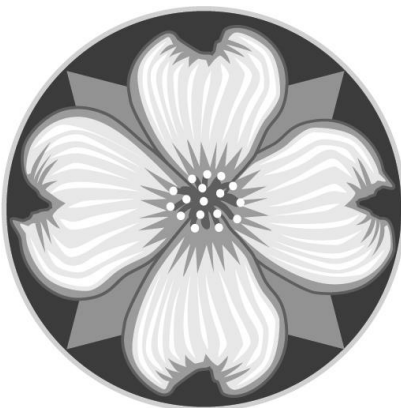


THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED



Regular Session

RS

Milwaukie City Council

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED



CITY OF MILWAUKIE

COUNCIL REGULAR SESSION

Zoom Video Conference
www.milwaukieoregon.gov

2331st Meeting

REVISED AGENDA

FEBRUARY 16, 2021

(Revised February 12, 2021)

(Revised again on February 12, 2021)

Video Meeting: due to the governor's "Stay Home, Stay Healthy" order, the City Council will hold this meeting through Zoom video meetings. The public is invited to watch live on the [city's YouTube channel](#), Comcast Cable channel 30 in city limits, or by joining the Zoom webinar (visit <https://www.milwaukieoregon.gov/citycouncil/city-council-regular-session-294> for details).

Written comments may be submitted by email to ocr@milwaukieoregon.gov. Council will take verbal comments. **To speak during the meeting**, see the Zoom information (meeting link above).

Note: agenda item times are estimates and are subject to change.

Page #

1. **CALL TO ORDER** (6:00 p.m.)

- A. Pledge of Allegiance
- B. Native Lands Acknowledgment

2. **ANNOUNCEMENTS** (6:01 p.m.)

3. **PROCLAMATIONS AND AWARDS**

- A. **Milwaukie High School (MHS) Outstanding Student Award** (removed)
- B. **MHS Update – Report** (removed)

4. **SPECIAL REPORTS**

- A. None Scheduled.

5. **COMMUNITY COMMENTS** (6:05 p.m.)

To speak to Council, please submit a comment card to staff. Comments must be limited to city business topics that are not on the agenda. A topic may not be discussed if the topic record has been closed. All remarks should be directed to the whole Council. The presiding officer may refuse to recognize speakers, limit the time permitted for comments, and ask groups to select a spokesperson. **Comments may also be submitted in writing before the meeting, by mail, e-mail (to ocr@milwaukieoregon.gov), or in person to city staff.**

6. **CONSENT AGENDA** (6:10 p.m.)

Consent items are not discussed during the meeting; they are approved in one motion and any Council member may remove an item for separate consideration.

- A. **Approval of Council Meeting Minutes of:** **1**
 - 1. January 12, 2021, Study Session;
 - 2. January 19, 2021, Work Session; and
 - 3. January 19, 2021, Regular Session.
- B. **An Appointment to the Tree Board – Resolution** **14**

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

6. CONSENT AGENDA (continued)

C. Reauthorization of the Court Amnesty Program – Resolution	17
D. Authorization of a Combination Truck Purchase – Resolution	21
E. Authorization of a Contract for the Pilot Newsletter – Resolution	30
F. Approval of an Intergovernmental Agreement Change Form for the Linwood Avenue Project – Resolution	40

7. BUSINESS ITEMS (6:20 p.m.)

A. Fossil Fuels Divestment Letter – Resolution	71
Staff: Peter Passarelli, Public Works Director	

Schedule Note: after item 7. A. (approximately 6:50 p.m.) Council will recess the regular session to meet as the Milwaukie Redevelopment Commission (MRC). After the MRC meeting Council will resume the regular session. For MRC meeting information visit click on the link below.

<https://www.milwaukieoregon.gov/bc-rc/redevelopment-commission-4>.

8. PUBLIC HEARINGS (7:20 p.m.)

A. Waverly Woods Planned Development (File PD-2020-001) – Ordinance	78
Staff: Vera Kolias, Senior Planner	
(Hearing materials revised on 2/12/21)	

9. COUNCIL REPORTS (9:50 p.m.)

10. ADJOURNMENT (10:00 p.m.)

Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice

The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at ocr@milwaukieoregon.gov or phone at 503-786-7502. To request Spanish language translation services email espanol@milwaukieoregon.gov at least 48 hours before the meeting. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the [city's YouTube channel](#) and Comcast Channel 30 in city limits.

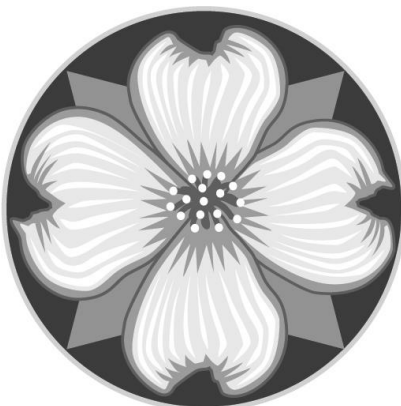
Servicios de Accesibilidad para Reuniones y Aviso de la Ley de Estadounidenses con Discapacidades (ADA)

La ciudad se compromete a proporcionar igualdad de acceso para reuniones públicas. Para solicitar servicios de asistencia auditiva y de movilidad, favor de comunicarse a la Oficina del Registro de la Ciudad con un mínimo de 48 horas antes de la reunión por correo electrónico a ocr@milwaukieoregon.gov o llame al 503-786-7502. Para solicitar servicios de traducción al español, envíe un correo electrónico a espanol@milwaukieoregon.gov al menos 48 horas antes de la reunión. El personal hará todo lo posible para responder de manera oportuna y atender las solicitudes. La mayoría de las reuniones del Consejo de la Ciudad se transmiten en vivo en el [canal de YouTube de la ciudad](#) y el Canal 30 de Comcast dentro de los límites de la ciudad.

Executive Sessions

The City Council may meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660(2); all discussions are confidential; news media representatives may attend but may not disclose any information discussed. Final decisions and actions may not be taken in executive sessions.

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED



RS Agenda Item

6

Consent Agenda



COUNCIL STUDY SESSION

Zoom Video Conference
www.milwaukieoregon.gov

MINUTES

JANUARY 12, 2021

Council Present by Video: Council President Angel Falconer; Councilors Lisa Batey, Kathy Hyzy, Desi Nicodemus, Mayor Mark Gamba

Staff Present by Video: Assistant City Manager Kelly Brooks
City Manager Ann Ober
City Recorder Scott Stauffer
Community Development Director Leila Aman

Housing and Economic Development Assistant
Christina Fadenrecht
Police Chief Luke Strait

Mayor Gamba called the meeting to order at 5:15 p.m.

1. Council Goal: Housing – Update

Ms. Aman provided background on Council's housing goal and the Milwaukie Housing Affordability Strategy (MHAS) action plan goals. She explained that the Comprehensive Plan added additional housing goals focused on affordability, livability, sustainability, and equity.

Ms. Aman explained how Construction Excise Tax (CET) funds were dedicated to support residential and commercial projects and programs and noted that state law set the rules for how residential CET funds could be used while Council determined commercial fund spending requirements. She reported that the current CET fund total was \$400,000. She anticipated that \$100,000 would be available for the CET grant program each year. She discussed staff's focus on grant compliance.

Councilor Hyzy noted that staff was building a CET evaluation tool from scratch and asked how Council could help inform others about the city's work and promote affordable housing in the region. **Ms. Aman** noted there would be lessons learned from the project and was open to sharing the progress made with others.

Councilor Batey asked for clarification about the grant funding. **Ms. Aman** clarified that she would like to see the city distribute \$100,000 a year to CET funded grants.

Councilor Batey asked when a developer would pay the CET and **Ms. Aman** confirmed that developers pay it before they are issued building permits. They discussed the details of the commercial fund.

Council President Falconer asked for clarification about the definition of multifamily housing, given the emergence of a new middle housing definition. She wondered if the state legislature had plans to update the definition. **Ms. Aman** noted that staff was tracking legislative developments to see if things would change.

Ms. Aman noted that Council had also passed a CET exemption. She discussed the details of the exemption and what a developer would have to demonstrate to have a CET waived. She reported that the Coho Point at Kellogg Creek project would likely apply for the exemption. She remarked on the city's intent for the program to add more affordable housing. She explained the CET grant program requirements and preferred criteria.

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

Ms. Aman discussed how staff would implement and monitor the CET program. She asked for Council's preference for how to spend \$100,000 in yearly grants for the program. **Mayor Gamba** wanted to get as much housing built as fast as possible. **Councilor Hyzy** commented that the housing landscape would be changing in the next three-to-five years with upcoming Metro bond measure funding and new affordable housing being developed. She wondered about the best approach for Council to take.

Council President Falconer suggested that CET program funding could be spent on smaller hyper-local projects. She noted the opportunity for Milwaukians to help create affordable housing units in the community. She agreed with Mayor Gamba in wanting as many units built as possible. She noted a potential conflict with the desires to both incentivize smaller developers and to build units as fast as possible.

Ms. Aman and **Councilor Batey** discussed whether to provide fewer grants to larger projects versus providing grants to many smaller projects. **Councilor Batey** suggested first providing shorter term grants and revisiting that program in a few years. She echoed Councilor Hyzy's comments and agreed on the importance for the city's program to be nimble. **Ms. Aman** summarized that the program could be adaptable and confirmed that staff would check in with Council annually to assess how the program was going.

Ms. Aman noted that CET program funds could be used to rehabilitate current multifamily housing. **Councilor Hyzy** observed that sometimes improvements to affordable housing can make units unaffordable. She asked if there would be provisions in place to help mitigate or prevent that. **Ms. Aman** explained the requirements in place to ensure the units would be affordable.

Councilor Hyzy noted that existing affordable housing units can deteriorate and sometimes result in people living in hazardous conditions. She wanted the city to not lose sight of the need to preserve naturally occurring affordable housing units. **Council President Falconer** agreed that deteriorating affordable housing should be a priority for funding. She did not want those units to fall victim to gentrification. **Ms. Aman** appreciated the feedback and confirmed staff felt similarly.

Ms. Aman reported that the city's accessory dwelling unit (ADU) system development charges (SDCs) waiver pilot program had been a success. A larger conversation about that program was scheduled to take during a Council meeting in March.

Ms. Aman discussed the city's Coho Point at Kellogg Creek public/private partnership development which would include market rate housing and affordable housing units. She noted staff would provide a project update soon. She also noted staff was working on the Sparrow Site project and would provide an update to Council on January 19.

Ms. Aman reported that staff was working on the housing code, specifically working on what an expedited permitting process would look like for land use and for building applications. She asked if staff should prioritize affordable housing in the land use and development review process. She noted the current project queue and asked if affordable housing projects should be moved to the front, which would result in others waiting longer.

Mayor Gamba asked where Milwaukie was in relation to the region and **Ms. Aman** commented on Milwaukie's land use and building review process in relation to other cities. **Councilor Batey**, **Ms. Aman**, and **Council President Falconer** commented on the building and land use review process.

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

Councilor Hyzy wondered if there would be a situation where the city would want to move a different type of project through the review process quickly to increase its chances of success. **Ms. Ober** noted examples like solar installations, public libraries, and schools that could be prioritized.

Mayor Gamba asked if the city had a definition of “affordable” for projects to be advanced through the process quickly. **Ms. Aman** noted the city had not yet determined that definition and it was a question staff had for Council. **Mayor Gamba** discussed the importance of workforce housing. **Ms. Aman** discussed why 80% of the area median income (AMI) rate would be a good starting point.

Ms. Ober noted that if too many projects were prioritized, then none would be prioritized. She suggested if that happened then staff would have to adjust and move the lowest income restricted housing to the front of the line. Council agreed with Ms. Ober’s suggestion.

Ms. Aman understood that Council wanted staff to try using 80% of AMI and focus on the building permit review as a starting point.

Ms. Aman provided a chart showing the estimated rental housing needs based on median family income (MFI) forecasted for the next 20 years for the city. She noted that Clackamas County’s Hillside Park and Manor redevelopment project would have a mix of units with a total of 300 new units, or 43% of the city’s estimated need over the next 20 years. She noted additional affordable housing units on the horizon that should get the city to over 60% of what was estimated to be needed. She also noted how the vertical housing tax credit assisted the building of market rate housing. She believed the city had an attainable goal to deliver affordable housing units.

Ms. Aman noted that staff would lead a conversation at the January 19 Council meeting related to concerns about the temporary use code and transitional housing. She discussed staff’s goal to clarify and improve the community service use (CSU) process.

Mayor Gamba noted that Milwaukie was home to the Annie Ross House, the only family shelter in the county. He observed there was a big need and hoped the city could help find solutions. **Ms. Ober** noted it was important to have conversations together with non-profit organizations and the county to make sure the city is creating a process that helps those groups carry out their mission.

Council President Falconer wanted to make sure that people who have been through the land use process have an opportunity to provide feedback on the barriers in the process. **Ms. Ober** and **Ms. Aman** noted that the city encouraged people who had insight to share it with the city.

Ms. Aman provided an overview of the city’s housing workplan goals.

Mayor Gamba reiterated that he wanted the city to keep an eye on the Hillside development and **Ms. Aman** confirmed staff would continue to do so.

Councilor Batey thought it was important that all councilors be informed of housing developments. **Ms. Ober** clarified that it was staff’s intention to ensure that all of Council knew about housing projects. **Mayor Gamba** and **Councilor Hyzy** commented on potential housing projects they had heard about from other sources.

Ms. Ober explained staff would update the housing goal resolution to remove “draft” and may remove the word “emergency.” Staff would provide an update soon before it was considered for adoption.

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

Mayor Gamba recessed the meeting at 6:50 p.m. and reconvened at 6:54 p.m.

2. Proposed Oregon Marine Board Rules – Discussion

Councilor Batey discussed wake zones and the recreational use of the Willamette River. She discussed how the new Oregon State Marine Board (OSMB) rule would add pressure on Milwaukie's waterway and existing parking problem. She noted the failure of the OSMB to notify the city about the new rule and that it was likely the OSMB would not adjust it. She explained what needed to be changed in the proposed rule to get a no wake zone added for Milwaukie Bay.

Councilor Hyzy understood that Portland's South Reach program originally considered a larger no wake zone in the Milwaukie Bay area. **Councilor Batey** clarified that the Portland plan was sperate from the OSMB's proposal.

Councilor Batey suggested the city could push for the OSMB to adopt a no wake zone. She noted her previous experience with the OSMB adopting a no wake zone elsewhere and that there could be backlash to the city's request.

Councilor Batey asked for Council feedback on the draft letter to the OSMB. **Ms. Ober** observed there was no feedback and that the letter would be added to Council's next consent agenda.

2. Adjourn

Mayor Gamba adjourned the meeting at 7:07 p.m.

Respectfully submitted,

Amy Aschenbrenner, Administrative Specialist II



COUNCIL WORK SESSION

Zoom Video Conference
www.milwaukieoregon.gov

MINUTES

JANUARY 19, 2021

Council Present: Councilors Angel Falconer, Lisa Batey, Kathy Hyzy, Desi Nicodemus, and Mayor Mark Gamba

Staff Present: Associate Planner Vera Kolias
Building Official Sam Vandagriff
City Attorney Justin Gericke
City Manager Ann Ober

City Recorder Scott Stauffer
Code Enforcement Coordinator Tim Salyers
Community Development Director Leila Aman

Mayor Mark Gamba called the meeting to order at 4:01 p.m.

1. Dangerous Building Code - Discussion

Ms. Vandagriff reviewed prior discussions about closing a loophole in the dangerous building code section of the Milwaukie Municipal Code (MMC). She asked for Council feedback on the proposed code changes.

Mayor Gamba observed that the current city hall building could be classified as an unsafe structure. He, **Ms. Vandagriff**, and **Councilor Batey** discussed the state of the current city hall and the definition of an unsafe structure. **Ms. Vandagriff** confirmed the current city hall did not meet the definition of an unsafe structure.

