration of its nonsupporting members, enclosing or outside walls or coverings;

12. Whenever a building, structure or property has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (a) an attractive nuisance to children; (b) a harbor for vagrants, or criminals; or as to (c) enable persons to resort thereto for the purpose of committing unlawful acts;

13. Whenever a building, structure or property has been constructed, exists, is used, or is maintained in violation of any specific requirement, prohibition or permit condition applicable to the building provided by any provision of this Code or state law;

14. Whenever a building or structure, whether or not erected in accordance with all applicable laws and ordinances, which has in any nonsupporting part, member or portion less than fifty percent, or in any supporting part, member or portion less than sixty-six percent of the (a) strength, (b) fire-resisting qualities or characteristics, or (c) weather-resisting qualities or characteristics required by law for newly constructed buildings of like area, height or occupancy in the same location;

15. Whenever a building, structure or property, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the building official to be unsanitary, unfit for human habitation or in a condition that is likely to cause sickness or disease;

16. Whenever a building, structure or property, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the building official to be a fire hazard;

17. Whenever a building, structure or property is in a condition that constitutes a public nuisance known to the common law or equity jurisprudence or the City of Milwaukee Municipal Code;

18. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to qualify the building or portion thereof as an attractive nuisance or hazard to the public;

C. Administration

1. Building Inspections. The building official is authorized to make inspections, take actions, and make interpretations of this chapter as may be required to enforce the provisions of this chapter.

2. Right of Entry. Whenever necessary to make an inspection to enforce any provision of this code, or whenever the building official has reasonable cause to believe that any of the dangerous building conditions mentioned in 15.04.180 (B) exist, the building official may enter the building, structure or property at all reasonable times to inspect the same or to carry out any provision of this chapter. If the building or premises is occupied, the building official shall first present proper credentials and request entry of the property owner or person in charge. If the building or premises are unoccupied, the building official shall first make a reasonable effort to locate the owner or person in charge of the building or premises and request entry. If entry is refused, or the owner or person in charge is unlocatable, the building official shall seek an appropriate warrant from municipal or circuit court authorizing entry.

3. Posting of Property and Restriction of Access. The building official, upon a finding that a building, structure or property constitutes a dangerous building may post the property with notices as provided in this chapter. The building official may also delimit the area of danger and prohibit all persons from entering onto, occupying or inhabiting the dangerous building area. Violation by any person of such notice and access restriction shall constitute trespass, a misdemeanor offense under this Code. Notwithstanding section 15.04.180(I), any person who enters or remains in or on a building, structure, or property that the building official has posted under authority of this section commits the crime of criminal trespass and may be subject to arrest or prosecution under ORS 164.245 or 164.255, whichever is applicable under the circumstances.

D. Emergency enforcement.

Notwithstanding any other section of this chapter, the building official may seek a summary abatement order to enforce the provisions of this chapter, in accordance with Chapter 1.08 of this Code.

E. Enforcement upon inspection.

All buildings, structures or properties, whether improved or unimproved, which are determined after inspection by the building official to be dangerous as defined in this chapter are declared to be public nuisances and shall constitute a civil infraction.

F. Posting of dangerous buildings.

Upon a declaration by the building official that a building, structure or property is dangerous, it shall be posted to reflect this determination. Notice shall include at least the following: that the building official, upon inspection, has determined the structure to be dangerous and a hazard to the public health, safety or welfare, that the property is not to be entered upon or occupied by anyone without specific authority of the building official, and that any person found to be occupying or otherwise upon the property without authority shall be subject to citation and arrest for trespass.

G. Commencement of Proceedings

1. When the building official has inspected or caused to be inspected any building and has found and determined that such building is a dangerous building, the building official shall commence proceedings to cause the repair, vacation, or demolition thereof.

2. The building official shall issue a notice and order directed to the record owner or owners of the building, structure or property. The notice and order shall contain:

a. The street address and a legal description sufficient for identification of the premises upon which the building is located.

b. A statement that the building official has found the building, structure or property to be a dangerous building, with a brief description of the conditions found to render the building dangerous under the provisions of Section 15.04.180 (B).

c. A statement of the action required to be taken as determined by the building official.

d. Statements advising that if any required repair or demolition work (without vacation also being required) is not commenced within the time specified, the building official will order the building vacated and posted to prevent further occupancy until the work is completed; and may proceed to cause the work to be done and charge the costs thereof against the property or its owner.

e. Statements advising that if the building official has determined that the building must be repaired, that all required permits shall be secured therefor and the work physically commenced within such time (not to exceed sixty (60) days from the date of the order) and completed within such time as the building official shall determine reasonable under all of the circumstances.

g. Statements advising that if the building official has determined that the building must be vacated, that the building or structure shall be vacated within a time certain from the date of the order as determined by the building official to be reasonable.

h. Statements advising that any person having any record title or legal interest in the building may be issued a citation and be ordered to appear in municipal court.

3. If the building official has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the building official shall determine is reasonable (not to exceed sixty (60) days from the date of the order), that all required permits be secured therefor within sixty (60) days from the date of the order, and that the demolition be completed within such time as the building official shall determine is reasonable.

4. The notice and order (and any amended or supplemental notice and order) shall be served upon the record owner; and one copy thereof shall be served on each of the following if known to the building official or disclosed from official public records: the holder of any mortgage, deed of trust or other lien or encumbrance of record, the owner or holder of any lease of record, and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the building official to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this section.

5. Service of the notice and order shall be made upon all persons entitled thereto either personally or by mailing a copy by certified mail, postage prepaid, to each such person at their address as it appears in the Clackamas County tax records, or as otherwise known to the building official. If no address of such person appears or is known to the building official, then a copy of the notice and order shall be so mailed and addressed to such person at the address of the building involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

6. Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the time, date and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail shall be affixed to the copy of the notice and order retained by the building official.

H. Repair, vacation, and demolition.

The following standards shall be followed by the building official (and by the municipal court if an appeal is taken) in ordering repair, vacation, or demolition of any dangerous building or structure:

1. Any building declared a dangerous building under this chapter shall be made to comply with one of the following:

a. The building shall be repaired in accordance with the currently adopted Oregon Specialty Code or other current code applicable to the type of substandard conditions requiring repair;

b. The building shall be demolished at the option of the building owner; or

c. If the building does not constitute an immediate danger to the health, safety, or welfare of the public it may be vacated, secured and maintained against entry.

welfare of the public it may be vacated, secured and maintained against entry.

d. If the building or structure is in such condition as to make it immediately dangerous to the health, safety, or welfare of the public or its occupants, it shall be ordered to be vacated.

I. Violation—Penalty.

1. Any person who performs an act prohibited by this Chapter, or who fails to perform an act required by this Chapter, commits a violation.

2. No person shall cause, create, construct, maintain, enlarge, alter, repair, move, improve, remove, convert, or demolish, equip, occupy, or otherwise use any dangerous building or cause or permit the same to be done in violation of this chapter. A person who violates this provision commits a violation.

3. Violations under this Title are enforceable under Title 1 of the Milwaukie Municipal Code. The maximum penalty for any violation under this Chapter is a fine of \$1,000 per day. Each day that the violation exists shall constitute a separate offense.

~~15.04.190 ALTERNATE MATERIALS AND METHODS~~

~~A. The provisions of this chapter are not intended to prevent the use of any alternate materials, designs, or methods of construction not specifically proscribed by this chapter, provided such alternates have been approved and their use authorized by the Building Official.~~

~~B. The Building Official may approve any such alternate materials, designs, or methods, provided the Building Official finds that the proposed material, design, or method complies with the provisions of this chapter and that it is, for the purpose intended, at least the equivalent of that proscribed in this chapter in suitability, strength, effectiveness, fire resistance, durability, safety, and sanitation, and is in conformance with all applicable City standards.~~

~~C. The Building Official may require that evidence or proof be submitted to substantiate any claims that may be made regarding an alternate use. The details of any approval of any alternate material, design, or method may be recorded and entered in the files of the jurisdiction.~~

~~1. Modifications~~

~~When there are practical difficulties in carrying out the provisions of this chapter, the Building Official may grant modifications provided the Building Official finds that the modification is in conformance with the intent and purpose of this chapter and that the modification does not lessen any fire protection requirements nor the structural integrity of the building involved. Any action granting modification may be recorded in the files of this jurisdiction.~~

~~2. Tests~~

~~a. Whenever there is insufficient evidence of compliance with the provisions of this chapter, or any material, method, or design does not conform to the requirements~~

~~of this chapter, the Building Official may require tests as proof of compliance to be made at no expense to this jurisdiction.~~

- ~~b. Test methods shall be as specified by the Building Official in accordance with the recognized test standards. If there are no recognized and accepted test methods for the proposed alternate, the Building Official shall determine test procedures.~~
- ~~c. All tests shall be made by an approved testing agency. Reports of such tests may be retained by the Building Official.~~

15.04.200 PLANS AND PERMITS

A. Issuance

1. The application, plans, specifications, computations, and other data filed by an applicant for a permit shall be reviewed by the Building Official. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws or chapters. If the Building Official finds that the work described in application for a permit and the plans, specifications, and other data filed therewith conform to the requirements of this chapter and other pertinent laws and chapters, and that the fees have been paid, the Building Official shall issue a permit therefor to the applicant.
2. When the Building Official issues the permit where plans are required, the Building Official shall endorse in writing or stamp the plans and specifications **APPROVED Reviewed for Code Compliance**. Such approved plans and specifications shall not be changed, modified, and altered without authorizations from the Building Official, and all work regulated by the Building Official and this chapter shall be done in accordance with the approved plans.
3. The Building Official may issue a permit for the construction of part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this chapter. The issuance of a partial permit shall not constitute or be construed as an assurance that the permit for the entire building or structure will be granted. The holder of a partial permit proceeds with such work at the holder's own risk.

B. Retention of Plans

One set of approved plans, specifications, and computations shall be retained by the Building Official ~~for a period of not less than one hundred eighty (180) days from date of completion of the work covered therein~~ as required by OAR 166-200-0025. One set of approved plans and specifications shall be returned to the applicant, who must keep this plan set on the site of the building or work at all times during which the authorized work is in progress.

C. Validity of Permit

1. The issuance or granting of a permit or approval of plans, specifications, and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this chapter or of any other chapter of the jurisdiction or any other federal, State, or local law, statute, rule, regulation, or Oregon specialty code.

2. The issuance of a permit based on plans, specifications, and other data shall not prevent the Building Official from thereafter requiring the correction of errors in such plans, specifications and other data, or from preventing building operations being carried on thereunder when in violation of this chapter or of any other chapters of this jurisdiction.
3. The issuance of a permit based on plans, specifications, and other data shall not be a guarantee by the City or the Building Official of the soundness of such plans or specifications, and shall not be a basis for imposing liability upon the City or any of its agents or employees, specifically including the Building Official.

D. Not Transferable

Absent express approval of the Building Official, a permit issued to one person or firm is not transferable and shall not permit any other person or firm to perform any work thereunder.

E. Expiration of Plan Reviews

~~Applications for which no permit is issued within one hundred eighty (180) days following the date of the application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the Building Official. The Building Official may extend the time for action by the applicant for a period not exceeding an additional one hundred eighty (180) days on request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than once. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.~~

Applications for which no permit is issued will expire as outlined in the appropriate Oregon Specialty Code under which the permit was issued.

F. Permit Expiration, Extension, and Reinstatement

~~1. Every permit issued by the Building Official under the provisions of this chapter shall expire by limitation and become null and void if the building or work authorized is not commenced within the time limitations set forth in this section.~~

1. Every permit issued by the Building Official under the provisions of this chapter shall expire by limitation and become null and void as outlined in the appropriate Oregon Specialty Code under which the permit was issued. Permits may be extended and reinstated as outlined in the appropriate Oregon Specialty Code under which the permit was issued.

~~2. Every permit issued by the Building Official shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within one hundred eighty (180) days from the date such permit is issued, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of one hundred eighty (180) days. The work shall not be considered suspended or abandoned where the permittee has pursued activities deemed by the Building Official to indicate the intent to start and complete the project. The Building Official may require the permittee to document these activities.~~

~~3.~~ 2. In addition to the time limits outlined above, every permit issued by the Building Official shall expire by limitation and become null and void twenty-four (24) months after the date of permit issuance. If the building or work authorized by such permit has not

received final inspection approval prior to the permit expiration date, all work shall stop until a new permit is obtained for the value of the work remaining unfinished.

4. 3. Exception

- a. At the time of permit issuance the Building Official may approve a period exceeding twenty-four (24) months for completion of work when the permittee can demonstrate that the complexity or size of the project makes completing the project within twenty-four (24) months unreasonable.
- b. Any permittee holding an unexpired permit may apply for an extension of the time within which work is to be completed under that permit when the permittee is unable to complete work within the time required by this section for good and satisfactory reasons. The Building Official may extend the time for action by the permittee for a period not exceeding ~~one hundred eighty (180) days~~ one year, on written request by the permittee showing that circumstances beyond the control of the permittee have prevented work from being completed. No permit shall be extended more than ~~once~~ twice.
- c. Where a permit has expired, the permit can be reinstated and the work authorized by the original permit can be recommenced, provided the following are met:
 - (1) The specialty code under which the original permit was issued and other chapters which are enforced by the Building Official have not been amended in any manner which affects the work authorized by the original permit.
 - (2) No changes have been made or will be made in the original plans and specifications for such work.
 - (3) If the original permit expired less than one (1) year from the request to reinstate, the fee for a reinstated permit shall be one-half ($\frac{1}{2}$) the amount required for a new permit. Where the request for reinstatement does not comply with the preceding criteria, a new permit, at full permit fees, based on the valuation of the work to be completed, shall be required.

15.04.210 FEES

- A. Fees charged under this chapter shall be established by resolution of the City Council.
- B. The Building Official may authorize the refunding of fees paid.
- C. ~~The determination of value or valuation under any provisions of this chapter shall be made by the Building Official. The value to be used in computing the building permit and plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire extinguishing systems, and any other permanent equipment.~~

Building permit valuation shall be determined as outlined in the appropriate Oregon Specialty Code under which the permit is issued.

CHAPTER ~~15.36~~ Chapter 12.02 PUBLIC WORKS STANDARDS

~~15.36.010~~ 12.02.010 STANDARDS

All new public works, including streets, sanitary sewers, storm sewers, and water lines constructed or installed in the City shall be constructed in conformance with the applicable public works standards adopted under Section ~~15.36.020~~ 12.020 of this chapter. If public works standards adopted under Section ~~15.36.020~~ 12.020 of this chapter. If public works standards have not been adopted for an area or type of improvement, they shall comply with the Standard Specifications and Drawings for Public Works Construction of the Oregon Chapter of the American Public Works Association.

~~15.36.020~~ 12.02.020 ADOPTION

The City Council may adopt by resolution one (1) or more sets of public works standards applicable in all or part of the City. Any public works standards so adopted shall be kept on file and available for inspection and copying at the City Public Works Department. Any adopted set of public works standards may be modified as provided in Section ~~15.36.030~~ 12.02.030 of this chapter.

~~15.36.030~~ 12.02.030 AMENDMENTS

The Public Works Director may make technical amendments to the City Public Works Standards to keep the Public Works Standards up-to-date with development of materials and engineering techniques. Public notice of proposed technical amendments shall be posted in City Hall and at the Public Works Office thirty (30) days prior to the effective date of the amendments.

~~15.36.040~~ 12.02.040 VIOLATION

Any violation of the City Public Works Standards shall constitute a Class A civil infraction. Each day that a violation exists is a separate infraction. For purposes of this section, defects in design or construction that are corrected without delay by the person responsible for the design or construction, prior to acceptance of the public works by the City, shall not constitute a violation.

~~15.36.050~~ 12.02.050 NUISANCE

Any uncorrected violation of the City Public Works Standards shall constitute a nuisance and may be abated as provided in Chapters 1.08 and 8.94 of this code.

12.08.020 CONSTRUCTION STANDARDS

M. Completion of Construction

The permittee shall promptly complete all construction activities so as to minimize disruption of the City rights-of-way and other public and private property. All construction work within City rights-of-way, including restoration, must be completed within ~~one hundred twenty (120)~~ one hundred eighty (180) days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved pursuant to the schedule submitted and approved by the ~~appropriate City official~~ City Engineer or that person's designee as required herein.

In addition to the time limits outlined above, every permit issued for work in the Right of Way shall expire by limitation and become null and void twenty-four (24) months after the date of permit issuance.

At the time of permit issuance the City Engineer or that person's designee may approve a period exceeding twenty-four (24) months for completion of work when the permittee can demonstrate that the complexity or size of the project makes completing the project within twenty-four (24) months unreasonable.

Any permittee holding an unexpired permit may apply for an extension of the time within which work is to be completed under that permit when the permittee is unable to complete work within the time required by this section for good and-satisfactory reasons. The City Engineer or that person's designee may extend the time for action by the permittee for a period not exceeding one year, on written request by the permittee showing that circumstances beyond the control of the permittee have prevented work from being completed. No permit shall be extended more than twice.

EXHIBIT B

TITLE 15 BUILDINGS AND CONSTRUCTION

CHAPTER 15.04 BUILDING CODES

15.04.170 VARIOUS SPECIALTY CODES AND STANDARDS ADOPTED

The following specialty codes, rules, and standards are adopted and incorporated herein by this reference as included in this chapter:

A. Structural Code

The Oregon Structural Specialty Code, as adopted by OAR 918-460-0010 through 918-460-0015, except as modified in this chapter, is enforced as part of this chapter.

B. Mechanical Code

The Oregon Mechanical Specialty Code, as adopted by OAR 918-440-0010 through 918-440-0040, except as modified in this chapter, is enforced as part of this chapter.

C. Plumbing Code

The Oregon Plumbing Specialty Code, as adopted by OAR 918-750-0010, except as modified in this chapter, is enforced as part of this chapter.

D. Electrical Code

The Oregon Electrical Specialty Code, as adopted by OAR 918-290-0010, except as modified in this chapter, is enforced as part of this chapter.

E. Residential Code

The Oregon Residential Specialty Code, as adopted by OAR 918-480-0000 through 918-480-0010, except as modified in this chapter is enforced as part of this chapter.

F. Manufactured Dwelling Parks Rules

The Manufactured Dwelling Park and Mobile Home Park Rules adopted by OAR 918-600-0005 through 918-600-0110, except as modified in this chapter, are enforced as part of this chapter.

G. Manufactured Home Installation Rules

The Manufactured Dwelling Rules adopted by OAR 918-500-0000 through 918-500-0500 and OAR 918-520-0010 through 918-520-0020, except as modified in this chapter, are enforced as part of this chapter.

H. Recreational Park and Organizational Camp Rules

The Recreational Park and Organizational Camp Rules adopted by OAR 918-650-0000 through 918-650-0085, except as modified in this chapter, are enforced as part of this chapter.

I. Appendix J of the Oregon Structural Specialty Code is adopted and incorporated in this chapter and shall be enforced as part of this chapter.

J. Energy Efficiency Specialty Code

The Oregon Energy Efficiency Specialty Code, as adopted by OAR 918-460-0500 and 918-460-0510, except as modified in this chapter, is enforced as part of this chapter.

K. Solar Installation Specialty Code

The Oregon Solar Installation Specialty Code, as adopted pursuant to ORS 455-010 through 455-895, except as modified in this chapter, is enforced as part of this chapter. (Ord. 2018 § 1, 2010; Ord. 1957 § 1, 2006; Ord. 1939 § 1 (Exh. 1) (part), 2004; Ord. 1887 § 1, 2001; Ord. 1814 § 2 (part), 1997)

15.04.180 DANGEROUS OR UNSAFE BUILDINGS

A. Definitions

For the purposes of this section "building official" means the building official of the City of Milwaukie, or that person's designee.