Councilor Falconer recalled previous conversations about whether to regulate flagpoles. **Ms. Vandagriff** provided background on the topic and noted that Council could add or remove flagpole regulations from the MMC. **Councilors Batey** and **Falconer** recalled previous conversations and noted the differences between residential flagpoles and large flagpoles. The group discussed safety concerns if a large flagpole were to fall. **Ms. Vandagriff** confirmed she would research standard flagpole heights and present to Council the option of the city regulating flagpoles larger than certain heights.

Councilor Hyzy observed that large flagpoles do show up on commercial land periodically. She suggested flagpoles could be added to other review processes that are specific to commercial properties. **Councilor Batey** noted minor to update and **Ms. Vandagriff** noted the changes.

Ms. Vandagriff commented on the status of homes with open code violations.

2. Comprehensive Plan Implementation Project – Update

Ms. Kolias explained that staff was in the first phase of the Comprehensive Plan implementation, discussed the project schedule, and noted next steps. She reviewed the plan update goals were to increase the supply of middle housing, increase and preserve the tree canopy, and manage parking. She noted key findings and recommendations to help achieve each goal. She reported that the Comprehensive Plan Implementation Committee (CPIC) had begun discussing clear and objective standards for housing, trees, and parking.

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

Mayor Gamba asked if the city required pavement or concrete for on-site residential parking. **Ms. Kolias** confirmed that the current MMC text required a durable, dust-free service, therefore gravel was not allowed for required residential parking spaces.

Councilor Batey observed that she lived in a neighborhood where people parked on gravel. She would like to know more about the environmental impacts of car chemicals running into groundwater or stormwater.

Councilor Falconer and **Ms. Kolias** discussed how much concrete was needed to meet code requirements as a required parking space. **Ms. Kolias** commented on MMC requirements and observed that it was staff's desire to ease requirements. **Councilor Falconer** noted that the parking requirements came into conflict with many of Council's goals.

Councilor Falconer asked about the conflicts between the Comprehensive Plan and recent state rulemaking. **Ms. Kolias** reported that staff was aware of the conflicts between the Comprehensive Plan and Oregon State House Bill 2001 and was working to address them.

Councilor Hyzy asked if a resident's stormwater rates would increase because they had installed a required off-street concrete parking pad. **Ms. Kolias** explained that a rate increase would be deepened on how much impervious surface was added. She noted that staff worked to identify and implement solutions to address rate concerns.

Councilor Hyzy observed that adding more impermeable surfaces on a property could potentially result in an increased water bill in perpetuity. **Councilor Batey** understood that stormwater was a flat fee and impermeable surfaces were not charged as a percentage of the property. She discussed upfront costs related to projects. **Councilor Hyzy** suggested Council could use clarification on rates and **Ms. Kolias** confirmed she would clarify the system development charge (SDC) details.

Mayor Gamba agreed with Councilor Falconer that the city should not require more paving for parking. He remarked that he was okay with gravel for parking and noted some negative aspects of using it. He believed that the requirement that all parking places have to be behind the front setback was problematic.

Councilor Batey commented on permeable pavement and hoped that technology was becoming more affordable.

Remarks on Proposed Resolution

Mayor Gamba asked if Council could review Councilor Hyzy's proposed resolution before the regular session meeting.

3. Adjourn

Mayor Gamba adjourned the meeting at 5:01 p.m.

Respectfully submitted,

Amy Aschenbrenner, Administrative Specialist II



CITY OF MILWAUKIE

COUNCIL REGULAR SESSION

Zoom Video Conference
www.milwaukieoregon.gov

2329th Meeting

MINUTES

JANUARY 19, 2021

Council Present: Councilors Angel Falconer, Lisa Batey, Kathy Hyzy, Desi Nicodemus, and Mayor Mark Gamba

Staff Present: Building Official Samantha Vandagriff
City Attorney Justin Gericke
City Manager Ann Ober
City Recorder Scott Stauffer

Community Development Director Leila Aman
Development Planning Manager Alison Wicks
Planning Manager Laura Weigel
Senior Planner Vera Kolias

Mayor Gamba called the meeting to order at 6:03 p.m.

1. CALL TO ORDER

A. Pledge of Allegiance.

B. Native Lands Acknowledgment.

2. ANNOUNCEMENTS

Mayor Gamba announced that the city was seeking applicants for the Milwaukie Redevelopment Commission (MRC) Community Advisory Committee (CAC) and nominees for the 2020 volunteer of the year award. He noted upcoming events, including a teen art contest and the annual State of the City address.

3. PROCLAMATIONS AND AWARDS

A. Milwaukie High School (MHS) Outstanding Student – Award

Carmen Gelman, MHS Principal, introduced Tyler Lenz and Council congratulated him on his academic and extracurricular achievements.

Ms. Gelman noted that she had been appointed to Governor Kate Brown's COVID-19 school advisory council. She discussed classes MHS planned to offer in the 2021-2022 school year and resources available for staff and students. She reported that MHS' enrollment had increased. **Mayor Gamba** and **Councilors Falconer and Nicodemus** thanked Ms. Gelman and MHS staff for their work for students and the community.

4. SPECIAL REPORTS

A. None Scheduled.

5. COMMUNITY COMMENTS

Mayor Gamba reviewed the public comment procedures and **Ms. Ober** reported that there was no follow-up report from the January 5 community comments.

6. CONSENT AGENDA

It was moved by Councilor Batey and seconded by Councilor Hyzy to approve the Consent Agenda as presented.

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

A. City Council Meeting Minutes:

1. December 15, 2020, Work Session; and
2. December 15, 2020, Regular Session.

B. Resolution 4-2021: A resolution of the City Council of the City of Milwaukie, Oregon, acting as the Local Contract Review Board, approving the award of a contract for the construction of the Lake Road Improvements Project (CIP-2019-S20) to Goodfellow Bros. LLC.

C. Approval of the 2021 Council Committee Assignments.

D. Approval of a Council Letter to the Oregon State Marine Board (OSMB).

Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting “aye.” [5:0]

Councilor Batey was glad that the Lake Road improvements were ready to be constructed. She noted that comments to the OSMB regarding proposed rules for the Willamette River were due soon.

It was noted that Council would consider the public hearing item before the business items on the agenda.

8. PUBLIC HEARING

A. Temporary Housing Code Amendments – Ordinance (moved up the agenda)

Call to Order: Mayor Gamba called the public hearing on the proposed temporary housing code amendments to order at 6:46 p.m.

Purpose: Mayor Gamba announced that the purpose of the hearing was to take public comment on the proposed code amendments.

Conflict of Interest: no member of Council declared a conflict of interest.

Staff Presentation: Ms. Kalias noted Council had previously discussed the amendments that were meant to allow indoor emergency housing as a temporary use during certain situations. She reported that the code changes also required a joint policy with Clackamas Fire District #1 (CFD1) which city and fire district staff had drafted. She discussed questions about the definition of a basement as it related to which spaces could be temporary emergency housing per the Milwaukie Municipal Code (MMC).

Mayor Gamba, Councilor Falconer, and Ms. Vandagriff remarked on the definition of a basement that sits on a sloped grade. They noted safety reasons for requiring exits from an area people would be sleeping in.

Mayor Gamba and Councilor Falconer believed the definition of a basement was too complicated and the group remarked on international building code requirements that below-grade commercial living areas have an exit and sprinkler. It was noted that residential basements could be converted to a living area without adding a sprinkler system. Councilor Hyzy expressed concern that large numbers of people may end up occupying a temporary shelter with only one way to exit in an emergency.

Shawn Olsen, CFD1 Fire Marshal, provided an overview of what the city and fire district looks for in a basement when conducting an onsite inspection. He underscored the importance of a basement having sprinklers and exits. Mayor Gamba remarked on balancing a temporary shelters' safety measures with the need to get at-risk groups of people indoors during disaster situations. Ms. Vandagriff and Mr. Olsen commented that

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

code requirements are applied on an individual basis with the goal of making sure a space can be used safely.

Mr. Olsen suggested the updated code and joint city/CFD1 policy would help staff when considering a temporary shelter permit application.

Councilor Batey remarked that the basement and grade plain diagram was not helpful and suggested it be redesigned. The group noted the source of the diagram.

Ms. Kolias explained that another proposed code change would allow a temporary shelter permit to be approved for 90 days with a 30-day extension. She provided an overview of the city/CFD1 joint policy and noted that state law assigned joint jurisdictional authorities to the city and fire district for temporary shelters. Staff recommended that Council approve the code changes.

Mayor Gamba asked how emergency disaster situations that were not specifically called out in the joint policy would be handled. **Ms. Kolias** explained that the code had a catch-all clause that would allow the city manager to take emergency action to address disasters not named in the policy.

Correspondence: It was noted that no correspondence had been received on the topic.

Conduct of Hearing: It was noted that no audience member wished to address Council.

Close Public Hearing: It was moved by Councilor Falconer and seconded by Councilor Batey to close the public hearing. Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting “aye.” [5:0]

Mayor Gamba closed the public hearing at 7:20 p.m.

Council Discussion: **Councilor Falconer** thanked staff for responding to concerns about the duration of an emergency use permit. She and **Councilor Batey** expressed support for the code and joint policy changes.

Council Decision: It was moved by Councilor Falconer and seconded by Councilor Hyzy for the first and second readings by title only and adoption of the ordinance amending Municipal Code Chapter 11.05.010 Temporary Uses, Permits, and Regulations for the purpose of clarification and allowing cooling and warming shelters (File #ZA-2020-001). Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting “aye.” [5:0]

Ms. Ober read the ordinance two times by title only.

Mr. Stauffer polled the Council with Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting “aye.” [5:0]

Ordinance 2198:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MUNICIPAL CODE CHAPTER 11.05.010 TEMPORARY USES, PERMITS, AND REGULATIONS FOR THE PURPOSE OF CLARIFICATION AND ALLOWING COOLING AND WARMING SHELTERS (FILE #ZA-2020-001).

7. BUSINESS ITEMS

A. Moses Lake Industries (MLI) Enterprise Zone Agreement - Resolution

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

Ms. Wicks introduced Cindy Moore, Clackamas County Economic Development Division, and Mark Willey and Laura Manske with MLI. She explained that Council was asked to approve an enterprise zone agreement for MLI.

Ms. Wicks and **Ms. Moore** provided an overview of the North Urban Clackamas County Enterprise Zone (NUCCEZ) program, an economic development tool to help invest in local businesses through three- and five-year tax abatements. They noted that the cities of Milwaukie and Gladstone and Clackamas County were the NUCCEZ sponsors and all three needed to approve enterprise zone agreements.

Mayor Gamba and **Ms. Moore** noted the difference between the Portland region and statewide minimum wages and how they factored into enterprise zone agreements.

Ms. Moore reported on NUCCEZ projects since 2019 and noted the MLI agreement would be the first recent project in Milwaukie. She reviewed MLI's proposed agreement.

Mr. Willey explained that MLI is a battery chemical company. He noted equipment and hiring investments the company intended to make through the agreement. **Ms. Manske** added that the county had encouraged MLI to seek the agreement. **Mr. Willey** remarked on the work that would be done at the expanded Milwaukie facility related to the next generation of lithium ion battery development. **Councilor Hyzy** and **Mr. Willey** commented on the future of battery development. **Mr. Willey** invited Council to visit the expanded Milwaukie location in the future.

Councilor Nicodemus asked if MLI had a student experience program. **Mr. Willey** reported that the company had previously had a college program and would be open to showing students around the facility. He added that employees at the Milwaukie facility had a wide array of skill and educational levels.

Mayor Gamba noted he had submitted questions to staff earlier in the day about the agreement and had received answers that clarified the request was for a five-year tax abatement. The group discussed what MLI currently paid in property taxes to the city and other taxing districts, and what it was estimated to pay after the agreement expired.

Ms. Moore noted that the tax abatement would only be granted to MLI if it made the investments outlined in its application.

Councilor Batey and **Ms. Moore** noted that the City of Gladstone had to sign-off on the agreement because of how the NUCCEZ program had been set up. **Ms. Moore** confirmed that MLI's would be the first five-year agreement in the enterprise zone. She noted that three-year agreements could be approved by staff without Council approval.

Mayor Gamba expressed support for the program and MLI's application.

It was moved by Councilor Batey and seconded by Councilor Hyzy to approve the resolution authorizing the city manager to approve an enterprise zone agreement for Moses Lake Industries in the North Urban Clackamas Enterprise Zone. Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting "aye." [5:0]

Resolution 5-2021:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO APPROVE AN ENTERPRISE ZONE AGREEMENT FOR MOSES LAKE INDUSTRIES IN THE NORTH URBAN CLACKAMAS ENTERPRISE ZONE.

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

The group noted Council's interest in visiting MLI's site in the future and MLI's interest in working with local schools.

B. Sparrow Site Goals - Discussion

Ms. Wicks provided an overview of the city's project to develop the Sparrow Site, also known as the TriMet remnant lot, into affordable housing. She noted the city had a plan to conduct decontamination work on the site and she reviewed the project timeline.

Ms. Aman explained that the city commissioned an engineering study in response to emergency vehicle accessibility issues on and around the site. She reviewed the site development goals as previously identified by Council: to build affordable housing, preferably two to three-bedroom family units; to attract a diverse set of residents; to work with minority- or women-owned businesses to develop the site; to preserve the existing tree canopy; to seek an energy efficient design; and to deliver the project with minimal city financing as soon as possible.

Councilor Hyzy asked about the cost of addressing site accessibility issues. **Ms. Aman** suggested the engineering study would help answer that question. **Councilor Hyzy** expressed support for adding market rate housing to the project to help get it done.

Mayor Gamba noted his involvement in acquiring the property from TriMet. He recalled that at the time of purchase the city and fire marshal had discussed how to address the emergency vehicle access issue. He expressed concern that site access issues would increase the project cost. **Ms. Aman** acknowledged the work done by staff and agreed that the city needed to be creative in finding ways to develop the site. She noted staff would reach out to TriMet and the neighborhood as design options were considered.

Ms. Ober noted a question had been asked in the Zoom chat. **Ms. Aman** reported that the first part of the question dealt with who would be eligible to live in the affordable housing, which she said would be answered at a later date; and the second part of the question asked about protecting the tree canopy. She and **Ms. Wicks** reiterated that preserving the tree canopy was a development goal.

Ms. Aman noted another chat question asked about the engineering cost of the project, which she reported would be better known after the engineering study was done.

Councilor Batey suggested that the city should not focus on a particular resident income but keep it flexible so the project could possibly offer home ownership opportunities and not just rental units. The group commented on whether any program existed that gave homeless families an opportunity to own a townhome.

Ms. Ober asked staff to include the site purchase agreement with the next report to Council. She noted that there had been questions in the chat about project cost and timeline. She reiterated that the city was working to determine what the project cost would be and asked staff to show the presentation slide with the timeline. **Ms. Wicks** noted when in the project timeline staff planned to conduct community outreach work.

Councilor Batey expressed support for the site development goals and **Mayor Gamba** asked that the energy efficiency goals be slightly reworded.

Councilor Hyzy noted that a question in the Zoom chat had asked when outreach to the community would be done. **Ms. Aman** suggested some outreach would be done soon as part of the engineering study. She asked the public to contact her or Ms. Wicks if they had any questions about the project.

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

Ms. Aman noted next steps, including when Council would be asked to confirm the goals by adopting a resolution and when the engineering study would begin.

C. Audit Committee Expansion – Discussion

Ms. Dennis provided an overview of the Audit Committee's role and history, noting that the committee's membership had been revised several times in the past. She explained that after an interview panel recently interviewed applicants to fill a vacancy on the committee, the panel suggested the committee be expanded so both individuals could be nominated to serve. She reported that the Audit Committee had expressed agreement with the idea of expanding the committee. She asked for Council feedback on the proposal to expand the committee's membership. **Ms. Ober** added that revised Audit Committee bylaws would include language that would allow the committee to be "between four and five" members.

Councilor Hyzy noted she was the Council liaison to the Audit Committee. She remarked on the role of the committee and expressed support for expanding the membership.