B. Dangerous buildings

Any building, structure or property, whether improved or unimproved, which has any of the conditions or defects described in this section shall constitute a "dangerous building," provided these conditions or defects exist to and endanger the health, safety or welfare of the public or occupants of the building structure or property in question:

1. Whenever any door, aisle, passageway, stairway, or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or other emergency necessitating evacuation;
2. Whenever the walking surface of any aisle, passageway, stairway, or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or other emergency necessitating evacuation;
3. Whenever the stress in any materials, member or portion thereof, due to all dead or live loads, is more than one-and-one-half times the working stress or stresses allowed in the currently adopted Oregon Specialty Codes for new buildings of similar structure, purpose and location;
4. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, whether natural or human, to the extent that the structural strength or stability is materially less than it was before the catastrophe and is less than the minimum

requirements of the currently adopted Oregon Specialty for new buildings of similar structure, purpose or location;

5. Whenever any portion, member or appurtenance thereof is likely to fail, to become detached or dislodged, or to collapse, and potentially injure persons or damage property;

6. Whenever any portion, member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in the building code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the building code for new buildings;

7. Whenever any portion thereof has wracked, warped, buckled or settled to the extent that walls or other structural members have materially less resistance to winds or earthquakes than is required of similar new construction;

8. Whenever any portion, because of (a) dilapidation, deterioration or decay; (b) faulty construction; (c) the removal, movement or instability of any portion of the ground necessary to the support of the building; (d) the deterioration, decay or inadequacy of its foundation; or (e) any other cause, is likely to partially or completely collapse;

9. Whenever, for any reason, any portion thereof is manifestly unsafe for the purpose for which it is being used;

10. Whenever the exterior walls or other vertical structural members list, lean or buckle to the extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base;

11. Whenever a building or structure, exclusive of the foundation, shows thirty-three percent or more damage or deterioration of its supporting member or members, or fifty percent damage or deterioration of its nonsupporting members, enclosing or outside walls or coverings;

12. Whenever a building, structure or property has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (a) an attractive nuisance to children; (b) a harbor for vagrants, or criminals; or as to (c) enable persons to resort thereto for the purpose of committing unlawful acts;

13. Whenever a building, structure or property has been constructed, exists, is used, or is maintained in violation of any specific requirement, prohibition or permit condition applicable to the building provided by any provision of this Code or state law;

14. Whenever a building or structure, whether or not erected in accordance with all applicable laws and ordinances, which has in any nonsupporting part, member or portion less than fifty percent, or in any supporting part, member or portion less than sixty-six percent of the (a) strength, (b) fire-resisting qualities or characteristics, or (c) weather-resisting qualities or characteristics required by law for newly constructed buildings of like area, height or occupancy in the same location;

15. Whenever a building, structure or property, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the building official to be unsanitary, unfit for human habitation or in a condition that is likely to cause sickness or disease;

16. Whenever a building, structure or property, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the building official to be a fire hazard;

17. Whenever a building, structure or property is in a condition that constitutes a public nuisance known to the common law or equity jurisprudence or the City of Milwaukee Municipal Code;

18. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to qualify the building or portion thereof as an attractive nuisance or hazard to the public;

C. Administration

1. Building Inspections. The building official is authorized to make inspections, take actions, and make interpretations of this chapter as may be required to enforce the provisions of this chapter.

2. Right of Entry. Whenever necessary to make an inspection to enforce any provision of this code, or whenever the building official has reasonable cause to believe that any of the dangerous building conditions mentioned in 15.04.180 (B) exist, the building official may enter the building, structure or property at all reasonable times to inspect the same or to

carry out any provision of this chapter. If the building or premises is occupied, the building official shall first present proper credentials and request entry of the property owner or person in charge. If the building or premises are unoccupied, the building official shall first make a reasonable effort to locate the owner or person in charge of the building or premises and request entry. If entry is refused, or the owner or person in charge is unlocatable, the building official shall seek an appropriate warrant from municipal or circuit court authorizing entry.

3. Posting of Property and Restriction of Access. The building official, upon a finding that a building, structure or property constitutes a dangerous building may post the property with notices as provided in this chapter. The building official may also delimit the area of danger and prohibit all persons from entering onto, occupying or inhabiting the dangerous building area. Violation by any person of such notice and access restriction shall constitute trespass, a misdemeanor offense under this Code. Notwithstanding section 15.04.180(I), any person who enters or remains in or on a building, structure, or property that the building official has posted under authority of this section commits the crime of criminal trespass and may be subject to arrest or prosecution under ORS 164.245 or 164.255, whichever is applicable under the circumstances.

D. Emergency enforcement.

Notwithstanding any other section of this chapter, the building official may seek a summary abatement order to enforce the provisions of this chapter, in accordance with Chapter 1.08 of this Code.

E. Enforcement upon inspection.

All buildings, structures or properties, whether improved or unimproved, which are determined after inspection by the building official to be dangerous as defined in this chapter are declared to be public nuisances and shall constitute a civil infraction.

F. Posting of dangerous buildings.

Upon a declaration by the building official that a building, structure or property is dangerous, it shall be posted to reflect this determination. Notice shall include at least the following: that the building official, upon inspection, has determined the structure to be dangerous and a hazard to the public health, safety or welfare, that the property is not to be entered upon or occupied by anyone without specific authority of the building official, and that any person found to be occupying or otherwise upon the property without authority shall be subject to citation and arrest for trespass.

G. Commencement of Proceedings

1. When the building official has inspected or caused to be inspected any building and has found and determined that such building is a dangerous building, the building official shall commence proceedings to cause the repair, vacation, or demolition thereof.
2. The building official shall issue a notice and order directed to the record owner or owners of the building, structure or property. The notice and order shall contain:
 - a. The street address and a legal description sufficient for identification of the premises upon which the building is located.
 - b. A statement that the building official has found the building, structure or property to be a dangerous building, with a brief description of the conditions found to render the building dangerous under the provisions of Section 15.04.180 (B).
 - c. A statement of the action required to be taken as determined by the building official.
 - d. Statements advising that if any required repair or demolition work (without vacation also being required) is not commenced within the time specified, the building official will order the building vacated and posted to prevent further occupancy until the work is completed; and may proceed to cause the work to be done and charge the costs thereof against the property or its owner.
 - e. Statements advising that if the building official has determined that the building must be repaired, that all required permits shall be secured therefor and the work physically commenced within such time (not to exceed sixty (60) days from the date of the order) and completed within such time as the building official shall determine reasonable under all of the circumstances.
 - f. Statements advising that if the building official has determined that the building must be vacated, that the building or structure shall be vacated within a time certain from the date of the order as determined by the building official to be reasonable.
 - g. Statements advising that any person having any record title or legal interest in the building may be issued a citation and be ordered to appear in municipal court.
3. If the building official has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the building official shall determine is reasonable (not to exceed sixty (60) days from the date of the order), that all required permits be secured therefor within sixty (60) days from the date of the order, and that the demolition be completed within such time as the building official shall determine is reasonable.
4. The notice and order (and any amended or supplemental notice and order) shall be served upon the record owner; and one copy thereof shall be served on each of the following if known to the building official or disclosed from official public records: the holder of any mortgage, deed of trust or other lien or encumbrance of record, the owner

or holder of any lease of record, and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the building official to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this section.

5. Service of the notice and order shall be made upon all persons entitled thereto either personally or by mailing a copy by certified mail, postage prepaid, to each such person at their address as it appears in the Clackamas County tax records, or as otherwise known to the building official. If no address of such person appears or is known to the building official, then a copy of the notice and order shall be so mailed and addressed to such person at the address of the building involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

6. Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the time, date and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail shall be affixed to the copy of the notice and order retained by the building official.

H. Repair, vacation, and demolition.

The following standards shall be followed by the building official (and by the municipal court if an appeal is taken) in ordering repair, vacation, or demolition of any dangerous building or structure:

1. Any building declared a dangerous building under this chapter shall be made to comply with one of the following:

a. The building shall be repaired in accordance with the currently adopted Oregon Specialty Code or other current code applicable to the type of substandard conditions requiring repair;

b. The building shall be demolished at the option of the building owner; or

c. If the building does not constitute an immediate danger to the health, safety, or welfare of the public it may be vacated, secured and maintained against entry.

d. If the building or structure is in such condition as to make it immediately dangerous to the health, safety, or welfare of the public or its occupants, it shall be ordered to be vacated.

I. Violation—Penalty.

1. Any person who performs an act prohibited by this Chapter, or who fails to perform an act required by this Chapter, commits a violation.
2. No person shall cause, create, construct, maintain, enlarge, alter, repair, move, improve, remove, convert, or demolish, equip, occupy, or otherwise use any dangerous building or cause or permit the same to be done in violation of this chapter. A person who violates this provision commits a violation.
3. Violations under this Title are enforceable under Title 1 of the Milwaukie Municipal Code. The maximum penalty for any violation under this Chapter is a fine of \$1,000 per day. Each day that the violation exists shall constitute a separate offense.

15.04.200 PLANS AND PERMITS

A. Issuance

1. The application, plans, specifications, computations, and other data filed by an applicant for a permit shall be reviewed by the Building Official. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws or chapters. If the Building Official finds that the work described in application for a permit and the plans, specifications, and other data filed therewith conform to the requirements of this chapter and other pertinent laws and chapters, and that the fees have been paid, the Building Official shall issue a permit therefor to the applicant.
2. When the Building Official issues the permit where plans are required, the Building Official shall endorse in writing or stamp the plans and specifications Reviewed for Code Compliance. Such approved plans and specifications shall not be changed, modified, and altered without authorizations from the Building Official, and all work regulated by the Building Official and this chapter shall be done in accordance with the approved plans.
3. The Building Official may issue a permit for the construction of part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this chapter. The issuance of a partial permit shall not constitute or be construed as an assurance that the permit for the entire building or structure will be granted. The holder of a partial permit proceeds with such work at the holder's own risk.

B. Retention of Plans

One set of approved plans, specifications, and computations shall be retained by the Building Official as required by OAR 166-200-0025. One set of approved plans and specifications shall be returned to the applicant, who must keep this plan set on the site of the building or work at all times during which the authorized work is in progress.

C. Validity of Permit

1. The issuance or granting of a permit or approval of plans, specifications, and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this chapter or of any other chapter of the jurisdiction or any other federal, State, or local law, statute, rule, regulation, or Oregon specialty code.
2. The issuance of a permit based on plans, specifications, and other data shall not prevent the Building Official from thereafter requiring the correction of errors in such plans, specifications and other data, or from preventing building operations being carried on thereunder when in violation of this chapter or of any other chapters of this jurisdiction.
3. The issuance of a permit based on plans, specifications, and other data shall not be a guarantee by the City or the Building Official of the soundness of such plans or specifications, and shall not be a basis for imposing liability upon the City or any of its agents or employees, specifically including the Building Official.

D. Not Transferable

Absent express approval of the Building Official, a permit issued to one person or firm is not transferable and shall not permit any other person or firm to perform any work thereunder.

E. Expiration of Plan Reviews

Applications for which no permit is issued will expire as outlined in the appropriate Oregon Specialty Code under which the permit was issued.

F. Permit Expiration, Extension, and Reinstatement

1. Every permit issued by the Building Official under the provisions of this chapter shall expire by limitation and become null and void as outlined in the appropriate Oregon Specialty Code under which the permit was issued. Permits may be extended and reinstated as outlined in the appropriate Oregon Specialty Code under which the permit was issued.
2. In addition to the time limits outlined above, every permit issued by the Building Official shall expire by limitation and become null and void twenty-four (24) months after the date of permit issuance. If the building or work authorized by such permit has not received final inspection approval prior to the permit expiration date, all work shall stop until a new permit is obtained for the value of the work remaining unfinished.
3. Exception
 - a. At the time of permit issuance the Building Official may approve a period exceeding twenty-four (24) months for completion of work when the permittee can demonstrate that the complexity or size of the project makes completing the project within twenty-four (24) months unreasonable.
 - b. Any permittee holding an unexpired permit may apply for an extension of the time within which work is to be completed under that permit when the permittee is unable to complete work within the time required by this section for good and satisfactory reasons. The Building Official may extend the time for action by the permittee for a period not exceeding one year, on written request by the permittee showing that circumstances beyond the control of the permittee have prevented work from being completed. No permit shall be extended more than twice.

- c. Where a permit has expired, the permit can be reinstated and the work authorized by the original permit can be recommenced, provided the following are met:
 - (1) The specialty code under which the original permit was issued and other chapters which are enforced by the Building Official have not been amended in any manner which affects the work authorized by the original permit.
 - (2) No changes have been made or will be made in the original plans and specifications for such work.
 - (3) If the original permit expired less than one (1) year from the request to reinstate, the fee for a reinstated permit shall be one-half (½) the amount required for a new permit. Where the request for reinstatement does not comply with the preceding criteria, a new permit, at full permit fees, based on the valuation of the work to be completed, shall be required.

15.04.210 FEES

- A. Fees charged under this chapter shall be established by resolution of the City Council.
- B. The Building Official may authorize the refunding of fees paid.
- C. Building permit valuation shall be determined as outlined in the appropriate Oregon Specialty Code under which the permit is issued.

Chapter 12.02 PUBLIC WORKS STANDARDS

12.02.010 STANDARDS

All new public works, including streets, sanitary sewers, storm sewers, and water lines constructed or installed in the City shall be constructed in conformance with the applicable public works standards adopted under Section ~~15.36.020~~ 12.020 of this chapter. If public works standards have not been adopted for an area or type of improvement, they shall comply with the Standard Specifications and Drawings for Public Works Construction of the Oregon Chapter of the American Public Works Association.

12.02.020 ADOPTION

The City Council may adopt by resolution one (1) or more sets of public works standards applicable in all or part of the City. Any public works standards so adopted shall be kept on file and available for inspection and copying at the City Public Works Department. Any adopted set of public works standards may be modified as provided in Section ~~15.36.030~~ 12.02.030 of this chapter.

12.02.030 AMENDMENTS

The Public Works Director may make technical amendments to the City Public Works Standards to keep the Public Works Standards up-to-date with development of materials and engineering techniques. Public notice of proposed technical amendments shall be posted in City Hall and at the Public Works Office thirty (30) days prior to the effective date of the amendments.

12.02.040 VIOLATION

Any violation of the City Public Works Standards shall constitute a Class A civil infraction. Each day that a violation exists is a separate infraction. For purposes of this section, defects in design or construction that are corrected without delay by the person responsible for the design or construction, prior to acceptance of the public works by the City, shall not constitute a violation.

12.02.050 NUISANCE

Any uncorrected violation of the City Public Works Standards shall constitute a nuisance and may be abated as provided in Chapters 1.08 and 8.94 of this code.

12.08.020 CONSTRUCTION STANDARDS

M. Completion of Construction

The permittee shall promptly complete all construction activities so as to minimize disruption of the City rights-of-way and other public and private property. All construction work within City rights-of-way, including restoration, must be completed within one hundred eighty (180) days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved pursuant to the schedule submitted and approved by the City Engineer or that person's designee.

In addition to the time limits outlined above, every permit issued for work in the Right of Way shall expire by limitation and become null and void twenty-four (24) months after the date of permit issuance.

At the time of permit issuance the City Engineer or that person's designee may approve a period exceeding twenty-four (24) months for completion of work when the permittee can demonstrate that the complexity or size of the project makes completing the project within twenty-four (24) months unreasonable.

Any permittee holding an unexpired permit may apply for an extension of the time within which work is to be completed under that permit when the permittee is unable to complete work within the time required by this section for good and-satisfactory reasons. The City Engineer or that person's designee may extend the time for action by the permittee for a period not exceeding one year, on written request by the permittee showing that circumstances beyond the control of the permittee have prevented work from being completed. No permit shall be extended more than twice.



To: Mayor and City Council

From: Bill Monahan, City Manager
Damien Hall, Jordan Ramis

Date: May 13, 2013

Subject: Habitat Development Agreement with Portland Harbor Holdings IV, LLC as created by Wildlands, Inc.

ACTION REQUESTED

APPROVE AND AUTHORIZE THE CITY MANAGER TO EXECUTE A HABITAT DEVELOPMENT AGREEMENT WITH PORTLAND HARBOR HOLDINGS IV, LLC OR WILDLANDS, INC. ESTABLISHING A FRAMEWORK FOR A FEASIBILITY STUDY, PROJECT DESIGN PROCESS, TRANSFER OF DEVELOPMENT RIGHTS TO CITY PROPERTY, INITIAL CONSTRUCTION TERMS, AND REVENUE SHARING TERMS, ASSOCIATED WITH THE REMOVAL OF KELLOGG DAM AND RESTORATION OF HABITAT IN AND AROUND KRONBERG AND DOGWOOD PARKS.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

Winter 2010, Oral History of Kellogg Lake Project is completed. Thanks to generous interviews with many long-time citizens, the Oral History of Kellogg Lake captures and archives the memories and role this lake has provided to Milwaukie and its residents.

Spring 2010, City staff submitted a funding proposal to the Portland Harbor Trustees Council. Trustees are responsible for restoring natural resources that may have been damaged by releases of contaminants at the Portland Superfund site. This process is known as the Natural Resources Damages Assessment (NRDA) process.

Fall 2010, City Council awarded a contract to Brown and Caldwell to conduct a bathymetric survey of the Kellogg Lake bed and monitor flows above, within, and below the dam's influence. Survey work determined both the top and bottom of the sediment layer and included temperature probing to locate influence of potential cold-water springs. Flow monitoring continued through summer 2011.

Winter 2011, Representatives of the Portland Harbor Trustees Council notified City staff that their proposal for Kellogg Dam removal would be included among the portfolio of projects eligible to receive mitigation funds through the NRDA process.

Spring 2011, US ACE nears completion of the feasibility study. Representatives of the Portland Harbor Trustees Council notified City staff that, in addition to the project being included in the portfolio of eligible projects, the Kellogg for Coho Initiative was among three projects region-wide selected to receive a comprehensive Habitat Evaluation Analysis (HEA). Scientists from the NOAA Restoration Center would conduct the HEA to determine the value of potential "ecological lift" for the full project.

Spring 2011- Fall 2012, Staff began discussions with Wildlands, Inc. to gauge interest in a partnership to fund construction of the Kellogg for Coho project.

Fall 2012, City began negotiations with Wildlands, Inc. on a Habitat Development Agreement for a feasibility study on the restoration of Kellogg Lake and removal of Kellogg Dam.

BACKGROUND

At the January 22, 2013 goal setting, Council established goal Number 4 "Complete the Kellogg for Coho project by negotiating with Wildlands a contract to remove the Kellogg dam and restore the area of the lake, the first part of which will be a study to ascertain the feasibility and viability of doing so for all parties." Accordingly, the City Attorney's office has been negotiating a contract with Wildlands, Inc., a habitat development and land management company. That contract, entitled Habitat Development Agreement, is now before Council for its consideration, and Paul Sherman, a representative of Wildlands, plans to attend the council meeting and be available for discussion.

Key terms in the Habitat Development Agreement address:

- Feasibility Period
- Project Design
- Project Entitlement
- Project Construction
- Post Construction

Feasibility Period

The City has two months to conduct Due Diligence, check references, define financial terms and review project descriptions. Wildlands has 180 days to conduct its Due Diligence, projected to conclude by the end of December 2013, to include onsite investigation and testing and outreach to 3rd party owners. The City will receive \$10,000 upon approval of feasibility by both parties.

Project Design

Wildlands will prepare project design in collaboration with the City, incorporating City Design Priorities that are economically and physically viable. The City Design Priorities means improvements that incorporate:

1. Development of Kronberg Park and Dogwood Park;
2. Perennial (year-round) flow of water in the section of Kellogg Creek running through the Habitat Property;
3. Public access to the City Property from the North (downtown) and South (Kronberg Park); and

4. An undercrossing of McLoughlin/99E between the Restoration Project site and the Willamette River/Riverfront Park.

Both parties must mutually agree on the Initial Project Design.

Project Entitlements

Wildlands will prepare entitlement applications for the needed local, state, and federal permits to undertake the project. There must be mutual agreement on the applications before submittal to the regulatory agencies. Should the regulatory approval process require any amendments to the city approved project design and a Conservation Instrument, final city approval will be sought. The City will receive \$10,000 upon closing.

Project Construction

Timing on construction start should be flexible as it is based on conditions in the DSAY market (Discounted Service Acre-Year). Prior to construction Wildlands shall provide to the City for approval: construction estimate; evidence of sufficient financing to complete construction and bond; and project construction logistics (e.g. role of 3rd parties, insurance terms, construction scheduling, enforcement of schedule, etc.). The City must approve the construction terms before the project is constructed.

Post Construction

After construction, the Conservation Instrument will be recorded to ensure the successful establishment and growth of the restored habitat. Wildlands will uphold its maintenance and monitoring obligation, the length of which is determined by the entitlement approvals, and the City takes over the maintenance upon expiration of Wildlands obligation.

CONCURRENCE

The City Manager's office has been advised of progress throughout the development of the Agreement and concurs with the content of the Agreement.

FISCAL IMPACT

The cost of constructing and marketing the project will be borne by Wildlands. If the project entitlements are approved, the city will have received total payments from Wildlands in the amount of \$25,000.

The cost to the city will be legal fees for preparation, negotiation, and monitoring of the HDA, and consultant costs for a habitat restoration specialist to inform the city's ongoing interest in the project's feasibility, financial performance and the associated progress and status of the Portland Harbor Superfund process.

WORK LOAD IMPACTS

The work load of various City departments, primarily Community Development and the City Manager's Office, will be impacted during the feasibility study and subsequent phases of the project. The extent of involvement will vary depending on the project task and need for City input and review.

ALTERNATIVES

1. Do not approve the agreement in its current form
2. Request revisions to the agreement

ATTACHMENTS

1. Habitat Development Agreement
2. Resolution authorizing the City Manager to sign the Habitat Development Agreement

Attachment 1

**HABITAT DEVELOPMENT AGREEMENT
AND INITIAL ESCROW INSTRUCTIONS
(City of Milwaukie – Kellogg Creek)**

This Habitat Development Agreement and Initial Escrow Instructions (“**Agreement**”), dated for reference purposes as May __, 2013, is entered into by and between the **CITY OF MILWAUKIE**, an Oregon municipal corporation (“**Owner**” or “**City**”), and **PORTLAND HARBOR HOLDINGS IV, LLC**, a Delaware limited liability company (“**Wildlands**”)(Owner and Wildlands are collectively referred to as the “**Parties**”).

RECITALS

A. Wildlands and its affiliates are currently in the process of developing wetland and salmonid restoration projects in the Willamette River watershed in the vicinity of Portland Harbor.

B. Wildlands desires to undertake the development of a riparian and habitat Restoration Project on Kellogg Creek near its confluence with the Willamette River for the purpose of generating credits and Habitat Values.

C. Owner is interested in supporting a Kellogg Lake/Kellogg Creek Restoration Project for the purpose of developing a project with environmental, recreational, cultural and multimodal transportation benefits.

D. Wildlands intends to construct the Restoration Project on certain property located in the City of Milwaukie, Oregon, commonly known as Kellogg Lake and Kellogg Creek, the Restoration Project site. The general location of the Restoration Project site is shown on the Site Plan attached as Exhibit A and incorporated herein by this reference.

E. Owner owns the City Property, which constitutes a majority of the Habitat Property. The location of the City Property and Habitat Property is shown on the Site Plan. The exact size and legal description of the City Property and Habitat Property shall be determined through the Survey (as hereinafter defined).

F. Depending on the ultimate scope of the Restoration Project, there may be additional impacted lands owned or controlled by third parties, including but not limited to, the Oregon Department of Transportation (“**ODOT**”), TriMet, Clackamas County, and Union Pacific Railroad (“**UPRR**”), and private parties from whom Wildlands intends to seek permission to carry out the Restoration Project.

G. The purpose of this Agreement is to set forth the terms and conditions upon which Wildlands may acquire, create, operate, maintain and sell the Habitat Development Rights with respect to the Habitat Property.

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual covenants contained herein, the Parties agree as follows:

AGREEMENT

ARTICLE 1: DEFINED TERMS

As used in this Agreement, the following terms when capitalized shall have the following meanings.

Adjusted Net Sales Proceeds: means, as of any point in time, the difference between (a) the Sales Proceeds, and (b) the sum of (i) the Closing Costs as of such point in time, (ii) Wildlands' Costs incurred by Wildlands as of such point in time, (iii) Wildlands' Preferred Return as of such point in time, (iv) the Marketing Costs as of such point in time, and (v) the Endowment Amount paid by Wildlands as of such moment in time; provided, however, that if such difference is a negative number, the "Adjusted Net Sales Proceeds" shall be deemed to be "0."

Anticipated Costs: means an amount equal to any Wildlands' Costs not yet incurred, but which are expected to be incurred.

Anticipated Costs Deposit: means the amount of each deposit of Anticipated Costs into the Reserve Account.

Anticipated Costs Summary: means a written summary of the specific Anticipated Costs covered by the applicable Anticipated Costs Deposit and the approximate date on which the Anticipated Costs is expected to be incurred.

Approval of the Restoration Project Entitlement Applications: means the date on which the Regulatory Agencies have approved the Restoration Project Entitlement Applications on terms and conditions satisfactory to Wildlands and the Owner, and that all applicable appeal periods have expired without the filing of an appeal, or if an appeal has been filed, that the appeal has been resolved on terms satisfactory to Wildlands and the Owner.

Business Day: means any day other than a Saturday, Sunday, or bank holiday.

City Design Priorities: means the following improvements:

- (a) Development of Kronberg Park and Dogwood Park;
- (b) Perennial (year-round) flow of water in the section of Kellogg Creek running through the Habitat Property;
- (c) Public access to the City Property from the North (downtown) and South (Kronberg Park) (i.e., pedestrian access over trails);
- (d) An undercrossing of McLoughlin/99E between the Restoration Project site and the Willamette River/Riverfront Park; and
- (e) Removal of the Kellogg Dam.

City Property: means all of the Habitat Property owned by the Owner as identified in the Site Plan.

Close of Escrow: means the date on which the Land Use and Easement Agreement is recorded in the Official Records of Clackamas County.

Closing: *see* "Close of Escrow."

Closing Conditions: means the collective conditions in Section 19 of this Agreement.

Closing Costs: means any third-party costs incurred by Wildlands with respect to the actual sale of the Habitat Values, such as escrow fees, but expressly excluding the Marketing Costs. Third-party costs incurred by Wildlands in connection with its acquisition of the Habitat Values shall not constitute Closing Costs.

Confidentiality Agreements: means, collectively, that certain Confidentiality Agreement dated June 25, 2012, entered into by and between Owner and Heron Pacific, LLC, and that certain Confidentiality Agreement dated _____, 2013, entered into by and between Owner's counsel, Jordan Ramis PC, and Heron Pacific, LLC.

Deposit: means the initial payment in the amount of Five Thousand and No/100 Dollars (\$5,000.00) paid into Escrow by Wildlands within three (3) days following the Effective Date, and all interest that accrues on that payment during the time that it is held in Escrow.

DEQ: means the State of Oregon Department of Environmental Quality.

Documents and Materials: means any and all tests, surveys, maps, plans, records, permits, correspondence, environmental assessments, reports (including hazard disclosure reports), and other materials related to the City Property or Habitat Property.

DSAYs: means discounted service acre-years.

Effective Date: means the date on which the last Party executes this Agreement.

Endowment Amount: means the amount that the Regulatory Agencies require be set aside for the long-term endowment care of the Habitat Property.

Environmental Laws: means and includes, without limitation, Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901 et seq.; the Federal Clean Air Act, 42 U.S.C. § 7401-7626; the Federal Water Pollution Control Act and Federal Clean Water Act of 1977, as amended, 33 U.S.C. § 1251 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 135 et seq.; the Federal Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the Endangered Species Act of 1973, 16 U.S.C. 1531 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. 2701 et seq., the State of Oregon's Air Pollution Control Act, ORS 468A.005, et seq.; Noise Control Act, ORS 467.010, et seq.; Water Pollution Control Act, ORS 468B.005, et seq.; Oil or Hazardous Material Spillage Act, ORS 468B.300, et seq.; Community Information on Hazardous Substances Act, ORS 453.307, et seq.; Radiation Sources Act, ORS 453.605, et seq.; Transportation of Hazardous Substances and Radioactive Materials Act, ORS 453.825, et seq.; Cleanup of Toxic Contamination from Illegal Drug Manufacturing Act, ORS 453.855, et seq.; Solid Waste Management Act, ORS 459.005, et seq.; Reduction of

Use of Toxic Substances and Hazardous Waste Generation Act, ORS 465.003, et seq.; Removal or Remedial Action Act (“**Environmental Cleanup Law**”), ORS 465.200, et seq.; Storage, Treatment, and Disposal of Hazardous Waste and PCB Act (state’s companion to RCRA), ORS 466.005, et seq.; Notice of Environmental Hazards Act, ORS 466.360, et seq.; Use of PCB Act, ORS 466.505, et seq.; Spill Response and Cleanup of Hazardous Materials Act, ORS 466.605, et seq.; Oil Storage Tanks Act, ORS 466.706, et seq.; Pesticide Control Act, ORS 634.006, et seq.; Oregon Safe Employment Act, ORS 654.001, et seq., all as amended now or in the future, and all other federal, state, local and foreign statutes, regulations and ordinances concerning public health and safety, worker health and safety, and pollution or protection of the environment, including without limitation all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any hazardous materials, substances or wastes (including petroleum products or byproducts), together with all applicable common law pertaining to actions for personal injury and property damage resulting from Hazardous Materials with respect to both on-site and off-site contamination.

EPA: means the United States Environmental Protection Agency.

Escrow: means the escrow entered into pursuant to this Agreement.

Escrow Holder: means Ticor Title Company, 111 SW Columbia, Suite 1000, Portland, Oregon 97201, Attention: Candice Weischedel, Escrow Officer.

Extended Coverage Title Policy: means the Title Company’s American Land Title Association Extended Coverage Policy of Title Insurance.

Feasibility Approval Notices: means Wildlands’ written notice to Owner of approval of the feasibility of developing the Habitat Values and/or a Restoration Project on the Habitat Property, and Owner’s written notice to Wildlands of approval of the results of Owner’s due diligence investigation into the capability of Wildlands.

Final Accounting: means an accounting with accompanying reasonable documentation of the Final Purchase Price.

Final Design Plans: means all construction drawings and specifications for all improvements to the Habitat Property, consistent with the Restoration Project Permits, Approvals, and Certifications.

Final Purchase Price: means the aggregate Purchase Price.

Future Costs Account: *see* “Reserve Account.”

Habitat Development Rights: means the exclusive right to permit, create, develop, maintain, operate, and sell the rights to use the City Property for the purpose of undertaking riparian and habitat restoration activities. Habitat Development Rights include, but are not limited to, the exclusive right to create and maintain the Restoration Project and the exclusive right to sell the Habitat Values to third parties. The Habitat Development Rights do not include fee title to the

City Property. The Habitat Development Rights include all of the following:

(a) Exclusive Rights to Habitat Values and use of City Property. All Habitat Values in the City Property, and an exclusive right to use the City Property for the purposes of developing and marketing Habitat Values, including, without limitation, the following with respect to the City Property: (i) the exclusive right to determine the natural resources to be restored; (ii) the exclusive right to determine the wetlands, streams, habitat and species sought to be protected, in the exercise of Wildlands' reasonable and professional judgment; (iii) the exclusive right to permit, create, develop, maintain, operate, use, encumber, trade and sell Habitat Values at prices and on terms determined by Wildlands in its sole discretion; (iv) the exclusive right to create, maintain, manage and monitor a Restoration Project; (v) the exclusive right to perform grading and construction activities on the Restoration Project in conjunction with the development of a Restoration Project; and (vi) the exclusive right to represent Owner and its successors-in-interest with respect to each of the foregoing.

(b) Access Rights. Nonexclusive easements (i) over the City Property to use the roads, paths, trails and other access-ways, as they may exist from time to time to maximize Habitat Values, for purposes of vehicular and pedestrian access to, from and through the City Property; and (ii) over the City Property to create such service roads within the Habitat Property, as may be reasonably necessary to construct, maintain, repair and reconstruct the Habitat Property. The Land Use and Easement Agreement shall more particularly describe such easements.

(c) Water Rights. Nonexclusive easements to any existing watercourses, existing ground water wells, and other water rights appurtenant to or otherwise granted to the City Property, as well as the right to extract and/or divert water from such sources and to transport and convey such water to and through the City Property for purposes of wetland, stream, or habitat restoration and maintenance within the City Property. The Land Use and Easement Agreement shall more particularly describe such easements.

(d) Right to Manage. The right to manage the City Property consistent with the Restoration Project Permits, Approvals and Certifications and in Wildlands' best professional judgment.

(e) Incidental Rights. Such incidental rights as may be reasonably necessary or appropriate in order to develop, maintain, operate and/or preserve the City Property in accordance with the requirements of the Regulatory Agencies, including, without limitation, the right of entry described in Section 3(c) below and the right to use the submerged and submersible lands abutting the City Property, to the extent they are not included in the City Property or Habitat Property and that are necessary in order to connect Wildlands' Restoration Project to the river and to obtain approval of the Restoration Project and to the extent that the Owner owns such incidental rights. The Land Use and Easement Agreement shall more particularly describe such incidental rights.

Habitat Development Work: means the construction of the Restoration Project, including without limitation, the construction of all improvements required by, and in accordance with, the terms of the Restoration Project Permits, Approvals, and Certifications.

Habitat Property: means all of the land impacted by the Restoration Project, as initially identified in the Site Plan, and further identified by Survey in accordance with Section 8 of this Agreement.

Habitat Values: means DSA Ys, mitigation credits, conservation credits, habitat values, and any other environmental credits and values that Wildlands deems appropriate, including, without limitation, those credits and values relating to water quality.

Hazardous Materials: means any chemical, element, compound, material, mixture, waste or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a “hazardous material,” “hazardous substance,” “hazardous waste,” “extremely hazardous waste,” “dangerous waste,” “infectious waste,” “toxic substance,” “toxic pollutant,” “pollutant,” “regulated emission,” or any other words of similar import intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity, or as a nuisance, including without limitation polychlorinated biphenyls, dioxins and furans, lead paint, asbestos or asbestos-containing materials, urea formaldehyde, radioactive materials, mold, any petroleum or petroleum product, radon gas, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas in such synthetic gas), ash, municipal solid waste steam, drilling fluids, or produced waters and other wastes associated with the exploration, development and production of crude oil, natural gas or geothermal resources.

Initial Project Design: means the design of the Restoration Project to be initially presented to the NRDA Trustees.

Land Use and Easement Agreement: means the “Land Use and Easement Agreement” attached hereto as Exhibit C and incorporated herein, the form of which is subject to modification pursuant to Section 19(a)(i) of this Agreement.

Marketing Costs: means all of the marketing and management costs (which Wildlands deems to be seven and one-half percent (7.5%) of the Sales Proceeds, regardless of the actual costs).

Memorandum: means the “Memorandum of Habitat Development Agreement” attached hereto as Exhibit B and incorporated herein by reference.

NRDA: means Natural Resource Damage Assessment.

NRDA Trustees: means the Portland Harbor Superfund Site Natural Resources Damage Assessment Trustee Council.

Outside Closing Date: means the tenth (10th) anniversary of the Effective Date of this Agreement.

Owner: means The City of Milwaukie, Oregon.

Owner's Feasibility Period: means the period of time commencing on the Effective Date and expiring at 5:00 p.m. Pacific Standard Time on the date that is sixty (60) days after the Effective Date of this Agreement.

Owner Parties: means Owner and its elected officials, employees, agents and affiliates, representatives, consultants, contractors and subcontractors, and their respective successors and assigns.

Owner's Agents: means Owner or Owner's agents, employees, representatives, consultants, contractors, and subcontractors.

Owner's Title Notice: means Owner's written notice to Wildlands of those disapproved title matters, if any, which Owner is unwilling or unable after reasonable and good faith efforts to have eliminated from title to the City Property by Close of Escrow.

Preliminary Title Report: means the Preliminary Title Report issued by the Title Company with respect to the City Property.

Purchase Price: means the price to be paid by Wildlands to Owner for the Habitat Development Rights, which shall be an amount equal to ten percent (10%) of the Adjusted Net Sales Proceeds.

Regulatory Agencies: means the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the EPA, the United States National Marine Fisheries Service, the DEQ, the NRDA Trustees, the City of Milwaukie, the County of Clackamas and/or any other governmental or quasi-governmental federal, state, and local agency with jurisdiction over the Restoration Project.

Reserve Account: means an interest-bearing deposit account with a national banking association with offices in the State of Oregon.

Restoration Project: means a NRDA restoration project, a stream restoration project, a conservation bank, a mitigation bank, and/or a project to improve water quality to obtain credits or values on the Habitat Property (as determined by Wildlands in its sole and absolute discretion).

Restoration Project Entitlement Applications: means the applications for the Restoration Project Permits, Approvals and Certifications.

Restoration Project Permits, Approvals, and Certifications: means, collectively, any applications that are necessary in order for Wildlands (i) to obtain the necessary permits and approvals for its development of the Habitat Property for a Restoration Project, and (ii) to obtain approval and certification from the NRDA Trustees of the projected and conventionally estimated DSAYs that the Restoration Project will generate.

Sales Proceeds: means total gross revenue at any point in time derived by Wildlands from the Habitat Property from whatever source, including, but not limited to, sales of Habitat Values.

Site Plan: means the map attached hereto as Exhibit A and incorporated herein.

Standard Coverage Title Policy: means the Title Company's standard form American Land Title Association Owner's Policy of Title Insurance.

Third Party Agreements: means agreements between Wildlands and/or Owner and third-party owners of the Habitat Property, that authorize Wildlands to perform Habitat Development Work on those portions of the Habitat Property owned by such third-party owners, as is needed to complete the Restoration Project.

Title Documents: means documents setting forth in the legal description, and the exceptions to title, as disclosed by the following documents and instruments:

(a) the Preliminary Title Report;

(b) legible copies of all documents, whether recorded or unrecorded, referred to in such Preliminary Title Report; and

(c) a parcel map(s) of the Habitat Property on which Escrow Holder has plotted all exceptions to title disclosed by the Preliminary Title Report that are capable of being plotted.

Title Company: means the Escrow Holder's title insurer.

Title Policy: means the Standard Coverage Title Policy or the Extended Coverage Title Policy, as elected by Wildlands.

Wildlands' Agents: means Wildlands' employees, agents, representatives, consultants, contractors and subcontractors, collectively.