Councilor Batey noted she had been on the interview panel that proposed expanding the committee. She expressed support for expanding the committee's membership.

Mayor Gamba and **Ms. Dennis** noted that staff would prepare a resolution to revise the committee's membership and a resolution nominating the two applicants for Council consideration on the February 2 regular session consent agenda.

D. Council President Election – Motion

Councilor Falconer remarked on the roll of the council president. She was willing to continue serving in the role but also supported giving another Council member the chance to gain experience as council president.

It was moved by Councilor Falconer and seconded by Councilor Batey to nominate Councilor Hyzy to serve as Council President.

Councilor Hyzy accepted the nomination as council president and commented on her positive experiences serving with her fellow Council members.

Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting "aye." [5:0]

9. COUNCIL REPORTS

Community Values – Resolution

The group noted that Council President Hyzy had drafted a resolution addressing national and local events related to community values.

Council President Hyzy had heard concerns about the resolution text from Council members. She suggested Council wait to act on the resolution but take a moment to discuss the national and local events that had prompted the resolution.

Councilor Batey noted that Council and other local leaders had issued a statement calling on Clackamas County Commissioner Mark Shull to resign due to social media comments he had made.

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

Councilor Falconer agreed that the resolution text needed to be revised. She stated her opposition to Commissioner Shull's remarks and called on him to resign.

Mayor Gamba noted that the county budget committee had attempted to defund Commissioner Shull's office. He expressed concern about Commissioner Shull's remarks and agreed that he should resign from office.

Council President Hyzy and **Councilor Nicodemus** commented on the state of political discourse in the United States and the negative impact that racist and bigoted statements made by political leaders can have on society.

Mayor Gamba and **Council President Hyzy** summarized that Council wanted to revise the resolution text and consider it at a future meeting. **Ms. Ober** noted that Council had adopted resolutions in recent years making statements about Milwaukie's opposition to hate and the desire to be an inclusive community. She thanked Council for taking these stands on behalf of the community and city staff.

Legislative Issues – Discussion

Councilor Batey noted she would be attending the League of Oregon Cities' upcoming legislative days and that she was tracking a proposed bill in the state legislature that would reorganize the Oregon State Marine Board.

Council President Hyzy noted she was tracking several bills that she would discuss further at the February 2 regular session.

10. ADJOURNMENT

It was moved by Councilor Nicodemus and seconded by Councilor Falconer to adjourn the Regular Session. Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting "aye." [5:0]

Mayor Gamba adjourned the meeting at 8:49 p.m.

Respectfully submitted,

Scott Stauffer, City Recorder



**RS 6. B.
2/16/21**

OCR USE ONLY

COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager

Date Written: Feb. 4, 2021

Reviewed: Peter Passarelli, Public Works Director, and
Amy Aschenbrenner, Administrative Specialist II

From: Scott Stauffer, City Recorder

Subject: Tree Board Appointment

ACTION REQUESTED

As outlined in the Milwaukie Municipal Code (MMC), Council is asked to consider approving a resolution making an appointment to the Tree Board.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

On October 1, 2020, a panel interviewed applicants to fill two Tree Board positions. Alexis Barton was one of the applicants interviewed and not selected for appointment at that time.

On January 21, 2021, Rebecca Ives resigned from Position 3 on the Tree Board.

January 28: The panel that interviewed Ms. Barton in October agreed to nominate her to fill the Position 3 vacancy.

ANALYSIS

Authority to fill city board and committee (BC) vacancies is granted to the Mayor and Council by Section 26 of the City Charter. To fill vacant positions, members of Council along with appropriate staff liaisons and committee chairs recruit volunteers and usually conduct interviews from applications received by the city, however interviews are not required by the MMC. Appointed individuals serve for a term length determined by the MMC. Upon the completion of a term, if the individual is eligible, they may be reappointed by Council to serve another term.

Committee appointments are made when a term has expired or when a position has been vacated. Generally, position terms expire in March or June, but appointments are also made as needed to fill vacancies. Some committees have positions nominated by neighborhood district associations (NDAs) instead of by an interview panel. NDA-nominated appointments are noted if applicable.

Position 3 on the Tree Board became vacant when Ms. Ives resigned effective January 21. Recalling that they had interviewed Ms. Barton during a previous process to fill vacant Tree Board positions, the board's staff liaison, Mr. Passarelli, contacted the October interview panel to see if they would be comfortable nominating Ms. Barton to fill the new vacancy. The panel, which consisted of Mayor Mark Gamba, Councilor Lisa Batey, Mr. Passarelli, and Tree Board Chair Kathleen Brennan-Hunter, agreed to nominate Ms. Barton to fill the current vacancy.

All board and committee positions are term-limited, meaning there is a limit to the number of times that members can be re-appointed. The nominated individual would be appointed to

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

position 3 for a term that has already started. Therefore, they would serve a zero-term through March 31, 2022.

Alexis Barton has been nominated to fill position 3. Alexis has lived just outside city limits, in the Oak Grove area of unincorporated Clackamas County, for seven years. She is an environmental nonprofit program coordinator and works for the Tryon Creek Watershed Council. She has extensive watershed, environmental education, and volunteer experience, and previously worked for the Johnson Creek Watershed Council.

BUDGET, WORKLOAD, AND CLIMATE IMPACTS

There are no fiscal, workload, or climate impacts associated with the recommended actions.

COORDINATION, CONCURRENCE, OR DISSENT

Staff worked with Council members and the Tree Board staff liaison and chair to confirm this nomination.

STAFF RECOMMENDATION

Staff recommends the following appointment:

Tree Board: 3-year terms, limit of 3 consecutive terms.

Position	Name	Term Start Date	Term End Date
3	Alexis Barton	2/16/2021	3/31/2022

ALTERNATIVES

Council could decline to make the recommended appointment, which would result in a continued vacancy on the committee.

ATTACHMENTS

1. Resolution



COUNCIL RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, MAKING AN APPOINTMENT TO THE TREE BOARD.

WHEREAS, Milwaukie Charter Section 26 authorizes the Mayor, with the consent of the Council, to make appointments to boards and committees; and

WHEREAS, a vacancy exists on the Tree Board; and

WHEREAS, the nominee was previously interviewed for other vacant positions on the Tree Board; and

WHEREAS, an interview panel has nominated the following individual for appointment to the board:

Tree Board:

Position	Name	Term Start Date	Term End Date
3	Alexis Barton	2/16/2021	3/31/2022

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that the individual named in this resolution is hereby appointed to the identified city board, committee, or commission for the term dates noted.

Introduced and adopted by the City Council on **February 16, 2021**.

This resolution is effective immediately.

ATTEST:

Mark F. Gamba, Mayor

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney



COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager

Date Written: Feb. 2, 2021

From: Bonnie Dennis, Finance Director
Carla Bantz, Court Operations Supervisor

Subject: **Second Municipal Court Amnesty Program Authorization**

ACTION REQUESTED

Council is asked to adopt by resolution a second court amnesty program.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

[September 3, 2019:](#) Council and Municipal Court Judge Kimberly Graves briefly discussed an amnesty program.

[March 3, 2020:](#) Council discussed the proposed amnesty program with staff and provided direction to bring a resolution forward with a two-month pilot program starting July 1, 2020, for citations two years and older. The citations subject to the program would include traffic, parking, and marijuana violations.

[March 17, 2020:](#) Council adopted a resolution establishing a court amnesty program from July 1 through August 30, 2020.

[December 1, 2020:](#) Staff presented the results of the amnesty program to Council and received direction to continue the program for a second round in early 2021.

HISTORY

The court amnesty pilot program ran from July 1 through August 30, 2020, and included citations for traffic, parking, and marijuana violations that were two years or older and in non-judgment status. The program included an outreach effort that included sending 4,553 postcards to individuals inviting them to take advantage of the pilot program. Articles were published in the Milwaukie Pilot in addition to social media blasts. Staff from the city and Valley Credit, the city's collections vendor, promoted the program. These outreach efforts resulted in significant positive feedback about the program.

Amnesty Program Results

Over the two-month period, the rate of return on the number of individuals with citations participating in the program was 3%. Although this is lower than expected, the program did result in the closing of 75 traffic, seven parking, and zero marijuana citations. The total revenue collected through the program was \$29,981.

The City of Oregon City Municipal Court conducted an amnesty program from September 15 through December 31, 2020, and closed 132 cases for a total of \$57,000. They had hoped to close more cases than their amnesty program in 2017 but the pandemic likely resulted in a smaller response.

ANALYSIS

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

During the December 1, 2020 work session, Council directed staff to conduct a second amnesty program to provide relief to qualified individuals in default for outstanding court fines. The program is intended to (1) provide relief to people who face significant cost barriers to paying fines and fees, (2) reinstate driver's licenses, and (3) generate a means to decrease the outstanding receivable for uncollectible accounts. Court amnesty programs provide an ability for the outstanding balance at collections to be waived if the individual pays 50% of the outstanding balance. The outstanding balance consists of the fine as adjudicated by the municipal court judge and any interest as established by the collection agency.

Proposed Milwaukie Municipal Court Amnesty Pilot Program

The proposed second amnesty program would be similar to the program in 2020, however, there will be additional outreach efforts conducted between March 1 and May 31. The program will include violations that are two years and older for traffic, parking, and marijuana violations.

The program would require individuals to meet the following criteria:

- Have outstanding fines at collections for two or more years.
- Have fines that relate to traffic, parking, and marijuana citations.
- Have only cases that are in non-judgment status with Valley Credit.

Partial payments or payment plans for the 50% payment will not be allowed.

Staff anticipates that the program's community outreach effort would include advertisements in local newspapers, the Milwaukie Pilot, social media outlets, and the city's website. Staff will also work on ensuring that outreach efforts will be available in multiple languages.

BUDGET IMPACT

The amnesty program had an immaterial effect on the city's court receivable and revenue. Costs estimates for newspaper advertisements for the program were quoted at no cost in the Clackamas Review and approximately \$1,300 for the Oregonian.

WORKLOAD IMPACT

Staff workload will temporarily increase in order to coordinate and reconcile accounts with Valley Credit and the related processes to reinstate driver licenses.

CLIMATE IMPACT

None.

COORDINATION, CONCURRENCE, OR DISSENT

The municipal court judge and city manager concur with the program and see mutual benefit to the city and community. City staff coordinated with Valley Credit to clear default accounts and follow the driver license reinstatement process.

STAFF RECOMMENDATION

Staff recommends that Council adopt the program for a two-month period starting March 1, 2021. Staff will return to Council with a progress update.

ALTERNATIVES

Council could decline or provide additional direction

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

ATTACHMENTS

1. Resolution



CITY OF MILWAUKIE

COUNCIL RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ESTABLISHING A COURT AMNESTY PROGRAM FROM MARCH 1 THROUGH MAY 31, 2021.

WHEREAS, the City Council adopted by resolution a schedule establishing fees and charges for all city services, including fines for traffic citations, parking violations, and other programs approved by the municipal judge and set by state legislature; and

WHEREAS, a court amnesty program would provide a 50% waiver of total fines and fees due at collections if the remaining 50% is paid in its entirety; and

WHEREAS, a resolution is required to establish a fee waiver program for a three-month period for individuals with fines older than two years and in non-judgment status.

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that the Milwaukie Municipal Court is authorized to provide a court amnesty program to waive up to 50% of accumulated traffic, parking, and marijuana fines for individuals with citations that are two years and older, in non-judgment status, and have paid- 50% of their fine between March 1 through May 31, 2021.

Introduced and adopted by the City Council on **February 16, 2021**.

This resolution is effective March 1 through May 31, 2021.

Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney



COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager

Date Written: Jan. 20, 2021

Reviewed: Blanca Marston (as to form), Administrative Assistant

From: Shane Hart, Wastewater/Stormwater Supervisor, and
Peter Passarelli, Public Works Director

Subject: **Vehicle Purchase: Combination Truck**

ACTION REQUESTED

Council is asked to authorize the city manager to approve the purchase of a replacement combination sewer truck in the amount of \$602,500.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

2008: A Vac-Con combination sewer truck was purchased by the city.

[June 16, 2020:](#) Council adopted the Biennial Budget for 2021-2022, which included funding to replace the Vac-Con combination truck.

ANALYSIS

The City currently owns a Vac-Con sewer combination truck used by the wastewater division of the public works department. Sewer combination trucks are built to jet (clean) build up in sewer lines and vacuum out debris. This type of machine allows the crew to clean the sewer mainlines and remove debris. This process is much safer than having a staff member go into the manhole for manual retrieval of debris.

The current truck is a Vac-Con brand, built on a 2008 Sterling chassis that has not been made since 2010. As an older vehicle, it lacks the synthetic catalytic reduction technologies that reduces nitrogen oxide emissions and particulate matter, and exceeds current emission levels allowed by the Environmental Protection Agency (EPA) for new trucks. The auxiliary motor is a Deutz engine and is also lacking modern diesel emissions equipment.

Public works staff tested several new combination trucks and chosen a JHL RECyler 315 Bucher combination truck with a recycler unit integrated into the system. This means that the truck reuses the water from the sewer to clean the mainlines. This will result in improved efficiencies as the truck will not need to refill with water during operations, resulting in fuel (up to 20%), water, and time savings. The JHL RECyler 315 Bucher combination truck is built on a Kenworth chassis and meets all current EPA certified diesel emissions requirements. All vacuum and jetting functions are powered solely by the chassis engine so there would no longer be a need for an auxiliary engine to power the unit. This decreases maintenance costs over time. The hose reel is located in the rear of the vehicle, which eliminates dangerous head swing situations and increases the turning radius of the truck for use on smaller streets. The JHL RECyler 315 Bucher combination truck also has a sanitization station for operator cleanup or emergency eye wash.

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

Further research by staff indicates that there are not currently any commercially available electric vehicle (EV) combination trucks.

In accordance with section 10.085B of the city's Public Contracting Rules,, the city will use Sourcewell (contract 122017-JTN), a joint cooperative purchasing program that has established a price agreement with Bucher, to purchase the new truck. Since the purchase exceeds \$250,000, the city will publish a public notice of intent to establish a purchase from Bucher in accordance with Oregon Revised Statute (ORS) 279A.215(2)(a-d).

CLIMATE IMPACTS

A [2013 assessment published in the Journal of Geophysical Research: Atmospheres](#) concluded that after carbon dioxide, black carbon is the second most impactful pollutant in the atmosphere in terms of its global warming impacts in the near-term, and that diesel exhaust is one of the predominant sources of black carbon emissions. The current combination sewer truck does not meet current Federal Tier IV diesel emissions standards. Tier IV standards require a diesel particulate filter to reduce particulate matter, closed crankcase ventilation to recirculate blow-by gases back into the engine instead of venting to the atmosphere, and selective catalytic reduction to convert NOx to nitrogen, water, and CO₂, which drastically reduces NOx emissions. The JHL RECyler 315 Bucher combination truck meets these standards and will result in a reduction in air pollutants. Fuel savings will result in lower transportation emissions, the second largest emissions sector in Milwaukie according to the 2016 community greenhouse gas inventory.

BUDGET IMPACTS

The total purchase price is \$602,500, which is within the total wastewater vehicles budget of \$635,000.

WORKLOAD IMPACTS

By replacing the current truck with the JHL RECyler 315 Bucher combination truck, the city will improve sewer cleaning efficiency and realize time, fuel, and water savings.

COORDINATION, CONCURRENCE, OR DISSENT

Fleet staff provided input during the evaluation process and agreed that the proposed JHL RECyler 315 Bucher combination truck was acceptable.

STAFF RECOMMENDATION

Staff recommend that Council authorize the city manager to approve the purchase of the JHL RECyler 315 Bucher combination truck in the amount of \$602,500.

ALTERNATIVES

1. Defer the purchase of the truck.

ATTACHMENTS

1. Resolution
2. Specifications sheet



CITY OF MILWAUKIE

COUNCIL RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE PURCHASE OF A REPLACEMENT SEWER COMBINATION TRUCK.