Wildlands' Costs: means all of the costs and expenses of the due diligence, design-build and construction costs of the Habitat Development Work, the initial and interim monitoring and maintenance costs, the Conservation Instrument costs, the financial assurances costs (which may include, by way of example and without limitation, costs associated with construction and performance bonds), legal, accounting, administration and any other costs that are incurred by Wildlands in carrying out the terms of this Agreement.

Wildlands' Feasibility Period: means the period of time commencing on the Effective Date and expiring at 5:00 p.m. Pacific Standard Time on the earlier of (1) one hundred and eighty (180) days after the Effective Date of this Agreement, or (2) December 31, 2013.

Wildlands' Preferred Return: means an amount such that Wildlands has received an eight percent (8%) internal rate of return on all Wildlands' Costs incurred, compounded quarterly.

Wildlands' Title Notice: means written notice to the Owner of Wildlands' approval or disapproval, which shall be made in Wildlands' sole and absolute discretion, of the legal description and every item or exception disclosed by the Title Documents.

ARTICLE 2: EFFECTIVE DATE AND DUE DILIGENCE

1. Escrow. Within three (3) Business Days after the Effective Date, Wildlands shall promptly deliver a copy of the fully-executed Agreement to Escrow Holder and secure the Acceptance by Escrow Holder in the form attached at the end of this Agreement.

2. Purchase and Sale of Habitat Development Rights. As long as this Agreement is in effect, Owner shall sell, and Wildlands shall buy the Habitat Development Rights on the terms and conditions set forth in this Agreement.

3. Wildlands' Feasibility Period. During Wildlands' Feasibility Period, Wildlands shall perform its due diligence review of the Habitat Property and determine, in Wildlands' sole and absolute discretion, whether or not the Habitat Property is suitable for Wildlands' proposed Restoration Project. Such due diligence investigation shall include, without limitation, the right (a) to review and approve the Documents and Materials, (b) to conduct any and all inspections, investigations, tests and studies (including, without limitation, investigations with regard to the environmental condition of the Habitat Property, the remediation/disposition of any Hazardous Materials located on the Habitat Property, ODOT bridge work, any improvements related to the existing UPRR bridge, zoning and other governmental regulations, engineering tests, economic feasibility studies, soils, seismic and geologic reports) with respect to the Habitat Property as Wildlands may elect to make or maintain, and (c) to evaluate the extent of any ODOT, UPRR and TriMet funding and cooperation for the Restoration Project.

a. Owner's Cooperation. Owner agrees to reasonably cooperate, at no expense to Owner (other than the approximately \$60,000.00 it previously contributed for sediment sampling of portions of the Habitat Property), (i) with Wildlands in conducting Wildlands' feasibility investigations, (ii) with Wildlands' efforts to investigate the environmental condition of the Habitat Property and the nature and extent of any remediation work that the DEQ, the EPA and/or any other governmental agency may require to be performed on the Habitat Property, and (iii) with Wildlands' efforts to obtain any prospective purchaser agreements, *de minimis* settlement consent decrees, no further action letters and/or such other environmental releases and clearances from the EPA, the DEQ and/or other governmental agencies that Wildlands requires, in its sole and absolute discretion, in order to become satisfied and comfortable with the environmental condition of the City Property and any clean-up obligations or liability with respect to the past or present environmental condition of the City Property. Owner shall authorize its consultants, legal counsel, contractors and subcontractors to provide Wildlands with any documents and/or other information that Wildlands may reasonably request concerning such matters and to discuss such matters with Wildlands in an effort to facilitate Wildlands' investigation of the feasibility of the City Property.

b. Documents and Materials. Within ten (10) days after the Effective Date, Owner shall deliver to Wildlands copies of the Documents and Materials that are within Owner's possession or control.

4. Preliminary Title Report; Permitted Exceptions. Wildlands shall have the right to approve any and all matters of and exceptions to title to the City Property, including the Title Documents, the preparation of which shall be commissioned by Wildlands. Owner shall cause Escrow Holder to deliver the Title Documents to Wildlands within ten (10) calendar days following the Effective Date. Wildlands shall have forty-five (45) calendar days following its receipt of the Title Documents or the Effective Date, whichever is later, to give Owner Wildlands' Title Notice. The failure of Wildlands to give Wildlands' Title Notice to Owner within the specified time period shall be deemed Wildlands' approval of the Title Documents. In the event that Wildlands disapproves of any matter of title shown in the Title Documents, Owner shall, within ten (10) calendar days after Wildlands' Title Notice is received by Owner, deliver Owner's Title Notice to Wildlands. Owner's failure to deliver Owner's Title Notice within such ten (10)-day period shall be deemed Owner's refusal to remove the disapproved title matters. In the event that Owner is unable or unwilling to remove, or is deemed to refuse to remove, all of the title matters objected to by Wildlands in Wildlands' Title Notice, Wildlands shall have until the expiration of Wildlands' Feasibility Period to notify Owner in writing that either (1) Wildlands is willing to purchase the Habitat Development Rights subject to such disapproved exceptions, or (2) Wildlands elects to cancel this transaction. Failure of Wildlands to take either one of the actions described in Subsection (1) or (2) above shall be deemed a cancellation of the transaction. In the event that Wildlands delivers the Feasibility Approval Notice, Wildlands shall be deemed to have elected to purchase the Habitat Development Rights subject to any disapproved exceptions. In the event this Agreement is canceled pursuant to this Section, the Parties shall have no further obligations under this Agreement save for those obligations which survive the termination of this Agreement, and the Deposit shall be promptly refunded to Wildlands. The title exceptions that Wildlands approves, pursuant to this Section, are referred to as the "**Permitted Exceptions.**"

a. Covenant Not to Encumber. Once the Permitted Exceptions have been determined, Owner shall not cause the condition of title to the City Property to differ from that disclosed by the Title Documents without the prior written consent of Wildlands. The Parties understand and agree that the Restoration Project Permits, Approvals and Certifications may also place restrictions on the condition of title to the Habitat Property, and the Regulatory Agencies may have the right to approve changes in the condition of title.

b. Mineral Rights. Owner shall not perform, and shall not authorize or permit any tenant, successor-in-interest or any other party to perform, any surface or subsurface mining or other extraction activities on the City Property.

5. Owner's Due Diligence. During Owner's Feasibility Period, the Owner may conduct a due diligence investigation of Wildlands. This would include, but not be limited to, a financial stability analysis and an evaluation of Wildlands' experience and qualifications, in order to better ascertain Wildlands' capability to complete the Restoration Project.

a. Wildlands Cooperation; Confidentiality. Subject to the provisions of this subsection 5.a, Wildlands shall reasonably cooperate with Owner, at no cost or expense to Wildlands, in performing Owner's due diligence investigation, and shall provide Owner with references who can attest to Wildlands' expertise in developing and constructing Restoration Projects. Wildlands will also provide project descriptions for certain of the projects that Wildlands and/or its affiliates have completed, including the construction costs associated with

such projects. Wildlands shall determine, in its sole and absolute discretion, the specific projects that it will provide information on pursuant to the foregoing provision. To the extent that Wildlands, in its sole and absolute discretion, elects to provide Owner and/or Owner's legal counsel with any financial documents, Owner agrees to keep, and to cause its legal counsel to keep, all such information confidential in accordance with the terms and conditions of the Confidentiality Agreements.

6. Notice of Approval. If Wildlands, in its sole and absolute discretion, fails to provide the Owner with its Feasibility Approval Notice on or before the expiration of Wildlands' Feasibility Period, or if Owner, in its sole and absolute discretion, fails to provide Wildlands with its Feasibility Approval Notice on or before the expiration of Owner's Feasibility Period, this condition shall fail, this Agreement shall terminate, the Deposit shall be promptly refunded to Wildlands, and the Parties shall have no further obligations under this Agreement except for those obligations that survive the termination of this Agreement; unless excused by mutual written agreement.

7. First Payment to Owner. Upon delivery of both Feasibility Approval Notices, Wildlands shall, within ten (10) days, pay the Owner Ten Thousand dollars (\$10,000.00), as compensation for costs incurred by Owner up to that point including the preparation and negotiation of all agreements, including this Agreement and any agreement with the State of Oregon, and any costs associated with the design and evaluation of the Restoration Project. Except in the event of a material default by Owner before Closing, such payment is irrevocable and shall not be returned under any circumstances including termination of this Agreement.

8. Identification of City Property and Habitat Property. Prior to the mutual approval of the Initial Project Design to present to the NRDA Trustees, Wildlands and Owner shall work together with a licensed engineer or surveyor, reasonably acceptable to Wildlands and Owner, using global positioning systems to prepare a survey of the City Property and Habitat Property (the "**Survey**") including, without limitation, a legal description for the City Property and Habitat Property. While Wildlands and Owner anticipate that the City Property and Habitat Property will fall within the area shown as the "City Property" and "Habitat Property" on the Site Plan attached hereto as Exhibit A, the exact scope of the City Property and Habitat Property shall be mutually agreed to by Wildlands and Owner prior to the Close of Escrow. Wildlands shall be solely responsible for all costs associated with obtaining the Survey.

ARTICLE 3:

9. Project Design. Wildlands shall be responsible for development of the Initial Project Design in collaboration with Owner. Provided that Wildlands has conceptually agreed to the terms and conditions of all Third Party Agreements that the Parties determine are necessary pursuant to Section 22 below, Wildlands shall commence its development of the Initial Project Design promptly upon the expiration of Wildlands' Feasibility Period, or at such earlier time as Wildlands deems appropriate. Once the process of designing the Restoration Project has begun, Wildlands shall regularly consult with the Owner, and the Owner shall have direct input into the design of the City Design Priorities, including but not limited to holding a public process as anticipated under paragraph 11, below. Wildlands will determine, in its reasonable discretion,

whether it is economically and physically viable to incorporate Owner's designs for the City Design Priorities into the Initial Project Design. To the extent that integration is determined to be viable, Wildlands shall use its good faith, commercially reasonable efforts to integrate into the Initial Project Design to the greatest extent possible, Owner's designs for the City Design Priorities. In developing the Initial Project Design, Wildlands shall explore reasonable alternatives to tree removal for the purpose of avoiding the removal of as many trees as reasonably possible but in a manner that is consistent with Wildlands' Restoration Project.

10. Mutual Agreement. The Parties shall use their good faith, commercially reasonable efforts to agree upon the Initial Project Design. Wildlands shall not formally present or submit the Initial Project Design to the NRDA Trustees prior to Owner's approval of such Initial Project Design, but shall have the right to consult with and obtain feedback from the NRDA Trustees during its development of the Initial Project Design. Owner shall not unreasonably withhold its approval of the Initial Project Design, and shall have no right to approve or disapprove those components of the Initial Project Design that do not affect the City Design Priorities. This provision applies only to the City's role as Owner in this Agreement (its proprietary capacity), and does not bind it or predetermine any decision regulatory review or from the City. Impacts to the City Design Priorities are reasonable causes for the Owner to withhold approval. Upon completion of the collaborative design process described in paragraph 9, and not before completion of the public process described in paragraph 11, Owner will formally review the Initial Project Design. Owner shall have thirty (30) days in which to formally review and approve the Initial Project Design. Owner's failure to provide Wildlands with written notice of Owner's disapproval of the Initial Project Design within such thirty (30)-day period shall be deemed to constitute Owner's approval of the Initial Project Design. In the event that Owner reasonably disapproves of the Initial Project Design, Wildlands and Owner shall use their good faith, commercially reasonable efforts to promptly resolve the Parties' reasonable concerns. If the Parties are unable to resolve their reasonable concerns, then either Party may terminate this Agreement by providing written notice to the other Party, in which case the Deposit shall be immediately refunded to Wildlands, each Party shall bear the responsibility for its costs incurred prior to such termination, and the Parties shall thereafter have no further rights, duties or obligations under this Agreement save for those obligations that survive the termination of this Agreement. The Initial Project Design that is approved by the Parties pursuant to the provisions of this Section 10 is referred to herein as the ("**Approved Initial Project Design**").

11. Public Process. The Owner and Wildlands acknowledge that Kronberg Park and Dogwood Park are public amenities and assets to the City and citizens of Milwaukie and that redevelopment of Kronberg Park and Dogwood Park requires input from members of the public as a stakeholder in the future of the parks. As such, Wildlands and the Owner may bring the Initial Project Design to the appropriate City commission or commissions and City Council for review and approval or acceptance. This preliminary review by the City is in its proprietary capacity and is separate from requisite City regulatory review of the Restoration Project. The Milwaukie City Council must approve or accept the Initial Project Design prior to submittal of the Restoration Project Entitlement Applications to the City of Milwaukie for regulatory approval. This Agreement in no way guarantees any action or approval by the City's commissions or the City Council.

ARTICLE 4: PROJECT ENTITLEMENT

12. Wildlands' Obligation to Process Restoration Project Applications. Unless this Agreement has been previously terminated by either Party pursuant to its rights set forth in this Agreement, promptly following the expiration of Wildlands' Feasibility Period or at such earlier time as Wildlands deems appropriate, Wildlands shall prepare and diligently process the Restoration Project Permits, Approvals, and Certifications, with the Regulatory Agencies.

(a) Owner's Consent to Restoration Project Entitlement Applications. Prior to submittal to the Regulatory Agencies, Wildlands shall provide Owner with copies of the Restoration Project Entitlement Applications, which shall include, without limitation, any conceptual plans, development plans and legal and administrative documents (e.g., habitat restoration and protection documents, an operator assurances document, a bank enabling instrument and/or mitigation bank instrument) that are included in the Restoration Project Entitlement Applications. In the event that the Restoration Project Entitlement Applications are not materially consistent with the Approved Initial Project Design, then Owner shall have the right to approve or disapprove (in its proprietary capacity) those portions that are materially inconsistent with the Approved Initial Project Design, but only to the extent that such portions impact the City Design Priorities. Owner shall not unreasonably withhold such approval. Owner and Wildlands agree that material impact to the City Design Priorities is reasonable cause to withhold approval. Owner shall have no right to approve or disapprove those components of the Restoration Project Entitlement Applications that do not affect the City Design Priorities and/or that are materially consistent with the Approved Initial Project Design. Owner shall have thirty (30) days in which to review and approve the Restoration Project Entitlement Applications. Owner's failure to provide Wildlands with written notice of Owner's disapproval of the Restoration Project Entitlement Applications within such thirty (30)-day period shall be deemed to constitute Owner's approval (acting in Owner's proprietary capacity) of the Restoration Project Entitlement Applications. In the event that Owner disapproves of the Restoration Project Entitlement Applications, Owner and Wildlands shall use their good faith, commercially reasonable efforts to promptly resolve Owner's reasonable concerns. If Owner and Wildlands are unable to resolve Owner's reasonable concerns, then either Party may terminate this Agreement by providing written notice to the other Party, in which case the Deposit shall be immediately refunded to Wildlands, each Party shall bear the responsibility for its costs incurred prior to such termination, and the Parties shall thereafter have no further rights, duties or obligations under this Agreement save for those obligations which survive the termination of this Agreement.

(b) Authority to Process. Upon approval, in its proprietary capacity, of the Restoration Project Entitlement Applications pursuant to subsection (a) above, Owner shall provide Wildlands with written authorization, in a form that is reasonably acceptable to Wildlands and the applicable Regulatory Agencies, that Owner has consented to the processing of the Restoration Project Entitlement Applications prior to the Closing. To the extent required by any Regulatory Agencies, Owner shall execute the Restoration Project Entitlement Applications promptly upon request of Wildlands or the applicable Regulatory Agencies, and appoint Wildlands as Owner's agent for purposes of processing the Restoration Project Entitlement Applications. Wildlands will keep Owner periodically apprised of the status of the

Restoration Project Entitlement Applications, and will provide status updates at the request of Owner.

(c) Owner's Cooperation. Owner agrees to lend all reasonable assistance and cooperation reasonably required by Wildlands for the approval of the Restoration Project Entitlement Applications, including appearing and giving testimony before any Regulatory Agency. Owner also agrees to reasonably cooperate, in all reasonable respects and at no material expense to Owner, with Wildlands in its efforts to transfer, sell or otherwise convey the Habitat Values to third parties, and Owner agrees to execute and deliver to Wildlands, for the benefit of a third party, any documents reasonably required to convey the Habitat Values to such third party. Owner acknowledges and understands that its failure to cooperate with Wildlands in accordance with the foregoing provisions and/or its delay in providing such cooperation will cause Wildlands to suffer substantial damages.

(d) Fees and Costs. Wildlands shall be responsible for all fees and costs associated with (i) preparing and processing the Restoration Project Entitlement Applications; (ii) obtaining the Regulatory Agencies' issuance of the Restoration Project Permits, Approvals and Certifications, including, without limitation, all engineering and other consulting costs and all application fees including Owner's; (iii) satisfying all financial assurances required by the Regulatory Agencies; (iv) the acquisition of any rights-of-way or other property interests necessary to construct the Restoration Project (to the extent that Wildlands determines, in its sole and absolute discretion, that such acquisition is necessary and the terms of such acquisition are acceptable to Wildlands in its sole and absolute discretion); (v) constructing the Restoration Project; (vi) funding all endowment obligations; and (vii) maintaining and monitoring the Restoration Project during its operation. Wildlands shall have no obligation to pay for any costs or expenses incurred by Owner with respect to its review of the Restoration Project Entitlement Applications or otherwise, excepting the Owner's application fees and any other fees associated with Owner's review of the Restoration Project Entitlement Applications in Owner's capacity as a regulator.

(e) No Representation or Warranty. Wildlands makes no representation or warranty as to (i) whether the Regulatory Agencies will issue the Restoration Project Permits, Approvals and Certifications; (ii) the timing for such issuance; or (iii) the timing for the creation of the Restoration Project and the sale of Habitat Values. The Owner makes no representation or warranty as to any future decisions of the Milwaukie Planning Department staff, Planning Commission, or City Council with regard to any Restoration Project permits.

13. Owner's Right to Approve Conservation Instrument.

(a) Draft Conservation Instrument. In connection with the Regulatory Agencies' approval of the Restoration Project Permits, Approvals, and Certifications, the Regulatory Agencies will require that a Conservation Easement or a Restrictive Covenant (the "**Conservation Instrument**") be recorded against the Habitat Property. Wildlands shall provide Owner with a draft of the Conservation Instrument as soon as Wildlands has received sufficient input from the Regulatory Agencies and any holder of the Conservation Instrument to determine what terms and conditions should be contained in the Conservation Instrument. Wildlands understands and acknowledges that any provisions contained in the Conservation Instrument that materially impact the City Design Priorities may not be acceptable to Owner. Owner shall have

thirty (30) days after its receipt of the draft Conservation Instrument in which to review and approve the draft Conservation Instrument. Owner and Wildlands agree that material impact to the City Design Priorities is reasonable cause for City to disapprove of the Conservation Instrument. Owner's failure to provide Wildlands with written notice of Owner's disapproval of the draft Conservation Instrument within such thirty (30)-day period shall be deemed to constitute Owner's approval of the draft Conservation Instrument. Owner understands and acknowledges that the form of Conservation Instrument that is agreed upon by the Parties pursuant to the foregoing provisions may be modified by the Regulatory Agencies and any holder of the Conservation Instrument.

(b) Final Conservation Instrument. Owner shall have thirty (30) days after its receipt of the final Conservation Instrument in which to review and approve the final Conservation Instrument. Owner shall have the right to approve or disapprove (in its proprietary capacity) those portions of the final Conservation Instrument that are materially inconsistent with the approved draft Conservation Instrument, but only to the extent that such portions impact the City Design Priorities. Owner and Wildlands agree that material impact to the City Design Priorities is reasonable cause for City to disapprove of the Conservation Instrument. Owner's failure to provide Wildlands with written notice of Owner's disapproval of the final Conservation Instrument within such thirty (30)-day period shall be deemed to constitute Owner's approval of the final Conservation Instrument. Owner agrees to reasonably cooperate with Wildlands in making any revisions to the Conservation Instrument, and will not unreasonably withhold approval of the final version of the Conservation Instrument. In the event that Owner reasonably disapproves of the final version of the Conservation Instrument, Owner and Wildlands shall use their good faith, commercially reasonable efforts to resolve the Owner's concerns to the reasonable satisfaction of Owner, Wildlands, the Regulatory Agencies and any holder of the Conservation Instrument. In the event the Parties are thereafter unable to resolve the Owner's concerns and such concerns are in good faith and commercially reasonable and Owner is not otherwise in default under this Agreement, either Party shall have the right to terminate this Agreement, in which case each Party shall bear the responsibility for its costs incurred prior to such termination, and the Parties shall thereafter have no further rights, duties or obligations under this Agreement, except for those obligations that survive termination of this Agreement.

ARTICLE 5: DELIVERIES TO ESCROW HOLDER

14. Escrow. This Agreement constitutes escrow instructions to Escrow Holder. Owner and Wildlands may jointly or separately prepare additional escrow instructions. Escrow Holder may also provide general instructions. If there is any inconsistency between the provisions of any of these instructions and this Agreement, the provisions of this Agreement shall control.

15. Opening of Escrow.

(a) Within three (3) Business Days after the Effective Date, Wildlands shall open the Escrow by depositing with Escrow Holder a fully-executed photocopy of this Agreement for use as escrow instructions. Escrow Holder shall execute the Acceptance By Escrow Holder which appears at the end of this Agreement and deliver a fully-executed Acceptance By Escrow Holder to Owner and Wildlands.

(b) Owner and Wildlands hereby authorize Escrow Holder to take necessary steps for the Close of Escrow pursuant to the terms of this Agreement.

16. Memorandum. Concurrently with the execution of this Agreement, the Parties shall execute, acknowledge and deliver to Escrow Holder the Memorandum for the purpose of providing the Regulatory Agencies and third parties with constructive notice of the Habitat Development Rights that have been conveyed to Wildlands under this Agreement.

(a) The Memorandum shall be recorded with the Clackamas County Recorder immediately following Escrow Holder's receipt of both Parties' Feasibility Approval Notices.

(b) In the event that this Agreement terminates, Wildlands shall execute and deliver to Owner a quitclaim deed, in recordable form, for the purpose of removing the Memorandum from the public records within five (5) days after the termination of this Agreement, provided that the Deposit has been refunded to Wildlands (to the extent that the Deposit is required to be refunded to Wildlands pursuant to the terms and conditions of this Agreement). This Subsection shall survive the termination of this Agreement.

17. Close of Escrow. The Close of Escrow shall occur within thirty (30) days after Approval of the Restoration Project Entitlement Applications, but in no event later than the Outside Closing Date. Upon approval of each Restoration Project Entitlement Application, Wildlands shall immediately furnish a copy of the approval to the Owner. Wildlands shall not be deemed in default under this Agreement if it fails to immediately furnish such copy to Owner, provided that Wildlands does so within ten (10) days after Owner's written request for a copy of such approval. In the event that Wildlands does not obtain Approval of the Restoration Project Entitlement Applications by the Outside Closing Date, either Party shall have the right to terminate this Agreement, in which event Owner shall retain the Deposit and, except as otherwise provided herein, the Parties shall have no further obligations hereunder save for those obligations which survive the termination of this Agreement.

(a) Second Payment to Owner. At the Close of Escrow, Wildlands shall pay the Owner Ten Thousand dollars (\$10,000.00), as compensation for costs incurred after the expiration of Wildlands' Feasibility Period ("**Second Payment**"). Such payment is irrevocable and shall not be returned under any circumstances including termination of this Agreement.

18. Conditions to Close of Escrow.

(a) Conditions to Wildlands' Obligations. The Close of Escrow and Wildlands' obligations to consummate the transaction contemplated by this Agreement are subject to the satisfaction of the following conditions (or Wildlands' written waiver thereof) which are for Wildlands' sole benefit on or prior to the dates designated below for the satisfaction of such conditions, or the Close of Escrow in absence of a specified date:

(i) Title Insurance. At Closing, Title Company shall have issued or shall have irrevocably committed to issue the Title Policy to Wildlands.

(ii) Approval of Restoration Project Entitlement Applications. Wildlands shall have obtained Approval of the Restoration Project Entitlement Applications.

(iii) Owner's Representations. All representations and warranties made by Owner to Wildlands in this Agreement shall be true and correct in all material respects as of the Close of Escrow.

(iv) No Default by Owner. Owner shall have performed all of its obligations under this Agreement in all material respects.

(b) Conditions to Owner's Obligations. The Close of Escrow and Owner's obligations to consummate the transaction contemplated by this Agreement are subject to the satisfaction of the following conditions (or Owner's written waiver thereof) which are for Owner's sole benefit on or prior to the dates designated below for the satisfaction of such conditions, or the Close of Escrow in absence of a specified date:

(i) Wildlands' Representations. All representations and warranties made by Wildlands to Owner in this Agreement shall be true and correct in all material respects as of the Close of Escrow.

(ii) No Default by Wildlands. Wildlands shall have performed all of its obligations under this Agreement in all material respects.

(c) Failure of Condition. In the event any of the Closing Conditions are not timely satisfied or waived by the appropriate benefited party, for a reason other than the default of Wildlands or Owner, this Agreement shall terminate, the Deposit and all other funds deposited into Escrow by Wildlands shall be immediately returned to Wildlands and, except as otherwise provided herein, the Parties shall have no further obligations hereunder save for those obligations which survive the termination of this Agreement.

19. Closing Documents and Funds.

(a) Deposits by Owner. Prior to the Close of Escrow, Owner shall deposit with Escrow Holder:

(i) Land Use and Easement Agreement. The final Land Use and Easement Agreement duly executed and acknowledged by Owner. The Land Use and Easement Agreement that is attached hereto as Exhibit C is only a draft of the Land Use and Easement Agreement. Owner and Wildlands agree to further modify the form of the Land Use and Easement Agreement, if necessary, to address any additional restrictions imposed by the Regulatory Agencies, provided that such additional restrictions are consistent with the scope of the Habitat Development Rights. The final, fully-executed Land Use and Easement Agreement shall be recorded against the Habitat Property by Escrow Holder upon the Close of Escrow.

(ii) Miscellaneous. Such other documents and instructions as may be reasonably required by the Escrow Holder or Wildlands in order to close Escrow in accordance with the terms of this Agreement.

(b) Deposits by Wildlands. Prior to the Close of Escrow, Wildlands shall deposit with Escrow Holder:

(i) Land Use and Easement Agreement. The Land Use and Easement Agreement duly executed and acknowledged by Wildlands.

(ii) Costs and Expenses. All amounts necessary to pay the escrow, recording and title costs.

(iii) Second Payment. The amount of the Second Payment.

(iv) Miscellaneous. Such other documents and instructions as may be reasonably required by the Escrow Holder or Owner in order to close Escrow in accordance with the terms of this Agreement.

(v) Proof of Ownership. Documentation that Wildlands has entered into Third Party Agreements with all third party owners of Habitat Property pursuant to the provisions of Section 22 below.

20. Issuance of Title Insurance. At the Close of Escrow, the Title Company shall issue or shall have committed to issue to Wildlands its Standard Coverage Title Policy, insuring Wildlands' interest in the Habitat Property pursuant to the Land Use and Easement Agreement, subject only to the Permitted Exceptions and the printed exceptions and exclusions common to Standard Coverage Title Policies, with liability in an amount equal to the fair market value of the Conservation Instrument, as determined by Wildlands in its sole and absolute discretion. At Wildlands' election, the Title Company shall issue to Wildlands its Extended Coverage Title Policy instead of a Standard Coverage Title Policy.

21. Costs Related to Closing. Wildlands shall pay all Escrow, recording and title costs. Wildlands and Owner shall each pay all legal and professional fees and fees of other consultants incurred by Wildlands and Owner, respectively.

ARTICLE 6: PROJECT CONSTRUCTION

22. Control of Habitat Property; Third-Party Agreements. Prior to the expiration of Wildlands' Feasibility Period, Wildlands and Owner shall use their good faith, commercially reasonable efforts to determine whether any Third Party Agreements are necessary in order for Wildlands to develop the Restoration Project and, if so, the nature of such Third Party Agreements and whether Wildlands and/or Owner will be a party to such Third Party Agreements. In the event that the Parties determine that any Third Party Agreements are necessary, then the Parties shall jointly pursue the negotiation of such Third Party Agreement(s). Wildlands shall have no obligation to enter into any Third Party Agreement or to fund any of Owner's obligations under any Third Party Agreement unless the terms and conditions of such Third Party Agreement are acceptable to Wildlands in its sole and absolute discretion. Owner shall have no obligation to enter into any Third Party Agreement unless the terms and conditions of such Third Party Agreement are acceptable to Owner in its sole and absolute discretion. Owner shall have the right to approve any Third Party Agreement that is entered into by Wildlands, but only for the purpose of confirming that such Third Party Agreement adequately addresses the City Design Priorities. Wildlands shall have the right to redact the financial terms of any Third Party Agreement that is submitted to Owner for Owner's approval. Owner shall not unreasonably withhold, condition or delay its approval of such Third Party Agreements. If

Owner disapproves of any Third Party Agreement and the Parties are unable to resolve Owner's concerns, then either Party may terminate this Agreement by providing written notice to the other Party, in which case each Party shall bear the responsibility for its costs incurred prior to such termination, and the Parties shall thereafter have no further rights, duties or obligations under this Agreement save for those obligations which survive the termination of this Agreement.

23. Habitat Development Work; Construction Activities. Wildlands shall, at its sole cost and expense, directly or through contractors, perform all of the Habitat Development Work. Excepted from this obligation is any Habitat Development Work for which a third party owner of Habitat Property is responsible, pursuant to a Third Party Agreement.

(a) Final Design. Wildlands shall prepare the Final Design Plans. Wildlands shall use its good faith, commercially reasonable efforts to integrate into the Final Design Plans to the greatest extent possible, Owner's designs for City Design Priorities, provided that Wildlands determines, in its reasonable discretion, that it is economically and physically viable to do so. Wildlands shall submit the Final Design Plans to Owner for Owner's review and approval in its proprietary capacity, which approval shall not be unreasonably withheld. Owner's approval rights shall be limited to those aspects of the Final Design Plans that are materially inconsistent with the Approved Initial Project Design and that impact the City Design Priorities. Owner shall have forty-five (45) days in which to review and approve the Final Design Plans. Owner's failure to provide Wildlands with written notice of Owner's disapproval of the Final Design Plans within such forty-five (45)-day period shall be deemed to constitute Owner's approval of the Final Design Plans. Material impacts to the City Design Priorities constitute reasonable grounds for disapproval of the Final Design Plans. In the event that Owner disapproves of the Final Design Plans, Owner and Wildlands shall use their good faith, commercially reasonable efforts to promptly resolve Owner's reasonable concerns. If Owner and Wildlands are unable to resolve Owner's reasonable concerns, then either Party may terminate this Agreement by providing written notice to the other Party, in which case each Party shall bear the responsibility for its costs incurred prior to such termination, and the Parties shall thereafter have no further rights, duties or obligations under this Agreement save for those obligations which survive the termination of this Agreement.

(b) Performance Security. Prior to performing any construction activities on the City Property, Wildlands shall post a bond, letter of credit or other security in favor of Owner for the purpose of securing the performance of Wildlands' construction obligations under this Agreement, but only to the extent that such construction obligations have not already been fully secured by the financial assurances required by the Regulatory Agencies in connection with the Habitat Development Work. The form of such security and the amount of such security shall be addressed in the Construction Coordination Agreement (as hereinafter defined), which shall be agreed upon by the Parties pursuant to Section 23(e) below.

(c) Construction Standard. Wildlands shall construct the improvements, or shall cause the improvements to be constructed, in a manner deemed reasonable and customary as to such improvements and in accordance with the Final Design Plans that are approved by Wildlands and Owner pursuant to Subsection (a) above, and the Restoration Project Permits, Approvals and Certifications.

(d) Construction Schedule. Promptly upon obtaining the Regulatory Agencies' Approval of the Restoration Project Permits, Approvals and Certifications, the Parties shall use their good faith, commercially reasonable efforts to agree upon a schedule for construction of the Restoration Project, taking into account the market conditions at such time. Wildlands shall have no obligation to construct the Restoration Project if it determines, in its sole and absolute discretion, that the market is not sufficient to support such construction or if Wildlands otherwise determines that proceeding with construction is not economically viable. If Wildlands determines that the market does support proceeding with construction of the Restoration Project, the Parties shall negotiate and execute the Construction Coordination Agreement, pursuant to Section 23(e) of this Agreement, which shall include a construction schedule and a process for amending such schedule. The parties agree that the dates set forth on the approved construction schedule shall be subject to extension if a Force Majeure Event (as hereinafter defined) occurs. The term "**Force Majeure Event**" means an actual delay not occasioned by the conduct or financial condition of Wildlands, whether that delay is an act of God or a public enemy, whether the occurrence is caused by war, riot, unseasonable storms or inclement weather, earthquake or other natural forces, moratoriums, the failure of government agencies to issue any necessary permits, consents and/or approvals after timely submittal therefor, unavailability of material or labor, unforeseen conditions and/or by the reasonably unforeseeable acts of anyone other than Wildlands.

(e) Construction Coordination Agreement. Prior to Wildlands' commencement of any construction activities relating to the Restoration Project, Owner and Wildlands shall use their good faith, commercially reasonable efforts to enter into a written agreement (the "**Construction Coordination Agreement**") setting forth the details related to the construction of the Restoration Project, including, but not limited to:

(i) A construction schedule (which shall be subject to extensions due to Force Majeure Events), a process for the Parties to amend such schedule and remedies for Wildlands' failure to comply with such schedule or approved amendments.

(ii) The types and amounts of any insurance that must be provided by Wildlands (or any third party performing the construction of the Restoration Project) during the construction of the Restoration Project in addition to the insurance required under Section 32 of this Agreement. In no event will Wildlands perform any handling, hauling, removal, storage or disposal of Hazardous Materials without procuring pollution liability insurance in an amount reasonably acceptable to Owner.

(iii) The types and amounts of any bonds, letters of credit and/or other security that must be posted by Wildlands (or any third party performing the construction of the Restoration Project) in favor of Owner for the purpose of securing the performance of the construction obligations under this Agreement in addition to the financial assurances required by the Regulatory Agencies in connection with the Habitat Development Work.

(iv) Wildlands' obligation to provide Owner, prior to commencement of the construction of the Restoration Project, with evidence (which shall be in a form reasonably acceptable to Owner) of construction funding for the purpose of satisfying Owner that Wildlands has sufficient funds to complete the construction of the Restoration Project.

(v) Allocation of responsibility for elements of the construction between Wildlands and any third parties.

(vi) Final terms for mutual indemnification of the Parties during the construction of the Restoration Project.

In no event shall Wildlands commence the construction of the Restoration Project prior to the Parties' execution of the Construction Coordination Agreement. The terms of the Construction Coordination Agreement shall be commercially reasonable. In the event that the Parties, after using their good faith, commercially reasonable efforts, are unable to agree upon the terms and conditions of the Construction Coordination Agreement, such dispute shall be resolved in accordance with the provisions of Section 36 below.

(f) Construction Contracting. Because Wildlands will pay for, contract for, and carry on the construction of the Restoration Project, the City acknowledges that it is Wildlands' intent and expectation that Wildlands will not be subject to public contracting requirements for work performed on City Property. Wildlands, if allowed by law, may either competitively bid all or portions of the work or sole source contracts to contractors it deems to be uniquely qualified to perform the work. Wildlands agrees not to contract with any contractor who is disqualified from bidding on similar City projects. Wildlands will use reasonable efforts to contract with minorities, women & emerging small businesses but this Agreement does not require Wildlands to meet any participation levels.

The provisions of Article 6 will survive the termination of this Agreement and the Close of Escrow.

ARTICLE 7: PURCHASE TERMS

24. Purchase Price. The Purchase Price for the Habitat Development Rights shall be an amount equal to ten percent (10%) of the Adjusted Net Sales Proceeds. Wildlands shall have the sole discretion to establish the price and terms of any sale of Habitat Values to third parties.

25. Payment of Purchase Price. The Purchase Price shall be paid as follows:

(a) Deposit. Within three (3) Business Days following the Effective Date, Wildlands shall pay the Deposit to the Escrow Holder. Escrow Holder shall invest the Deposit with a financial institution acceptable to Wildlands, in a federally-insured interest-bearing demand account.

(i) Nonrefundability; Application of Deposit. Except in the event of a default by Owner or except as otherwise provided in this Agreement, the Deposit shall become nonrefundable upon Closing. The Deposit shall remain in Escrow until the Close of Escrow. The Deposit shall be credited to the Purchase Price at the Close of Escrow.

(b) Balance of Purchase Price. The balance of the Purchase Price payable to Owner by Wildlands shall be paid from the Sales Proceeds. Upon Wildlands' receipt of any Sales Proceeds, Wildlands shall apply such Sales Proceeds as follows:

(i) Closing Costs. First, to pay any Closing Costs incurred by Wildlands with respect to the actual sale of the Habitat Values.

(ii) Pre-Funded Endowment Costs. Second, to pay any portion of the Endowment Amount that the Restoration Project Permits, Approvals and Certifications and the Regulatory Agencies require Wildlands to, or Wildlands elects to (a) pre-fund in advance of the sale of Habitat Values, (b) pay at the time of the sale of Habitat Values, or (c) deposit into an account at the time of the sale of each acre of Habitat Value.

(iii) Wildlands' Costs. Third, to Wildlands as reimbursement of all of Wildlands' Costs previously incurred.

(iv) Wildlands' Internal Rate of Return. Fourth, to Wildlands until Wildlands has received an eight percent (8%) Internal Rate of Return on Wildlands' Costs.

(v) Marketing Costs. Fifth, to Wildlands to pay the then-applicable Marketing Costs.

(vi) Wildlands' Anticipated Costs. Sixth, an amount equal to Wildlands' Anticipated Costs shall be deposited into the Reserve Account, provided that, concurrently with each Anticipated Costs Deposit, Wildlands shall provide to Owner an Anticipated Costs Summary.

(vii) Payment of Purchase Price. Thereafter, Wildlands shall pay to Owner, by Wildlands' company check by the fifteenth (15th) day of each month immediately following the calendar quarter in which any Sales Proceeds are received by Wildlands, a portion of the Purchase Price until such time as Owner has received the entire Purchase Price. Without limiting the foregoing, in the event that the aggregate amounts set forth in Sections 27(b)(i)-(vi) of this Article exceed the Sales Proceeds as of such time, the Purchase Price as of such time shall be deemed to be "0". Any Sales Proceeds remaining following Owner's receipt of the Purchase Price shall be retained by Wildlands. Each Purchase Price payment shall be accompanied by an accounting of all Sales Proceeds received by Wildlands with respect to the Habitat Property for the preceding month, and all Closing Costs, Wildlands' Costs, Marketing Costs, Endowment Costs, and Anticipated Costs paid with such Sales Proceeds. Notwithstanding anything to the contrary contained herein, at such time as all of the Habitat Values have been sold and Wildlands has ceased to aggressively pursue the generation of additional income from the Habitat Property, Wildlands shall provide Owner with the Final Accounting. In the event that the aggregate payments made by Wildlands to Owner pursuant to this Section 27(b)(vii) (collectively, the "**Interim Payments**") are less than the Final Purchase Price, Wildlands shall promptly pay to Owner an amount equal to the difference between the Final Purchase Price and the Interim Payments. Except as otherwise provided in Section 27(c) below, any funds remaining in the Reserve Account after Owner has been paid the entire Purchase Price shall be disbursed to Wildlands. The obligations of Wildlands and Owner under this Section 27(b)(vii) shall survive the termination of this Agreement.