WHEREAS, sewer cleaning and debris removal is required in the day to day operation of the city's public works' wastewater division; and

WHEREAS, the city's current sewer combination truck is 13 years old, outdated, does not meet current diesel emission standards, and has been budgeted for replacement in the current biennial budget; and

WHEREAS, in accordance with section 10.085B of the city's Public Contracting Rule,, city staff identified the need to purchase a JHL RECyler 315 Bucher combination truck through Sourcewell (contract 122017-JTN), a joint cooperative purchasing program that has established a price agreement with Bucher, in the amount of \$602,500.

Now, Therefore, be it Resolved that City Council of the City of Milwaukie, Oregon, that the city manager is authorized to approve the purchase of a JHL RECyler 315 Bucher combination truck as a replacement for the existing sewer combination truck used by the public works department, in the amount of \$602,500.

Introduced and adopted by the City Council on **February 16, 2021**.

This resolution is effective immediately.

Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney



JHL RECyler™ 315

Technical documentation for a RECyler™ 315 unit on Kenworth T880 chassis
Revision 1.4 applicable for unit 20170144 and up





TANK

Volume	Total 15,7yd³ / 12m³, with maximum size of debris tank of 11,9yd³ / 9,1m³. Approved for respectively 1.0bar / 14.5 psi positive pressure and 90% / 27 inHg vacuum, according to the Pressure Equipment Directive (PED) 2014/68/EU.
Movable partition	The tank is equipped with a movable partition, which can be locked in three pre-set positions. The partition divides the tank into two compartments of flexible size. The locking bolts fixing the partition in the pre-set positions are pneumatically operated. The partition is moved pneumatically by pressure/vacuum created by the vacuum pump. An air-pressurised gasket is fitted in the partition to ensure that the sludge is kept separate from the water. The pressure in the gasket is controlled from the control panel.
End cover	A fully automatic end cover hydraulically operated. Including safety support.
Manhole	One manhole (20") placed on the top of the tank.
Ball valves	One 6" bottom suction valve and one 4" top suction valve, both pneumatically operated. Inside the tank, the top suction valve is fitted with a vertical pipe, which takes the incoming sludge to the top of the tank. Both valves are equipped with Cam lock-couplings for suction hoses, including blinds.
Sloped tray	Light material and water is emptied through the bottom valve by pressurising the sludge compartment. Heavy material is emptied through the open end cover by means of the partition pushing out the material onto the sloped tray with stone collection box. The slope tray is made of stainless steel. High side plates.
Bottom emptying	From front compartment led to the rear of the truck (3" Cam lock-coupling).
Tank level indicators	A sludge level indicator with pointer. The pointer is connected to a float ball placed in the end of the sludge compartment. 4 level switches in water tank. Level can be seen via lamps on the rear control panel.
Drainage pipe	3 holes for drainage on the inside of the top suction pipe.



HIGH-PRESSURE UNIT

Type	Uraca P3-45 high pressure pump.
Capacity	124 gpm at 2175 PSI (471 l/min at 150 bar) Control of pressure and flow from the control panel.
Hose reels	One hydraulically operated hose reel with 656ft (200m) 5/4" thermo plastic jetting hose, Parker yellow. One hydraulically operated hose reel with 164ft (50 m) 3/4" + 197ft (60m) 1/2" rubber jetting hose, mounted on the back of the unit.
Hose Guide	Hose guide for large hose reel.
Footage counter	Footage counter on large hose reel.
Protection of pump	Water filters mounted on the suction side of the pump protects the pump. The pump is automatically switched off when the amount of water in the tank is reduced to minimum level. The operator may, however, use the remaining water by manually activating the switch on the control panel. The running hours of the high-pressure pump is registered on an hour counter on the control panel.
Water filling	Water filling pipe with air gap, mounted on the left side of the tank and equipped with a ball valve. Cam lock-couplings with blind.

WATER RECYCLING SYSTEM

Type	A++, 5-step automatic water recycling system with continuous operation.
Raw water Pump	Type "DESMI", hydraulically operated raw water pump, with a capacity of 800 l/min / 210 gpm.
Coarse filter	700 micron hydraulically operated coarse filter, mounted on the end cover, fitted with a float, spring loaded cleaning scraper, and internal jetting boom.
Fine filter	200 micron hydraulically operated fine filter, mounted in the front end of the tank, fitted with a hydraulically operated cleaning brush, and internal jetting boom.
Hydro cyclones	9 pcs. centrifugal hydro cyclones mounted on the side of the tank.



VACUUM UNIT

Type	CVS WR3100 liquid ring pump.
Capacity	1825cfm /51.667 l/min at 25" inHg (85%) vacuum or 1,0 bar/ 14,5psi positive pressure.
Protection of compressor	Internal filter system in front of the tank that protects the vacuum pump against impurities.
Piping	5". The piping for the vacuum pump is fitted with a 4-way valve that makes it possible to switch from vacuum to pressure.
Cassette system	6" cassette system for suction hose including telescopic arm and lift. 65ft hose length, 7ft telescope and 4ft lift. Drainage through the cassette hose from the rear chamber. Cam lock-coupling.

TRANSMISSION

PTO	Semi-hydraulic transmission (depending on chassis). Power to the Uraca high pressure pump is transferred via V-belts. Power for the vacuum pump and recycling system and auxiliary functions via hydraulics.
Variable hydraulics	Variable hydraulic control of vacuum pump.

CONTROL

PLC	The unit is equipped with a PLC (lockable cabinet).
Control panels	The complete operation of the sewer cleaning tanker (vacuum pump, high-pressure pump, RECYcling system, position of partition, etc.) is carried out from the control panels. One control panel is mounted at the back of the tanker and one on the side. The control panels are made of stainless steel, and fitted with stainless steel / glass covers. All buttons are equipped with English texts.
Remote control	Type "Scanreco" with 12 functions.
GSM	GSM Modem for online fault finding.
Pneumatics	Reverser for pressure/vacuum, front/rear tank, feed pipe for the high-pressure pump, jetting valve, bottom drainage for the front compartment, partition, water filling.



LIGHTS AND REFLECTORS

Work lamps	5 pcs. LED work lamps.
Beacon lights	4 pcs.
Cabinet lights	Mounted in cabinets on right hand side.

CABINETS AND SHELVES

Cabinets	Three double cabinet made of aluminium, placed at the right-hand side. One comfort cabinet, with hot water for handwash/soap and water dispenser.
Shelves	One hose shelf with rails placed on the right-hand side above cabinets. One hose shelf with rails placed on the left-hand side above tool shelf. One tool shelf with bottom drainage placed on the left-hand side, fitted with bottom hinged lockable covers.

CHASSIS

Type	Kenworth T880 425HP 6X4 with day cab, supplied by Performance Truck Sales.
Camera	Rear view camera mounted.
Mudguard	Aluminium mudguards over rear axles.

FINISH

Undercarriage	Colour: Standard Kenworth black.
Cabin	Colour: White.
Tank	Colour: White.
Sign plates	One aluminium sign plate on each side of the tank and one at the back of the tank.
Cabinets and shelves	Cabinets, shelves and are painted.

ACCESSORIES

Nozzles	One nozzle set 430972B
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APPROVALS

General

JHL units are CE-marked.

JHL vehicles are approved by the Danish Directorate of Labour Inspection before dispatch.

JHL vehicles are furnished with product liability insurance.



CITY COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, city manager

Reviewed: Kelly Brooks, assistant city manager

From: Jordan Imlah, communication program manager

Subject: **Printing contract for The Milwaukie Pilot newsletter**

Date Written: Feb. 2, 2021

ACTION REQUESTED

City Council is asked to approve a new printing contract between the city and Oregon Publication Corporation (OPC) to produce The Milwaukie Pilot newsletter.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

The city approved an initial two-year contract with OPC for \$63,602 in 2017. The city also approved an amendment to the original printing contract with OPC in 2019 to continue services for an additional two years.

ANALYSIS

The city has worked with the OPC (also referred to as Community Newspapers or Pamplin Media Group) for the past four years to print The Milwaukie Pilot after they were awarded the contract through an intermediate competitive bid process. During that time, OPC has fulfilled their part of the agreement and met or exceeded the expectations of city staff. An efficient working relationship between the contract representative, Lanette Bernards, and city staff has been developed, and the quality of the printing services has matched the high standard set by the city.

During the creation of this contract, staff explored several options for including translated content in the newsletter. For each option, total cost, feasibility of production and staff time was analyzed. While a final decision about translated content has not been made, staff are confident it can be accommodated within this contract or easily implemented through an amendment. OPC has consistently proven they can undertake new city projects, both large and small.

BUDGET IMPACT

The total amount for the 4-year contract is \$131,912.

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

WORKLOAD IMPACT

The communication program manager will have approximately the same workload required to design, layout and edit the newsletter each month. The workload and deadlines for those contributing content to the newsletter will be the same as well.

CLIMATE IMPACT

The new contract does not create additional climate impacts. The city will continue to use the same paper type and quantity of paper.

COORDINATION, CONCURRENCE OR DISSENT

The communication program manager will continue to work cross-departmentally and with City Council for newsletter content.

STAFF RECOMMENDATION

Approve the new contract and continue printing services through OPC.

ALTERNATIVES

Decline to approve the contract with OPC and direct staff to pursue services from other vendors.

ATTACHMENTS

1. Purchase agreement between the city and OPC
2. Resolution



**PURCHASE AGREEMENT
WITH THE CITY OF MILWAUKIE, OREGON
FOR PRINTING SERVICES FOR THE PILOT NEWSLETTER**

THIS CONTRACT is made and entered into this ____ of February, 2021, by and between the City of Milwaukie, Oregon, a municipal corporation of the State of Oregon, hereinafter called "City", and Oregon Publication Corporation, hereinafter called "Contractor."

RECITALS

WHEREAS, City has need for certain goods or services provided by Contractor; and

WHEREAS, Contractor is in the business of selling certain goods or services and is aware of the purposes for which City will use the goods.

THEREFORE, City and Contractor wish to enter into a contract under which City shall purchase the goods or services described in Contractor's bid in accordance with these contract documents, including the attached standard terms and conditions.

TERM AND CONDITIONS

Any purchase made against this Contract shall be in compliance with the terms and conditions set forth in these contract documents, including those listed in Exhibit A, Standard Terms and Conditions.

GOODS OR SERVICES TO BE PROVIDED

City shall purchase goods or services from Contractor in accordance with specifications, scope, and unit prices outlined in Exhibit B. This Contract is non-exclusive. City reserves the right to procure goods or services through any other means as it deems necessary. Contractor shall be responsible for the delivery of goods or services in accordance with Exhibit B and the terms and conditions of this Contract.

EFFECTIVE DATES AND DURATION

This Contract shall become effective upon the date of execution by the City, and shall expire, unless otherwise terminated or extended, on January 31, 2025.

COMPENSATION

City agrees to pay Contractor not to exceed one hundred thirty-one thousand nine hundred twelve dollars (\$131,912) for goods or services supplied, including any applicable shipping and handling charges, as described in Exhibit B. City shall not be responsible for payment of any materials, services, expense, or costs other than those which are specifically included in Exhibit B. Payment shall be for those goods or services received in an acceptable condition to City.

There will be no price increase for the initial two (2) years of this Contract. Following the initial two-years, pricing may, through express written approval of City, increase annually at a rate not exceeding the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers, US city average, during the previous year. Any pricing increase must be submitted to the City in writing no less than 60 days prior to the effective date.

Payment will be made based on Contractor's invoice, subject to the approval of the City, and not more frequently than monthly. Payment shall be made only for work actually completed as of date of invoice. Payment terms shall be net 30 days from date of invoice.

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

Contract No. C2021-010

CONTACT INFORMATION

All notices, bills, and payments shall be made in writing and may be given by mail or email. Payments may be delivered by mail or electronic transfer. The following addresses and contacts shall be used to transmit notices, bills, payments, and other information:

Contract Manager for City:	Contract Manager for Contractor:
City of Milwaukie	Company: Oregon Publication Corporation
Attn: Jordan Imlah	Attn: Lanette Bernards
10722 SE Main St.	6605 SE Lake Rd.
Milwaukie, OR 97222	Milwaukie, OR 97222
Phone: 503.786.7503	Phone: 503.804.0048
Email: imlahj@milwaukieoregon.gov	Email: lbernards@pamplinmedia.com
Invoices to: ap@milwaukieoregon.gov	

CONTRACTOR AS INDEPENDENT CONTRACTOR

Contractor acknowledges that for all purposes related to this Contract, Contractor is and shall be deemed to be an independent contractor as defined by ORS 670.600 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Contract, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of said finding.

Contractor acknowledges that for all purposes related to this Contract, Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

Contractor certifies that it will possess either a City of Milwaukie or a Metro business license for the duration of this Contract.

INDEMNIFICATION

Contractor shall defend, indemnify, and hold harmless City, City's officers, employees, agents, and representatives from and against all liability, claims, demands, judgments, penalties, and causes of action of any kind or character, or other costs or expenses incidental to the investigation and defense thereof, of whatever nature, resulting from or arising out of the activities of the Contractor or its subcontractors, agents, or employees under this contract, except, however, that the foregoing shall not apply to liability that arises out of City's negligence.

INSURANCE

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities and work performed hereunder, including the operations of its subcontractors of any tier.

The policy or policies of insurance maintained by the Contractor and its subcontractors shall provide at least the following limits and coverages:

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

Contract No. C2021-010

a. Commercial General Liability Insurance

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form., This coverage shall include Contractual Liability insurance. Coverage will include \$1,000,000 per occurrence and \$2,000,000 general annual aggregate.

b. Commercial Automobile Insurance

Contractor shall also obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.

c. Workers' Compensation Insurance

The Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract who are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain workers' compensation coverage. All non-exempt employers shall provide Employers Liability Insurance with coverage limits of not less than \$500,000 each accident.

d. Additional Insured Provision

The Commercial General Liability Insurance and Commercial Automobile Insurance policies shall include the City, its officers, directors, employees and volunteers as additional insureds with respect to this Contract.

e. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Contractor shall furnish a Certificate of Insurance to the City. No contract shall be effective until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this Contract.

f. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City.

g. Primary Coverage Clarification

City's insurance is excess and not contributory insurance with the insurance required by this contract.

GOVERNING LAW

The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Contract must be brought in the appropriate court of the State of Oregon.

EXTRA (CHANGES) WORK

Only Jordan Imlah, communication program manager, may, by written order, authorize extra (and/or change) work. Failure of Contractor to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

Contract No. C2021-010

COMPLETE AGREEMENT

This Contract, including the attached terms and conditions and exhibits, constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature of its authorized representative, hereby acknowledges that he/she has read this Contract, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Contract to be executed by its duly authorized undersigned officer and Contractor has executed this Contract on the date hereinabove first written.

CITY OF MILWAUKIE

Signature

Ann Ober, City Manager
Printed Name & Title

Date

CONTRACTOR

Signature

Printed Name & Title

Date

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

EXHIBIT A

Contract No. C2021-010

STANDARD TERMS AND CONDITIONS

1. Packing & Shipment. Any deliveries shall be made as specified, without charge for boxing, crating, carting or storage. Material shall be suitably packed to ensure against damage from weather or transportation and to secure lowest transportation costs, and in accordance with the requirements of common carriers. City's Contract number and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each box or package shipment. City's count or weight shall be conclusive on shipment not accompanied by packing lists. Unless otherwise specifically agreed, all costs of packaging and shipment are included in the purchase price and all goods will be shipped, with all costs prepaid. Risk of loss to goods in shipment (including damage, destruction, theft, or loss) shall be borne by the Contractor. Risk of loss shall not pass to City until the goods are delivered to and checked in at the location specified by City in this Contract.

2. Warranty. Unless otherwise agreed in writing, Contractor warrants that the products ordered will conform to the specifications herein and to any drawings, samples, or other description furnished or adopted by City. All products are warranted to be merchantable, to be of the highest quality design, material, and workmanship and free from defect and to be fit for purpose intended. All warranties shall survive inspection or test, acceptance and payment. Warranties shall run to City, its successors, assigns and customers. Warranty period shall be (1) year from date of acceptance by City.

3. Inspection and Acceptance. At City's request, Contractor shall provide a complete inspection program; satisfactory to City, for City's inspection of all materials, fabricating methods, equipment in process work and finished products. If this Contract provides for inspection of the work by City on site during the period of manufacture, Contractor agrees to provide City's inspectors with reasonable facilities and assistance during such inspection. Inspection by City shall not unduly delay the work. City may charge Contractor any additional cost incurred by City if the work is not ready in accordance with the inspection schedule. Any inspection made or Waiver-of-Inspection-Notice given by City will not relieve Contractor from its responsibilities for delivering products and work hereunder. Acceptance or rejection of the products shall be made up to 10 days after delivery and inspection by City except as otherwise provided herein. Failure to inspect and accept or reject products shall neither relieve Contractor from responsibility for such products, which do not meet the requirements herein nor impose liability on City thereafter.

4. Delivery. If Contractor fails to meet the delivery schedule provided herein, City may require Contractor to deliver the products, or any portion thereof, in any manner commercially necessary to speed delivery, all at the Contractor's sole expense. Unless otherwise agreed upon in writing by City and Contractor, Contractor shall be required to pay the normal freight weight plus any premium rate required. Invoices covering products shipped in advance of the date specified will not be paid until after the date specified for delivery and are subject to rejection, as provided in this paragraph immediately below, if shipped too early. Neither party shall be liable for delays or defaults due to strike, fire, windstorm, riot, natural disaster, pandemic, public health emergency, war, civil unrest or other similar unforeseeable cause beyond the control and without the fault or negligence of the party incurring such delay. Contractor shall notify City in writing of the existence of such cause within five (5) days after the commencement of the delay or default giving pertinent information concerning such cause. No delivery shall be made more than seven (7) days prior to the applicable delivery date, and City shall have the right to return earlier deliveries at Contractor's risk and expense or charge to Contractor any additional costs sustained because of the same.

5. City-Furnished Materials. Contractor shall assume all risk of loss of any material furnished by City to Contractor for use in performance of this Contract.

6. Taxes. Contractor shall not invoice City for any taxes nor include in Contractor's price any federal excise, state, or city tax or any other tax, unless Contractor has first asked City for City's tax exemption number and it has been agreed upon between both parties that City is not exempt from the tax.

7. Changes. City may, by written order, make changes including changes in drawings or specifications. City will equitably adjust any difference in cost or time for performance resulting from such change and the Order modified in writing accordingly. ANY CLAIM BY CONTRACTOR UNDER THIS CLAUSE MUST BE ASSERTED IN WRITING WITHIN 30 DAYS FROM THE DATE OF CONTRACTOR'S RECEIPT OF THE CHANGE ORDER OR THE CLAIM WILL NOT BE ALLOWED. In the event that City proposes any change prior to making such change by written order and such change will have an effect on the warranty of the products procured by this Contract, Contractor shall notify City in writing of such effect within 10 days of receipt of such proposal.

8. Advertising. Contractor shall not, without the written consent of City, in any manner advertise or publish the fact that Contractor has furnished or contracted to furnish to City the products herein.

9. Cancellation for Cause. City may cancel all or any part of the undelivered portion of this Contract if Contractor breaches any of the terms hereof or in the event of any of the following: Insolvency of Contractor, a voluntary or involuntary petition

in bankruptcy for, by or against Contractor; the appointment of a receiver or trustee for Contractor, or an assignment for the benefit of creditors by Contractor or if City has reasonable cause to believe Contractor will become insolvent, file for bankruptcy, go out of business or that the products being shipped may be subject to lien, claim or attachment by a creditor of Contractor. Any such cancellation under this section shall be cancellation for cause and in the event of such cancellation, City shall have the right to complete, or cause to have completed, this Contract including the right to cause Contractor to produce, without liability of any kind to the City, proprietary items of the Contractor as necessary to complete the Contract. The remedies and damages in this section shall be cumulative and in addition to any other or further remedies provided at Law or in Equity, including reasonable and necessary attorney's fees and other costs of litigation.

10. Termination. City has the right, in its sole discretion, to terminate this Contract without cause at any time by giving written notice to Contractor. If City terminates the contract pursuant to this section, it shall pay Contractor for goods shipped or services rendered by Contractor prior to receipt by Contractor of the notice of termination. City may deduct the amount of damages, if any, sustained by City due to any breach of contract or warranty by Contractor. Damages for breach of contract or warranty shall be those allowed by Oregon law, reasonable and necessary attorney fees, witness fees (expert and non-expert), and other costs of litigation at trial and on appeal.

11. Assignment and Subcontracting. Contractor may not assign or subcontract any of its rights or obligations hereunder without the prior written approval of City. Any unapproved assignment shall be void. Contractor shall be fully responsible for the acts or omissions of any subcontractors and all persons employed by them, and neither the approval by City of any subcontract nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and the City. City may assign its rights under this Contract.

12. Work on City's Premises. If Contractor's performance of this Contract involves operations by Contractor on City's premises, Contractor shall provide all necessary and sufficient safeguards and take all proper precautions against the occurrence of injury to any person or damage to any property. Any work performed on City's premises must be done pursuant to all OSHA standards, all applicable State and Federal health and safety laws, rules and regulations and all workers must be covered by workers' compensation insurance furnished through and paid for by Contractor.

13. Stop Work Order. City may, at any time by written order to Contractor, require Contractor to stop all, or any part of the work called for by this Order for a period of 90 days after the written order is delivered to Contractor, and for any further period to which the parties may agree and for any other period to which the parties may have agreed or as provided in Section 4, 10, and/or 11. Within the period of 90 days or less or within any extension of that period, City shall either: (a) cancel the "Stop Work Order" and direct Contractor to resume work; or (b) terminate the work covered by this Order. If City orders Contractor to resume work, Contractor shall be entitled to any equitable adjustment pursuant to Section 8 provided a claim for such an adjustment shall be submitted by Contractor within 30 days after the end of the period of work stoppage.

14. Information/Data. Unless otherwise agreed in writing any designs, drawings, specifications, or other manufacturing information furnished by City to Contractor shall be confidential to City and is furnished solely for the performance of this Contract. All copies of such information shall be returned to City upon completion of the Contract. Any designs, drawings, specifications, or other manufacturing information delivered by Contractor to City may be used for any purpose whatsoever. The foregoing shall apply notwithstanding the presence or absence of any contrary legend or statement on any of such information. All business and governmental information materials containing business and governmental information provided by City to Contractor shall be treated as confidential.

15. Compliance with Laws and Regulations. Contractor warrants that all products, goods, or work delivered and performed shall comply with all applicable Federal, State or Local Laws or Regulations including without limitation The Occupational Safety and Health Act (29 USC. Chapter 15); Federal Hazardous Material Transportation Act (49 USC. Chapter 27); Equal Employment Opportunity; E.O. 11246 and 41 CFR Sections 60-1.4 and 60-1.7; Employment of the Handicapped E.O. 11758 and 41 CFR Section 60-741-4; Utilization of Minority Enterprises E.O. 11625 and 41 CFR Subpart 1-1.13; Age Discrimination E.O. 11141, Employment of Veterans E.O. 11701 and 41 CFR Section 50-250.4 and all rules, regulations and amendments issued pursuant to the foregoing. Contractor shall indemnify City, its officers, employees and agents against any damages, penalties, costs or expenses incurred in connection with any alleged violation of any Federal, State or Local Law or regulating the manufacture or sale to the City of any item covered by this Contract.

16. Patents, Copyrights, Trademarks. Contractor warrants that no products will be furnished hereunder which infringe or contribute to the infringement of any letters patent, copyright or trademark. Contractor agrees to immediately replace at its sole cost any products furnished hereunder which infringe or contribute to the

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

EXHIBIT A

Contract No. C2021-010

infringement of any letters patent, copyright or trademark or to take all steps necessary at Contractor's sole expense to remove such infringement. Contractor will indemnify and hold harmless City, its representatives, officers, employees and agents from and against any and all costs, royalties, damages and/or expenses which may arise out of or result from, or be reasonably incurred in contesting any claims that the methods, processes or acts by the Contractor or its employees or the products furnished hereunder, infringes or contributes to the infringement of any letters, patent, copyright or trademark.

17. Waiver. The failure of City to enforce at any time any of the provisions of this Contract or to exercise any option herein provided, shall not be a present or future waiver of such provisions, nor in any way affect the validity of this Contract or any part hereof, or the right thereafter to enforce each and every such provision. The express waiver (whether one (1) or more times) of any provision, condition or requirement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

18. Acceptance by Performance. If Contractor fails provide to City with a signed copy of this Contract, but delivers product or performs the services specified in this Contract, then Contractor agrees that the Contractor shall be deemed to have accepted the terms and conditions of this Contract, as provided on both the front and this reverse side of the Contract. City must agree any changes or modifications to this Contract by Contractor to, in writing, or they shall not be deemed accepted by City and if the Contractor delivers the products nonetheless, then the original terms and conditions of this Contract shall govern.

19. Mandatory Mediation and Binding Arbitration. If there is a dispute concerning any of the terms, conditions or the performance of this Contract, then it is hereby agreed by both City and Contractor that the dispute shall be submitted first to non-binding mediation, to be performed by a sole mediator to be agreed upon between City and Contractor. If a mediator cannot be agreed upon, then the parties agree that any Circuit Court judge for the State of Oregon, County of Clackamas, shall be authorized to appoint a mediator for the parties. Should the parties fail to reach an agreement through mediation, then the parties shall submit to binding arbitration, which shall be governed by the rules of the Arbitration Service of Portland, and shall be conducted within Clackamas County. The arbitration shall be conducted by a single arbitrator chosen by mutual agreement of the parties. If the parties are unable to agree on an arbitrator, the parties shall ask the Presiding Judge of the Circuit Court for Clackamas County to select the arbitrator. If the arbitrator determines that one party is the prevailing party, then the losing party shall be required to pay all fees and costs of the arbitration. On the other hand, if the arbitrator determines that neither party is to be considered the prevailing party, then the fees and costs of the arbitration shall be divided equally between the parties. The parties knowingly and voluntarily waive their rights to have their dispute tried and adjudicated by a judge or jury. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, then the other party shall be entitled to costs, including reasonable attorney fees, for having to compel arbitration or defend or enforce the award. The parties agree to defend the arbitrator and any individual engaged in the administration of an arbitration proceeding from any subpoenas or claims from third parties arising out of this Contract or the arbitration.

20. Jurisdiction and Attorney Fees. This Contract shall be governed and construed according to the laws of the State of Oregon. If a dispute shall arise under this Contract necessitating the services of an attorney, then the prevailing party shall be entitled to collect from the losing party all of its/his/her reasonable costs and attorney fees, either in arbitration (if awarded by the arbitrator as provided above), or by a court before which any matter concerning this Contract may be heard, both at trial and on appeal.

21. Neutral Interpretation. This Contract constitutes the product of negotiations between the parties hereto. Any enforcement hereof will be interpreted in a neutral manner and not more strongly for or against any party based upon the source of draftsmanship.

22. Severability. Nothing contained herein shall be construed to require the commission of any act contrary to law, and wherever there is any conflict between the provisions contained herein and any present or future statute, law, ordinance or regulation contrary to which to the parties have no legal right to contract, the latter shall prevail. The provision of this Contract, which is affected, shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law.

23. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday or such holiday, then that period shall be extended to include the next day which is not a Saturday, Sunday or holiday.

24. Notice. Any notice required or permitted to be given by either party to the other shall be deemed to have been given when sent via telecopy, overnight air courier, or deposited in the United States mail certified, return receipt requested, with first class postage prepaid, addressed as indicated on the front of this Contract, or addressed to either party at such other address as such party shall hereafter furnish

to the other party in writing. Notice shall also be considered effective upon delivery if personally delivered.

25. Conditions of Supplying a Public Agency. Where applicable, Contractor must make payment promptly as due to persons supplying Contractor labor or materials for the execution of the work provided by this Contract. Contractor must pay all contributions or amounts due from Contractor to the Industrial Accident Fund incurred in the performance of this Contract. Contractor shall not permit any lien or claim to be filed or prosecuted against City or any subdivision of City on account of any labor or material to be furnished. Contractor further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

26. Payment of Claims by Public Officers. In the event that Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor of Contractor by any person in connection with the performance of this Contract when such claim becomes due, then the proper officer or officers representing the City hereunder may pay such claim to the person furnishing the labor or services and charge the amount of the payment against the funds due or to become due to the Contractor by reason of this Contract. The payment of a claim in the manner authorized by this provision shall not relieve the Contractor or any of the Contractor's surety from obligations with respect to any unpaid claims.

27. Health Care Benefits for Contractor's Employees. If this Contract involves public service, then Contractor must provide health care benefits to all employees who are performing services previously performed by public employees performing similar duties under this Contract.

28. Hours of Labor. If labor is performed under this Contract, then no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, or emergency or where the public policy absolutely requires it, and in such cases, except cases of contracts for personal services as defined in ORS 279A.055, the labor shall be paid at least time and a half for all overtime in excess of eight (8) hours a day and for all work performed on Saturday and on any legal holidays as specified in ORS 279B.020. In cases of contracts for personal services as defined in ORS 279A.055, any labor shall be paid at least time and a half for all hours worked in excess of forty (40) hours in any one week, except for those individuals excluded under ORS 653.010 to 653.261 or under 29 USC SS 201-219.

29. Medical Care and Workers' Compensation. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury, to the employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the employees pursuant to any law, contractor agreement for the purpose of providing or paying for such service.

SCOPE OF WORK

SPECIFICATIONS

Contractor shall print 17,500 8-page newsletters for 11 months of each year in full color on 70# glossy paper. Newsletters will be mailed using postage from the City's United States Postal Service (USPS) permit #990. Finished size of newsletter will be 8.375 in. x 10.875 in.

SERVICES TO BE PROVIDED

- City shall provide Contractor with 11 monthly publications each calendar year for Contractor to print and mail. The month of January of each year will not result in a publication.
- Contractor shall provide City with an 11-month schedule each year for receiving the newsletter files.
- City shall provide Contractor with high resolution PDF files no less than six (6) calendar days from the last day of each month.
- City shall notify Contractor of any quantity reductions within seven (7) calendar days from the last day of each month.
- Contractor shall provide City with an electronic proof prior to printing.
- City shall approve electronic proof within 24 hours of receiving it from Contractor.
- After receiving approval from City, Contractor shall print newsletters within seven (7) calendar days from the last day of each month. Finished newsletters will be saddle-stitched and prepared for mailing. Contractor's mail preparation includes downloading postal route counts, counting and sorting by carrier route, preparing USPS paperwork, and delivery/check-in at the post office.
- City shall manage deposits to USPS permit #990 and ensure sufficient postage funds are available for Contractor's use at each mailing.



CITY OF MILWAUKIE

COUNCIL RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, AUTHORIZING A PURCHASE AGREEMENT WITH OREGON PUBLICATION CORPORATION FOR PILOT NEWSLETTER PRINTING SERVICES.

WHEREAS, the city commits to issuing a monthly newsletter highlighting city news, programs and services; and

WHEREAS, The Milwaukie Pilot newsletter is an effective communication method when sharing information with the community; and

WHEREAS, the city performed an intermediate procurement process for services and determined Oregon Publication Corporation was the most qualified respondent to perform the services requested.

Now, Therefore, be it Resolved by the City Council for the City of Milwaukie, Oregon, acting as the Local Contract Review Board, that the city manager is authorized to execute a purchase agreement with Oregon Publication Corporation for city newsletter printing services for four years.

Introduced and adopted by City Council on **Feb. 16, 2021**.

This resolution is effective immediately.

Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, city recorder

Justin D. Gericke, city attorney



**RS 6. F.
2/16/21**

OCR USE ONLY

COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager

Date Written: Feb. 4, 2021

Reviewed: Jennifer Garbely, PE, Assistant City Engineer

From: Wendy Marshall, PE, Civil Engineer

Subject: **Linwood Avenue Safe Routes to School IGA – Amendment No. 01**

ACTION REQUESTED

Council is asked to accept Amendment No. 01 of the Linwood Avenue Safe Routes to School (SRTS) project intergovernmental agreement (IGA).

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

Safe Access for Everyone (SAFE) is the City of Milwaukie's program to improve safety for people walking, biking and more. SAFE calls for upgrading our pedestrian and bicycle routes, ramps, and crossings, and ensuring the Americans with Disabilities Act (ADA) standards are met.

Linwood Avenue is one project within the SAFE program. Pedestrian and bicycle improvements will be made on both sides of Linwood Avenue from Harmony Road to Monroe Street. The City will construct a shared bike and pedestrian path, curb, storm facilities, planter strips, and plant street trees to increase safety, improve walkability of the neighborhood, and create a safe route for Linwood/Sojourner Elementary School students. Additional project information can be found at: <https://www.milwaukieoregon.gov/engineering/linwood-avenue-safe-routes-school-srts>.

In the [March 19, 2019 Regular Session](#) Council adopted Resolution 23-2019 to enter into an IGA with the Oregon Department of Transportation (ODOT) to accept Safe Routes to School (SRTS) grant funds for construction of the Linwood Avenue SAFE/SRTS improvements project. Engineering staff enlisted the design services of Harper Houf Peterson Righellis and traffic consultant DKS Associates. Once the design team was established, evaluation of the design led to revisions and improvements to the original design concepts assumed in the grant application as described below.

ODOT approved the revisions January 25, 2021.

ANALYSIS

The SRTS grant was approved based upon the best available data at the time of the city's application. During subsequent design work a few details of the project were revised, including an adjusted projected completion date to conform to the current schedule approved in the construction contract with D & D Concrete and Utilities Inc. This revised completion date provides that all improvements are to be completed by September 1, 2021, except for landscaping, which is to be completed by October 15, 2021.

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

In addition to the revised completion date, the project description was changed to reflect revisions to the design that better accomplish the project goal of safe bicycle and pedestrian routes along Linwood Avenue. For example, the original grant application proposed a concept with sidewalks and bike lanes adjacent to vehicle lanes and described specific safety devices at intersections. During design, the traffic engineering consultant analyzed the existing and future conditions and recommended different safety measures for the project. City staff concurred with this analysis and recommended an alternative that would provide a safer and more pleasant experience than bike lanes adjacent to vehicle lanes. This recommendation replaced bike lanes and sidewalks with shared bicycle/pedestrian paths separated from vehicular traffic.

The revised plan meets the intended goals of the SRTS grant program, however, the program administrator determined that the changes should be documented in an amendment.

BUDGET & WORKLOAD IMPACTS

None.

CLIMATE IMPACT

The revised design includes pervious asphalt shared bicycle/pedestrian paths on either side of Linwood Avenue. This results in (at least) three positive impacts to the environment: 1) vehicular lanes will be narrowed, with a resulting reduction in pollutants; 2) pervious asphalt used on the paths will reduce stormwater runoff; and 3) separating bicycle lanes from vehicle lanes will encourage more users to commute by bicycle instead of automobiles, resulting in a reduction of pollutants and opportunities for improved health.

COORDINATION, CONCURRENCE, OR DISSENT

The ODOT SRTS administrator and the city engineer and assistant city engineer have approved the changes.

STAFF RECOMMENDATION

Staff recommends that Council accept Amendment No. 01 of the Linwood Avenue SRTS IGA.

ALTERNATIVES

Council could decline to accept the amendment.

ATTACHMENTS

1. Resolution
2. Amendment No. 01 of the Linwood Avenue SRTS IGA for signature
3. Original IGA and Resolution 23-2019



CITY OF MILWAUKIE

COUNCIL RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO SIGN AMENDMENT NO. 01 TO INTERGOVERNMENTAL AGREEMENT (IGA) NO. 33118 WITH THE OREGON DEPARTMENT OF TRANSPORTATION (ODOT) FOR THE LINWOOD AVENUE SAFE ROUTES TO SCHOOL (SRTS) PROJECT.

WHEREAS, the Linwood Avenue SRTS project is part of the city's Safe Access for Everyone (SAFE) program; and

WHEREAS, the city applied for and received grant funding from ODOT towards design and construction of the project; and

WHEREAS, the City Council adopted Resolution 23-2019 authorizing the Mayor to sign IGA No. 33118 with the ODOT; and

WHEREAS, the IGA requires compliance with the project description as stated in the grant application; and

WHEREAS, during the design process, some details of the project description were revised, necessitating an amendment to the IGA; and

WHEREAS, ODOT has approved the revised project description and prepared Amendment No. 01.

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon that the Mayor is authorized to sign Amendment No. 01 to Intergovernmental Agreement No. 33118 with the Oregon Department of Transportation for the Linwood Avenue Safe Routes to School project.

Introduced and adopted by the City Council on **February 16, 2021**.

This resolution is effective immediately.

Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

**AMENDMENT NUMBER 01
SAFE ROUTES TO SCHOOL PROGRAM (SRTS) AGREEMENT
Milwaukie: Additions and Improvements to Bicycle Network, Sidewalk Addition,
and Crossing Improvements
City of Milwaukie**

This is Amendment No. 01 to the Agreement between the **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as “ODOT,” and the **CITY OF MILWAUKIE**, acting by and through its elected officials, hereinafter referred to as “Recipient,” entered into on April 1, 2019.

It has now been determined by ODOT and Recipient that the Agreement referenced above shall be amended to update Project description, extend the Project Completion date, and update ADA language.

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

2. **Amendment to Agreement.**

a. **EXHIBIT A, Project Description, which reads:**

The project will construct continuous sidewalks, curb ramps, and marked bike lanes along both sides of Linwood Ave from Harmony Rd to Monroe St, will include crossing beacons at 3 intersections (Furnberg St, Aspen St, & Monroe St), and install crosswalk striping at all intersections along the project area.

Shall be deleted in its entirety and replaced with the following:

The project will construct continuous bicycle and pedestrian routes on the east and west sides of Linwood Avenue between Harmony Road and Monroe Street. All intersections will be improved with marked crosswalks and ADA ramps. Additional safety improvements including combinations of signage, flashing beacons, and enhanced street lighting will be added at the school entrance just north of Aspen Street, the school entrance at Furnberg Street, and Monroe Street/Linwood Avenue intersection.

b. **EXHIBIT A, Table 1: Key Milestone No. 8, which reads:**

Key Milestone	Description	Estimated Due Date
8	Project completion (Project must be completed within 5 years of agreement execution.)	08/06/2021

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

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Shall be deleted in its entirety and replaced with the following:

Key Milestone	Description	Estimated Due Date
8	Project completion (Project must be completed within 5 years of agreement execution.)	10/15/2021

c. EXHIBIT B, Section 10, which reads:

10. Americans with Disabilities Act Compliance:

- a. **State Highway:** For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):
 - i. Recipient shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Recipient shall follow ODOT's processes for design, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iii. At Project completion, Recipient shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<http://www.oregon.gov/ODOT/CONSTRUCTION/Pages/Forms.aspx>
 - iv. Recipient shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Recipient and prior to release of any Recipient contractor.

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Agreement No. 33118, Amendment No. 01

- v. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction, to the greatest extent possible.
- b. **Local Roads:** For portions of the Project located on Recipient roads or facilities that are not on or along a state highway:
 - i. Recipient shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
 - ii. Recipient may follow its own processes or may use ODOT's processes for design, modification, upgrade, or construction of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:
<http://www.oregon.gov/ODOT/CONSTRUCTION/Pages/Forms.aspx>;

Additional ODOT resources are available at:
<http://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

ODOT has made its forms, processes, and resources available for Recipient's use and convenience.
 - iii. Recipient assumes sole responsibility for ensuring that the Project complies with the ADA, including when Recipient uses ODOT forms and processes. Recipient acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
 - iv. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the

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public, people with disabilities, and disability organizations prior to the start of construction, to the greatest extent possible.

- c. Recipient shall ensure that any portions of the Project under Recipient's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Recipient ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Recipient identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are completed by Recipient or abutting property owner pursuant to applicable local code provisions,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- d. Maintenance obligations in this section shall survive termination of this Agreement.

Shall be deleted in its entirety and replaced with the following:

10. **Americans with Disabilities Act Compliance:**

- a. **State Highway:** For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):
 - i. Recipient shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Recipient shall follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design

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Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;

- iii. At Project completion, Recipient shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

- iv. Recipient shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Recipient and prior to release of any Recipient contractor.
 - v. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days prior to the start of construction.
- b. **Local Roads:** For portions of the Project located on Recipient roads or facilities that are not on or along a state highway:
- i. Recipient shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
 - ii. Recipient may follow its own processes or may use ODOT's processes for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:
<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>;

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Recipient's use and convenience.

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- iii. Recipient assumes sole responsibility for ensuring that the Project complies with the ADA, including when Recipient uses ODOT forms and processes. Recipient acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
 - iv. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.
- c. Recipient shall ensure that any portions of the Project under Recipient's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Recipient ensuring that:
- i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Recipient identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Recipient, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- d. Maintenance obligations in this section shall survive termination of this Agreement.
3. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

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City of Milwaukie/ODOT

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

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

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

City of Milwaukie/ODOT

Agreement No. 33118, Amendment No. 01

CITY OF MILWAUKIE, by and through
its Governing Body

By _____
(Legally designated representative)

Name _____
(printed)

Date _____

**LEGAL REVIEW APPROVAL (If
required in Recipient's process)**

By _____
Recipient's Legal Counsel

Date _____

Recipient Contact:

Wendy Marshall, Civil Engineer
6101 SE Johnson Creek Blvd.
Milwaukie, Oregon 97206
(503) 786-7694
MarshallW@milwaukieoregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____
Public Transportation Division
Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Safe Routes to School Program Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Sam Zeigler via email dated
Assistant Attorney General

Date: 01/25/2021 - retained in file

ODOT Contact:

LeeAnne Fergason
SRTS Program Manager
555 13th Street NE
Salem, Oregon 97301-4178
(503) 986-5805
Leeanne.fergason@odot.state.or.us

Attachment 3 **THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED**

**GRANT AGREEMENT
SAFE ROUTES TO SCHOOL PROGRAM (SRTS)
OREGON DEPARTMENT OF TRANSPORTATION**

Project Name Milwaukie: Additions and Improvements to Bicycle Network, Sidewalk Addition, and Crossing Improvements
(Oregon Governmental Entity)

This Agreement is made and entered into between the **State of Oregon**, acting by and through its Department of Transportation, ("ODOT"), and **City of Milwaukie**, acting by and through its Governing Body, ("Recipient"), both referred to in this Agreement individually as "Party" and collectively as "Parties."

Agreement Documents. This Agreement consists of this document and the following documents:

- a. Exhibit A: **Project Description, Key Milestones, Schedule and Budget**
- b. Exhibit B: **Recipient Requirements**
- c. Exhibit C: **Subcontractor Insurance**
- d. Exhibit D: **Application and documents provided by Recipient to ODOT before execution of the Agreement**

Exhibits A through D are incorporated by reference into this Agreement. Exhibits A through C are attached. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C; Exhibit D.

BACKGROUND

1. The State of Oregon has established the Safe Routes to Schools Fund (the "SRTS Fund") and the Safe Routes to School Program (the "Program") pursuant to ORS 184.740 *et seq.*
2. The purpose of the Program is to assist Oregon communities in identifying and reducing barriers and hazards to children walking or bicycling to and from school.
3. Moneys in the SRTS Fund are continuously appropriated to ODOT to implement the Program and provide certain matching grants for safety improvement projects near schools.
4. Recipient applied for a grant through the Program to undertake the project described in Exhibit A, attached and incorporated by this reference (the "Project").
5. ODOT approved a grant in the maximum amount of **\$1,152,330** and is willing to provide the grant to Recipient for the Project on the terms and conditions of this Agreement.
6. Recipient desires to receive the grant on the terms and condition of this Agreement,
7. ODOT and Recipient desire to enter into this Agreement to implement the grant.

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

AGREEMENT

1. Effective Date and Availability of Grant Funds. This Agreement is effective on the date that it is fully executed and approved as required by applicable law (the “Effective Date”). The availability of Grant Funds (as defined in section 2) and ODOT’s obligation to disburse Grant Funds shall end on the earlier of the following dates (the “Availability Termination Date”):

(i) Five (5) years after the Effective Date; or

(ii) 45 days after the Final Payment Conditions are satisfied pursuant to section 6.a.

No Grant Funds are available after the Availability Termination Date.

2. Grant. In accordance with the terms and conditions of this Agreement, ODOT shall provide Recipient with a maximum of **\$1,152,330** (the “Grant Funds”) from the SRTS Fund to support and assist Recipient’s implementation of the Project.

3. Estimated Project Cost, Scope and Schedule; Recipient Match. The total Project cost is estimated at \$2,012,300, which is subject to change. The Project’s scope and schedule are set forth in Exhibit A. While the total Project cost may change, ODOT will reimburse Eligible Costs (as that term is defined in section 4.b) only up to the maximum Grant Funds amount stated in section 2. ODOT’s reimbursement of Eligible Costs under section 6.a. is subject to, and calculated based upon, Recipient’s cash match requirement as set forth in paragraph 5 of Exhibit B (“Recipient’s Cash Match”). Recipient will be responsible for all Project costs, whether Eligible Costs or otherwise, not covered by the Grant Funds.

4. Project:

a. Use of Grant Funds. The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by ODOT by amendment pursuant to Section 11.c.

b. Eligible Costs.

Recipient may seek reimbursement for its actual costs to develop the Project, consistent with the terms of this Agreement (“Eligible Costs”).

i. Eligible Costs are actual costs of Recipient to the extent those costs are:

(A) reasonable, necessary and directly used to develop and construct the Project;

(B) permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by ODOT;

(C) incurred no earlier than 24 months before the application deadline for this grant; and

(D) eligible or permitted uses of the Grant Funds under the Oregon Constitution Article IX Section 3a, the statutes and laws of the state of Oregon, and this Agreement.

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

ii. Eligible costs do NOT include:

- (A) operating and working capital or operating expenditures charged to the Project by Recipient or payments made to related parties;
- (B) loans or grants to be made to third parties;
- (C) any expenditures incurred after this Agreement's termination or expiration; or
- (D) costs associated with a Project that substantially deviate from the Application submission, identified in Exhibit D, unless such changes are approved by ODOT by amendment of this Agreement.

c. Project Change Procedures.

- i. If Recipient anticipates a change in the Project's scope or the Project's completion date identified in Exhibit A (the "Project Completion Date"), Recipient shall submit a request for change to SRTSProgramMailbox@odot.state.or.us. The request for change must be submitted before the change occurs.
- ii. Recipient shall not proceed with any changes to the Project's scope or the Project Completion Date without first executing an amendment to this Agreement that documents ODOT's approval of Recipient's request for such a change. A request for a change in the Project's scope or the Project Completion Date may be rejected at ODOT's sole discretion.

5. Progress Reports.

- a. Quarterly Reports.** Recipient shall submit quarterly progress reports to ODOT using a format that ODOT provides. Recipient must submit the reports to SRTSProgramMailbox@odot.state.or.us by the first Wednesday of March, June, September, and December.
- b. Final Report.** Recipient shall submit a final written report (the "Final Report") to SRTSProgramMailbox@odot.state.or.us that identifies how hazards have been reduced to children walking or bicycling to and from school as a direct result of this Project. Recipient must submit the Final Report within six (6) months after the Project Completion Date. Recipient's obligation to provide the Final Report will survive this Agreement's expiration or termination.