(c) Prior to the sale of any Habitat Values, Wildlands shall open the Reserve Account. The Reserve Account shall be in the name of Wildlands. Wildlands shall make each Anticipated Costs Deposit in accordance with Section 27(b)(vi), Wildlands shall have the right to

make withdrawals from the Reserve Account to reimburse itself for Anticipated Costs that it has incurred provided that (i) such Anticipated Costs are set forth on an Anticipated Cost Summary, and (ii) Wildlands has not previously been reimbursed for such Anticipated Costs. In the event that any funds are being held in the Reserve Account as of the date of any termination of this Agreement, such funds shall be allocated between Wildlands and Owner in accordance with the Final Accounting procedures set forth in Section 27(b)(vii). The provisions of this Section 27(c) shall survive any termination of this Agreement.

(d) Wildlands makes no representation or warranty concerning the amount of the Sales Proceeds that may be derived from the Habitat Property, the aggregate amount of the Purchase Price or the timing for such payment. Except as otherwise provided in this Agreement, in no event shall the Owner be obligated to contribute financially or otherwise pay any amount toward the Restoration Project or to Wildlands. Nothing contained in the foregoing provision shall be construed as a waiver by Wildlands of its right to recover damages from Owner in the event of a default by Owner.

ARTICLE 8: GENERAL TERMS

26. Wildlands Conduct. Although Wildlands will contract for and carry out the Restoration Project, it will be viewed by the citizens of Milwaukie as a public project. Wildlands understands this and agrees that all Wildlands' Agents, will conduct themselves in a manner that is courteous and civil to City staff and the citizens of Milwaukie.

27. Owner's Cooperation in Sale of Habitat Values. Owner agrees to execute and deliver to Wildlands, at no cost or expense to Owner, for the benefit of a third party, any documents reasonably required to convey the Habitat Values to such third party.

28. Right of Entry.

(a) During the term of this Agreement, Wildlands, Wildlands' Agents, and the Regulatory Agencies shall have the right to enter upon the City Property at reasonable times during ordinary business hours, or as otherwise agreed to by Owner or Owner's designated project representative, to make any and all inspections and tests as may be necessary or desirable in Wildlands' sole judgment and discretion. Wildlands shall indemnify, defend and hold Owner and Owner Parties harmless from any and all damages, claims, demands, liens, claims of liens, losses, fines, penalties, judgments, actions or liability of any kind, individually or collectively (including, without limitation, reasonable and actual attorneys' fees, expert witness fees and litigation or arbitration costs reasonably incurred), arising out of or as a result of the entry onto the Habitat Property by Wildlands and/or Wildlands' Agents, excepting those arising from or related to (i) the acts or omissions of Owner or Owner Parties, (ii) any diminution in the value of the Habitat Property arising from or related to matters discovered by Wildlands during its investigation of the Habitat Property, (iii) any latent defects in the Habitat Property discovered by Wildlands, (iv) liability resulting from Wildlands' performance of environmental testing consistent with ASTM standards, and (v) liability which arises from the results or findings of environmental testing procedures. In no event shall Wildlands be considered an owner or operator of the Habitat Property. The provisions of this Section shall survive the Close of Escrow and the termination of this Agreement.

(b) Wildlands Covenants Relating to Right of Entry. Wildlands shall (a) perform all investigations contemplated under this Section in a safe manner, in compliance with all applicable laws, orders, rules, regulations and ordinances; (b) if Wildlands decides not to issue its Feasibility Approval Notice, Wildlands shall promptly and adequately repair any damage to City Property caused by Wildlands by restoring the damaged area(s) to substantially its original condition; and (c) Wildlands shall not permit any liens or claims to stand against the City Property for labor or services furnished in connection with Wildlands' permitted activities. The provisions of this Subsection shall survive the termination of this Agreement.

(c) Insurance. Prior to any entry on the City Property by Wildlands or any of Wildlands' Agents, Wildlands shall furnish Owner with a certificate of Wildlands' liability insurance policy, which insurance shall be primary coverage regardless of whether Owner has other collectible insurance, and evidence of at least the coverage required by Section 32(d).

29. Owner's Representations and Warranties. As a material part of the consideration for Wildlands entering into this Agreement, Owner makes the representations and warranties set forth in this Section, each of which is material and is being relied upon by Wildlands (the continued truth and accuracy of which constitutes a condition precedent to Wildlands' obligations hereunder). The representations and warranties shall survive the Close of Escrow. The phrase "to Owner's knowledge" shall mean the current actual knowledge of Owner, excluding constructive notice and with no duty of any investigation or inquiry.

(a) Owner's Authority. Owner represents that it is a municipal corporation in good standing in the State of Oregon. Owner is the owner of the City Property. Owner has the right, power and authority to enter into this Agreement and to perform its obligations hereunder, and the person(s) executing this Agreement on behalf of Owner have the right, power and authority to do so. This Agreement constitutes the legal, valid and binding obligation of Owner enforceable against Owner in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the rights of creditors generally and, as to enforceability, the general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law). This Agreement does not violate any provision of any other agreement or document to which Owner is a party or to which Owner is bound, which violation would materially impair the ability of Owner to perform its obligations under this Agreement. No further approval of any person or entity is required for Owner to perform its obligations hereunder.

(b) No Default. Owner is not in default under any contracts, leases, agreements, easements or any other documents or instruments relating to or affecting this Agreement or the Habitat Property.

(c) Pending Transactions, Suits or Proceedings. To Owner's knowledge, there are no transactions, suits, proceedings, litigation, including zoning or other land use regulation proceedings, condemnation, or investigations pending or threatened against or affecting Owner or the City Property that would prevent Owner from meeting any of its obligations under this Agreement or that would result in a material adverse change in the condition, operation, developability or marketability of the City Property for a Restoration Project from its condition as of the Effective Date.

(d) No Rights to Acquire Property. No person, firm or entity other than Wildlands has any rights in or right to acquire, lease or obtain any interest in the City Property or any part thereof, and as long as this Agreement remains in force, Owner will not, without Wildlands' prior written consent, lease, transfer, option, mortgage, pledge, or convey its interest in the City Property or any portion thereof nor any right therein, nor shall Owner enter into any agreement granting to any person or entity any option to purchase or rights superior to Wildlands with respect to the City Property or any part thereof.

(e) Hazardous Materials. To Owner's Knowledge, except as disclosed by the Documents and Materials delivered by Owner to Wildlands, Owner is in compliance with all Environmental Laws related to the City Property. Owner has not received any notice, report, or other information regarding any actual or alleged violation of Environmental Laws, or any liabilities or potential liabilities, including any investigatory, remedial, or corrective obligations, relating to any of the City Property under applicable Environmental Laws. To Owner's knowledge, except as specifically discussed in the Documents and Materials, no Hazardous Materials exist in, on, or under the City Property. Owner has not treated, stored, disposed of, handled, or released any Hazardous Materials at or on the City Property in a manner that has given or would give rise to liabilities to Wildlands, including any liability for response costs, corrective action costs, personal injury, property damage, natural resources damages, or attorney fees, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Solid Waste Disposal Act, as amended, or any other Environmental Law, nor has Owner, to Owner's knowledge, released, disposed of, arranged for, or permitted the disposal of, or transported any Hazardous Material on or to other properties owned or operated by third parties in a manner that has given or would give rise to liabilities to Wildlands, including any liability for response costs, corrective action costs, personal injury, property damage, natural resources damages or attorney fees, pursuant to any Environmental Law.

(f) No Violation of Law. Owner has received no notices from governmental authorities pertaining to violations of law or governmental regulations with respect to the City Property with which Owner has not fully complied or corrected, and Owner has no knowledge of any such violations which have not been the subject of any such governmental notices. To Owner's knowledge, Owner is not in default with respect to any of their obligations or liabilities pertaining to the City Property, nor to Owner's actual knowledge are there any facts, circumstances, conditions or events which, but for notice or lapse of time or both, would constitute or result in any such default.

(g) Information Provided to Wildlands. To Owner's knowledge, all Documents and Materials delivered to or inspected by Wildlands pursuant to the terms hereof are complete and true copies of such documents or original counterparts thereof and Owner is aware of no material inaccuracy in or material misrepresentation of the matters contained therein. The Documents and Materials delivered by Owner to Wildlands are true and correct copies and, to Owner's knowledge, there are no other documents or agreements which constitute Documents and Materials that have not been delivered by Owner.

(h) Material Change. From the execution date of this Agreement through the Closing, Owner shall promptly notify Wildlands of any material change with respect to the City Property and any information heretofore or hereafter furnished to Wildlands with respect to the City Property, including specifically, but without limitation, any changes to the Documents and

Materials or any change which would make any portion of this Agreement, including without limitation, the representations, warranties, covenants, and agreements contained herein untrue or materially misleading.

30. Wildlands' Representations and Warranties. As a material part of the consideration for Owner entering into this Agreement, Wildlands makes the representations and warranties set forth in this Section, each of which is material and is being relied upon by Owner (the continued truth and accuracy of which constitutes a condition precedent to Owner's obligations hereunder). The representations and warranties shall survive the Close of Escrow.

(a) Wildlands' Authority. Wildlands represents that it is a Delaware limited liability company in good standing in the States of Delaware and Oregon whose primary business is the development, maintenance and acquisition of land for the creation and sale of wildlife habitat mitigation credits and values. Wildlands has the right, power and authority to enter into this Agreement and to perform its obligations hereunder, and the person(s) executing this Agreement on behalf of Wildlands have the right, power and authority to do so.

(b) Wildlands' Financial Capacity. Wildlands represents that it has the financial capacity to fully construct, maintain and endow the Restoration Project.

(c) Wildlands' Expertise. Wildlands represents that it has experience and expertise in the design and development of habitat restoration projects similar to the Restoration Project, as well as the financing and execution of such habitat restoration projects.

31. Indemnity and Insurance.

(a) Indemnity by Owner. Subject to the Oregon Tort Claims Act and the Oregon Constitution, Owner shall indemnify, defend and hold harmless Wildlands, its successors and assigns, members, managers, partners, shareholders, officers, directors and/or employees (collectively, the "**Wildlands Indemnified Parties**"), and each of them, from, against, for and in respect of any and all demands, claims, actions, causes of actions, assessments, losses, diminutions in value, damages, liabilities, costs and expenses, including interest, penalties, costs of investigation and defense, amounts paid in settlement, and reasonable attorneys' and other professional fees and expenses asserted against, or paid, suffered or incurred (each, a "**Loss**" and collectively, "**Losses**") by any one or more of the Wildlands Indemnified Parties and resulting from, based upon or arising out of (i) any material breach by Owner of its obligations under this Agreement; (ii) the inaccuracy, untruth, incompleteness, misrepresentation or breach of any representation or warranty of Owner contained in or made pursuant to this Agreement; (iii) injury or harm caused to a third party or its property as a result of the acts or omissions of Owner or Owner Parties; and (iv) injury or harm caused to Wildlands and/or the Wildlands Indemnified Parties as a result of the gross negligence or willful misconduct of Owner or Owner Parties. Owner's indemnity and duty to defend and hold harmless does not extend to Losses resulting from the negligence or wrongful acts or omission of Wildlands or Wildlands Agents. The terms of this Section shall survive the Close of Escrow and termination of this Agreement.

(b) Indemnity by Wildlands. Wildlands shall indemnify, defend, and hold harmless Owner, its successors and assigns, members, managers, officers, directors, and/or employees (collectively, the "**Owner Indemnified Parties**"), and each of them, from, against, for, and in

respect of any and all Losses by any one or more of the Owner Indemnified Parties and resulting from, based upon or arising out of (i) any material breach by Wildlands of its obligations under this Agreement; (ii) the inaccuracy, untruth, incompleteness, misrepresentation or breach of any representation or warranty of Wildlands contained in or made pursuant to this Agreement; (iii) harm caused to a third party or its property as a result of the acts or omissions of Wildlands or Wildlands' Agents; (iv) injury or harm caused to Owner Indemnified Parties or its property as a result of the gross negligence or willful misconduct of Wildlands or Wildlands' Agents, and (v) any liens against the City Property relating to any work on or about the Habitat Property conducted by Wildlands or Wildlands' Agents or Losses resulting from a contest or forfeiture premised upon such liens. Wildlands will not be responsible for any Loss resulting from the negligence or wrongful acts or omission of Owner or Owner Parties. The terms of this Subsection shall survive the Close of Escrow and termination of this Agreement.

(c) Notice. Each of the Parties hereto further agrees, upon written notice from the indemnifying party, and at the sole cost and expense of the indemnifying party, to contest any demand, claim, suit, or action against which the indemnifying party has hereinabove agreed to indemnify and hold the other and all such other parties harmless, and to defend any action that may be brought in connection with any such claim with respect to which each party has hereinabove agreed to hold the other and all such other parties harmless and to bear all costs and expenses of such contest and defense. The terms of this Subsection shall survive the Close of Escrow and Termination of this Agreement.

(d) Insurance. Prior to any entry on the Habitat Property by Wildlands or any of Wildlands' Agents, Wildlands agrees to obtain and maintain, until the Land Use and Easement Agreement is terminated, at its own expense, and shall furnish Owner with a certificate evidencing Wildlands' Comprehensive General Liability insurance, including but not limited to Broad Form Property Damage, Personal Injury, Completed Operations, Contractual and XCU Coverage; Automobile Liability Insurance, including Owned Automobiles and Automobiles Under Long-Term Lease, Hired automobiles, and Non-Owned Automobiles; and Worker's Compensation and Employer's Liability Insurance for protection of Owner's employees as required by statute in the state in which the Habitat Development Work is to be performed. If Wildlands employs persons who are not covered by its worker's compensation insurance policy, Wildlands will also cause such persons to execute a declaration that each of such persons renders services as an independent contractor. Coverage limits and scope will be no less than minimum coverage requirements specified below or applicable statutory limits, whichever is greater. The following minimum coverage limits apply,

(i) Commercial General Insurance:

- a. Two Million Dollars (\$2,000,000.00) per occurrence;
- b. Three Million Dollars (\$3,000,000.00) general aggregate;
- c. Three Million Dollars (\$3,000,000.00) products/completed operations aggregate;
- d. Three Million Dollars (\$3,000,000.00) personal and advertising injury;

(ii) Employer's Liability Insurance:

- a. Two Million Dollars (\$2,000,000.00) per occurrence;
- b. Two Million Dollars (\$2,000,000.00) disease each employee;
- c. Two Million Dollars (\$2,000,000.00) disease – policy.

(iii) Comprehensive Automobile Liability Insurance including coverage for all owned, hired and non-owned vehicles:

- a. Two Million Dollars (\$2,000,000.00) per occurrence combined single limit;
- b. Three Million Dollars (\$3,000,000.00) aggregate bodily injury.
- c. Prior to commencing construction activities, as part of the Construction Coordination Agreement in Section 23(e), Owner and Wildlands will agree upon any additional types and amounts of insurance needed by Wildlands during construction of the Restoration Project.

(e) Such insurance shall be primary coverage regardless of whether Owner has other collectible insurance, with the exception of the worker's compensation policy shall contain an endorsement naming Owner as an additional insured, and shall be in form and substance reasonably satisfactory to Owner by an insurer reasonably satisfactory to Owner. Wildlands shall continue to maintain such insurance after the Close of Escrow until such time as the Land Use and Easement Agreement is terminated. This Section shall survive the close of Escrow.

32. Default by Wildlands; Liquidated Damages. WILDLANDS RECOGNIZES THAT THE CITY PROPERTY WILL BE REMOVED BY OWNER FROM THE MARKET DURING THE EXISTENCE OF THIS AGREEMENT, AND THAT IF THE CLOSE OF ESCROW DOES NOT OCCUR BECAUSE OF WILDLANDS' DEFAULT WHICH IS NOT CURED PURSUANT TO THE PROVISIONS OF SECTION 34 BELOW, IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE EXTENT OF THE DETRIMENT TO OWNER. THE PARTIES HAVE DETERMINED AND AGREED THAT THE ACTUAL AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY OWNER AS A RESULT OF ANY SUCH DEFAULT IS DIFFICULT OR IMPRACTICABLE TO DETERMINE AS OF THE DATE OF THIS AGREEMENT AND THAT THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE AMOUNT OF SUCH DAMAGES. FOR THESE REASONS, THE PARTIES AGREE THAT IF THE CLOSE OF ESCROW DOES NOT OCCUR BECAUSE OF WILDLANDS' DEFAULT IF NOT CURED AS PROVIDED IN SECTION 34 BELOW, THE DEPOSIT SHALL BE FORFEITED TO OWNER AS LIQUIDATED DAMAGES. UPON ANY SUCH BREACH OR DEFAULT BY WILDLANDS HEREUNDER, THIS AGREEMENT SHALL BE TERMINATED, AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER,

EACH TO THE OTHER, SAVE FOR THE TERMS THAT SURVIVE THE TERMINATION OF THIS AGREEMENT AND EXCEPT FOR THE RIGHT OF OWNER TO RETAIN SUCH LIQUIDATED DAMAGES; PROVIDED, HOWEVER, THAT NOTHING CONTAINED HEREIN SHALL IN ANY MANNER LIMIT THE AMOUNT OF DAMAGES OBTAINABLE PURSUANT TO AN ACTION UNDER ANY HOLD HARMLESS, DEFENSE AND INDEMNIFICATION PROVISION SET FORTH IN THIS AGREEMENT OR ATTORNEYS' FEES RECOVERABLE PURSUANT TO THIS AGREEMENT. DELIVERY TO AND RETENTION OF THE DEPOSIT AMOUNT SHALL BE OWNER'S SOLE AND EXCLUSIVE REMEDY AGAINST WILDLANDS IN THE EVENT OF A MATERIAL DEFAULT OR BREACH BY WILDLANDS RESULTING IN THE FAILURE OF CLOSING, AND OWNER WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST WILDLANDS, INCLUDING WITHOUT LIMITATION, SPECIFIC PERFORMANCE.

Owner _____

Wildlands _____

33. Termination Rights. The following provisions shall apply with respect to the termination of this Agreement.

(a) Owner's Termination Rights. Owner shall have the right to terminate this Agreement by written notice to Wildlands at any time after the date on which a material default by Wildlands has occurred under this Agreement or the Land Use and Easement Agreement, provided that Wildlands fails to cure such default within the following time periods: Wildlands shall have (a) ten (10) days after the delivery of written notice stating the nature of the default in which to cure any default that can be cured through the payment of money ("**Monetary Cure Period**"), and (b) thirty (30) days after the delivery of written notice from Owner stating the nature of the default ("**Non-Monetary Cure Period**"), in which to cure a default which cannot be cured by the payment of money (a "**Non-Monetary Default**"); provided, however, if such Non-Monetary Default is reasonably capable of cure but is not reasonably capable of being cured (without taking into account financial capability) within the Non-Monetary Cure Period, such failure shall not constitute a default so long as Wildlands commences the cure of such Non-Monetary Default within such thirty (30)-day period and diligently prosecutes such cure to completion within one hundred twenty (120) days after such written notice from Owner. The term "**Non-Monetary Cure Period**" as used in this Agreement shall also mean the one hundred twenty (120)-day period to the extent applicable. In the event that this Agreement is terminated by Owner at any time prior to the Closing pursuant to the provisions of this subsection (a), Owner's remedies shall be limited pursuant to Section 33 above. In the event that this Agreement is terminated by Owner at any time after Closing, Owner may pursue any remedies at law or in equity, including those remedies listed in this Agreement.