6. Reimbursement Process for Eligible Costs.

- a.** In accordance with the terms and conditions of this Agreement, ODOT shall provide Recipient Grant Funds in an amount not to exceed (i) \$1,152,330 or (ii) 60% of Eligible Costs (the "Reimbursement Rate"), whichever is less. ODOT shall reimburse Eligible Costs at the Reimbursement Rate within forty-five (45) days of ODOT's receipt and approval of a request for reimbursement from Recipient. Recipient must pay its contractors, consultants and vendors before submitting invoices to ODOT for reimbursement. Recipient must submit to ODOT its first invoice within two (2) years of the Effective Date and must submit its final invoice (the "Final Invoice") within six (6) months of the Project Completion Date. Upon ODOT's receipt of the Final Invoice, ODOT will conduct a final on-site review of the Project. ODOT will withhold payment of the Final Invoice until both (i) its SRTS Program Manager, or designee, has completed the final inspection and accepted the Project as complete and (ii) Recipient has submitted the Final Report required by section 5.b (collectively, the "Final Payment Conditions").

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

- b. Recipient shall present monthly invoices for the Eligible Costs directly to SRTSProgramMailbox@odot.state.or.us for review and approval. Such invoices shall include the Agreement number, invoice number, total Grant Funds amount, total amount of previously reimbursed invoices, the start and end date of billing period, and itemize all expenses for which reimbursement is claimed. Invoices shall include supporting documentation, e.g., labor hours should be supported by timesheets/work logs, proof of payment to vendors (if applicable), receipts, etc. Invoices must be based on actual expenses incurred and clearly specify the percentage of Project completion. Invoices shall not be presented for period of less than one month. Recipient shall also include with the invoice a summary describing the work invoiced for the period being invoiced and work expected for the next invoicing period.
- c. **Conditions Precedent to Reimbursement of Eligible Costs.** ODOT's obligation to reimburse Recipient for Eligible Costs is subject to satisfaction, with respect to each reimbursement, of each of the following conditions precedent:
 - i. ODOT has received funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the reimbursement;
 - ii. Recipient is in compliance with the terms of this Agreement;
 - iii. Recipient's representations and warranties set forth in Section 7 below are true and correct on the date of reimbursement with the same effect as though made on the date of the request for the reimbursement, and
 - iv. Recipient has provided to ODOT a request for reimbursement in accordance with Section 6.b.
- d. **Recovery of Funds.** Any funds disbursed to Recipient under this Agreement that are expended in violation of one or more of the provisions of this Agreement, including falsifying information contained in the application, ("Misexpended Funds") must be returned to ODOT. Overstatement of the match requirement in the application is a violation of this Agreement. Recipient shall return all Misexpended Funds to ODOT promptly after ODOT's written demand and no later than fifteen (15) days after ODOT's written demand. If Recipient fails to reimburse ODOT, ODOT may withhold Recipient's proportional share of State Highway Fund distribution necessary to reimburse ODOT for costs incurred by such Recipient breach. Recipient shall pay back all of the funds to ODOT if Project is not completed or if funds are Misexpended.

7. Representations and Warranties of Recipient. Recipient represents and warrants to ODOT as follows:

- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.

- b. Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any of its benefits.
- d. No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify ODOT immediately if it is debarred, suspended or otherwise excluded from any federally assisted transaction for any reason or if circumstances change that may affect this status, including, without limitation, any relevant criminal indictments or convictions.
- e. Compliance with Oregon Taxes, Fees and Assessments.** Recipient is, to the best of the undersigned(s) knowledge, and for the useful life of the Project will remain, current on all applicable state and local taxes, fees and assessments.
- f.** The warranties set forth in this Section 7 are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. Records Maintenance and Access; Audit.

- a. Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall ensure that each of its subrecipients and subcontractors complies with these requirements. ODOT, the Secretary of State of the State of Oregon ("Secretary") and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, ODOT, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODOT or the Secretary to perform site reviews of the Project, and to examine all real property and facilities purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.
- b. Retention of Records.** Recipient shall retain and keep all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a period of six (6) years after final payment. Recipient should consult with the State of Oregon before final destruction of Project records. If there are unresolved audit questions at the end of the period described in this section, Recipient shall retain the records until the questions are resolved.

- c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by ODOT under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOT to verify how the Grant Funds were expended.
- d. **Survival.** This Section 8 shall survive any expiration or termination of this Agreement.

9. Recipient Subagreements and Procurements

- a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project.
 - i. All subagreements must be in writing, executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
 - ii. Recipient shall require all of its contractors performing work under this Agreement to name ODOT as a third party beneficiary of Recipient's subagreement with the Contractor and to name ODOT as an additional obligee on contractors' bonds.
 - iii. Recipient agrees to provide ODOT with a copy of any signed subagreement upon ODOT's request. Recipient must report to ODOT any substantial breach of a term or condition of a subagreement relating to this Agreement within ten (10) days of Recipient discovering the breach.
- b. **Subagreement indemnity; insurance.**
 - i. *Recipient shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in Oregon Revised Statute (ORS) 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, the Oregon Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 ("Claims"), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Recipient's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that ODOT shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of ODOT, be indemnified for all Claims caused or alleged to be caused by the contractor or subcontractor.*
 - ii. Any such indemnification shall also provide that neither Recipient's contractor or subcontractor, nor any attorney engaged by Recipient's contractor or subcontractor, shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's contractor is prohibited from defending the State of Oregon, or that Recipient's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of

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Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Recipient's contractor if the State of Oregon elects to assume its own defense.

iii. Recipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

c. Procurements. Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code and rules, ensuring that:

- i. all applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement;
- ii. all procurement transactions are conducted in a manner providing full and open competition; and
- iii. procurements exclude the use of statutorily or administratively imposed in-state or geographic preference in the evaluation of bids or proposals (with exception of locally controlled licensing requirements).

10. Termination

a. Termination by ODOT. ODOT may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by ODOT in such written notice, if:

- i. Recipient fails to perform the Project within the time specified in this Agreement or any extension of the Agreement or commencement, continuation or timely completion of the Project by Recipient is, for any reason, rendered improbable, impossible, or illegal; or
- ii. ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
- iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
- iv. The Project would not produce results commensurate with the further expenditure of funds; or
- v. Recipient takes any action pertaining to this Agreement without the approval of ODOT and which under the provisions of this Agreement would have required the approval of ODOT.

b. Termination by Recipient. Recipient may terminate this Agreement effective upon delivery of written notice of termination to ODOT, or at such later date as may be established by Recipient in such written notice, if:

- i. The requisite local funding to continue the Project becomes unavailable to Recipient;

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- ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- iii. ODOT fails to make payments due in accordance with this Agreement.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten (10) days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.
- d. **Rights upon Termination; Remedies.** Any termination of this Agreement shall not prejudice any rights or obligations accrued before termination. The remedies set forth in this Agreement are cumulative and are in addition to any other rights or remedies available at law or in equity.

11. GENERAL PROVISIONS

a. Contribution.

- i. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
- ii. With respect to a Third Party Claim for which ODOT is jointly liable with Recipient (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.
- iii. With respect to a Third Party Claim for which Recipient is jointly liable with ODOT (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of ODOT on the other hand shall

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be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

- b. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- c. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- d. Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- e. No Third Party Beneficiaries.** ODOT and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name in this Agreement and expressly described as an intended beneficiary of the terms of this Agreement.
- f. Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties or notices to be given under this Agreement shall be given in writing by personal delivery, facsimile, email or mailing the same, postage prepaid, to Recipient Contact or ODOT Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 11.f. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
- g. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by, construed in accordance with, and enforced under the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between ODOT (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party consents to the exclusive jurisdiction of the Circuit Court of Marion County in the State of Oregon court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

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- h. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- i. **Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- j. **Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of ODOT. Recipient has no right or authority to incur or create any obligation for or legally bind ODOT in any way. ODOT cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of ODOT, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- k. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- l. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- m. **Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the Agreement's subject matter. There are no other understandings, agreements, or representations, oral or written, not specified in this Agreement regarding its subject matter. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Recipient, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

ODOT/Recipient
Agreement No. 33118

THE PARTIES, by executing this Agreement, acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The Oregon Transportation Commission at its January 17, 2019 meeting approved the Safe Routes to School project application list and directed the Transportation Development Division Administrator to enter into project agreements.

City of Milwaukie, by and through its
Governing Body

By [Signature]
(Legally designated representative)

Name Mark Gamba
(printed) MAYOR

Date 3-19-2019

By _____

Name _____
(printed)

Date _____

**LEGAL REVIEW APPROVAL (If required
in Recipient's process)**

By [Signature]
Recipient's Legal Counsel

Date 3-21-2019

Recipient Contact:

Wendy Marshall, Civil Engineer
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206
503-786-7694
MarshallW@milwaukieoregon.gov

STATE OF OREGON, by and through its
Department of Transportation

By [Signature]
Transportation Development Division Administrator

Date 4/1/19

APPROVAL RECOMMENDED

By [Signature]
SRTS Program Manager

Date 4/1/19

BY N/A
State Traffic-Roadway Engineer

Date _____

APPROVED AS TO LEGAL SUFFICIENCY
(For funding over \$150,000)

By Sam Zeigler via email dated 2/6/19
Assistant Attorney General

Name _____
(printed)

Date _____

SRTS Program Manager:

LeeAnne Fergason
555 13th Street NE
Salem, OR 97301-4178
Phone: 503-986-5805
Leeanne.fergason@odot.state.or.us

EXHIBIT A
Project Description, Key Milestones, Schedule and Budget
Agreement No. 33118

Application Number: 11-137

Project Name: Milwaukie: Additions and Improvements to Bicycle Network, Sidewalk Addition, and Crossing Improvements

A. PROJECT DESCRIPTION

The project will construct continuous sidewalks, curb ramps, and marked bike lanes along both sides of Linwood Ave from Harmony Rd to Monroe St, will include crossing beacons at 3 intersections (Furnberg St, Aspen St, & Monroe St), and install crosswalk striping at all intersections along the project area.

Recipient acknowledges that such Project improvements funded under this Agreement may trigger other Recipient responsibilities under the Americans with Disabilities Act. Recipient agrees that it is solely responsible for ensuring Americans with Disabilities Act compliance pursuant to Exhibit B, Recipient Requirements, #10.

B. PROJECT KEY MILESTONES AND SCHEDULE

The Project has six (6) Key Milestone(s). Key Milestones are used for evaluating performance on the Project as described in the Agreement. Neither Key Milestone 1, Scoping and planning, nor Key Milestone 6, Project completion, can be changed without an amendment to the Agreement.

If Recipient anticipates either that Key Milestone 1 will require material changes or that Key Milestone 6 will be delayed by more than ninety (90) days, Recipient shall submit a Request for Change Order, as described in Section 4(c) of the Agreement, to SRTSPProgramMailbox@odot.state.or.us as soon as Recipient becomes aware of any possible change or delay. Recipient must submit the Request for Change Order before materially changing the project scope (Key Milestone 1) or delaying the Project completion more than 90 days (Key Milestone 6), as the case may be. Adjustments to all milestone dates must be noted in the quarterly reports.

Table 1: Key Milestones

Key Milestone	Description	Estimated Due Date
1	Scoping and planning	6 weeks from Agreement Execution
2	Community Outreach	128 weeks from Agreement Execution
3	Right of way and land acquisition	N/A
4	Permits	76 weeks from Agreement Execution
5	Final plans/bidding engineering documents	63 weeks from Agreement Execution

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6	Construction contract award	76 weeks from Agreement Execution
7	Utilities Relocation	N/A
8	Project completion (Project must be completed within 5 years of agreement execution.)	8/6/2021

Table 2 – Funding Breakdown

1	TOTAL PROJECT COST	\$2,012,300
2	RECIPIENT'S CASH MATCH (minimum 20% of Total Project Cost and any portion of the Project which is not covered by SRTS Grant Funds. \$0 in prior expenditures are included in Recipient's Cash Match.)	\$804,920 (40%)
3	SRTS GRANT FUNDS	\$1,152,330

EXHIBIT B

Recipient Requirements

1. Recipient shall comply with all applicable requirements of ORS 184.740 to 184.742 and Oregon Administrative Rule (OAR) 737-025-0010 through 737-025-0093.
2. Recipient shall comply with all applicable provisions of ORS 279C.800 to 279C.870 pertaining to prevailing wage rates and including, without limitation, that workers on the Project shall be paid not less than rates in accordance with ORS 279C.838 and 279C.840 pertaining to wage rates and ORS 279C.836 pertaining to having a public works bond filed with the Construction Contractors' Board.
3. Recipient acknowledges and agrees that, whenever OAR 839-025-0230(4) requires ODOT as the public agency providing public funds for a project that is a public work under ORS 279C.800(6)(a)(B) to pay the fee required under ORS 279C.825, ODOT will calculate and pay the fee and deduct the amount of the fee from Recipient's Grant Funds under this Agreement.
4. Recipient shall notify ODOT's SRTS Program Manager in writing when any contact information changes during the term of this Agreement.
5. Recipient must provide a "cash match," as that term is defined in OAR 737-025-0010, in an amount equal to **40%** of the Eligible Costs. ODOT will reimburse Recipient pursuant to section 6.a of the Agreement. Recipient is responsible for all Project costs, whether Eligible Costs or otherwise, in excess of the Grant Funds.
6. Recipient shall pay back all of the Grant Funds to ODOT if Project is not completed in accordance with, or consistent with Exhibit A and Exhibit D, as each may be amended. Recipient obligations for Recovery of Grant Funds are provided in Section 6.d of this Agreement.
7. Recipient and ODOT's SRTS Program Manager, or designee, shall, upon completion of all on-site work for the Project, perform a final on-site review. Once the review is completed, the ODOT SRTS Program Manager may recommend acceptance of the Project by providing written documentation affirming that the Project is complete.
8. Recipient shall, at its own expense, maintain and operate Project upon completion and throughout the useful life of Project at a minimum level that is consistent with normal depreciation or service demand or both. ODOT and Recipient agree that the useful life of Project is defined as twenty (20) years. Recipient has, by submitting its application for this grant, represented and certified to sufficient funds and to its ability to operate and maintain Project. Recipient may not transfer, convey, sell or lease the property and assets of the Project during the useful life of the Project without the prior written approval of ODOT. Such approval shall not be unreasonably withheld. Recipient agrees to require any successor owner of the Project property to comply with this requirement. Failure to comply with this requirement may be remedied by Recipient or its successor in interest by (a) restoring the property to the uses(s) required by this Agreement or (b) repaying expended funds. In the event repaying expended funds is required, the amount determined using the Straight Line Depreciation (SLD) method must be repaid to ODOT. The SLD is calculated by taking the grant amount divided by twenty years. ODOT may conduct site reviews of the Project as provided in Section 8.a of this Agreement throughout the useful life of the Project. This paragraph shall survive any expiration or termination of this Agreement.

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9. Recipient shall provide pre-construction Project photographs within thirty (30) days of the execution of this Agreement. Recipient shall provide Project photographs thirty (30) days after Project is completed.

10. Americans with Disabilities Act Compliance:

- a. **State Highway:** For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):
- i. Recipient shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Recipient shall follow ODOT's processes for design, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iii. At Project completion, Recipient shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<http://www.oregon.gov/ODOT/CONSTRUCTION/Pages/Forms.aspx>
 - iv. Recipient shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Recipient and prior to release of any Recipient contractor.
 - v. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction, to the greatest extent possible.
- b. **Local Roads:** For portions of the Project located on Recipient roads or facilities that are not on or along a state highway:
- i. Recipient shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
 - ii. Recipient may follow its own processes or may use ODOT's processes for design, modification, upgrade, or construction of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT

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Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

<http://www.oregon.gov/ODOT/CONSTRUCTION/Pages/Forms.aspx>;

Additional ODOT resources are available at:

<http://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

ODOT has made its forms, processes, and resources available for Recipient's use and convenience.