(b) Wildlands' Termination Rights. Wildlands shall have the right to terminate this Agreement at any time by providing written notice to Owner (i) if Owner is in material default under this Agreement or the Land Use and Easement Agreement, provided that Owner fails to cure such default within thirty (30) days after the delivery of written notice from Wildlands stating the nature of the default, or if such default cannot be cured within such thirty (30) day period, but is reasonably capable of cure, such failure shall not constitute default so long as Owner commences the cure within such thirty (30) day period and diligently prosecutes such cure to completion within one hundred twenty (120) days after such written notice to Owner; or

(ii) if at any time before undertaking construction Wildlands determines, in its sole and absolute discretion, that the proposed Restoration Project is not economically viable. Except to the extent that this Agreement is terminated pursuant to Subsection (i) above (i.e., a material default by Owner), Wildlands' payment obligations under Section 26 above shall survive the termination of this Agreement.

(c) Quitclaim. In the event that this Agreement is terminated pursuant to the provisions of Subsection (a) or (b) above or for any other reason, Wildlands shall quitclaim all of its right, title, and interest in and to the City Property back to Owner, and shall promptly execute any other documents that are necessary to terminate the Land Use and Easement Agreement. Notwithstanding the termination of such documents, the Conservation Instrument will continue to remain as an encumbrance against the Habitat Property if previously recorded, and Owner shall continue to comply with the terms of the Conservation Instrument. The terms of this Section 34 shall survive Closing and the termination of this Agreement.

34. Assignment. Provided that Wildlands complies with the terms of this Section 35 and subject to Owner's commercially reasonable approval, Wildlands shall have the right to assign this Agreement to a new entity to be owned by (a) Wildlands, (b) one or more of the principals of Wildlands, and/or (c) an entity in which one or more of the principals of Wildlands have an interest. In order for any permitted assignment to be valid, (a) any such assignment shall be in writing, (b) the assignee shall have agreed in such written assignment to assume all of the obligations of Wildlands hereunder, (c) any such assignment shall be an assignment of all of Wildlands' rights and obligations under this Agreement, (d) a copy of the written assignment shall be delivered to Owner immediately upon execution, and (e) the written assignment shall contain the name, address, telephone number, facsimile number and contact person for the assignee.

35. Confidentiality. Notwithstanding any other provision contained herein to the contrary, Wildlands, as a Representative (as such term is defined in the Management Agreement) of Heron Pacific, LLC, and Owner shall continue to be bound by the Confidentiality Agreement; provided, however, Wildlands and the Owner shall be permitted to disclose such Confidential Information (as such term is defined in the Confidentiality Agreement) as is reasonably necessary in order (a) to obtain the Regulatory Agencies' Approval of the Restoration Project Entitlement Applications, (b) to transfer, sell, assign or convey the Habitat Values, and (c) to otherwise perform under this Agreement.

36. Resolution of Disputes. Any dispute, controversy or claim arising out of or relating to this Agreement, including any dispute relating to interpretation of or performance under the Agreement ("**Dispute**"), shall be resolved in the manner set forth in this Section 36, which shall be in lieu of litigation in any court, and the Parties specifically waive any right to a jury trial of any Dispute between them.

(a) Mediation of Disputes. Either Party ("**Claimant**") desiring to arbitrate any Dispute shall first notify in writing the other Party hereto of the Claimant's intent to institute arbitration proceedings as provided hereinafter. Such notice ("**Claim**") shall state the nature of the Claim and the relief sought. Within thirty (30) days thereafter, the Claimant and the other Party shall mediate a resolution of the Dispute before a mediator employed by the Judicial Arbitration and Mediation Service, or such other mediation service which is mutually agreeable

to the Parties, the cost of which shall be shared equally between Wildlands and Owner. If the Parties have not reached a settlement of the Dispute within thirty (30) days following the mediation, the Claimant or the other Party may initiate formal arbitration proceedings pursuant to the procedures set forth below. Refusal of either Party to assent to the mediation shall entitle the initiating Party to obtain appropriate court relief to compel such mediation.

(b) **ARBITRATION OF DISPUTES**. In the event the Dispute is not resolved by mediation, the Dispute shall be resolved by binding arbitration before a retired judge of the Supreme Court, Appellate Court or Circuit Court of the State of Oregon (the "**Arbitrator**"), in accordance with the following provisions:

(i) The Parties stipulate and agree that any and all necessary parties may be joined in the arbitration, but the Parties agree to proceed with arbitration of all Disputes between themselves even if other parties refuse to participate. The Parties specifically waive any objection to arbitration based on the failure or refusal of any other party to be joined. If the nature of the Dispute is such that it cannot be finally resolved without the participation of other parties who refuse to participate in the arbitration, either Party may make a motion to the arbitrator to request a ruling that the Disputes cannot be finally resolved without the participation of the other parties and to transfer the Dispute to Clackamas County Circuit Court for resolution in accord with the Oregon Rules of Civil Procedure, without limitation.

(ii) The arbitration shall be initiated by written notice (the "**Arbitration Notice**") of a demand to arbitrate by registered or certified mail sent by one Party to the other Party or Parties. The Arbitration Notice shall include a plain statement of the Dispute and the relief requested. It shall attach the documents the Party demanding arbitration relies upon and a detailed statement of the expected testimony of witnesses, including expert witnesses. Within thirty (30) days of receipt of the demand for arbitration, each responding Party or Parties shall provide its own plain statement of the Dispute, together with documents such Party intends to rely upon and the expected testimony of witnesses, including expert witnesses. Owner and Wildlands shall each advance one-half of the Arbitrator's fee, as fixed and required by the Arbitrator in order to initiate the arbitration, although the Parties shall ultimately bear responsibility for such fee as determined by the Arbitrator.

(iii) The Parties shall attempt to agree on a retired judge to be the Arbitrator. If they are unable to agree, the Parties shall simultaneously exchange the names of three available retired judges and a judge appearing on both lists shall be selected. If there is no common available Arbitrator and the Parties still cannot agree on an Arbitrator, the Parties shall submit further lists until one is selected. If the Parties have not selected the Arbitrator within fifteen (15) days following the responding Party's statement of its position, the presiding judge of the Circuit Court of Oregon in and for the County of Clackamas shall appoint the Arbitrator. The Arbitrator so selected shall be notified immediately and a date for the arbitration shall be set. The Dispute shall be resolved by binding arbitration under the American Arbitration Association's ("**AAA**") Commercial Arbitration Rules then in effect, as supplemented by this Section 36.

(iv) The Arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations and narrow the issues.

(v) Except and only to the extent pre-empted by federal law, the substantive law of Oregon shall apply to the arbitration process and the Dispute. The law of Oregon shall be applied by the arbitrator to the Arbitration Issues and the Parties as it would be applied, in the judgment of the arbitrator, if the Parties were before a court of general jurisdiction in Oregon. However, this agreement controls over any Oregon or federal law that is not consistent with this agreement unless such law requires a different result.

(vi) The Arbitrator shall have the power to grant all legal and equitable remedies, including, but not limited to, injunction, specific performance, reformation, cancellation, accounting and compensatory damages, except only that punitive damages shall not be awarded.

(vii) Except as otherwise required by law, the arbitrator's final award shall be final, binding, and non-appealable; and no Party may seek any amendment to or reconsideration of the arbitrator's final award except for correction of non-substantive scrivener's or administrative errors. The arbitrator may issue such pre-final award rulings, instructions, and orders (including rulings in the nature of summary or partial summary judgment and orders compelling discovery) as the arbitrator deems necessary to fulfill the obligations of the arbitrator as set forth herein, that the Parties shall obey such rulings, instructions and orders, and that the arbitrator shall have the authority to enforce such rulings, instructions and orders by way of sanctions to include, but not to be limited to, monetary sanctions, the preclusion of evidence, and general or partial default awards, all of which (if any) shall be incorporated into the arbitrator's final award.

(viii) The Parties shall on their own initiative conduct such discovery as is reasonably necessary for them to prepare their cases, generally in accordance with ORS Ch. 36 and the Oregon Rules of Civil Procedure, but without unnecessary complexity or formality. The arbitrator may on motion of any Party or on the arbitrator's own motion order the Parties to adopt and follow such discovery procedures and methods as the arbitrator deems consistent with fairness, expedition, and economy and in so doing may depart from ORS Ch 36 or the Oregon Rules of Civil Procedure. The Parties shall conduct discovery expeditiously and cooperatively, and the arbitrator may, on request of either Party, require any Party to act with regard to discovery in the way most consistent with economy, expeditiousness, and fairness and without undue regard to technicalities.

(ix) The arbitrator is directed to, and the Parties agree that the arbitrator shall have the authority to, conduct the arbitration hearing and all pre-hearing matters, including discovery, in whatever fashion the arbitrator deems most consistent with fairness, expedition, and economy. The arbitrator shall be guided by, but may freely depart from, the rules of procedure and evidence that ordinarily apply in litigation.

(x) An arbitration hearing shall be held on dates agreed upon by the Parties in consultation with the arbitrator. If the Parties cannot agree on hearing dates by a date satisfactory to the arbitrator, the arbitrator shall select dates in the arbitrator's sole discretion, and the Parties may not contest those dates.

(xi) Each Party shall pay an equal share of the fees and costs charged by the arbitrator. Each Party agrees that its failure to timely pay its share of the fees and costs of

the arbitrator upon request by the arbitrator, including fees and costs requested by the arbitrator in advance, shall constitute both consent by the non-paying Party to entry of a default award against the non-paying Party and in favor of the paying Party and a waiver of any challenge to such a default.

(xii) The arbitrator shall issue a final and dispositive award on all substantive issues no later than 14 days after the last hearing day. A supplemental award may be issued, if appropriate, for fees and costs. The awards may be reduced to and enforced as judgments in accordance with applicable law.

(xiii) The arbitrator is encouraged to require the Parties to submit stipulated facts and to stipulate to exhibits in advance of the arbitration hearing and to impose other requirements that simplify and expedite the arbitration process and arbitration hearing consistent with fundamental fairness for the Parties.

(xiv) The arbitrator is encouraged to require the Parties to submit stipulated facts and to stipulate to exhibits in advance of the arbitration hearing and to impose other requirements that simplify and expedite the arbitration process and arbitration hearing consistent with fundamental fairness for the Parties.

(xv) In the event that an arbitrator selected by the Parties or appointed by a judge cannot or will not for any reason continue in that capacity, the Parties shall within seven business days agree on a new arbitrator, and if they fail to do so, a replacement arbitrator shall immediately be selected by the departing arbitrator in that arbitrator's sole discretion, but after consultation with the Parties. If the departing arbitrator is unable or unwilling to select a replacement arbitrator, the Parties shall ask the Presiding Judge of the Circuit Court of Clackamas County, Oregon to appoint a replacement arbitrator, and the Parties shall be bound by such appointment unless there is showing of actual bias or prejudice as to the arbitrator appointed, in which case they ask the presiding judge to appoint another arbitrator.

(xvi) If the Parties have a disagreement about the meaning or effect of this Section 36, such disagreement shall be submitted to the Arbitrator, who shall be the sole and final authority as to the meaning and effect of this section and the rights and obligations of the Parties thereunder. The Arbitrator shall include any determinations made as to the meaning and effect of this section in the final award. Unless otherwise required by law, no Party may seek relief or redress of any kind in any forum other than the arbitration hereunder as to any matter falling within the scope of this section or the dispute.

(xvii) The Arbitrator shall award reasonable attorneys' fees and costs, including the expert fees, to the "Prevailing Party." For purposes of this section, the "**Prevailing Party**" shall be the Party which obtains a net monetary recovery, exclusive of attorneys' fees and costs UNLESS the net monetary recovery is equal to or less than the amount of a written offer from the opposing Party made after the negotiations described in Section 36. The Arbitrator shall have exclusive and binding authority to determine entitlement to attorneys' fees and costs, including experts' fees, under this section, but the Arbitrator shall reduce any such award to any party who, in the Arbitrator's opinion, unnecessarily delayed or complicated the arbitration process. Such reduction shall be in an amount to be determined by the Arbitrator in the Arbitrator's sole discretion. Notwithstanding whether any party is otherwise entitled to fees, the

arbitrator may award fees and costs to any party upon a finding that another party unnecessarily delayed or complicated the Arbitration process.

(xviii) The arbitration shall be conducted in a place agreed upon by the Parties. If the Parties cannot agree on a location, the Arbitrator shall select a location in Clackamas County, Oregon. If the use of a space or other facilities for the arbitration hearing generates costs, the Parties shall pay the costs equally, unless the arbitrator finds that specified costs should be borne differently. Any party may be represented by counsel or other authorized Representative.

"NOTICE: BY INITIALLING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY OREGON LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALLING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE OREGON CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Owner's Initials

Wildlands' Initials

37. Miscellaneous Provisions.

(a) No Broker. Each of the Parties hereto represents to the other that it has dealt with no real estate salesperson, broker or finder in connection with this transaction, and insofar as they know, no salesperson, broker or other person is entitled to any commission, finder's fee or other compensation in connection with this transaction. If any claims for any brokers' or finders' fees for the consummation of this Agreement arise, then Wildlands hereby agrees to indemnify, hold harmless and defend Owner from and against such claims if they shall be based upon any statement, representation or agreement by Wildlands, and Owner hereby agrees to indemnify, hold harmless and defend Wildlands if such claims shall be based upon any statement, representation or agreement made by Owner.

(b) Notice. All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given

only in accordance with the provisions of this Section 37, shall be addressed to the Parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (i) upon receipt when hand delivered during normal business hours (provided that notices which are hand delivered shall not be effective unless the sending Party obtains a signature of a person at such address that the notice has been received); (ii) upon the day of delivery if the notice has been deposited in a authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that the sender has in its possession the return receipt to prove actual delivery); or (iii) one (1) Business Day after the notice has been deposited with an overnight courier (provided that the sending Party receives a confirmation of actual delivery from the courier). The addresses of the Parties to receive notices are as follows:

TO WILDLANDS: Portland Harbor Holdings IV, LLC
c/o Wildlands, Inc.
3855 Atherton Road
Rocklin, California 95765
Attention: Sherrie R. Aland, Esquire
Telephone: (916) 435-3555
Facsimile: (916) 435-3556

TO OWNER: City of Milwaukie
Attention: City Manager
10722 SE Main St
Milwaukie, Oregon 97222 Telephone: (503) 786-7501
Facsimile: (503) 652-4433

With a copy to: Steve Shropshire
Jordan Ramis PC
Two Centerpointe Dr., 6th Fl.
Lake Oswego, Oregon 97035
Telephone: (503) 598-7070
Facsimile: (503) 598-7373

TO ESCROW HOLDER: Ticor Title Company
111 SW Columbia, Suite 1000
Portland, Oregon 97201
Attention: Candice Weischedel, Escrow Officer
Telephone: (503) 242-1210
Facsimile: (503) 242-0770

Any Party may change its address for purposes of this Section by giving the other Party written notice of the new address in the manner set forth above.

(c) Integration. This Agreement and the Exhibits related to and referred to within this Agreement and the Confidentiality Agreement contain the entire agreement of the Parties hereto; and this Agreement supersedes any and all prior written and oral agreements between them. There are no representations, agreements, arrangements or understandings, oral or written,

relating to the subject matter which are not fully expressed herein.

(d) Additional Documents. From time to time prior to and after the Close of Escrow, each Party shall execute and deliver such instruments of transfer and other documents as may be reasonably requested by the other Party to carry out the purpose and intent of this Agreement, including, but not limited to, documents necessary for compliance, as required by law or the requirements of any Regulatory Agency.

(e) Calculation of Time Periods. If any date for performance herein falls on a day other than a Business Day, the time for such performance shall be extended to 5:00 p.m. Pacific Time on the next Business Day, and the next time period shall be calculated from and after the date of such actual date for performance.

(f) Attorneys' Fees. If a suit, action, appeal, mediation, arbitration or other proceeding of any nature whatsoever, including, without limitation, any proceeding under the U.S. Bankruptcy code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing Party shall be entitled to recover from the losing Party its attorney fees, paralegal fees, accountant fees, and other expert fees, and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, appeal, mediation, arbitration or other proceeding, the amount of fees shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

(g) Dependency and Survival of Provisions. The respective warranties, representations, covenants, agreements, obligations and undertakings of each Party hereunder shall be construed as dependent upon and given in consideration of those of the other Party, and shall survive the Close of Escrow and delivery of the Land Use and Easement Agreement, and, the termination of this Agreement to the extent provided herein.

(h) No Third-Party Beneficiaries. This Agreement shall be for the sole and exclusive benefit of the Parties hereto and shall not confer any right upon any third party, unless expressly so stated herein.

(i) Condemnation.

(i) Before Close of Escrow. If, before the Close of Escrow, any portion of the Habitat Property is taken in condemnation or under the right of eminent domain, or in the event any portion of the Habitat Property is damaged or destroyed such that such portion cannot be restored by Wildlands pursuant to this Agreement, then such portion of the Habitat Property shall be excluded from the Habitat Property, and shall not be subject to the Land Use and Easement Agreement or any of the Restoration Project Permits, Approvals and Certifications or this Agreement. Notwithstanding the foregoing provision, if Wildlands, acting in good faith, reasonably determines, that the condemnation action or damage will have such an effect that the Restoration Project will no longer be economically viable, Wildlands shall have the right to terminate this Agreement, in which event, except as otherwise provided in this Agreement, the Parties shall have no further obligations under this Agreement save for those obligations which survive the termination of this Agreement. Owner (as applicable to City Property) shall be

entitled to all condemnation awards, damages or insurance proceeds under this Subsection (i) with respect to the City Property.

(ii) After Close of Escrow. If, after the Close of Escrow, any portion of the Habitat Property shall be taken in condemnation or under the right of eminent domain, or in the event that any portion of the Habitat Property is damaged or destroyed after the Close of Escrow where such damage or destruction is not caused by any action or omission of Wildlands, and provided that Wildlands is not in default under this Agreement beyond applicable notice and cure periods, then Wildlands shall be entitled to that portion of the condemnation award or insurance proceeds (as applicable) allocable to the fair market value of the Habitat Rights only to the extent that any valuation includes value for the Habitat Values. Owner shall be entitled to the balance of the condemnation award or insurance proceeds (as applicable to City Property). The provisions of this Subsection shall survive the Close of Escrow.

(j) Counterparts. This Agreement may be executed in counterparts, and all counterparts together shall be construed as one document.

(k) Electronic Transmittals. The Parties agree that if this Agreement is transmitted electronically, the electronic transmittal of the original execution signatures shall be treated as original signatures and given the same legal effect as an original signature.

(l) Recitals/Exhibits. The Recitals set forth in this Agreement and the exhibits referenced herein are incorporated herein by this reference.

(m) Severability. If any portion of this Agreement shall be declared void, invalid, or illegal, the validity or legality of any other portion of this Agreement shall not be affected thereby.