- iii. Recipient assumes sole responsibility for ensuring that the Project complies with the ADA, including when Recipient uses ODOT forms and processes. Recipient acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
- iv. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction, to the greatest extent possible.
- c. Recipient shall ensure that any portions of the Project under Recipient's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Recipient ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Recipient identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are completed by Recipient or abutting property owner pursuant to applicable local code provisions,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- d. Maintenance obligations in this section shall survive termination of this Agreement.

11. Additional requirements

General Standards. The Project shall be completed within industry standards and best practices to ensure that the functionality and serviceability of the Program's investment meets the intent of the application and the Program.

EXHIBIT C

Subcontractor Insurance Requirements

GENERAL.

Recipient shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between Recipient and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Recipient. Recipient shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall Recipient permit a contractor to work under a Subcontract when the Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the Recipient directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

TYPES AND AMOUNTS.

1. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.
2. **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to ODOT. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by ODOT:

Bodily Injury, Death and Property Damage:

Not less than \$2,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence). Annual aggregate limit shall not be less than \$4,000,000.

3. **AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.** Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by ODOT:

Bodily Injury, Death and Property Damage:

Not less than \$2,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

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4. **ADDITIONAL INSURED.** The Commercial General Liability Insurance and Automobile Liability insurance must include the State of Oregon, ODOT, its officers, employees and agents as Additional Insureds, but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.
5. **"TAIL" COVERAGE.** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of twenty-four (24) months following the later of : (i) the contractor's completion and Sponsor's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and ODOT may grant approval of the maximum "tail " coverage period reasonably available in the marketplace. If ODOT approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
6. **NOTICE OF CANCELLATION OR CHANGE.** The contractor or its insurer must provide thirty (30) days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s). Any failure to comply with the reporting provisions of this clause shall constitute a material breach of this Agreement and shall be grounds for immediate termination of this Agreement.
7. **CERTIFICATE(S) OF INSURANCE.** Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees) and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage. Required insurance coverages shall be obtained from insurance companies acceptable to ODOT and the contractor shall pay for all deductibles, self-insured retention or self-insurance.
8. **INSURANCE REQUIREMENT REVIEW.** Recipient agrees to periodic review of insurance requirements by ODOT under this Agreement and to provide updated requirements as mutually agreed upon by ODOT and Recipient.
9. **ODOT ACCEPTANCE.** All insurance providers are subject to ODOT acceptance. If requested by ODOT, Recipient shall provide complete copies of its Contractors' insurance policies, endorsements, self-insurance documents and related insurance documents to ODOT's representatives responsible for verification of the insurance coverages required under this Exhibit C.

The Recipient shall immediately notify ODOT of any change in insurance coverage.



COUNCIL RESOLUTION No. 23-2019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO SIGN AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MILWAUKIE AND THE OREGON DEPARTMENT OF TRANSPORTATION FOR THE LINWOOD SAFE ROUTES TO SCHOOL PROJECT.

WHEREAS, the City of Milwaukie believes that every student deserves a safe route to school; and

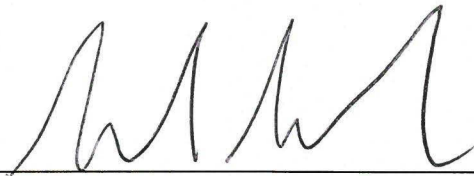
WHEREAS, the identified improvements on Linwood are consistent with the city's Safe Access for Everyone Program and Bicycle and Pedestrian Accessibility Plan; and

WHEREAS, the City Council supports the successful application to Oregon Department of Transportation's (ODOT) Safe Routes to School program;

Now, Therefore, be it Resolved the City Council of the City of Milwaukie authorizes the Mayor to sign an intergovernmental agreement with ODOT to accept Safe Routes to School infrastructure grant funds for the Linwood Safe Routes to School project.

Introduced and adopted by the City Council on **March 19, 2019**.

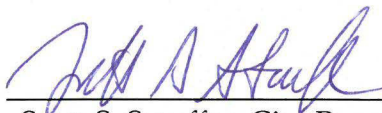
This resolution is effective immediately.

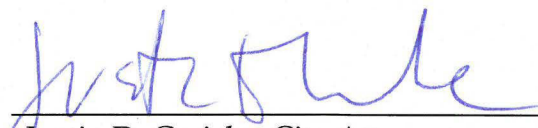


Mark F. Gamba, Mayor

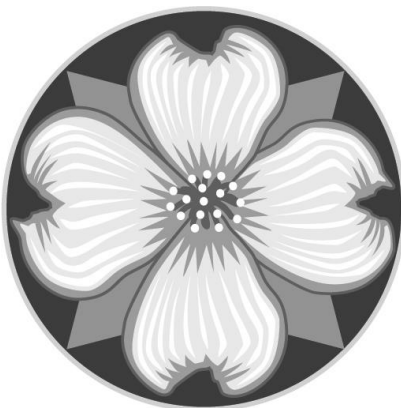
ATTEST:

APPROVED AS TO FORM:



Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney



RS Agenda Item

7

Business Items



COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager

Date Written: Feb. 5, 2021

Reviewed: Blanca Marston (as to form), Administrative Assistant, and
Bonnie Dennis, Finance Director

From: Natalie Rogers, Climate Action and Sustainability Coordinator, and
Peter Passarelli, Public Works Director

Subject: Resolution for Financial Divestment from Fossil Fuel Industries

ACTION REQUESTED

Council is asked to consider adopting a resolution urging the State of Oregon to divest from fossil fuel companies, and sending a corresponding letter to the Oregon Investment Council (OIC) calling for divestment of the Oregon Short Term Fund (OSTF), Oregon Public Employees Retirement Fund, the Common School Fund, and the State Accident Insurance Fund (SAIF), and commitment to climate action.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

[July 10, 2018](#): Staff presented to Council a draft letter encouraging the OIC to divest from the fossil fuel industry in alignment with Council climate action goals.

[October 2, 2018](#): Council unanimously adopted the Milwaukie Community Climate Action Plan (CAP). Staff identified and presented 21 actions to be initiated in the following two years.

[January 21, 2020](#): Council adopted a resolution declaring a climate emergency and calling for the CAP carbon goals to be accelerated.

ANALYSIS

For the purposes of this resolution, a "fossil fuel company" is defined as any of the two hundred and twenty publicly-traded companies with the largest coal, oil and gas reserves found at the [Fossil Free Indexes](#), also known as The Carbon Underground 200™ and the Tar Sands 20™. This definition is consistent with other regional resolutions.

The burning of fossil fuels for industry, transportation, and other human activities has increased the concentration of greenhouse gases in the atmosphere, causing climate change. Investment into the fossil fuel industry supports these activities and can lead to the development of new fossil fuel extraction and distribution infrastructure. An argument for divestment of funds from fossil fuels can be made based on the moral grounds of removing support for climate change causing activities and the environmental and social impacts felt from fossil fuel use, including oil spills, health impacts, water and air quality impacts and more. There is a financial argument for divestment as well, with reports coming out addressing the risk and shrinkage of the fossil fuel industry¹ as well as the comparable

¹ Institute for Energy Economics and Financial Analysis (2018), The Financial Case for Fossil Fuel Divestment, URL: <http://ieefa.org/wp-content/uploads/2018/07/Divestment-from-Fossil-Fuels-The-Financial-Case-July-2018.pdf>

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

performance of a divested portfolio to a portfolio with fossil fuel investments². Considering the regional and national phase out of coal generation plants, as well as the decreased cost and corresponding increased development of renewable infrastructure³, funds may be better placed with investments into the clean energy sector.

Multiple jurisdictions in Oregon, including Ashland, Corvallis, Portland, and Metro, have called for the divestment of state funds from the fossil fuel industry, including funds in the Local Government Investment Pool (LGIP) and the OSTF. The LGIP is an open-ended, no-load diversified portfolio offered to eligible participants, which include—but are not limited to—any municipality, political subdivision or public corporation of this state that by law is made the custodian of, or has control of, any public funds. The pool is commingled with state funds in the OSTF, which as of September 2020, currently totals over 24 billion dollars⁴. The OSTF Board advises the OIC and the Oregon State Treasury Investment staff in the management of the OSTF. The OIC oversees the investment and allocation of all State of Oregon trust funds, including the Oregon Public Employees Retirement Fund, the Common School Fund, and SAIF. According to the Statement of OIC Investment and Management Beliefs, “The OIC is vested with the authority to set and monitor portfolio risk. Both short-term and long-term risks are critical. The OIC must weigh the short-term risk of principal loss against the long-term risk of failing to meet return expectations.”

The city has already taken steps to reduce its affiliation with the fossil fuel industry, including incorporating fossil fuel and climate interview questions in the city’s bank selection process, resulting in a contract with Umpqua Bank who does not currently provide loans to fossil fuel projects. As the CAP directs the city to “Partner with other local and regional governments to influence local, state and federal climate policy activities,” a resolution urging the OIC and State Treasury to divest from fossil fuels would be in alignment with the city’s climate goals.

BUDGET IMPACT

Divestment of the OSTF from fossil fuel industries may impact the rate of return of the Local Government Investment Pool resulting in the city to review other investment opportunities outside of LGIP.

WORKLOAD IMPACT

None.

² Blachman, Jim, Gerard Cronin, Daniel Kern, Advisor Partners, “Fossil Fuel Divestment: Risk and Opportunities”, URL: https://www.advisorpartners.com/wp-content/uploads/2018/10/fossil_fuel_study_07-9-13.pdf

³ Marcacci, Silvio (2020), Forbes, “Renewable Energy Prices Hit Record Lows: How Can Utilities Benefit From Unstoppable Solar And Wind?”, URL: <https://www.forbes.com/sites/energyinnovation/2020/01/21/renewable-energy-prices-hit-record-lows-how-can-utilities-benefit-from-unstoppable-solar-and-wind/?sh=1f70b0392c84>

⁴ Oregon State Treasury (2020), Oregon Short Term Fund Third Quarter Fund Facts, URL: <https://www.oregon.gov/treasury/public-financial-services/oregon-short-term-funds/Documents/OSTF-Fund-Facts/2020/2020-Q3-OSTF-Fund-Fact-Page.pdf>

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

CLIMATE IMPACT

The divestment of funds from fossil fuel industries may reduce funding for fossil fuel projects and increase available funding for potential investment in the clean energy industry. This may help increase the availability of clean energy for communities, innovative technology development, and decarbonization of the energy sector.

COORDINATION, CONCURRENCE, OR DISSENT

Climate and finance staff have been working on this topic and will continue to coordinate on advocacy for financial policy in alignment with the city's climate goals. Staff will work with other cities to continue to advocate for state divestment and further climate policies at the state level.

STAFF RECOMMENDATION

Staff recommends that Council adopt a resolution calling for the divestment of state funds from fossil fuels, and sign the letter directed to OIC and the State Treasurer urging divestment and commitment to climate action.

ALTERNATIVES

1. Council may provide direction to staff for revisions of the resolution and/or letter.
2. Council may decline to adopt a resolution and/or sign a letter calling for the divestment of funds from fossil fuel industries.

ATTACHMENTS

1. Resolution for Financial Divestment from Fossil Fuel Industries
2. Cover Letter for Resolution Distribution



COUNCIL RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, IN SUPPORT OF DIVESTMENT FROM FOSSIL FUEL INDUSTRIES FOR STATE OF OREGON FUNDS.

WHEREAS, the climate crisis is the largest environmental threat to humanity, caused by the combustion of fossil fuels for human activity; and

WHEREAS, for the purposes of this resolution, a “fossil fuel company” shall be defined as Fossil Free Indexes (FFI) Solutions’ Carbon Underground 200™, the two hundred publicly-traded companies with the largest coal, oil and gas reserves, and the Tar Sands 20™, the twenty top publicly-listed owners of oil sands; and

WHEREAS, investment in fossil fuel companies supports the continued extraction of fossil fuels and development of new fossil fuel infrastructure, further contributing to climate change; and

WHEREAS, diverting investments from fossil fuel companies to clean energy industries can further support the development of renewable and innovative decarbonization technology; and

WHEREAS, multiple cities and states across the United States have called for and committed to divestment from fossil fuels, including the Oregon cities of Portland, Ashland, and Corvallis; and

WHEREAS, the City of Milwaukie has taken steps to commit to climate action, including adopting a resolution declaring a climate emergency and incorporating climate considerations in the selection process for the city’s banking services.

NOW BE IT THEREFORE RESOLVED, that the City Council of the City of Milwaukie, Oregon, calls upon the Oregon State Treasury to commit to climate action by immediately stopping new investments in fossil fuel companies, and to take steps to divest all holdings from the fossil fuel companies within five years, as well as release periodic updates to the public, detailing progress made towards full divestment; and

BE IT FURTHER RESOLVED, that the city will advocate for the Oregon Short Term Fund (OSTF) Board, the Public Employee Retirement System (PERS) Board, and the Oregon Investment Council (OIC) to divest from fossil fuel companies, including directly held or commingled assets that include holdings in fossil fuel public equities and corporate bonds; and

BE IT FURTHER RESOLVED, that the city will send a copy of this resolution to the Oregon State Treasurer, the OSTF Board, and the PERS Board with a letter urging them to divest their holdings from fossil fuel companies.

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

Introduced and adopted by the City Council on **February 16, 2021.**

This resolution is effective immediately.

Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

February 17, 2021

State Treasurer Tobias Read
900 Court St. NE,
Salem OR 97301
oregon.treasurer@ost.state.or.us

Re: Commitment to climate action through fossil fuel divestment

To Mr. Tobias Read, Oregon State Treasurer, the Oregon Investment Council, the Oregon Short Term Fund Board, and the Public Employee Retirement Board,

The City of Milwaukie is committed to climate action – in 2018, the city adopted a Climate Action Plan (CAP) establishing greenhouse gas reduction goals, and in 2020, declared a climate emergency and accelerated the city’s climate goals. Milwaukie is implementing strategies in the CAP to reduce and mitigate its contributions to climate change, including subscription for 100% carbon-free electricity for city operations and incorporating climate criteria in its selection process for banking services. On February 16, 2021, the City Council adopted a resolution calling for the State of Oregon to divest funds from fossil fuel companies, particularly Fossil Free Indexes (FFI) Solutions’ Carbon Underground 200™, the two hundred publicly-traded companies with the largest coal, oil and gas reserves, and the Tar Sands 20™, the twenty top publicly-listed owners of oil sands.

By investing in fossil fuel companies, the State of Oregon and the jurisdictions contributing to state-managed funds are complicit in the support of fossil fuel extraction and use, and the resulting increase in concentration of greenhouse gas emissions that cause climate change. Divesting from fossil fuel companies can increase the availability of funds for investment in clean energy and innovative decarbonization technology industries – this will be critical in order to achieve both Milwaukie’s climate goals as well as the state’s own decarbonization goals.

For the benefit of Oregon communities, as well as communities around the world facing the health, environmental and economic impacts from fossil fuel extraction, combustion, and pollution, we urge the Oregon State Treasury to commit to climate action by:

- Immediately stopping new investments in fossil fuel companies; and
- Take steps to divest all holdings from the fossil fuel companies within five years; and
- Release periodic updates to the public, detailing progress made toward full divestment.



Furthermore, we urge the Oregon Investment Council, the Oregon Short Term Fund Board, and the Oregon Public Employee Retirement System Board to divest from fossil fuel companies, including directly held or commingled assets that include holdings in fossil fuel public equities and corporate bonds.

Many other communities, including Portland, Corvallis, and Ashland have already called for the divesting of state funds from fossil fuels. The City of Milwaukie is proud to join them in this critical step in the fight against climate change.

Thank you,

Mark Gamba, Mayor

Cc: Ms. Rachel Wray
Oregon State Treasurer Tobias Read's Office
Public Information Director
Office: 503-378-5474
Email: Rachel.Wray@ost.state.or.us

PERS Board
Email: PERS.Board@state.or.us

THIS MEETING WAS CANCELED, AGENDA ITEMS WERE RESCHEDULED

Packet materials for item 8. A. are located in a separate PDF document.