(n) Choice of Law. The validity of this Agreement and the rights, obligations, and relations of the Parties hereunder shall be construed and determined under and in accordance with the substantive laws of the State of Oregon, without regard to its principles of conflicts of law.

(o) Pre-Suit Mediation. In the event any dispute arises out of or in connection with this Agreement, the Parties must submit such dispute to mediation prior to litigation. If the Parties cannot mutually and reasonably agree upon a mediator within fourteen (14) days following a Party's request therefore, any Party may apply to the presiding judge of the Clackamas Circuit Court to appoint a mediator. Mediation shall be non-binding upon the Parties unless a written agreement is signed by the Parties. The Parties shall share the mediator's fee equally. Each Party shall bear its own costs and attorneys' fees, if any, associated with the mediation. The mediation shall be conducted at a location in the greater Portland metropolitan area.

(p) Choice of Forum and Jurisdiction. Any action, suit, or proceeding arising from or relating to this Agreement shall not be commenced except in the appropriate court (state or federal) in the County of Clackamas, State of Oregon. Each of the Parties irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect

of the action, suit or proceeding shall be heard and determined only in such court and agrees not to bring any action, suit or proceeding arising out of or relating to this Agreement in any other court. The Parties agree that any Party may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement among the Parties irrevocably to waive any objections to venue or to convenience of forum.

(q) Inconsistencies. In the event of any conflict or ambiguity between the terms and conditions of this Agreement and any exhibits, attachments or prior agreements, the terms and conditions of this Agreement shall prevail.

(r) Amendment. This Agreement may be amended solely pursuant to a written agreement that refers to this Agreement by name, describes fully and completely all terms and conditions of such amendment and includes the signatures of both Parties.

(s) Relationship of the Parties. In the performance of this Agreement, Wildlands shall at all times be acting as an independent buyer, with the right to resell the Habitat Values. This Agreement shall not constitute or give rise to a joint venture, partnership, association or similar type relationship between the Parties, nor an employer-employee or principal-agent relationship between Parties.

(t) Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the Parties to this Agreement and their respective successors and assigns unless otherwise stated in this Agreement.

(u) Representation by Counsel. Notwithstanding any rule or maxim of construction to the contrary, any ambiguity or uncertainty shall not be construed against either Wildlands or Owner based upon authorship of any of the provisions hereof. Wildlands and Owner each hereby warrant, represent and certify to the other as follows: (i) that the contents of this Agreement have been completely and carefully read by the representing Party and counsel for the representing Party; (ii) that the representing Party has been separately represented by counsel and the representing Party is satisfied with such representation; (iii) that the representing Party's counsel has advised the representing Party of, and the representing Party fully understands, the legal consequences of this Agreement; and (iv) that no other person (whether a party to this Agreement or not) has made any threats, promises or representations of any kind whatsoever to induce the execution hereof, other than the performance of the terms and provisions hereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

WILDLANDS:

**PORTLAND HARBOR HOLDINGS IV,
LLC**, a Delaware limited liability company

By: _____

OWNER:

CITY OF MILWAUKIE, an Oregon
municipal corporation

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

ACCEPTANCE BY ESCROW HOLDER

The undersigned Escrow Holder hereby acknowledges that on _____, 2013, the undersigned received a fully-executed duplicate original (with Section 33 initialed by both Parties) of the foregoing Habitat Development Agreement and Initial Escrow Instructions by and between the City of Milwaukie and Portland Harbor Holdings ____, LLC, a Delaware limited liability company. Subject to Escrow Holder's receipt of acceptable escrow instructions, Escrow Holder agrees to act as the Escrow Holder under this Agreement, and to comply with these instructions. Escrow Holder has assigned Escrow Number _____ to the Habitat Property for that purpose.

TICOR TITLE COMPANY

By: _____

Name: _____

Title: _____

Date: _____

LIST OF EXHIBITS

- Exhibit A - Site Plan Showing Project Site, City Property, and Habitat Property
- Exhibit B - Memorandum of Agreement
- Exhibit C - Land Use and Easement Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN A HABITAT DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MILWAUKIE “CITY” AND PORTLAND HARBOR HOLDINGS IV, LLC OR WILDLANDS, INC. FOR THE INTENT OF STUDYING FEASIBILITY OF RESTORATION OF KELLOGG LAKE AND THE REMOVAL OF KELLOGG DAM.

WHEREAS, Council desires to study the feasibility of restoring Kellogg Lake and removing Kellogg Dam to allow the passage of fish species; and

WHEREAS, one of Council’s 2013 goals is to complete the Kellogg for Coho project by negotiating with Portland Harbor Holdings, IV, LLC or Wildlands, Inc. a contract to remove the Kellogg Dam and restore the area of the lake, the first part of which will be a study to ascertain the feasibility and viability of doing so for all parties; and

WHEREAS, City has entered into negotiations with Portland Harbor Holdings, IV, LLC or Wildlands, Inc. to conduct a feasibility study; and

WHEREAS, Wildlands, Inc. has agreed in principle to a construction financing plan that does not include expenditure by the City; and

NOW, THEREFORE, BE IT RESOLVED that the City Manager is authorized to sign the Habitat Development Agreement between the City of Milwaukie and Portland Harbor Holdings, IV, LLC or Wildlands, Inc.

Introduced and adopted by the City Council on May 21, 2013.

This resolution is effective on May 21, 2013.

David Hedges, Council President

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney



Agenda Item: 6.D.
Meeting Date: May 21, 2013

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Proposed Vacation of Street Right-of-Way (44th Ave at Monroe)

Prepared By: Gary Parkin, Public Works Director

Dept. Head Approval:

City Manager Approval: Bill Monahan

Reviewed by City Manager:

ISSUE BEFORE THE COUNCIL

The issue before the Council is the disposition of an unimproved section of 44th Avenue Right-of-Way (ROW) as it runs south of Monroe St. This was discussed in work session at the March 19, 2013 meeting where staff was directed to continue with the process after obtaining Hector Campbell NDA's concurrence.

STAFF RECOMMENDATION

Begin the City-initiated vacation for the identified section of ROW to bring clarity to the issues of maintenance and liability.

KEY FACTS & INFORMATION SUMMARY

City Attorney's office was asked for their opinion as to the options open for the disposition of the unimproved section of right-of-way for 44th Ave just south of Monroe St. Their opinion did not extend to whether the City should vacate but provided that if the ROW were vacated, vacating it to the original adjacent dedicating properties was the legal course of action.

There is no apparent need for the ROW to be improved as a street. It is not identified in the Transportation System Plan for future connectivity plans. The Romalyn subdivision adjacent to the south of the ROW developed in the 1980's without continuing 44th Avenue. Homes are constructed where the street was planned for and connectivity without the use of 44th Ave developed.

The adjacent property owners could petition for the ROW vacation but it is costly as the City is entitled to cost recovery for staff time expended. A City-initiated vacation would recognize the efforts that adjacent property owners have already expended in the maintenance of the ROW and that there is benefit for the City in moving the ROW into private property.

The Hector-Campbell NDA provided concurrence with the vacation at their April 8, 2013 meeting.

OTHER ALTERNATIVES CONSIDERED

Many alternatives were considered by the neighborhood. Most were deemed to be in violation of land use law.

CITY COUNCIL GOALS

Nothing specific

ATTACHMENT LIST

1. Aerial map showing the unimproved ROW
2. Map showing Utility placement in the unimproved ROW
3. Resolution authorizing the City to initiate the street vacation process

FISCAL NOTES

If the vacation proceeds to a successful conclusion there would likely be a small increase in property taxes collected from the adjacent properties that would absorb this right-of-way.

To: Mayor and City Council
Through: Bill Monahan, City Manager
From: Gary Parkin, Public Works Director
Subject: Vacation of Unimproved Street Right-of-Way (44th Ave at Monroe)
Date: May 8, 2013 for the May 21, 2013 Regular Session

ACTION REQUESTED

City Council initiation of the street vacation process for an unimproved section of 44th Avenue just south of Monroe Street.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

March 19, 2013: Council was provided with information on the 44th Ave street vacation and Council then provided direction to staff to proceed after checking in with the Hector-Campbell NDA.

BACKGROUND

As staff related to Council at the March 19th work session, the impetus for this street vacation request was an inquiry from a neighborhood representative of the Hector-Campbell NDA. Staff was approached last spring about an unimproved street right-of-way for 44th Ave off of Monroe St. The right-of-way area is about the size of single building lots in the area and looks like a vacant lot (attachment 1).

Staff reviewed potential uses of the right-of-way with the NDA representative and the City Attorney's office. The size, location and dedication of the right-of-way limited its future use. In addition there is no clear need of this ROW for street purposes. This unimproved ROW is not identified in the City's Transportation System Plan as a street connectivity need and since the ROW terminates at a built out subdivision of residential houses, its eventual continuance is unlikely.

The vacation proceeding is authorized by ORS 271 and involves noticing, allowing for property owners within the notice area to object, enacting the vacation by ordinance and filing the action with the County assessor and surveyor offices. The action cannot take place without the written consent of the owners of the adjoining property. The title to the street vacated shall attach to the lands bordering on such area in equal portions.

The City has an existing water main running along the west side of the ROW (see attachment 2). An easement for that main will be needed if the ROW is vacated. The vacating process can reserve an easement for this main. An exhaustive search has not been made for private utilities that may be using this ROW but overhead power and communication lines run through the area and need to be addressed.

CONCURRENCE

Both of the abutting property owners have expressed their desire to move forward with the street vacation. The Hector–Campbell NDA provided concurrence at their April 8, 2013 meeting. Both the City’s Community Development and Public Works Departments support this vacation.

FISCAL IMPACT

The vacation process takes staff time but requires only a small amount for direct charges to cover recording fees and mailing.

If the vacation proceeds to a successful conclusion there would likely be a small increase in property taxes collected from the adjacent properties that would absorb this right-of-way.

WORK LOAD IMPACTS

Preparing a street vacation file and processing through to Council review requires some time and effort. The schedule to complete this vacation should not be demanding as there are not pressing matters waiting for its conclusion. As this street vacation proceeds, it should be with the understanding that it is not priority work.




ALTERNATIVES

Don’t proceed at this time.

ATTACHMENTS

1. Aerial Map showing the area in question
2. Map showing utilities located in the unimproved ROW
3. Resolution authorizing the City to initiate the street vacation process

Attachment 1

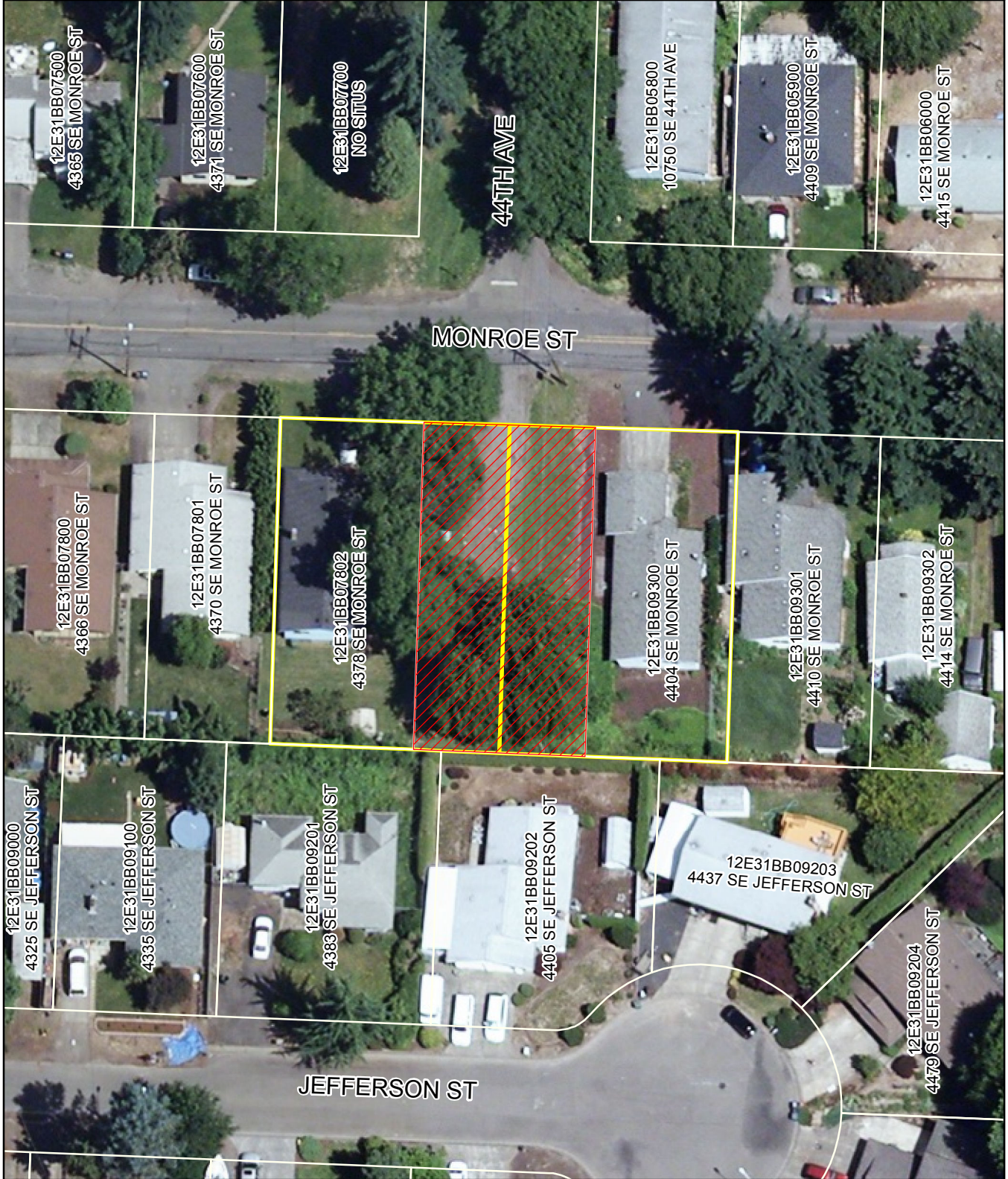
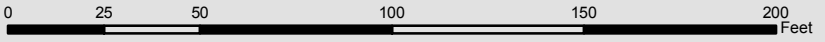
-  Proposed new tax lot boundaries
-  Area to vacate
-  Tax lots

Data Sources: City of Milwaukie GIS
 Clackamas County GIS
 Metro Data Resource Center

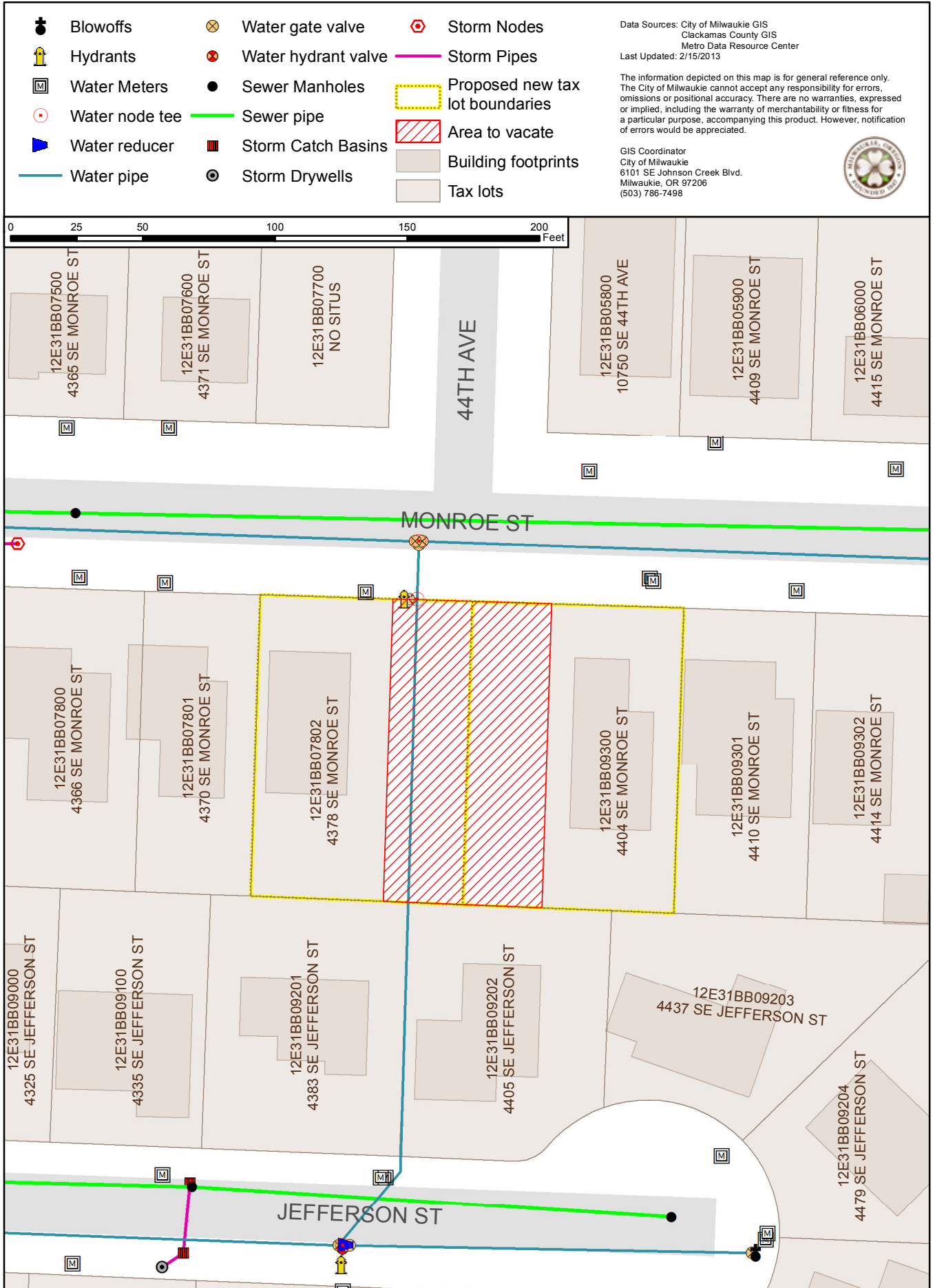
Contact: GIS Coordinator
 City of Milwaukie
 6101 SE Johnson Creek Blvd.
 Milwaukie, OR 97206
 (503) 786-7498

Last Updated: 2/15/2013

The information depicted on this map is for general reference only. The City of Milwaukie cannot accept any responsibility for errors, omissions or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of errors would be appreciated.



Attachment 2



RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
AUTHORIZING THE CITY INITIATED VACATION OF A PORTION OF THE STREET
RIGHT-OF-WAY FOR 44TH AVENUE SOUTH OF MONROE STREET.**

WHEREAS, the unimproved section of 44th Ave adjacent and south of Monroe Street was dedicated to the City for roadway purposes; and

WHEREAS, the City of Milwaukie has determined that the unimproved section of 44th Ave adjacent and south of Monroe Street is not needed for roadway purposes; and

WHEREAS, the Oregon Revised Statutes (ORS) Chapter 271 provides for the vacation of street rights-of-way; and

WHEREAS, the City Council of the City of Milwaukie wishes to follow the provisions of ORS Chapter 271 and initiate the vacation the unimproved section of 44th Ave adjacent and south of Monroe Street on their own motion per Chapter 271.130;

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

This resolution initiating the street vacation of the unimproved section of 44th Ave adjacent and south of Monroe Street per ORS 271.130 is effective immediately.

Introduced and adopted by the City Council on May 21, 2013.

David Hedges, Council President

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney