

# AGENDA

## MILWAUKIE CITY COUNCIL JULY 6, 2006

**MILWAUKIE CITY HALL**  
10722 SE Main Street

**1985<sup>th</sup> MEETING**

### REGULAR SESSION – 7:00 p.m.

- I. **CALL TO ORDER**  
**Pledge of Allegiance**
2. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
3. **CONSENT AGENDA** *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the “Consent” portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*
  - A. **City Council Minutes**
    1. **Work Session Minutes of May 16, 2006**
    2. **Regular Session Minutes of May 16, 2006**
  - B. **42<sup>nd</sup> Avenue Sidewalk and Storm Project Construction Award**
  - C. **Authorize the City Manager to Sign Purchase Orders For City Vehicles And Public Works Equipment**
  - D. **Payment to Oak Street LLC for Oak Street Improvements**
  - E. **Municipal Court Judge Contract Extension**
4. **AUDIENCE PARTICIPATION** *(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are “not on the agenda” may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, “all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous.” The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)*
5. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*

**None Scheduled**

6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

- A. **Banking Services Agreement (Stewart Taylor)**
- B. **Texaco Advisory Committee Appointments (Mayor Bernard)**
- C. **Council Reports**

7. **INFORMATION**

- A. **Riverfront Board Minutes, May 2, 2006**
- B. **Design and Landmarks Committee Minutes of February 22 and May 3, 2006**

8. **ADJOURNMENT**

**Public Information**

- Executive Session: The Milwaukie City Council will meet in executive session immediately following adjournment pursuant to ORS 192.660(2)(e) to deliberate with persons designated by the governing body to negotiate real property transactions.

All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

## MINUTES

### MILWAUKIE CITY COUNCIL WORK SESSION

May 16, 2006

**Mayor Bernard** called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Council Present: Councilors Barnes, Collette, Loomis, and Stone.

Staff Present: City Attorney Gary Firestone, Community Services Director JoAnn Herrigel, Development/Public Works Director Ken Asher, Resource and Economic Development Specialist Alex Campbell, Engineering Director Paul Shirey, and Building Official Tom Larsen.

#### **Advisory Board Interviews**

The Council interviewed Jane Hanno for reappointment to her position on the Center/Community Advisory Board and Devon Graham for a vacancy on the Cable Access Board.

#### **Metro Construction Excise Tax**

**Mr. Larsen** reported that a certain amount of land was brought into the urban growth boundary (UGB) in 2002 and 2004, and jurisdictions were mandated by Metro to do long-range planning for those areas. In 2005 Metro realized none of the jurisdictions were carrying out their concept plans because they lacked funding. The purpose of the tax was to create a funding base that Metro would give out as grants. Metro's goal was to collect \$6.3 million over a period of several years. The tax was .12% of the value of the job, and collection would begin in July. For example, a \$100,000 job would pay \$120. Jobs valued at less than \$100,000 were exempt, so generally residents doing additions and other home improvements would not pay the tax. There were other exemptions for charitable organizations. A 30-member group composed of elected officials, construction industry groups, school district representatives, and other stakeholders considered the issue and supported the tax. The homebuilders supported the proposal because completed concept plans would open more land for development.

**Councilor Stone** asked who had signed onto this. The staff report stated that all jurisdictions would "likely" sign onto this IGA.

**Mr. Larsen** replied the IGA was still in draft form, and each of the governing bodies had to adopt it by resolution.

**Councilor Stone** asked how much staff time it would take to collect the fee.

**Mr. Larsen** replied building department staff collected several other fees such as system development charges (SDC), so little additional time would be required once the fee was set up in the permitting software. The local jurisdictions can retain 5% for administrative fees.

**Councilor Stone** had a problem with Metro imposing a tax and the cities collecting it without a vote of the people. She understood what Metro was trying to do, but somehow she thought it seemed underhanded.

**Mr. Larsen** said Metro had the authority as a taxing entity. The builders had to pay the fee whether the cities or Metro collected it. He thought it was better customer service to collect the fees when the permits were issued.

The group agreed to put the item on the June 6 consent agenda.

## **Riverfront Concept**

Board members present: Michael Martin, Mitch Wall, Dave Green, Mike Stacey, Shane St. Clair, and Gary Klein.

The group discussed the concept plan developed by the Riverfront Board with the assistance of Gill Williams from David Evans Associates. **Ms. Herrigel** said in 2000 the City adopted a Downtown Riverfront Plan into its Comprehensive Plan. It was developed after a 1-1/2 year public input process. That plan did not have a boat ramp in it, and since that time there had been a lot of discussion about the absence or presence of the boat ramp. A lot of progress had gone into developing the riverfront. In 2003, the Klein family donated Klein Point just south of the mouth of Johnson Creek. In 2005, the last two remaining buildings on the riverfront were demolished, and in the fall a survey went out to the public seeking input on two concepts. One of the concepts had a boat ramp and the other did not. The majority of the survey responses preferred Concept #2 that showed a boat ramp. In January 2006 she reported the survey response to the Council and outlined the Board's proposal for integrating the survey response into a final design concept.

**Mr. Green**, Riverfront Board Chair, reported the Board held a design meeting with a number of resource people including park and program designers and Oregon State Marine Board (OSMB) representatives. The question was "what did Milwaukie really want in its park?" They needed guidelines and criteria by which to help develop the details. In April the Riverfront Board toured several facilities to look at ramps and parks, which sparked a lot of good discussion among the members about integrating parking and ramp into the park area. He reviewed the elements the Board felt were critical to the riverfront park. The boat ramp remained in essentially the same location with the trailer parking moved tight with McLoughlin Boulevard at the upper end of the park in order to open up more space where the lower parking lot was currently located. They also squeezed in a turnaround for boat trailers. One of the issues they grappled with was just moving vehicles and trailers through the park and making sure there was turnaround space and a queuing area to create a functional traffic flow. He felt the plan was workable in general, and it provided people with a turnaround similar to what they now had although it was somewhat tighter. There was no parking on the lower level, and the upper level was moved toward McLoughlin Boulevard. The Board worked to get 14 trailer spaces between the creeks, which was the ultimate compromise between the seven board members. Between the parking spaces at the log dump and the 14 spaces along McLoughlin Boulevard there were at least as many trailer parking spots as there are now. There was also some car parking identified for the Trolley Trail and in the roundabout area.

The Board thought it was important to shut down the traffic flow in and out of Jefferson Street so recommended closing Jefferson and moving all the trailers in and out at Washington where there was a signalized intersection. That further created more parking spaces along McLoughlin Boulevard. This was a significant change, and the Oregon Department of Transportation (ODOT) had yet to buy off on it.

**Councilor Stone** asked how much parking there would be and how much there was now.

**Ms. Herrigel** said there were currently 25 trailer parking spaces plus ADA and regular car parking for a total of 40 spaces.

**Mr. Green** said in this plan there were 14 trailer spots between the creeks and at least 10 at the log dump. Some of the County parking lot would be used in this plan, so the space sharing would have to be discussed.

**Councilor Stone** asked how many total spaces there were.

**Mr. Green** suggested not drilling down too deep because this was a concept plan, and a lot of design work still needed to be done. Currently the plan showed 31 boat trailers spots plus

about 25 car spaces. Two trailer and two car spots would have to be ADA. The Board also suggested using permeable pavers in all the parking areas to reduce stormwater runoff and the need for stormwater treatment systems. That was generally healthier for the river. It will be a huge issue to construct parking facilities and roadways and to improve the boat ramp in the sensitive area between Johnson and Kellogg Creeks. One of the other criteria was a dock at both the boat ramp and log dump.

**Mr. St. Clair** noted those were the difficult issues, and the Board also discussed the amphitheater and the Sunday Farmers' Market. From his perspective as a boat captain, this would be a very inviting entrance into the City.

**Mr. Green** added the Board was looking forward to working on other park elements in addition to the boat ramp and parking.

**Mayor Bernard** recognized the group's hard work and observed that some people would be happy that the boat ramp was still included while others would not.

**Mr. Green** said one of the elements important to all the Board members was keeping the area north of the ramp including Klein Point as natural areas.

**Michelle Bussard**, Executive Director Johnson Creek Watershed Council, commented on maintaining the connections north of the boat ramp and Johnson Creek. There were restoration opportunities at the confluence this project could support and enhance. Those opportunities included daylighting Spring Creek, enhancing instream habitat by focusing on the placement of large pieces of wood, creating off-channel habitat, and revegetation using natural species for bank stabilization. Just as the riverfront was the welcome mat for the City, it was also the threshold for migrating salmon. The fish would either go effortlessly or not. She urged the Council to think about less and not more parking; consider that any paved surfaces be done with permeable paving; all of the plantings on site were native species and eco-turf so there were not chemical enhancements; and emphasis on educational and interpretive signage. Because the environment, economy, and the community were inextricably intertwined, the Watershed Council appreciated the desire to accommodate the boating and fishing enthusiasts. She also wanted to say 'bravo' for moving the parking area further from the confluence to minimize the disturbance. That was key to the Watershed Council. Tonight the City had a chance to recognize the Oregon Plan that balanced the environmental, economic, and social factors. It encouraged civic engagement and looked like the Rotary Club adopting Klein Point and sharing that partnership with the Waldorf School. It looked like a boater who just purchased snacks from a downtown merchant before going out to fish. It was an open-air concert with picnic items bought at the open-air market. In 2002 the US Fish and Wildlife and the US Department of Commerce did a study and found that 31% of the US population engaged in wildlife watching, and spent 16% more on their trips and items. That could mean a lot of sales for downtown merchants. This and the decisions that followed would frame what happened both above and below the waterline on the Milwaukie waterfront. The decision would determine the sustainability and livability of this place into virtual perpetuity.

**Councilor Stone** understood Ms. Bussard recommended keeping parking as far as possible from the confluence. Was this concept plan agreeable to the Watershed Council?

**Ms. Bussard** replied the farther and the fewer the better to minimize disturbance to that area. She felt the compromise that had been reached was agreeable to the Watershed Council.

**Councilor Stone** asked if the location of the boat ramp was agreeable also.

**Ms. Bussard** replied she would not say that it was not.

**Councilor Stone** said her question all along was if this ramp had to be in that exact location and could it be further south.

**Ms. Bussard** said one of the keys was that there be a ten-year limit on the City's agreement with OSMB to keep open the option of relocating the boat ramp.

**Mr. Green** said after the Board reached consensus on the plan it talked about OSMB funding. There was some concern based on the agreements in place historically and the repayment requirements if there were changes to the facility. Some Board members were concerned about getting locked in given the uncertainties of the Kellogg Treatment Plant and the potential for moving the boat ramp. The Board was concerned about having to repay the Marine Board in full for its investment if the facility were moved further south. This was one of the difficult issues for the City Council, and all the Board could do was to make a recommendation. OSMB may have some comments on the concept plan and would certainly have comments on any proposed restrictions related to funding. The Board recommended with a 6:1 vote that the Council limit its commitment to the Marine Board. One suggestion was to limit the commitment to 10 years in which the City would have to repay OSMB's investment in full. The other option would be to identify facilities and only fund facilities the Council did not feel would be relocated even if the ramp were relocated. For instance, the City might want to keep the docks, parking, and restrooms whether the ramp was there or not.

**Mr. St. Clair** added from a practical matter bathometric data did not indicate there was another location to the south for the boat ramp.

**Mayor Bernard** was concerned from a business perspective about depreciation. No business would pay for something that was falling apart.

**Mr. St. Clair** was convinced an effective compromise could be reached.

**Councilor Stone** asked who was consulted about the possibilities of moving the ramp further south.

**Mr. St. Clair** said OSMB did a bathometric study because the Riverfront Board wanted to know if the ramp could be moved to the log dump. The grade and steepness generally precluded an effective move of the ramp to that location. Realistically he felt one should consider how quickly that would happen. The ramp was in its current location because that was the best place for it considering the depth of the river and that sort of thing. The question was where else would it work.

**Councilor Stone** said just looking at the design, the ramp bisected the park. It would be nice to have it further south to really open up the park.

**Mr. Green** said the Board looked at moving it south between the creeks, but that would create some fish passage issues the ramp was nearer either Kellogg or Johnson Creeks. From that standpoint, the ramp was in the best place. He saw the letter from OSMB just yesterday, and he, even though he was an engineer, was not clear about its contents. It did sound like there were some problems with the turning radii and the steepness of the drop off and fitting the ramp with the required slopes. He had asked Ms. Herrigel to get some drawings so the Board could better understand the constraints.

**Mr. St. Clair** thought moving the access to Washington Street and moving vehicular traffic to the south made a nice feature. People would walk out on the dock to the pavilion, so he did not see it as a negative feature in the middle of the park.

**Mr. Klein** agreed that the dock where it was located was the best place between the creeks. He personally wished it could be further south, but until an option came up this was the best spot. By further south he meant the Kellogg Treatment Plant. Too far beyond that there were issues with the bay and how shallow it was. There had been a moorage there in the past, but it was gone because of that issue. Here it was the fish passage issue.

**Councilor Collette** asked if there would be any issues with having the Sunday Farmers' Market on turf.

**Mayor Bernard** thought there might be some permeable pavers where the tents were set up, but that would be a detail to consider.

**Mr. Wall** said one of the experts recommended putting in the infrastructure first – such as electricity and water – where there were repetitive needs. That part of the process needed to be planned for at the front end.

**Mr. Green** suggested that the Sunday Market could use the trailer spots on McLoughlin Boulevard. It was busy but there would be a lot of advertising.

**Councilor Collette** observed that the children's play area was not shown in the concept plan.

**Mr. Green** replied it dropped off because so few people commented on that feature in the survey, but there was room to put it in. It did not seem like an important issue to people for whatever reason. The Board voted unanimously on all elements with the exception of OSMB funding which was 6:1.

**Mr. Wall** commented on the scale used by the group. Once the group came to consensus, each member was asked at what point on the scale his/her commitment level was. How that turned out showed this was a real compromise.

**Councilor Stone** commented this promoted good discussion.

**Mr. Stacey** added this was a plan that everyone could support.

**Councilor Loomis** was pleased. Ms. Bussard was involved with Oregon Solutions and got the Governor there. He was glad this was a compromise and followed Concept #2. His only concern was putting a limit on the OSMB funding. The last time the Council negotiated was for Milwaukie Jr. High, and that was not pretty. His concern was that he wanted to get it done. These were the types of features that OSMB funded, and if there was another way fine.

**Mayor Bernard** felt the City should at least run the idea by the Marine Board, but he would rather sell pies than commit the City to 20 years.

**Councilor Loomis** did not want to go looking for a partner and demanding things.

**Councilor Stone** did not want to commit to 20 years. There were a lot of unknowns over that period of time such as the sewage treatment plant. It was a lot of money to invest. Milwaukie needed its boat ramp. Milwaukie was the meeting of the waters and everyone needed access to the river. She would hate to see Milwaukie commit to something to put the infrastructure in and maybe tear it out with a big bill to pay. She wanted to make sure all the possibilities were considered.

**Mr. Martin** said the Riverfront Board did discuss asking the Marine Board if it would be sufficient for the City to find a substitute.

**Mayor Bernard** recalled that OSMB had not been willing to compromise on the matter five years ago, but they may have changed.

**Mr. Martin** observed that OSMB needed the City.

**Mr. Green** thought it was important for OSMB to fit into Milwaukie's riverfront plans and not vice versa.

**Councilor Stone** asked the feasibility of parking on east side of McLoughlin Boulevard.

**Councilor Collette** thought people would use it but not necessarily dedicate it to the park.

**Mr. Green** added there were issues related to long parking slots for trailers and turnaround needs. There could be car parking for shoppers.

**Mr. Wall** commented on the seasonal nature of boat parking.

**Mr. St. Clair** noted those parking spaces could be seasonally allocated for vehicles and cars and for events. The highest impact for boating was January through April.

**Mr. Green** said the Board felt it could recommend that the space be committed to boat trailer parking during spring fishing season. There were seasonal shifts, so uses could be flip-flopped.

**Councilor Collette** thought it could be a wonderful combination with the Farmers' Market that started in May.

**Mayor Bernard** heard consensus on the concept plan and hoped the Board would stay on to work out the details.

**Mr. Green** thanked the Board and commented on the compromises to come up with this plan. He was excited about moving forward and making a unanimous recommendation to Council. He urged putting out the request for proposal (RFP) as soon as possible to bring a designer on board. He thanked Gill Williams who did all the graphics since 1998 most of which he donated. The riverfront project would not be where it was without Ms. Herrigel.

**Councilor Stone** suggested honoring Mr. Williams at a Council meeting.

**Councilor Collette** provided an update on the Artrain, USA.

**Mayor Bernard** adjourned the work session at 6:42 p.m.

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Pat DuVal, Recorder

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
MAY 16, 2006**

**CALL TO ORDER**

**Mayor Bernard** called the 1982<sup>nd</sup> meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Deborah Barnes	Joe Loomis
Carlotta Collette	Susan Stone

Staff present:

Gary Firestone, City Attorney	Les Hall, Code Compliance Coordinator
Kenny Asher, Community Development/Public Works Director	

**PLEDGE OF ALLEGIANCE**

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

**Mayor Bernard** read a proclamation naming May 22 – 27 as Poppy Days in the City of Milwaukie. Nadine Menke was present on behalf of the American Legion Auxiliary. Any donations to the organization would go to veterans and their families.

**Mayor Bernard** read a proclamation naming May 26, 2006 as Veterans Recognition Day.

**CONSENT AGENDA**

It was moved by Councilor Stone and seconded by Councilor Barnes to approve the Consent Agenda:

- A. City Council Minutes of April 18, 2006
- B. Resolution No. 17-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Scott Churchill to the Planning Commission
- C. Resolution No. 18-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Bob Cooper to the Milwaukie Park and Recreation Board
- D. Resolution No. 19-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Mart Hughes to the Milwaukie Park and Recreation Board
- E. Resolution No. 20-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Harold “Sonny” Newson to the Park and Recreation Board.

Motion passed unanimously.

## AUDIENCE PARTICIPATION

None.

## PUBLIC HEARING

### TriMet Park-and-Ride – Files A-06-01, CSO-05-04, and TPR-05-04

**Mayor Bernard** called the public hearing on the appeal of the Planning Commission's approval of a request for CSO-05-04 and TPR-05-04 for property located at 9600 SE Main Street is called to order at 7:09 p.m. The Council opened the hearing on this matter on April 18, 2006, and heard testimony from the appellant, the applicant, and several citizens. The Council continued the hearing to the date certain of May 16, 2006. The record was closed at the April 18, 2006 hearing. The remaining portions of the hearing were testimony in opposition to the appeal (in support of the applications), staff recommendation, appellant rebuttal, applicant rebuttal, and Council deliberation and decision.

The purpose of this hearing was to consider the appeal of the Milwaukie Planning Commission's approval of applications CSO-05-04 and TPR-05-04. This appeal was made by Mark Whitlow of Perkins Coie LLP on behalf of the Industrial District Property Owners. Mayor Bernard reviewed the appellants' reasons for denying the applications.

#### Site Visits and Ex Parte Contacts

**Mayor Bernard** and **Councilors Loomis** and **Collette** had been at or near the site. There were no additional ex parte contacts declared since the April 18, 2006 meeting.

#### Testimony of those opposed to the appeal and in support of the application

None.

#### Neutral Testimony

- **Mike Stacey, 2740 SE Kelvin, Milwaukie**

**Mr. Stacey** reported his interest started while he was watching a Council work session, and several gentlemen testified about the increase in truck traffic and how this proposal would adversely affect them. They quoted some percentages of increased traffic, and when asked about the numbers they did not have them to offer. Mr. Stacey decided to go to the site and count trucks. He had the opportunity to go by that intersection frequently, and at no time had he seen what he considered a problem. He spent three hours in the morning from 6:00 a.m. to 9:00 a.m. and from 4:00 p.m. to 7:00 p.m. on Monday April 17 and counted all the commercial traffic through the intersection. In the morning hours there were 83 commercial vehicles or approximately 27 per hour and 46 TriMet buses. In the evening there were only 29 commercial vehicles or about 10 per hour and 48 TriMet buses. He felt the only one to be adversely affected would be TriMet as the buses would compete with park-and-ride users. The morning hours would be more congested, but a TriMet lot user survey indicated that the largest percentage of the users would come from the south of Milwaukie via McLoughlin Boulevard. It was his interpretation that those vehicles would exit McLoughlin Boulevard at the off ramp by the dry cleaners. They would not even get to the intersection. They would get to the lot and be able to use it. In the evening hours it would be more of a problem for the people trying to get back onto McLoughlin Boulevard southbound. He was a commuter, and like any other commodity one tried to move, one took the path of least resistance. If it seemed like things were backing up at the intersection, he thought drivers would probably move into Milwaukie to access McLoughlin Boulevard.

**Councilor Barnes** asked Mr. Stacey why he decided he wanted to check it out as a citizen.

**Mr. Stacey** drove by the area and never saw a problem. When they could not produce the numbers when asked he wondered why and what those numbers were. He drove by that intersection at least twice daily going to and from work, and he had never seen a backup. The first part of this year for a couple of months he had the opportunity to travel through that area on a regular basis throughout the day and never saw a problem. It was a quick trip through, so he decided to take a count in case he had missed something.

**Councilor Stone** asked Mr. Stacey if he got a total number for larger trucks.

**Mr. Stacey** replied he had not separated them out. All he separated was commercial vehicles versus TriMet buses. Commercial vehicles were anything from a service van from Portland Mechanical to a semi-truck carrying multiple trailers.

**Mayor Bernard** asked if his truck had been counted.

**Mr. Stacey** said that it was. He added that the stop signs should be changed to 'hesitate' because no one stopped.

#### Staff Recommendation

**Ms. Rouyer**, 2100 SW River Parkway, Portland 97201 and **Mr. Weigel** provided the staff recommendation. Ms. Rouyer reported that by now the Council had heard a lot of testimony and reviewed a lot of paper. This was the point at which she would make the staff recommendation, the appellant would make his rebuttal, and the applicant's rebuttal. Procedurally the Council was being asked to determine the merits of the approval of the park-and-ride and the Planning Commission decision made on February 14. She reviewed the slides she used in her previous presentation to Council: a site overview, subject property at McLoughlin Boulevard/Milport/Main Street, a close-up of the property, the applicant's site plan, a summary of the appeal points, and the applicable criteria. She indicated she would put the slide of those criteria back up at the end of the rebuttal for Council information. She pointed out the community service overlay (CSO) requirements and notably the public benefits test, community service uses, and the general public interest, and that the benefits to the public outweighed the adverse impacts. Off-street parking and loading requirements were procedural requirements for minor quasi-judicial review and also section 1400 transportation planning design requirements and procedures. Under section 1400 with regard to the sidewalk the applicant was requesting an adjustment. In order to have an adjustment approved the applicant had to demonstrate compliance with those criteria which she reviewed on April 18.

**Ms. Rouyer** addressed certain points made during the April 18 appeal. Point #1 – the appellant made a statement that the parking demand would increase with the introduction of this park-and-ride. Staff concluded the parking demand would decrease with the introduction of this use. The original approved use on the site was the theater use, and there were 381 parking spaces. With this proposal there would be 329 spaces. Therefore, there was a decrease of overall parking demand on the site. Point #2 – Councilor Barnes asked if TriMet had an opportunity to respond to Ray Bryan's comments found on page 247 of the April 18 packet. Ms. Rouyer acknowledged that comment and reminded TriMet to address that in their testimony this evening. Point #3 – the point was made during the last hearing that this decision should be made as part of a larger planning process that involved discussion of the Milport/Main intersection improvements, traffic conditions, and other regional transit decisions. She reminded the Council that it was obligated to make the decision based on the criteria of the application and weighing whether the application met the applicable criteria. While

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**DRAFT MINUTES**

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those other issues were important to the community, this was an application before the Council with criteria attached to it. Point #4 – with all land use decisions in the state of Oregon there was a 120-day clock that would expire tomorrow.

Staff recommended that the Council uphold the February 14, 2006 Planning Commission approval of CSO-05-04, adopting the recommended findings and conditions in support of authorizing construction of a park-and-ride facility at 9600 SE Main Street.

**Councilor Loomis** had a question about the sidewalks and asked who would be responsible in the future for installing them if TriMet did not.

**Ms. Rouyer** replied the right-of-way would be dedicated with this proposal, but it would be the responsibility of whoever funded the street improvements at the time. It would not be the adjacent property owners; it would probably be a public entity.

**Mr. Firestone** clarified there was a possibility that there would be a future application by TriMet at the site and if so it could be imposed on TriMet at the time when there was a future land use application. Apart from that as Ms. Rouyer stated it would probably be a public cost.

**Councilor Loomis** asked who was responsible for maintaining the sidewalks and keeping them safe.

**Mr. Firestone** replied under the Municipal Code the adjoining property owners were responsible for sidewalks, so TriMet would be responsible for sidewalks that were there.

#### Appellants' Rebuttal

- **Mark Whitlow, Perkins Coie, 1120 NW Couch Street, 10<sup>th</sup> Floor, Portland 97209**

**Mr. Whitlow** submitted another letter raising the points of rebuttal. He reiterated that the property owners in the North Milwaukie Industrial area were not comfortable being in opposition to this application. It was inconsistent with their past and current desires. They had a history of working with the City both as a group and individually. That type of cooperative endeavor was in the NILUS Study and the Milwaukie Transit Center study in 2003 – 2004. They were serious when they said this was strange and uncomfortable for them. As he started with the letter of rebuttal they said they were not opposing the park-and-ride facility per se. They supported public transit in various ways and understood the importance of it including this portion of the community. But the fact remained that all the studies indicated this was not a good site for this type of transit facility.

**Mr. Whitlow** reviewed the points of the letter. Brian Ray, Kittleson Associates, who was part of both of the prior studies, and he presented broadly about the past of the North Milwaukie Industrial area and the decisions that have made that were a series of cuts that eliminated access not in a comprehensive way but in an ad hoc decision making way. A piece at a time things have changed; the nature of the facility on McLoughlin Boulevard had changed. It was converted to an expressway/highway segment of the Oregon Highway Plan that had a series of policy statements attached to it that included the removal of at-grade crossings. Milport at McLoughlin Boulevard under the Highway Plan would be grade separated at some point in the future. The point the appellant wanted to make was that they were being asked to look at this application in a vacuum of both the past decisions that rendered this area deficient from a transportation facility's capacity perspective and from the vacuum of the linkage of this application for future uses as the Working Group studied extensively when they looked at the transit center study and made a decision to move it to Kellogg Lake. The point was that if TriMet

invested in the site -- \$3 to \$5 million whatever the total was for acquisition and improvements – it would lock in the imperfect circumstances that were presented by this unconventional off ramp from Hwy 224 onto McLoughlin Boulevard. The intersections were stacked on both sides of McLoughlin Boulevard at Milport with frontage on the west and Main Street on the east. The studies that were done that he tabbed in the book he provided at the last meeting identified potential mitigation solutions to some of the problems, but the solutions required all or a part of the site to be used for the mitigations. That was one of the reasons the site was readily dismissed as not being a good one. The point was if this application was approved and this use was put into place, it would lock in and perpetuate the status quo, which was a negative.

The second point was that one could not get to the site. It was in the middle and second to some. Most people who would come and use the facility, some percentage on a daily basis would be strangers. It was not intuitive how to get there. If you were coming on McLoughlin Boulevard from either direction, the driver expectation would be to take a turn movement at Milport and access the site, but you can't. You don't find that out until you access the site. So one had to turn early either on Harrison to get onto Main or at Ochoco to get onto Frontage. It was the same thing coming from the southeast across Hwy 224. The expectation of the normal driver was to take the off ramp and go down to McLoughlin Boulevard to access the site. You can't do that. You have to turn around one way or another and backtrack. Or you go across McLoughlin Boulevard to 17<sup>th</sup> Avenue, take a right to Milport then take a right, then you have to go through both of those bad intersections at the worst time when trucks are present to access the site. It was common sense that this was not a good idea. It was not a good place; you can't get to it to place a parking facility that would require hundreds of cars a day to enter and exit. TriMet offered testimony that 50% of the projected people using the site would come along Harrison Street. That meant that 50% would not, and that was still a big problem.

The third point was that the Council heard testimony that it was losing opportunities and letting them slip through its fingers. People in the state and in the region were doing back flips trying to make areas like this happen. The City had one that was a very good one. There were comments that there was a lot of economic value there, and a report was provided that said that. Now the Council heard testimony from Oregon Transfer because of the uncertainty of the future of the area – was it going to be a light rail transit center? Was it going to be a transit center? The answer that if it was linked to a park-and-ride then probably yes. That was what TriMet said. The perfect linkage was to have all three facilities in one location, and that was why Kellogg Lake was selected. The worst thing was happening – you were having your businesses leave. Wilhelm had space available. You can ask yourself if this was a big shift in the economy, and should we just be done with the area. You heard repeatedly that the NILUS Study addressed that question, and the answer was no. There was a lot of useful life there, and it needed to be protected.

The next point was about section 19.502(b). The record was made on this that staff was contorting the reading of the code. TriMet admitted in its own testimony that a parking lot under section 500 with a nonconforming design was what they were talking about. Design of what? It had to be something. It was not just an ethereal design. It was the design of the structure and the use. To say opposite was again contortionism. Mr. Whitlow disagreed with the recitation 19.500 and did not say anything about pre-existing uses. The Council should not use that as a tool in decision-making.

The final point was in its testimony TriMet did not dispute that there could be linkage between this use and the future South Corridor light rail project. There would be a new study placed into existence, and that would happen soon. A study was already done. It showed a park-and-ride linked with a transit center linked with light rail was the best one

could achieve from a transit perspective, and that was why this site was not picked. He was disappointed to see a memo from TriMet's working file suggesting that low and behold during this whole process they intended to put a park-and-ride there anyway. Mr. Whitlow assured the Council that none of the members of the Working Group from the North Industrial area knew that. They could only hope the City did not have the same mindset. It was disingenuous, in their minds, to sit for hours on committees talking about moving facilities to different areas and then to find a memo in the file which he referred to as a smoking gun that said they never intended to do anything except make the application they were now making. That was certainly not what the Working Group understood.

**Mr. Whitlow** thought the Council needed to look under all the circumstances present be they past circumstances that led to this tenuous position in the area and to the linkage of this use to future use. Unless the Council did that it had blinders on pretending that this was just an application for the use that had no relationship to the past or the future. That would be the wrong way to read the code. For all those reasons Mr. Whitlow urged the Council to think again and reconsider the decision of the Planning Commission and deny the application to preserve the industrial area for industrial uses.

**Councilor Stone** said when Mr. Whitlow mentioned it was difficult for cars to get into the site, what was he basing that on. It used to be a movie theater with 381 parking spots. She went to that movie theater and did not have any trouble getting in and out of there.

**Mr. Whitlow** went there too and recalled the first two times he was totally baffled. He did get used to it over time, but the movie theater closed. He thought that was because it did not work from any access point of view. One got used to a circumstances and got used the turning movements it took to access the site. The average driver was not so ...when he talked about access it was finding how to get into the site from one direction or the other, and one had to learn how to get there.

**Councilor Stone** did not know why the movie theater closed but thought it was presumptuous to say it was because of the traffic movements. Usually it was a business thing or maybe the location of that particular business. She asked Mr. Whitlow what his solution would be.

**Mr. Whitlow** replied the solution would be to step back and not make it any worse. Hold what you have until you find a replacement for Kellogg Lake.

**Councilor Stone** asked Mr. Whitlow what his replacement would be if he did not want it at Southgate. Where would it go?

**Mr. Whitlow** replied there was a deliberative process with a lot of well-minded, well-intended people that came up with a solution before. People only read the paper about that other location and the circumstances relative to it, which had apparently changed it as being available for the transit center and light rail station and the park-and-ride. He thought the Council had to go back through its process and re-engage the citizens to come up with a different solution. He could not hand the Council one. They could just hand the information that the lack of comprehensive thinking and planning led to poor decision-making. This would be another element of poor decision-making because it would be made without recognition of the past or the present or the future in terms of what this would lead to by implication – probably necessity. He was already reading the paper where the transit center would be moved to match the park-and-ride, and that would lock in the light rail alignment that was already decided – the locally preferred alternative – was not the preferred alternative. The message to Metro was lost, and all of that was in the documentation. The Council asked the citizens to spend a lot of time with it to double check and re-examine that and come up with a different place to put

this very use. It seemed like the City Council owed it to people to go back and look at it again. It was grabbing an element and pretending it did not have linkage. That was not fair or right.

**Councilor Collette** asked Mr. Whitlow if he had read in the paper they were going to put the transit center at that location as well.

**Mr. Whitlow** said that was his read of the article he saw – that there was interest in moving the buses from downtown to the site. He may have misread the article, but that was his understanding of a recent newspaper article.

#### Applicants' Rebuttal

- **Phil Selinger, TriMet Project Planning Director, 710 NE Holladay Street, Portland 97232**

**Mr. Selinger** provided overview comments. TriMet appreciated the time and consideration of the Council regarding this important transit center project. It was one of the parts of a relatively ambitious improvement program for Milwaukie that they would continue to implement together. The CSO application was for a park-and-ride facility that would replace a former popular shared-use park-and-ride lot. It would remove an obsolete theater building and renovate an existing parking lot for that purpose. The project represented a moderate investment that started with the acquisition of the site in 2004. As previously noted the project would help reduce congestion on SE McLoughlin Boulevard by providing convenient access for Milwaukie and nearby residents. It would free up on-street parking spaces in adjacent neighborhoods and business districts. It would provide a safe environment for transit riders and be compatible with adjacent businesses. It would also make efficient use of transit capital and operating resources. As was presented to the Council and the Planning Commission, the benefits of this project far outweighed its impacts. TriMet was mindful of the impacts and would execute the project and mitigate those impacts. Advancement of this project was not a substitute for the greater transit and transportation planning efforts of TriMet, the City, Metro, and the South Corridor partners. TriMet recognized the City's priority for establishing a new off-street transit center that was part of the larger planning program. TriMet believed it had established its commitment to making that project also a reality. TriMet appreciated comments of Council and citizens including Ray Bryan proposing that a park-and-ride and transit center facility be combined on that site. Constructing a transit center would not satisfy the need for a park-and-ride lot and vice versa. The complexity and cost of locating a new transit center was beyond the scope of this project and the designation of federal funds assigned to this project was specifically for a park-and-ride lot. The need for the facility was immediate. TriMet indicated the facility could adapt as larger plans unfolded to meet transportation and development needs in the Milwaukie community. TriMet requested the approval of the project and looked forward to a continuing partnership in development the other elements of the transit development plan.

- **Steve Abel, Counsel for the applicant, 900 SW 5<sup>th</sup> Avenue, Suite 2600, Portland**

**Mr. Abel** expressed his appreciation to staff who worked hard on putting together the evidence. There were two or three hearings before the Planning Commission and the second before the City Council. There was a lot of material submitted in addition to the testimony, which had to be adequately weighed to determine if the criteria were satisfied. At the last hearing, the eight points of the appellants' appeal were discussed. There was a little newness to the appellants' rebuttal testimony, and Mr. Abel would

address the five points that were raised by the opponents in the rebuttal testimony and embodied in the letter that was delivered to the Council and TriMet at this hearing.

The first question was the adequacy of the transportation system. DKS Associates, professional transportation engineers, testified both before the Planning Commission and City Council and presented numerous studies about the adequacy of the transportation system. The studies were reviewed by ODOT and endorsed by ODOT as being adequate and correct. They were also given that same adequacy finding by the outside consultant David Evans as a specialist transportation engineer to represent the City. The City engineer said the reports were adequate to demonstrate that the transportation system was adequate and supported the proposed use. Mr. Abel thought that was overwhelming evidence on that particular point. Beyond that Mr. Ray's testimony was very global in nature. He did say the levels of service (LOS) for this particular facility were adequate. One would see that statement in the minutes approved this evening from the April 18 hearing.

Secondly was the question of access. This was a site that was a movie theater. Mr. Whitlow testified that he had trouble finding the site, by Mr. Abel doubted that was the right kind of testimony to say whether or not access was adequate. The real determining positions on adequate access were the transportation studies. The system was found to be adequate and was found to have adequate access. The character of the users of park-and-rides are repeat users, and humans did learn over time – where they can park and how to get to places. It seemed natural especially for this particular use that that pattern of learning behavior would make it very unlikely that access issues would arise.

The third point was the question of the economic values of the industrial neighborhood. TriMet had never taken the position that that was not a valuable resource to the City, to TriMet, and to the region. The reality was that the testimony did not tie that fact to this park-and-ride's doing any damage to the economic vitality of the area. The damage to the economic vitality that appeared to have been testified to was happening today without the park-and-ride; something else was happening to make a few of those businesses leave. There were other dynamics going on. Whether this was an appropriately located industrial area in a more regional setting was another questions. The fact was that it was not the park-and-ride that was already having some impact on this particular use. There was an interesting document in the record. Jerry Johnson was brought in as an economic consultant to the opponent group. There was a two or three page letter that talked about the value to the economic community, but it was remarkable in that it did not say that there was any consequence of the park-and-ride. Nothing in the letters said that. It just said this was a valuable economic resource, but there was not evidence.

The fourth issue of the nonconforming use question was not as muddly as it was laid out. TriMet was not applying for any nonconforming use status to allow the use. In fact the very process they were in today was as a CSO that allowed the use. The nonconforming element that existed was in the parking design standards. Section 500 said if there was a parking lot that was allowed by use, the CSO, that was nonconforming in its dimensional standards and design, the obligation was to bring it closer to conformance as to what was required. It did not have to be brought all the way. It could be brought to conformance as closely under a particular set of circumstances. That was what TriMet had done. It was not unlike the City of Portland code the recognized differences between nonconforming uses and nonconforming development. It was pretty simple, and Mr. Abel did not quite understand the confusion.

The final point was the global issue that was laced through this hearing and what was being asked. TriMet was asking for a park-and-ride based on the criteria for CSO used

in the code. The rest of the speculation about what else might happen elsewhere or at this location at a different time was just speculation. Those were his responses, and he and Mr. Selinger would be happy to answer questions. In addition to staff, Mr. Abel thanked Council for sitting through quite a bit of testimony.

**Councilor Collette** said Mr. Whitlow said he had read in the paper that the proposal was to add the transit center and asked Mr. Selinger to speak to that.

**Mr. Selinger** was embarrassed to say that was news to him. That did not come from TriMet, and it had been on this course for some time. There was the kick-off of the next phase in the environmental process for the greater corridor study. That had not made any early conclusions about what the transit improvements in Milwaukie would look like. Obviously the City, staff and Council, would be involved in that process.

**Councilor Stone** asked what the City could expect in terms of getting the transit center moved off the downtown streets in Milwaukie.

**Mr. Selinger** replied at this stage it awaited the larger environmental process that talked about high capacity transit improvements in the Corridor that would be revisited. The park-and-ride lot was somewhat of an independent facility. A transit center indeed would best be served by being planned and integrated with the high capacity transit scenario which up to this point was presumed to be light rail. There have been a couple of locations proposed for that transit center in the past – Safeway and Kellogg Lake. They were back to the drawing board, and that was a very extensive process to get to that point. TriMet did not have the resources outside of the environmental process to restart that. It needed to be efficient and part of the larger process.

**Councilor Stone** understood that was many years down the road.

**Mr. Selinger** replied hopefully not many more years. TriMet was as anxious as the City to move it forward.

**Mayor Bernard** thought the article Mr. Whitlow might have been referring to was about the struggles throughout the nation to raise money to build mass transit products. Basically it said to him that light rail may or may not happen. It was a long way off and people were out after the same dollars. Transit centers and park-and-rides were a lot cheaper than light rail. The potential was more likely in the near future.

**Mr. Selinger** interjected as proposed with the Kellogg Lake scenario such a facility might be built in phases so even if the light rail funding were not immediately available one could presumably find a workable scenario to advance a transit center.

**Mayor Bernard** said this was a good time to remind TriMet that phase 1 of light rail on I-205 was to relocate the Milwaukie transit center. He thought the Council would be pushing TriMet on that.

#### Questions from City Council to staff

**Councilor Collette** noted that Mr. Whitlow referred to locking in imperfect circumstances, and she thought he was alluding to the problems of the existing conditions. He asked staff to speak to whether or not putting the park-and-ride in prohibited them from continuing to look at and find solutions to some of the other problems.

**Mr. Asher** did not think any development that occurred in the industrial or downtown district necessarily locked the City into anything. This property being in the hands of a public entity and a partner of Milwaukie probably gave the City more flexibility over time to allow that site to evolve as development evolved around it or as mass transit happened around it. He was actually more comfortable that over time there would be more site control as long as TriMet was on the site. Even with transportation conditions

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that were there, even the traffic issues that did occur in some degree of severity were likewise not locked in. Staff was working with ODOT and property owners even today to see whether or not there were alternatives that could be introduced to mitigate some of what ailed the businesses and industrial property owners there, which the City did regard as serious.

#### Close public hearing

**Mayor Bernard** closed the public testimony portion of the hearing public hearing at 7:56 p.m.

#### Council discussion

**Mayor Bernard** loved the comment about the blinders. Probably in 1858 the founders of this community actually wanted every road to go to Milwaukie. They really had some blinders on back then. A great example was Hwy 224. He owned a business in downtown Milwaukie off Lake Road, and everyday a truck driver cannot find Lake Road because it was divided into six sections. He thought it was a mistake to think that problem would ever be resolved. He thought the Southgate site did have some potential opportunities. One was that just prior to this process ODOT and members of the Governor's Economic Development Team said they were committed to solving access problems in that area. When he ran for Mayor five years ago that was practically empty. Unisource left, and the whole warehousing district was empty. Mailwell closed, and another came in. The WWW Metal Fab building, which was now eight years old, was abandoned at that time. The uses were changing, and other types of trucks were accessing the site. He thought another great example was the riverfront. The sewage treatment plant might go away in 10 or 15 years, but would the City wait for that to go away before it did something? Or would it build the partnerships and raise the money today. He can go to the Joint Policy Advisory Committee on Transportation (JPACT) and beg all day long, but unless he had a partner he would not get it done. It was not until the City began developing those partnerships that the City got money for McLoughlin Boulevard and the North Main project. All of those things were impacting and making the need for a park-and-ride greater and greater. He thought the Council was looking at the long range. Thanks to the project, he thought all of the people would be at the table working out the details. He felt that although this Council would not solve the problem he was confident at least the parties were on a path toward some solution that would be reached only with partners.

**Councilor Stone** commented in fall 2004 the Working Group charge was to mitigate the potential negative impacts to north industrial businesses, and that never happened. She wanted to see that happen. The City needed to go back and look really hard at how it could help the businesses down there and still continue to have a park-and-ride site.

**Councilor Barnes** observed this was one of those situations in which there was a lot to discuss but which had nothing to do with the actual situation on which the Council was voting. She had two concerns. This Council did care about the North Industrial businesses and under Mr. Asher his department had met with many of the business representatives. Many of the Council members met with business representatives individually because they did care about the North Industrial because it was a strong economic base. This was not an issue about economic base. This was an issue about what was best for Milwaukie at this point and under these circumstances. As the City went through this situation she would like Oregon Transfer to stay. TriMet did bring up an interesting point about which she had not thought until it was raised at this meeting. You would not be moving out if there were not another problem. There were people here to help, and the Council would like the businesses to stay. It was not just about this one place. She had issues with the applicant down the line. Ms. Zimmerman

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testified before the Council, and she had legitimate concerns that needed to be addressed. Mr. Bryan's concern needed to be addressed. She knew TriMet had the strength to bring ODOT to the table to speak seriously with Milwaukie. Milwaukie had strength now, and with TriMet's help she thought the intersections could be fixed and fixed right. That was a concern of these people, so it should be taken care of.

**Councilor Loomis** said it met all the criteria. Spending all the time reading through all the material and trying hard to understand what was going on and what the point was. It seemed clear that the fear was light rail. It was a park-and-ride before, and it was a movie theater before, and it worked well. He knew a lot of citizens in the community that were parking all over town, and the City was busy putting up different signs to keep people from parking there because they had no other place to park to use TriMet. He was concerned about having to pay for the sidewalk at a later date. He wished there was some way to say if TriMet ever did charge for the park-and-ride that a portion of that money would be put in a fund to make improvements at that intersection or the sidewalk so the City was not stuck with the whole bill. He was concerned about that but would vote to deny the appeal. Addressing overall, long-range traffic issues was huge, but this was not the problem. He loved the 3-Bridges project, but that was transportation money. These were decisions that were made as a community and what the community wanted. He thought the warehouses needed to voice their opinions and organize and talk to people to let them know what the impact was on them. It was great that everyone got out of their cars, but there were people and businesses who needed to be able to get from point A to B. He could see this getting much worse, and he felt for them in that way. He knew Mr. Asher and others were trying to work on solutions, and Councilor Loomis would be happy to talk with them to determine if there was anything he could do to forward ideas or brainstorm. He did not see a problem with the park-and-ride.

**Councilor Collette** agreed with her fellow councilors. This in some ways was an appeal about light rail and the fear of light rail and what it could do to the North Industrial area. Tonight's decision was not about light rail and was not really about a transit center. She worked with many people from the North Industrial on the Working Group. They worked endlessly to try to mitigate the impacts that light rail and the transit center would have on the North Industrial area, and they could not. That needed to be re-addressed. They came up with an alternate site, but that failed. This was really not about any of that. This was about a park-and-ride which was there before, and she thought it would be improved by the new design and some of the conditions such as moving the access roads. The City was very committed to continuing to work with the North Industrial partners and to build that partnership and make that area a viable, accessible, working place. Milwaukie citizens worked there, and it was absolutely essential to the City of Milwaukie that that continue to thrive. It was also essential to the citizens that Milwaukie had accessible parking and access to public transportation. This site given how built out the City is was the best being considered. It was not perfect. As was stated it was an imperfect site, so she was concerned that the City not lock into that imperfection. She did not think it would be. It was not perfect – she had yet to see a perfect solution to a transportation issue, and she had been working in transportation for many years, so she was not holding her breath for perfection. She did want to uphold the Planning Commission's decision because this was a very good solution to the parking and transportation concerns.

**Mayor Bernard** said before he made a motion, he wanted to discuss security. He understood the security had to be installed in three years.

**Mr. Firestone** recalled it was as soon as feasible but not later than three years.

**Mayor Bernard** asked if was feasible to make it not more than two years from opening.

**Ms. Rouyer** replied it was a matter of coming up with the money and finding the money and being able to commit to it. That had been the applicant's concern in the past.

**Mr. Selinger** said the security system would cost \$275,000.

**Mr. Firestone** said the motion could be amended to state with the condition of approval relating to security amended so that the maximum period was two years.

**Ms. Rouyer** said condition #2 could be amended to say "closed circuit television surveillance shall be installed and operational as soon as reasonably feasible and in no event later than two (2) years following the opening of the park-and-ride.:

#### Council decision

**It was moved by Mayor Bernard and seconded by Councilor Barnes to deny appeal A-06-01, approving CSO-05-04 and TPR-05-04, adopting the findings in the staff report subject to the conditions of approval in the staff with the condition of approval #2 amended to say closed circuit television surveillance shall be installed and operational as soon as reasonably feasible and in no event later than two (2) years following the opening of the park-and-ride.**

**Mr. Firestone** added the motion should include authorization for the Mayor to sign an order reflecting the Council decision.

**Mayor Bernard** as the mover and Councilor Barnes as the seconder accepted that additional language amending the motion.

#### LUBA appeal information

Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. The written decision will contain an explanation of the appeal rights. If you have questions, please call the Planning Department staff.

## **OTHER BUSINESS**

### **A. Amend Title 8 of Municipal Code to Address Inoperable Vehicles on Private Property – Ordinance**

**Mr. Hall** sought City Council approval of a code amendment that addressed storage of inoperable vehicles on private property. The proposed ordinance would amend § 8.04.070(B) to include inoperable vehicles. The current city code addressed junk or dismantled vehicles and recreational vehicles but not those parked on properties for extended periods of time and not dismantled. After researching other jurisdictions staff found other ordinances addressing inoperable vehicles on private property, and staff used those as models for the amendment before the Council at this meeting. Code staff receives complaints about vehicles parked in front yards or those that have been dismantled, and the current code addresses those situations. Many of the complaints received in regards to vehicles were those parked for months or years and were not dismantled. These were the cars that did not move. They had flat tires, broken windows, and moss growing on them. In short they were eyesores and neighbors were tired of looking at them. If the vehicles are moved to the driveway area, they were basically safe, and nothing could be done if they were on an approved parking surface. The neighborhood continued to suffer from the visual blight. By amending Title 8 and adding inoperable vehicles along with the appropriate definition a loophole would be closed that was being used and improve overall neighborhood livability. It would not affect the current regulations as to where and when vehicles were parked on private property. The ordinance would apply to all vehicles as defined in ORS and would

include school buses, trailers, and other similar vehicles. There was current code that addressed recreational vehicles parked on private property. Code enforcement staff understood cars sometimes broke down and that it might take time to get them repaired, so they were always willing to work with citizens since the ultimate goal was compliance and not necessarily a citation. After talking with the City Attorney it was determined vehicles could stay on a property for 15 days after which point they could be declared nuisances. Code enforcement staff always has the discretion to work with the property owner once the notice was sent and they contacted the City. If the property owner had circumstances and agreed to meet a reasonable timeline, then staff would work with them. The complaints would not be about cars that had been parked there for a couple of weeks or even those being restored or even those in violation but were stored neatly on the property. It was about the eyesores that have been parked for extended periods of time and looked terrible. If this ordinance was passed Mr. Hall did not anticipate actively seeking out vehicles as code enforcement had a backlog. Passage of this ordinance would give the opportunity that when staff went to the property for other violations and there were inoperable vehicles then the entire property could be addressed at one time and the vehicles completely removed or repaired. This amendment would not prohibit any vehicles if they were in an enclosed structure to include those that were fixer-uppers or any business that had been approved for storage of inoperable vehicles.

**Mayor Bernard** said for record Council received letters of support for the proposed amendment from Lewelling and Island Station Neighborhoods.

**Councilor Loomis** commented he and Mr. Hall had numerous conversations about this, and it was a tough call for him. He saw the need in some instances but to him it was where the line was drawn. He appreciated how the code enforcement staff was discretionary and how they applied it, but he had a problem with making an ordinance and making it discretionary. It seemed an issue was being made for one certain problem when others were in violation, and it was really not a problem. There would always be irresponsible people, and people who complained all of the time. He was having a hard time about where the line was drawn. Did the City adopt an ordinance every time there was a problem to address one person? There were issues about junk in the front yard, and most of those issues had been addressed. When he drove around he did not see the problem. He was not getting the calls. If he opened his eyes a little harder he could probably see them. He would vote no on the ordinance.

**Mayor Bernard** thought those were great comments. He did have problems with signs placed on utility poles, but there was only so much money to send crews out to remove them. He thought the City might think about citing those people.

**Councilor Stone** asked if the proposed ordinance would be on a complaint basis – would it be generated by someone calling to complain about a dismantled or junk car?

**Mr. Hall** replied that was correct for the most part. There were already a lot of complaints on file, so there was a backlog code enforcement would have to deal with. The proposed ordinance cleaned up the code language, and typically that vehicle was not the only issue.

**Councilor Stone** understood this addressed one issue, and that the code addressed nuisance properties as well. There were ordinances already in place, and the proposed amendment clarified the code. She asked if cars had to be visible from the street and what if people had a bunch of cars in their back yard?

**Mr. Hall** said it could be anywhere on the property, but the main concern was that it not be in view.

- **David Aschenbrenner, 11505 SE Home Avenue, Hector Campbell Neighborhood Association Chair**

**Mr. Aschenbrenner** had a discussion on the proposed ordinance but did not take a formal vote. There was no visible opposition at the meeting. This code amendment would give code enforcement the tools needed to do the job. The same thing happened to him today. He was working on a project and did not have the tool he needed to do the job so had to go out and get it. This was the same thing. He trusted code enforcement to work with people and not hunting down and staking out places to cite them. It was one more tool to go into a nuisance property and solve the whole problem and not just apply a Band-Aid.

- **Lisa Batey, 11912 SE 19<sup>th</sup> Avenue, Island Station Neighborhood Chair**

**Ms. Batey** said the Neighborhood Association voted and all present but one vote in support of the code amendment. She added she would be happy to help Councilor Loomis find some of the problems. There were a half dozen in Island Station and some vehicles had not moved for three years and some longer than that – probably decades. Some people were junk collectors, but sometimes these code violations were ways to address more harmful problems such as the Heckmann property. It was not the suspected criminal activity but rather the code violations that remediated a big neighborhood problem. She thought there were examples of both situations in Island Station. Some people were just junk collectors who needed Goodwill. She noted there were some who just loaded trailers with junk and let them sit with flat tires for a number of years. Cars were one aspect of the problem, and this was a great start. On the issue of code enforcement discretion she said that was the nature of all law enforcement. There was the idea of prosecutorial discretion from the cop who decided whether to give a ticket or a warning for speeding. Discretion was an important part of any law enforcement, and she felt it should be a relief that the staff could help people work through problems and that a fine was not the initial result. Island Station did have a big problem, and she would be happy to walk anyone around to view the problem. She encouraged the Council to adopt the ordinance.

- **Jeff Klein, 4479 SE Logus Road, Lewelling Neighborhood Chair**

**Mr. Klein** said the Neighborhood Association also discussed this matter and voted 15:1 in support. The members thought it was very important for the neighborhood and Milwaukie as a whole. There were a lot of new people moving into Milwaukie, and when they drove through the neighborhoods, this was the first thing they were seeing. This was a deciding factor for people looking to purchase a house. The City can go one route with Sanford and Son, or go another route and have a livable community. People looked at these things. There were first time buyers coming to the area, and Mr. Klein thought it was important to set a good example. This was a good step forward, and he would like to see more.

**It was moved by Councilor Barnes and seconded by Councilor Stone for the first and second reading and adoption of an ordinance amending Title 8 of the Municipal Code to include inoperable vehicles as a nuisance.**

**Councilor Barnes** noted that if there was a backlog of calls on this matter, then it should be taken care of as soon as possible.

**Mr. Swanson** said the Charter allowed him to participate in discussion which he rarely did. Two things were brought to mind. One was that when he started in September 2000 the City had more acute budget problems. One of the things the City did was to hire a code enforcement officer. Milwaukie did not delete, as some local governments like Clackamas County did, but added a second person to deal with code enforcement.

Even then when Mr. Hall talks about a backlog this was complaint-driven, and Mr. Swanson authorized the staff to proceed on things they saw. The City still acted largely out of a complaint-driven process, and that was with additional staff. As the City did some interesting and exciting things, one of the things it did was to pay attention to that particular area. Even during times of difficult budgets, the Council and Budget Committee decided to go a different way. When he started out as a young county attorney dealing with these same issues inoperable vehicles was probably his biggest caseload. He guessed it was a problem in almost every community. People were willing to work with code enforcement, and in some instances it provided the impetus to get rid of the junker or license it and give it some use. They did not immediately swoop in and take people to task. Sometimes it was just having the ability to act and notify people about changing their behavior to change the look and feel of the neighborhood. Code enforcement staff worked with people before they did anything and attempted to solve problems.

**Councilor Collette** was always very concerned about restricting people's use of private property. It was the most expensive thing people owned and their most valued resource. On the other hand the community as a whole was so much in need of this type of control. She drives and walks by a lot of dead cars in the Ardenwald Neighborhood. She herself had a project boat in her driveway until it almost became mulch, and it was good for her spirit to turn it over to someone who could actually repair it. She would support the proposed code amendment as it was an additional tool and send the message that Milwaukie wanted the community to be a good and beautiful place to live.

**Councilor Loomis** thought Milwaukie was already a beautiful and special place to live right now. He thought Mr. Hall did a good job with code enforcement, but in his opinion it was a matter of drawing the line. If the City adopted an ordinance, then it should be enforced. Although he liked the idea it was complaint driven he was glad he did not live next to Ms. Batey.

**Motion passed 4 – 1 with the following vote: Mayor Bernard and Councilors Barnes, Collette, and Stone 'aye' and Councilor Loomis 'no.'**

The City Manager read the ordinance one time by title only.

Mayor Bernard announced the second reading of the ordinance would be set for June 6, 2006.

## **B. Council Reports**

**Councilor Collette** announced the Artrain events.

**Councilor Stone** urged people to attend the Ardenwald Secret Garden Tour with proceeds going to Ardenwald Elementary.

## **ADJOURNMENT**

**It was moved by Councilor Collette and seconded by Councilor Barnes to adjourn the meeting. Motion passed unanimously. [5:0]**

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

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Pat DuVal, Recorder



To: Mayor and City Council

Through: Mike Swanson, City Manager  
Kenny Asher, Director of Community Development & Public Works  
Paul Shirey, Engineering Director

From: Brenda Schleining, Associate Engineer

Subject: 42<sup>nd</sup> Ave. Sidewalk and Storm Project Construction Award

Date: June 21, 2006 for July 6, 2006 City Council Meeting

#### Action Requested

Authorize the City Manager to sign a contract and purchase order for the 42<sup>nd</sup> Ave. Sidewalk and Storm Project with D&D Concrete and Utilities Inc. in an amount not to exceed \$490,000.

#### Background

In January 2003, the City of Milwaukie entered an Intergovernmental Agreement (IGA) with the Oregon Department of Transportation (ODOT). The agreement is for funding walkway and bikeway improvements on 42<sup>nd</sup> Avenue between Johnson Creek Boulevard (JCB) and Olsen Street. The State has agreed to contribute \$200,000 of bike-ped money towards the project. \$100,000 was paid already, and the second \$100,000 will be reimbursed upon successful completion of the project (Attachment 1).

A second IGA was signed in February of 2005 for a time extension on the project. Under the terms of this agreement, construction must be completed no later than October 31, 2008 (Attachment 2).

This project will provide a safe walking route for local residents and children attending Ardenwald Elementary School, and establish connectivity with existing sidewalks at Roswell Street, Olsen Street, and Johnson Creek Boulevard. Additionally, it will link residents to transit routes, neighborhood parks, and commercial shopping centers.

The current Capital Improvement Plan has identified the need for sidewalks, bike lanes, and street widening on 42<sup>nd</sup> from Johnson Creek Blvd. to Covell. The 1997 Transportation System Plan also identified this section as needing sidewalks in the Bikeway Action Plan.

The project consists of roadway widening, installing approximately 4,000 lineal feet of new curb, installing 2,600 square yards of sidewalk, ADA ramps, and 300 lineal feet of 12-inch storm sewer pipe. Controlled Density Fill (CDF or concrete slurry) will be used in trenches to reduce street maintenance cost by providing a more solid sub-base, as it is less conducive to heaving and subsiding.

The existing right-of-way (ROW) width for the project is generally 40-feet (limited sections measure 50 and 60-feet). The proposed roadway cross-section includes 6-foot sidewalks and 13-foot travel lanes. The 13-foot travel lanes will function as a shared travel way for motorists and bicycles (Attachment 3 Project Cross Section).

The project cross-section is constrained by several factors such as:

- Short setback from roadway for many of the houses
- Large significant trees within ROW
- Project budget that has no money to purchase additional ROW

The City held two open houses for the project, one on December 15, 2004 and on December 15, 2005. The City has received one letter and several e-mails and phone calls with project concerns. There is general support for the project by residents living in and around the project area. Some of the citizen concerns included:

- Loss of on-street parking
- Project schedule and timeline
- Potential costs to homeowner
- An interest in bike lanes
- Speeding following project completion
- Preserving existing trees
- Access during construction

The majority of residents support the project. Many are irritated that it has taken so long to be constructed. Staff made an informational project presentation to the Planning Commission on January 24, 2006.

It is important to note that the project must be substantially complete by October 1, 2006, before the City will be eligible to apply for additional State bike/ped project funding. (Substantially complete means that the project will only have small punch list items left to complete.) The ODOT bike-ped grant requires an agency to complete a grant-funded project prior to applying for additional grant money. Staff is currently working on additional bike-ped grant requests to submit to ODOT in the fall.

This project was publicly advertised and bids were opened on June 21, 2006.  
The bids received are listed below:

<b>Contractor</b>	<b>Amount</b>
D & D Concrete	\$488,500.80
Kodiak Bengé	\$497,794.00
Parker Northwest	\$525,709.75
Eagle Elsner	\$614,065.75

The City uses the Public Contracting Rules (PCR) as adopted by the City Council to select a contractor. Bidders were prequalified for utility construction and related work. The bids also contained a statement that prevailing wages will be paid and that contractors are resident bidder in the State of Oregon as defined by ORS 279.029. Contractors were also registered with the Oregon Construction Contractors board and included a list of their First-Tier subcontractors.

The City awards contracts to the lowest responsive bidder (defined in PCR 30.110 A). D & D Concrete and Utilities Inc. was determined to be the lowest responsive bidder and staff recommends awarding the contract to them.

#### Concurrence

The Finance Director, Operations Department and ODOT concur with the Engineering staff on this.

#### Fiscal Impact

This project is in the 2006-2007 budget and CIP list. The estimated cost for construction was \$405,000. Project funds will come from the Streets SDC fund 325 (\$121,000), Storm Water Capital Fund 580 (\$93,000). The existing balance in these funds respectively is \$756,467 and \$178,000. There is also \$200,000 from an ODOT bike-ped grant. \$100,000 has been received and the second \$100,000 is reimbursable to the Street fund, upon project completion and approval from ODOT.

The total project cost of \$488,500.80 is more than the budgeted amount by \$83,500.80. The recent increase in oil prices have caused rock prices to increase from \$20/ton to \$35/ton and asphalt prices to increase from \$60/ton to \$70/ton. The storm pipes are a petroleum product, which have also increased dramatically in price.

Due to the higher cost, the SDC contribution can increase to \$151,000, because it is based on a percentage of the total project cost. This leaves a difference of \$53,500.80. This amount will need to be funded by reducing the scope of the project or a contribution from the Street gas tax fund. Staff expects to have a revised budget for the project at the time of the Council adoption.

### Work Load Impacts

This project is part of the Engineering and Storm Division's annual work program. Staff time on this project is approximately 190 hours for Engineering, 70 hours from Operations, and 8 hours for Finance.

### Alternatives

Postpone the project to a later date. This option will cause the City to miss the opportunity to apply for additional bike-ped grant money. The neighborhood will likely be concerned due to project delays. Construction costs will likely increase with a delay.

Refund the \$100,000 in grant money, which the City has already received. The neighborhood will likely be concerned due to the loss of funds.

### Attachments

1. IGA
2. IGA 2
3. Project Cross Section

1/3/03

Misc. Contracts & Agreements  
No. 20473

### **WALKWAY/BIKEWAY PROJECT AGREEMENT**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and the CITY OF MILWAUKIE, acting by and through its Elected Officials, hereinafter referred to as "City."

#### **RECITALS**

1. SE 42<sup>nd</sup> Avenue is a part of the City system under the jurisdiction and control of the City.
2. By the authority granted in ORS 366.514, funds received from the State Highway Trust Fund are to be expended by the State and the various counties and cities for the establishment of footpaths and bicycle trails. For purposes of Article IX, Section 3a, of the Oregon Constitution, the establishment and maintenance of such footpaths and bicycle trails are for highway, road, and street purposes when constructed within the right of way.
3. By the authority granted in ORS 190.110, 366.770 and 366.775, State may enter into cooperative agreements with counties and cities for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

NOW THEREFORE, the premises being in general as stated in the foregoing RECITALS, it is agreed by and between the parties hereto as follows:

#### **TERMS OF AGREEMENT**

1. Under such authority, State and City plan and propose to design and construct sidewalks on SE 42<sup>nd</sup> Avenue from SE Johnson Creek Blvd to SE Olsen Street, hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. City has determined that the actual total cost of the Project is estimated to be \$330,000. State shall fund the Project in an amount not to exceed \$200,000, using

State Highway Funds. City will provide a match in the amount of \$130,000. City shall be responsible for any portion of the Project, which is not covered by State funding, including any portion of the Project which exceeds the estimated total cost. In the event that the total Project cost is actually less than the original estimate, the State funds shall be limited to a proportionate share of the original estimated amount, based on a percentage calculated using state share and local match.

3. The work is to begin upon execution of the agreement by all parties and be completed no later than October 31, 2004. Maintenance responsibilities shall survive any termination of this agreement.

### **CITY OBLIGATIONS**

1. City shall perform the work described in this agreement.
2. City shall conduct the necessary field surveys, prepare plans and contract documents; advertise for bid proposals, award all contracts, and supervise construction of the Project. Actual construction of the Project may be accomplished by City forces, by contract, or by any combination of these methods, as City shall elect.
3. City shall submit a copy of the plans and specifications to State through the State's Bicycle and Pedestrian Program Manager for review and concurrence prior to advertising for a construction contract or prior to construction if City forces will perform the construction work. Concurrence must be received from the State's Bicycle and Pedestrian Program Manager prior to proceeding with the Project. The Project design, signing, and marking shall be in conformance with the current Oregon Bicycle and Pedestrian Plan.
4. City shall, upon completion of Project, submit to the State's Bicycle and Pedestrian Program Manager an itemized statement of the final actual total cost of the Project.
5. City represents that this agreement is signed by personnel duly authorized to do so by its City Council.
6. City shall not enter into any subcontracts for any of the work scheduled under this agreement without obtaining prior written approval.
7. City shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, City expressly agrees to comply with: (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with

Disabilities Act of 1990 and ORS 659.425; (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.

8. Contractor shall furnish to the City, Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage.
9. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, city, its Contractors, and their Subcontractors shall indemnify, defend, save, and hold harmless the State of Oregon, the Oregon Transportation Commission and its members, the Oregon Department of Transportation, their officers, agents, and employees from and against any and all claims, suits, actions, losses, damages, costs, expenses, and liabilities of any nature whatsoever resulting from, arising out of, or relating to the activities of City or its officers, employees, subcontractors, or agents under this agreement.
10. City shall be responsible for all costs not covered by State funding. State funding is limited to \$200,000
11. City shall be responsible for all costs and expenses related to its employment of individuals to perform the work under this agreement, including but not limited to, retirement system contributions, workers compensation, unemployment taxes, and state and federal withholdings.
12. City shall, upon completion of Project, maintain the Project at its own cost and expense, and in a manner satisfactory to State.

## STATE OBLIGATIONS

1. State's Bicycle and Pedestrian Program shall review and must concur in the plans prepared by City before the Project is advertised for a construction contract or before construction begins if City forces shall perform the work. State's Bicycle and Pedestrian Program office shall process all billings submitted by City.
2. Upon receipt of notification that the City is prepared to proceed with the development of Project, State shall deposit with City the sum of \$100,000, such amount being equal to 50 percent of the State's share of the estimated Project costs. Upon completion of Project, inspection and approval by State staff, and receipt from City of an itemized statement of the actual total cost of the Project, State shall deposit with City a final payment, the sum of \$100,000, such amount being equal to 50 percent of the State's share of the estimated Project costs. When added to the initial deposit, the final deposit will equal the State's share of the originally estimated costs (\$330,000). BS ✓

Should final Project costs exceed the original estimate, extra costs shall be borne by City; the maximum amount of State reimbursement is \$200,000. If final Project costs are less than original estimate, State shall deposit with City a final payment in an amount which, when added to the initial deposit, would equal the State's proportionate share of the originally estimated costs, based on a percentage calculated using state share and local match.

3. In the event this agreement is terminated for any reason, City shall provide an itemized statement of the costs and expenses prior to date of termination. State shall reimburse City for its proportional share of these expenses. If any funds are remaining from the advance deposit, they shall be refunded to State.
4. State certifies, at the time this agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this agreement within State's current appropriation or limitation of current biennial budget.

#### **GENERAL PROVISIONS**

1. City, its contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers, unless such employers are exempt under ORS 656.126. City shall ensure that each of its contractors complies with these requirements.
2. This agreement may be terminated by mutual consent of both parties.
3. State may terminate this agreement effective upon delivery of written notice to City, or at such later date as may be established by State, under any of the following conditions:
  - a. If City fails to provide services called for by this agreement within the time specified herein or any extension thereof.
  - b. If City fails to perform any of the other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within 10 days or such longer period as State may authorize.
  - c. If State fails to receive funding, appropriations, limitations, or other expenditure authority at levels sufficient to pay for the work provided in this agreement.

- d. If federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the work under this agreement is prohibited or if State is prohibited from paying for such work from the planned funding sources.

Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

4. If City fails to maintain the facility in accordance with the terms of this agreement, State, at its option, may maintain the facility and bill City, seek an injunction to enforce the duties and obligations of this agreement, or take any other action allowed by law.
5. State, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of City which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
6. This agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of a party to enforce any provision of this agreement shall not constitute a waiver by a party of that or any other provision.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

The Oregon Transportation Commission approved this Project on February 1, 2000 as part of the Fiscal Year 2002-2003 Local Assistance Bicycle and Pedestrian Program. The funds are included in the Statewide Programs Section of the 2000-2003 Statewide Transportation Improvement Program (STIP).

The Oregon Transportation Commission on January 16, 2002, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the commission.

On January 31, 2002, the Director of the Oregon Department of Transportation approved subdelegation order No. 2, in which the Director grants authority to the Executive Deputy Director for Highways, Executive Deputy Director for Central Services, and the Chief of Staff to approve and execute over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program, other system plans approved by the Commission, or in a line item in the approved biennial budget.

STATE OF OREGON, by and through  
its Department of Transportation

By John Edelberger  
Exec. Deputy Director for Highways

Date 2-11-03

APPROVAL RECOMMENDED

By Chris M. Nish  
Technical Services Mgr./Chief Engineer

Date 2-7-03

APPROVED AS TO LEGAL  
SUFFICIENCY

By Walter H. Wolman  
Assistant Attorney General

Date: 1/30/03

CITY OF MILWAUKIE

By James Bernard  
James Bernard, Mayor

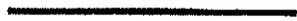
Date 1/21/03

APPROVED AS TO FORM

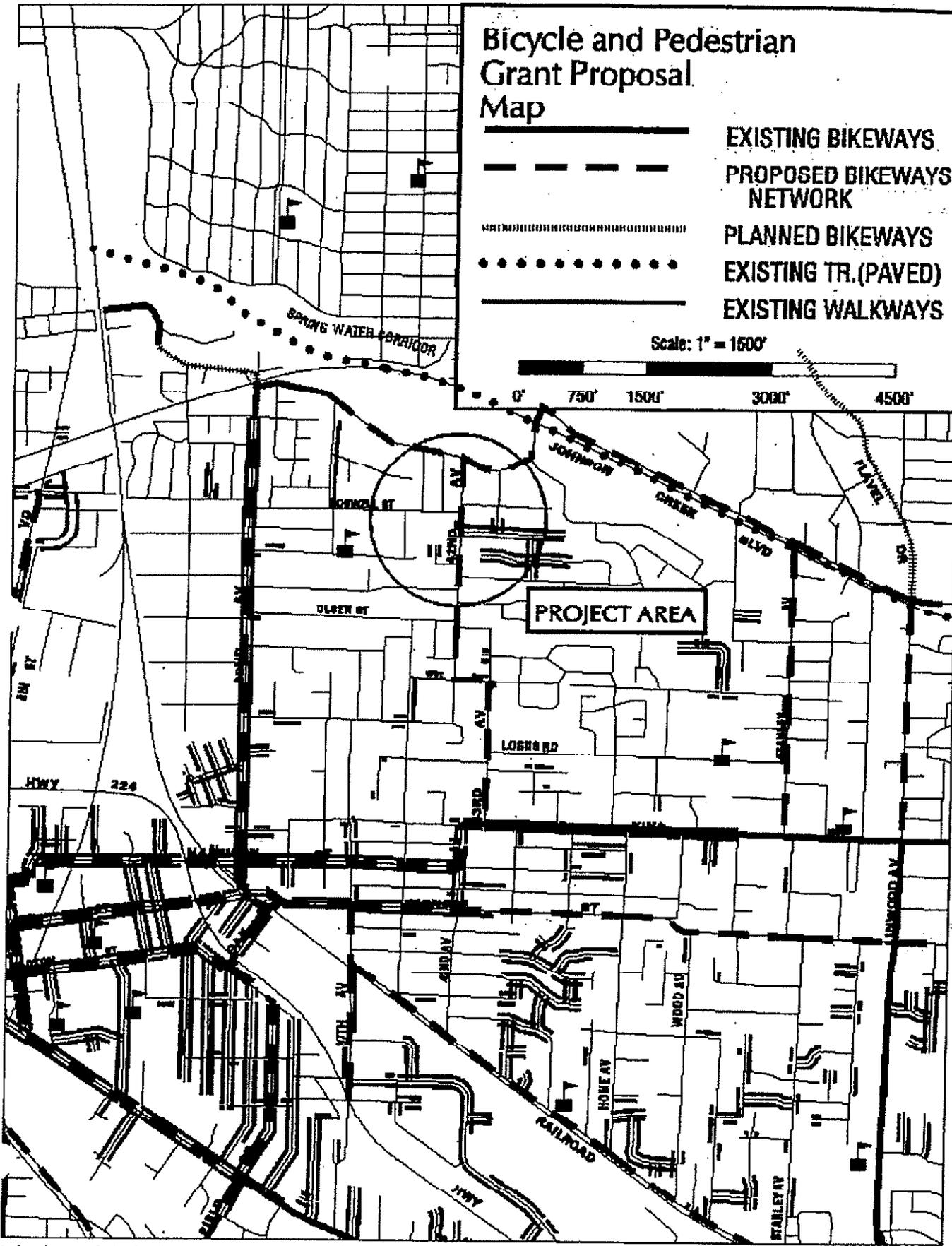
By Gary Finestone  
City Legal Counsel

Date 1/21/03

# Bicycle and Pedestrian Grant Proposal Map

-  EXISTING BIKEWAYS
-  PROPOSED BIKEWAYS NETWORK
-  PLANNED BIKEWAYS
-  EXISTING TR.(PAVED)
-  EXISTING WALKWAYS

Scale: 1" = 1500'



2005

**WALKWAY/BIKEWAY PROJECT AGREEMENT**  
**Project Name: 42<sup>nd</sup> Avenue Sidewalk Construction**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and the Milwaukie, acting by and through its elected officials, hereinafter referred to as "Agency."

**RECITALS**

1. SE 42<sup>nd</sup> Avenue is a part of the city street system under the jurisdiction and control of Agency.
2. By the authority granted in ORS 366.514, funds received from the State Highway Trust Fund are to be expended by the State and the various counties and cities for the establishment of footpaths and bicycle trails. For purposes of Article IX, Section 3(a), of the Oregon Constitution, the establishment and maintenance of such footpaths and bicycle trails are for highway, road, and street purposes when constructed within the right of way.
3. By the authority granted in ORS 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
4. Agency and State entered into agreement 20473 on February 11, 2003, to provide funding for this Project. This Agreement expired prior to completion of the Project, but after State contributed \$100,000 towards completion.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

**TERMS OF AGREEMENT**

1. Under such authority, State and Agency agree to design and construct sidewalks on SE 42<sup>nd</sup> Avenue from SE Johnson Creek Blvd to SE Olsen Street, hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. Agency has determined that the actual total cost of the Project is estimated to be \$330,000. State has already provided funding in the amount of \$100,000, which was expended under Agreement number 20473. State shall provide additional funding for the Project in an amount not to exceed \$100,000. Agency shall provide a match in

the amount of \$130,000 and shall be responsible for any portion of the Project which is not covered by State funding.

3. The term of this Agreement shall begin on the date all required signatures are obtained. Construction shall be completed no later than October 31, 2008. The Agreement shall terminate upon completion of construction and final payment, or five calendar years, whichever is sooner, unless extended by a fully executed amendment. Maintenance responsibilities shall survive any termination of this Agreement.

## **AGENCY OBLIGATIONS**

1. Agency shall conduct the necessary field surveys, prepare plans and contract documents; advertise for bid proposals, award all contracts, and supervise construction of the Project.
2. Agency shall submit a copy of the plans and specifications to State through the State's Bicycle and Pedestrian Program Manager for review and concurrence prior to advertising for a construction contract or prior to construction, if Agency forces will perform the construction work. Concurrence must be received from State prior to proceeding with the Project. The Project design, signing, and marking shall be in conformance with the current Oregon Bicycle and Pedestrian Plan.
3. Agency shall, upon completion of Project, submit to State Bicycle and Pedestrian Program Manager an itemized statement of the final actual total cost of the Project.
4. Agency represents that this Agreement is signed by personnel duly authorized to do so by the City Council.
5. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval.
6. Agency agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, Agency 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.
7. Agency shall require its contractor to indemnify State and name State as a third party beneficiary of the resulting contract and shall carry at a minimum personal injury and property damage insurance with a single limit of \$1,000,000 for all claims

arising out of a single accident or occurrence. Agency shall also insure that the contractor also provide an additional \$1,000,000 excess insurance coverage over the basic \$1,000,000 coverage. Each annual aggregate limit shall not be less than \$2,000,000 when applicable. The contractor shall include Agency and State as named insured on policies issued for this Project, or shall furnish an additional insured endorsement naming the same as additional insured to the contractor's existing public liability and property damage insurance. The certificate of insurance shall include the State of Oregon, Transportation Commission and its members, Department of Transportation, officers and employees as additional insured. Agency shall provide a copy of the certificate to State prior to construction of the Project. The insurance coverage shall not be amended, altered, modified or cancelled insofar as the coverage contemplated herein is concerned without at least 30 days prior written notice.

8. Agency shall indemnify, defend, save, and hold harmless the State of Oregon, the Oregon Transportation Commission and its members, the Oregon Department of Transportation, their officers, agents, and employees from and against any and all claims, suits, actions, losses, damages, costs, expenses, and liabilities of any nature whatsoever resulting from, arising out of, or relating to the activities of Agency or its officers, employees, subcontractors, or agents under this Agreement.
9. Notwithstanding the foregoing defense obligations under paragraph 8 above, neither party nor any attorney engaged by either party shall defend any claim in the name of the other party or any agency/department/division of such other party, nor purport to act as legal representative of the other party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other party. Each party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other party is prohibited from defending it, or that other party is not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the party to do so. Each party reserves all rights to pursue any claims it may have against the other if it elects to assume its own defense.
10. Agency shall be responsible for all costs not covered by State funding. State funding is limited to \$200,000.
11. Agency shall be responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to, retirement system contributions, workers compensation, unemployment taxes, and state and federal withholdings.
12. All employers, including Agency, that employ subject workers who work under this Agreement 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. Agency shall ensure that each of its subcontractors complies with these requirements.

13. Agency shall, upon completion of Project, maintain the Project at its own cost and expense and in a manner satisfactory to State.

### **STATE OBLIGATIONS**

1. State's Bicycle and Pedestrian Program shall review and must concur in the plans prepared by Agency before the Project is advertised for a construction contract or before construction begins if Agency forces shall perform the work. State's Bicycle and Pedestrian Program office shall process all billings submitted by Agency.
2. Upon completion of Project, inspection and approval by State staff, and receipt from Agency of an itemized statement of the actual total cost of the Project, State shall deposit with Agency the sum of \$100,000. When added to the initial deposit from Agreement number 20473, the final deposit will equal the State's share of the originally estimated costs (\$200,000). Should final Project costs exceed the original estimate, extra costs shall be borne by Agency; the maximum amount of State reimbursement under this Agreement is \$200,000. If final Project costs are less than original estimate, State shall deposit with Agency a final payment in an amount which, when added to the initial deposit, would equal the State's proportionate share of the originally estimated costs, based on a percentage calculated using State share and local match.
3. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of current biennial budget.

### **GENERAL PROVISIONS**

1. This Agreement may be terminated by mutual written consent of both parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within 10 days or such longer period as State may authorize.
  - c. If Agency fails to provide payment of its share of the cost of the Project.

- d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. If any funds are remaining from the advance deposit, they shall be refunded to State.
  4. State, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
  5. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by a party of that or any other provision.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year hereinafter written.

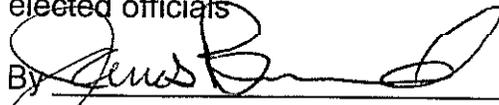
The Oregon Transportation Commission approved this Project on November 17, 2003 as part of the Fiscal Year 2004-2007 Local Assistance Bicycle and Pedestrian Program. The funds are included in the Statewide Programs Section of the 2004-2007 Statewide Transportation Improvement Program (STIP).

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 3, Paragraph 12, which authorizes the Director and Deputy Director, Highways to approve and execute all agreements pertaining to OTC approved local grant program agreements for bicycle and pedestrian projects.

Agency/State  
Agreement No. 22280

On October 8, 2004, the Director and Deputy Director, Highways approved Subdelegation Order No. 4, Paragraph 10, in which the Director and Deputy Director, Highways delegates authority to the Technical Services Manager/Chief Engineer to approve and execute all agreements pertaining to OTC approved local grant program agreements for bicycle and pedestrian projects.

The City of Milwaukie, by and through its  
elected officials

By   
Title Mayor

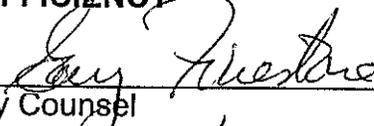
Date 02/15/05

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

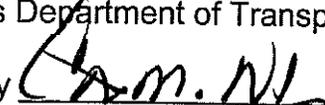
**APPROVED AS TO LEGAL  
SUFFICIENCY**

By   
City Counsel

Date 2/15/05

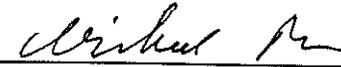
Agency Contact:  
City of Milwaukie  
Attn: Brion Barnett, Civil Engineer  
6101 SE Johnson Creek Blvd  
Milwaukie, OR 97206

STATE OF OREGON, by and through  
its Department of Transportation

By   
Technical Services Manager/Chief  
Engineer

Date 3-7-05

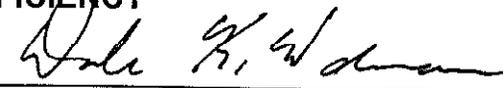
**APPROVAL RECOMMENDED**

By   
Bicycle/Pedestrian Program Manager

Date 2-23-2005

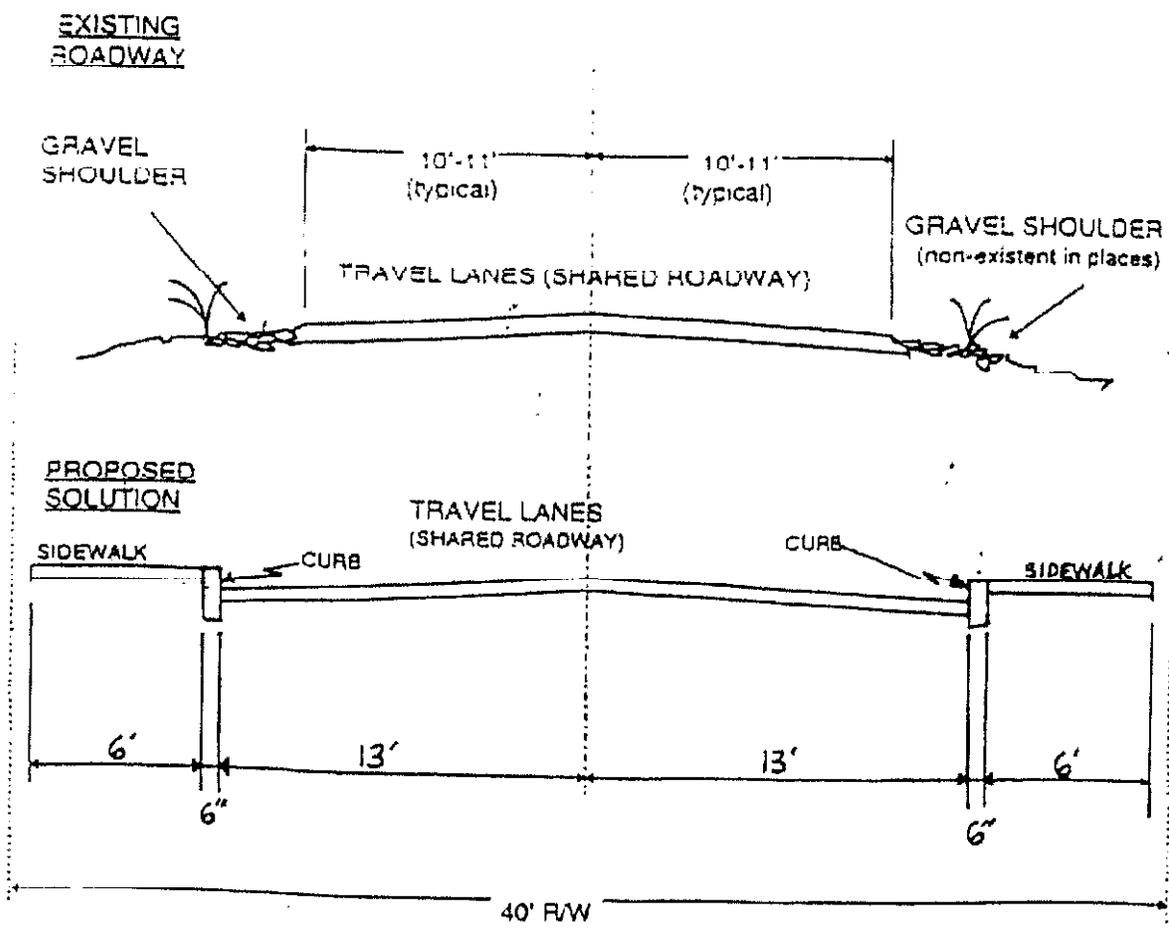
By \_\_\_\_\_  
Region 1 Manager

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By   
Assistant Attorney General

Date: 2/28/05





CITY OF  MILWAUKIE	CITY OF MILWAUKIE, OREGON – PUBLIC WORKS DEPT. <h2 style="margin: 0;">42<sup>nd</sup> Avenue Typical Section</h2>	DRAWING NO.  _____
APPROVED  _____ CITY ENGINEER	NO. _____ REVISIONS _____ _____ _____ DATE _____	DATE _____ BY _____ _____ _____



**To:** Mayor and City Council

**Through:** Mike Swanson, City Manager  
Kenny Asher, Community Development/Public Works Director  
Kelly Somers, Operations Director

**From:** Ernie Roeger, Fleet Supervisor

**Subject:** Authorize the City Manager to Sign Purchase Orders For City Vehicles And Public Works Equipment

**Date:** June 12, 2006 for July 06, 2006 Council Meeting

### **Action Requested**

Authorize the City Manager to sign purchase orders totaling \$389,000 for the purchase of one patrol car, one detective car, one police sport utility vehicle, two patrol motorcycles, a hydraulic hammer for the backhoe, an upgrade for the existing TV van, and a street sweeper, and one staff car.

### **Background**

Fleet Services has a vehicle replacement program that is designed to replace vehicles on a regular schedule to insure the lowest overall cost possible and to provide safe and reliable vehicles.

Fleet Services' replacement schedule for FY 2006/2007 calls for the replacement of two patrol cars, a police patrol motorcycle, a police detective vehicle, and a police sport utility vehicle. It also calls for the upgrade of the existing TV van, a hydraulic hammer for the backhoe and a special shared sweeper. Due to the maintenance requirements of the present Police motorcycles, it was recommended that an additional police patrol motorcycle be purchased in lieu of a patrol car. A safe reliable new staff car is also needed to provide dependable transportation for city personnel traveling out of town to conferences and schools. Attachment #1 is the City of Milwaukie Standard Criteria for Vehicle Replacement.

The replacement schedule includes the following:

1. One new Police patrol vehicle. The patrol unit being replaced is unit #62, a 1998 Crown Victoria with an estimated 80,000 miles at the time of rotation. The used vehicle will be sold.
2. Two new police patrol motorcycles. The present motorcycles will be used as backups.
3. One Police detective vehicle. The unit being replaced is 14. The used vehicle will be used as a staff car by the police department.
4. One police sport utility vehicle. The sport utility being replaced is 08. The used vehicle will be sold.
5. The technology of the equipment in the existing TV van is outdated. Updated equipment is needed.
6. In emergencies a better means of breaking pavement is needed. A hydraulic hammer for the backhoe would fill that need.
7. One special shared sweeper. The sweeper being replaced is the Elgin Pelican. The used sweeper will be sold.
8. One safe, reliable and fuel-efficient staff vehicle. The five vehicles available to travel to a school or conferences are 1996 and older vehicles ranging in mileage from 79,000 to 122,000. The fleet supervisor is concerned that these vehicles are becoming less dependable for distance traveling. The police department has found it advantageous to sell the high mileage patrol cars to smaller communities in the area, leaving the city without a source for staff vehicles. A committee will be formed to evaluate the most appropriate vehicle to purchase. A hybrid or bio fueled car will be considered.

The new vehicles will be purchased through the Oregon State Cooperative Purchasing Program. The amount budgeted for the replacement of these vehicles and equipment \$389,000.

### **Concurrence**

The Public Works Operations Director, and Fleet Supervisor have conferred with the Police Chief, and Police Sergeant, as well as, the Operation Supervisors on how many and what types of vehicles are needed for each department.

### **Fiscal Impact**

The funds to purchase this equipment come from the Fleet Reserve fund. The Fleet Reserve fund operates like a savings account for each department and division, which put aside monies each year to replace vehicles and equipment on

a regular replacement schedule. Then funds have been approved in the current fiscal budget for the amount of \$389,000.

**Work Load Impacts**

Each new vehicle requires set up costs and fleet staff time. This is figured into the overall cost of each vehicle and is included in the \$389,000 total.

**Alternatives**

Deny request or approve with modifications. This would mean modifying the purchasing program.

**ATTACHMENT #1:**

**CITY OF MILWAUKIE  
FLEET SERVICES  
STANDARD CRITERIA FOR VEHICLE REPLACEMENT**

**AGE:** We have set up a schedule of replacement for the various vehicles and equipment as follows:

**1. POLICE PATROL CARS – 4 YEARS or 80,000 MILES:** Patrol cars are used as an essential tool for the officers and receive much more stress on the drive train components than normal vehicles. This type of stress takes a toll on these vehicles and can become a safety issue.

**2. DETECTIVE, POLICE CHIEF AND CAPTAIN CARS - 5 YEARS:** Detective cars are replaced more often in order to remain anonymous. These vehicles are used for surveillance. The Police Chief and Police Captain's cars are replaced more often due to moderate to high stress and mileage.

**3. PICKUPS AND LIGHT DUTY TRUCKS – 10 YEARS:** These vehicles are the front line pickups, vans, service trucks and small dump trucks that are used in the everyday maintenance and inspection work of each division of Public Works.

**4. HEAVY DUTY TRUCKS – 15 YEARS:** The heavy-duty trucks are built to last longer and are not use as often.

**5. BACKHOES, LOADERS, ROLLERS AND AIR COMPRESSORS – 15 YEARS:**

These vehicles are not used on an every day basis but are essential to the overall operations of Public Works.

**MILEAGE:** We look at the total mileage on a vehicle; being a small city we do not put high mileage on a vehicle (other than the police patrol cars). However, the usage is mostly stop and start city driving. This type of usage is much harder on the drive train of a vehicle than over the road or freeway driving.

**CONDITION:** Condition is a big factor in making a decision to replace a vehicle. Fleet staff evaluates the vehicle by looking at all of the components such as body condition, rust, door fit, door hinges, floorboard condition, paint and body damage. We look at the suspension and steering components, brake system, and perform a safety check to make sure the vehicle meets all the safety requirements. We evaluate the condition of the drive train, engine, transmission, and rear end to determine if a major repair is coming due.

**COST RECORDS:** Cost records gives staff the information of cost history, and repairs made. This would indicate to us if any future repairs would exceed the worth of the vehicle.

**WHAT IS THE VEHICLE USED FOR:** A major factor in vehicle replacement is what the vehicle is used for, and how often the vehicle is used. A good example is a police patrol vehicle that is used daily, even sometimes on a double shift, and in extreme conditions; compared to a backhoe that may only be used for emergency repairs possibly one time per week.



To: Mayor and City Council

Through: Mike Swanson, City Manager  
Kenny Asher, Community Development and Public Works Director

From: Paul Shirey, Engineering Director

Subject: Authorize the City Manager to Sign a Contract for City Share of S.E. Oak St. Street Improvements

Date: June 8, 2006, for July 6, 2006 City Council Meeting

#### Action Requested

Authorize the City Manager to sign a contract committing the City to a payment of \$140,000, to Oak Street Square LLC., representing approximately 51% of the total cost of the off-site frontage street improvements at S.E. Oak Street between S.E. Washington Street and S.E. Campbell Street.

#### Background

As part of a land use approval for the Oak Street Square development, the applicant was required (see Attachment #1) to make a proportional payment of \$133,795 towards the total cost of \$273,795 for off-site street improvements on S.E. Oak Street between S.E. Washington Street and S.E. Campbell Street. The City of Milwaukie agreed to contribute \$140,000 of the total cost of the off-site street improvements based upon pre-existing conditions at this location. The City prepared a contract (see Attachment #2) that has been signed by the developer. The contract requires the City to make payment within 30 days of the satisfactory completion of the work and presentation of the invoice. Work is scheduled for completion by the end of September this year.

The City determined that it was necessary to participate in the improvements at S.E. Oak Street, based on the predevelopment condition of the intersection. A fifth travel lane on S.E. Oak Street at the intersection with Highway 224 was warranted prior to the proposed development. The addition of new trips from the proposed development intensified the need for the fifth travel lane and warranted a sixth travel lane on S.E. Oak Street. New trips generated by the proposed development (86 net new P.M. peak trips)

were compared to the existing trip generation prior to the development. The City determined that the City's share of street improvements on S.E. Oak Street is about 51% or \$140,000.

#### Concurrence

The Finance Director concurs with this payment. The City Attorney has reviewed and approved the contract.

#### Fiscal Impact

The amount of the payment is included in the adopted SDC budget (Fund 325) for Streets and is part of the 2005-2006 budget. The account balance in this fund is \$307,406 for the current fiscal year, prior to payment.

#### Work Load Impacts

Staff will inspect all work constructed within the right-of-way on S.E. Oak Street for compliance with City standards for construction. Estimated time is 4 hours per month for four months. The street improvements are to be constructed summer and fall 2006.

#### Alternatives

None.

#### Attachments

1. Planning Commission Revised Notice of Decision – January 25, 2006
2. Contract between the City and the Oak Street Square, LLC.



January 25, 2006

File(s): TAR-05-01, TPR-05-03, LC-05-01

## REVISED NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on January 10, 2006.

**Applicant(s):** Group Mackenzie for Gramor Development

**Location(s):** Block of Oak Street, Highway 224, Myrtle Street, & Campbell Street

**Tax Lot(s):** 11E36AB07100, 7500, 7950, 7600, 7601, 7700, 7800, 7900, 8000, 6500, 660, 6700, 6800, and 7000

**Application Type(s):** Transition Area Review  
Transportation Plan Review  
Lot Consolidation

**Decision:** Approved

**Review Criteria:** Milwaukie Zoning Ordinance:

- 13.313 General Commercial Zone
- 19.416 Transition Area Review
- 19.500 Off-street Parking and Loading
- 19.700 Variances
- 19.1011.3 Minor Quasi-Judicial review
- 19.1400 Transportation Planning Design standards and Procedures

**Neighborhood(s):** Historic Milwaukie

On January 10, 2006 the Planning Commission took action on the above-mentioned item. A Notice of Decision was sent the following day. The Notice of Decision did not accurately represent the Planning Commission's Decision. This notice corrects the errors of the previous notice. The changes are identified with ~~strikethrough~~ markings and new material is identified as underlined.

The Planning Commission's decision on this matter may be appealed to the Milwaukie City Council. An appeal of this action must be filed within 15 days of the date of this notice, as shown below.

**Appeal period closes: 5:00 p.m., February 8, 2006**

Appeals to the City Council must be accompanied by the appeal fee, be submitted in the proper format, address applicable criteria, and be made on forms provided by the Planning Department. Milwaukie Planning staff (503-786-7630) can provide information regarding forms, fees, and the appeal process.

**Findings in Support of Approval**

1. The applicant is proposing to redevelop a 2.1-acre parcel that encompasses the majority of a city block between Oak Street, Highway 224, Myrtle Street, and Campbell Street. The property was rezoned to General Commercial in February 2005. The single family and multi family structures have been demolished except for the dental facility and the residential structure located at the corner of Campbell Street and Myrtle Street. Three new buildings will be constructed as follows:

- a. 14,800 square foot commercial anchor tenant with drive-thru pharmacy.
- b. 4,200 square foot mixed commercial/office use building.
- c. 4,800 square foot mixed commercial/office use building.

Site improvements will include:

- a. 98 parking spaces
- b. Bicycle parking.
- c. 15% of the site will be landscaped.
- d. A vegetative screen along the face of the anchor tenant consisting of trees and shrubs will be provided along Myrtle Street.
- e. Right-of-way dedication, curb, sidewalk, and a planter strip will be provided along Oak Street and Myrtle Street. ODOT will construct new sidewalks along Highway 224.

Off-site improvements include

- a. Construction of 6-lane configuration at the intersection of Oak Street and Highway 224 that will provide dedicated left turn and right turn lanes.
  - b. Strip a dedicated left turn lane on Oak Street westbound to Railroad Ave. Oak Street.
  - c. Traffic island at Sellwood Avenue and 34<sup>th</sup> Avenue to satisfy neighborhood traffic calming requirements.
2. In February 2005, the City Council approved a zone change request to rezone the property from R-2 to CG. Traffic studies are required for zone changes. The traffic study conducted identified traffic impacts. The City Council approved the

zone change request and adopted the following conditions to ensure mitigation of identified traffic impacts:

- a. Prohibition of fast-food drive thru facility.

Fast food and bank drive thru facilities are not proposed. A drive thru pharmacy is proposed.

- b. Limiting building area to a maximum of 27,000 square feet.

The floor area of the three buildings do not exceed 27,000 square feet.

- c. Right-of-way dedication of up to 20 feet on Oak Street to allow for construction of a 5-lane intersection, while maintaining room and design for ultimate build out of a 6-lane configuration.

The applicant is proposing to dedicate 19 feet of right-of-way and to construct the full 6-lane intersection at Oak Street and Highway 224.<sup>1</sup> See Attachment 4 - Site Plan.

- d. Strip dedicated right turn lane on Oak Street for the movement onto Railroad Ave. Street.

The site plan and narrative demonstrate compliance with this requirement.

- e. Provide specific neighborhood traffic calming improvement (up to \$10,000) at the discretion the Planning Commission.

The Commission adopted a condition requiring the applicant provide a traffic island at the intersection of 34<sup>th</sup> and Sellwood to satisfy the neighborhood traffic-calming requirement.

As conditioned, the proposal complies with conditions adopted by the City Council on February 15, 2005.

3. Applications TAR-05-01, TPR-05-08, & LC-05-01 have been processed and public notice has been provided in accordance with Milwaukie Municipal Code (MMC) Section 19.1011.3- Minor Quasi-Judicial Review.
4. The project is located in the General Commercial Zone (CG) where retail trade establishments, personal service businesses, and restaurants are permitted outright provided the development standards of the CG Zone Section 19.313.3 are met. The proposal complies with lot area, setbacks, height restrictions, and lot coverage development standards established by MMC 19.313.3.

MMC Section 19.313.3 (L) requires that at least 15% of the site must be left or planted in trees, grass, or shrubs. The applicant has proposed to landscape 15% of the site. As conditioned, the application complies with the development standards of MMC Section 19.321.3.

5. MMC Section 19.416 - transition areas are applicable in areas where proposed commercial projects are located within 100 feet of areas designated for lower density. Transition areas are applied to reduce impacts on lower density uses.

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<sup>1</sup> The applicant is proposing to dedicate 19 feet of right-of-way, however staff recommends the Commission adopt a condition requiring 20-feet of right-of-way dedication in order to provide a 5-foot planter strip.

Proposed transition area measures include:

- 30-foot building setback.
- Landscaped area ranging from 8 feet to 10 feet in width.
- Building treatments to break up the building mass.
- Trellis on the side of the building for a vegetative screen.

The site plan demonstrates trash compactors and loading areas adjacent to Myrtle Street. A condition has been adopted requiring masonry wall and fencing to screen the trash compaction and loading areas from view. As conditioned the application meets the intent of the Transition Area Requirements MMC Section 19.416.

6. Off-street Parking and Loading

- a. Off-street parking and loading MMC Section 19.503.6- determination of required parking for unlisted uses. The applicant has demonstrated that a proposed minimum-parking ratio of 1 space per 245 square feet will provide adequate parking for shopping center. As conditioned the application complies with MMC Section 19.503.6 – determination of required parking for unlisted uses.
- b. Table 19.503.10 established minimum drive aisle and parking space dimensions. The site plan demonstrates compliance with minimum dimensional standards for parking areas. As conditioned, the application complies with Table 503.10.
- c. Section 19.503.17 requires pedestrian access that is separate from vehicular circulation be provided throughout the site. Walkways are required in parking areas with over 20 spaces and shall be buffered by landscaping or a curb. ~~The site plan does not demonstrate compliance with pedestrian walkways. Pedestrian access is not provided across the site from Oak Street to Myrtle Street, or in portions of the parking area adjacent to Highway 224 and adjacent to Myrtle Street. A condition has been adopted requiring the site plan to be revised in order to accommodate pedestrian access from required parking spaces to on-site buildings. In order to accommodate requires pedestrian walkways and minimum vegetative requirements established in MMC Section 19.313, the applicant might need to reduce building floor area. As conditioned the application complies with MMC Section 503.17. The Planning Commission found the onsite walkways adequately serve the site.~~
- d. MMC Section 19.503.19 establishes landscaping requirements for off-street parking areas and requires the installation of wheel stops to prevent vehicles from encroaching on required landscaping and pedestrian walkways. The Planning Commission found that wheel stops could be omitted when landscape areas and walkways are over designed by 2 feet. The applicant has over-designed landscaping areas and pedestrian walkways by 2 feet in order to eliminate wheel stops. A condition has been adopted requiring the applicant to maintain the over development of 2 feet in required landscape areas and pedestrian walkways. As

conditioned, the application complies with minimum stall dimension and minimum landscape area and walkway dimensions.

MMC Section 19.503.19 (A)(1) requires a minimum of 8 feet of landscaped buffer area between off-street parking area and right-of-way be provided. Site plan submitted December 5, 2005 provides required 8 feet of landscaping adjacent to Myrtle Street.

As conditioned the application complies with MMC Section 19.503.19 - Landscaping.

- e. MMC Section 19.504 establishes standards for off-street loading. Off-street loading areas are not required for Buildings I and II because they are under 5,000 square feet in area. The anchor tenant will require 1 loading area. The proposed loading area will be on the west building elevation adjacent to Myrtle Street. Since the development is subject to Transition Area Review standards, a condition has been adopted requiring landscape buffering and site obscuring fencing to screen the loading area from adjacent residential uses. As conditioned, the proposal is consistent with MMC Section 19.504 - Off-street loading standards.
  - f. MMC Section 19.505 establishes standards for bicycle parking. As conditioned the application complies with MMC Section 19.505 – Bicycle Parking.
9. MMC Section 19.1400 - Transportation
- a. MMC Section 19.1404 authorizes the Engineering Director to approve adjustments to transportation facility design standards. The applicant has requested to reduce the sidewalk to 8 feet and the planter strip to 4 feet along Oak Street. The Planning Commission denied the applicant's request to reduce the planter strip to 4 feet and required construction of a 5-foot planter strip. The Planning Commission approved the applicant's request to reduce the sidewalk width to 8 feet upon finding the following:
    - The City Council conditions of approval require the applicant to dedicate up to 20 feet of right-of-way, which must include construction of a 6-lane intersection configuration with 11-foot travel lanes as well as allow for a curb, sidewalk, and planter strip.
    - After providing six 11-foot travel lanes within the existing right-of-way and dedicated 20 feet, only 13 feet remained to provide a curb, sidewalk and planter strip.
    - A larger sidewalk could be provided if the planter strip were reduced. Staff does not suggest reducing the planter strip below 5-feet. The planter strip will create a safer pedestrian environment by providing greater separation between vehicles and pedestrians.
- A condition has been adopted requiring the applicant to dedicate 20 feet of right-of-way on Oak Street and to construct a 5-foot planter strip and an 8-foot sidewalk. As conditioned the proposal complies with MMC 1404 - Adjustment Criteria and table 1409.3 Right-of-way design standards.

- b. MMC Section 19.1406 states that any non-residential development adding more than 25 trips per day to an adjacent residential local street requires mitigation of impacts.

The applicant will provide the following mitigation:

- Dedicate 20 feet of right-of-way and construct a 6-lane intersection at Oak Street and Highway 224 that provides dedicated left turn and right turn lanes.<sup>2</sup>
- Strip dedicated right turn lane on Oak Street for the movement onto Railroad Ave. Street.
- Construct a traffic island at the intersection of Sellwood and 34<sup>th</sup> Avenue to satisfy the neighborhood traffic-calming requirement adopted by the City Council.<sup>3</sup>
- Construct curb, setback sidewalk, and planter strip along Myrtle Street and Oak Street.
- Stripe a crosswalk on Oak Street at the Campbell Street intersection and construct an ADA compliant ramp on the corner of Oak Street and Campbell Street.

- c. MMC Section 19.1407 requires new developments to be safe, convenient, and adequate to accommodate the impacts of new development.

The applicant will dedicate 20 feet of right-of-way on Oak Street and construct a six lane intersection that provides dedicated left turn and right turn lanes, as shown on the December 5, 2005 site plan. Dedication is not required on Myrtle Street.<sup>4</sup> A 6-foot setback sidewalk with a 5-foot planter strip will be constructed.

Required mitigation measures and frontage improvements must be provided at the time of development. As conditioned, the proposal is consistent with MMC Section 19.1407.

- d. MMC Section 1408.1 requires the submission of a transportation impact analysis (TIA) that demonstrates development on the surrounding transportation system. The TIA provides framework to evaluate transportation impacts and the basis to assess reasonable and proportionate mitigation of impacts.

A TIA and supplemental documentation was submitted with the zone change application. The City Council found that the TIA and supplemental documentation adequately demonstrate impacts and reasonable proportional mitigation of those impacts.

- e. 1408.3 (B) requires the applicant to demonstrate proportionate impacts to motor vehicle pedestrian, bicycle, and transit facilities related to the

<sup>2</sup> The applicant has proposed 19 feet of dedication. Staff recommends 20 feet of right-of-way dedication to allow for a 5-foot planter strip along Oak Street.

<sup>3</sup> The applicant is responsible for up to \$10,000 for the cost of and construction of the traffic island. Staff estimates the cost of constructing the traffic island to be approximately \$8,000 to 10,000.

<sup>4</sup> Myrtle Street is a 60-foot right-of-way.

development proposal. The applicant has identified impacts and has proposed appropriate mitigation as follows:

- Dedicate 20 feet of right-of-way and construct a 6-lane intersection at Oak Street and Highway 224 that provides dedicated left turn and right turn lanes.<sup>5</sup>
  - Strip dedicated right turn lane on Oak Street for the movement onto Railroad Ave. Street.
  - Construct a traffic island at the intersection of Sellwood and 34<sup>th</sup> Avenue to satisfy the neighborhood traffic-calming requirement adopted by the City Council.<sup>6</sup>
  - Construct curb, setback sidewalk, and planter strip along Myrtle Street and Oak Street.
  - Stripe a crosswalk on Oak Street at the Campbell Street intersection and construct an ADA compliant ramp on the corner of Oak Street and Campbell Street.
- f. MMC Table 19.1409.3 establishes provision for frontage improvement and required right-of-way dedication. The applicant is proposing the following:  
The applicant will dedicate 20 feet of right-of-way on Oak Street and construct a six lane intersection that provides dedicated left turn and right turn lanes, as shown on the December 5, 2005 site plan. Dedication is not required on Myrtle Street. Myrtle Street is a 60-foot right-of-way.
- g. Access spacing standards for driveways.  
The applicant has proposed to construct a right-in only access driveway on Oak Street approximately 200 feet from the intersection of Oak Street and Highway 224. Based upon advise from the City's traffic consultant, the Planning Commission found the right-in only access creates a traffic hazard. A condition is being imposed allowed the right-in access, but requiring a change of surface to encourage slowing and requiring removal of the right-in access if the City Engineer determines that the access creates a safety hazard or disrupts traffic.
- h. MMC Section 19.1410 establishes standards for pedestrian facilities. As conditioned the application is consistent with MMC Section 19.1410 – Pedestrian requirements and standards.
- i. MMC Section 19.1411 establishes standards for bicycle requirements. The applicant is proposing to provide bicycle parking and as conditioned right-of-way width will be preserved for future construction of a bike lane along Oak Street. As conditioned the application is consistent with MMC Section 19.1411 – Bicycle requirements and standards.
- j. MMC Section 19.1412 – establishes transit requirements and standards. A concrete landing area within the planter strip on Oak Street must be

<sup>5</sup> The applicant has proposed 19 feet of dedication. Staff recommends 20 feet of right-of-way dedication to allow for a 5-foot planter strip along Oak Street.

<sup>6</sup> The applicant is responsible for up to \$10,000 for the cost of and construction of the traffic island. Staff estimates the cost of constructing the traffic island to be approximately \$8,000 to \$10,000.

installed to accommodate future transit stop requirements. As conditioned the application complies with MMC 19.1412.

10. The applicant requested a variance to omit the bike lane along Oak Street. The Commission has granted the variance upon finding the applicant has demonstrated compliance with variance criteria as follows:

- a. Unusual Conditions.

The City Council conditions of approval required the applicant to dedicate up to 20 feet of right-of-way, which must include construction of a 6-lane intersection configuration with 11-foot travel lanes as well as allow for a curb, sidewalk, and planter strip.

After providing six 11-foot travel lanes within the existing right-of-way and dedicated 20 feet, only 13 feet remained to provide a curb, sidewalk and planter strip, there is not sufficient room to construct a bike lane, planter strip, and side walk.

There are no other bike lanes to connect to.

- b. No feasible alternatives

There is not sufficient right-of-way on the east side of Oak Street to construct a bike lane; it is common practice to construct bike lanes on both sides of the street at the same time on arterial streets.

After providing six 11-foot travel lanes within the existing right-of-way and dedicated 20 feet, only 13 feet remained to provide a curb, sidewalk and planter strip, there is not sufficient room to construct a bike lane, planter strip, and side walk.

With the dedication of 20 feet on Oak Street, there will be sufficient right-of-way to construct a future bike lane. The planter strip may be removed and replaced with the bike lane.

- c. Mitigation of potential impacts

Alternative routes that provide cross connection across Highway 224 exist at Monroe Street and Harrison Street.

With the dedication of 20 feet on Oak Street, there will be sufficient right-of-way to construct a future bike lane. The planter strip may be removed and replaced with the bike lane.

The applicant has demonstrated the need for the variances and the application is consistent with MC Section 19.700 – Variance, Exceptions, and Home Improvement Exceptions.

11. The property contains 16 tax lots. The Planning Commission has approved the lot consolidation application to combine the property into one tax lot. A condition has been adopted requiring the lot consolidation be recorded with Clackamas County and a copy of the recording instrument must be submitted to the Planning Director prior to issuance of a building permit. As conditioned, the application complies with lot consolidation requirements.
12. Title 16 of the Milwaukie Municipal Code requires that the applicant obtain an erosion control permit prior to construction or commencement of any earth

disturbing activities. As conditioned that application complies with the Milwaukie Municipal Code Title 16 - Erosion Control.

### Conditions of Approval

1. Final site and architectural plans shall be in substantial conformance with the plans approved by this action. Reference is made to architectural plans and site plan and application submission materials stamped received October 5, 2005, October 24, 2005, November 4, 2005, and November 30, 2005, at the Milwaukie Planning Department and traffic study conducted November 22, 2004 and revised on October 5, 2005 and October 24, 2005 and findings and conditions in support of approval of zone change adopted by the city council on February 15, 2005.
2. Prior to issuance of a building permit the following shall be resolved:
  - a. Provide a narrative description of all actions taken to comply with conditions of approval.
  - b. Provide a narrative description of all changes made that are not related to conditions of approval.
  - c. Street and utility construction plans shall be prepared in accordance with city standards. Engineered plans for all public frontage improvements must be submitted to the Planning Director for review and approval.
  - d. Dedication of rights-of-way along Oak Street and the corner of Highway 224 shall be in a form acceptable to the City Attorney and shall be submitted with the building permit application.
  - e. An erosion control plan and permit application must be submitted along with the engineered plans for public improvements.
  - f. Submit revised site plan that demonstrates the following:
    1. Required bicycle parking.
    2. 20-feet of right-of-way dedication on Oak Street.
    3. Landscaping calculations demonstrating that 15% of the site will be landscaped.
    4. A minimum parking ratio of one parking space per 245 square feet of building floor area.
  - i. Submit an irrigation plan.
  - g. The proper lot consolidation recording mechanism must be reviewed and approved by the city and file with Clackamas County prior to issuance of a building permit.
  - h. Tree preservation measures shall be installed and inspected to the satisfaction of the Planning Director.
  - i. System Development Charges for storm and transportation shall be paid at the time building permits are issued. Wastewater and water System Development Charges shall be paid at the time of tenant improvement.
3. Prior to certificate of occupancy for any building the following shall be resolved:

- a. Narrative description of all actions taken to comply with conditions of approval.
- b. Frontage improvements along Oak Street and Myrtle Street shall be completed.
- c. The applicant shall stripe a dedicated right turn lane on SE Oak Street for the movement onto SE Railroad Ave. Street.
- d. The applicant shall construct up to \$10,000 in traffic calming improvements at the intersection of SE 34<sup>th</sup> Avenue and Sellwood. Traffic calming improvements include a 16-foot diameter traffic calming island at the intersection of SE 34<sup>th</sup> Avenue and SE Sellwood Street, landscaping, and necessary signage. The applicant shall use any remaining money to install street trees within the landscape strip on SE 34<sup>th</sup> Avenue between SE Sellwood Street and SE Washington Street. The applicant shall submit a survey of the intersection of 34<sup>th</sup> Avenue and Sellwood. With submission of a survey City staff will design the traffic island.
- e. The applicant shall improve crosswalk pavement markings at the following locations.
  - NE, NW, and SW side of intersection of SE Oak Street and Highway 224.
  - NW side of intersection of SE Washington Street and SE Oak Street.
  - SW side of intersection of SE Oak Street and SE Campbell Street. The applicant shall improve all sidewalk ramps on the northwest side of SE Oak Street between SE Washington Street and SE Campbell Street, including installation of yellow pedestrian warning pads (MASCO CASTinTACT preferred).
- f. The Oak Street Highway 224 intersection shall be restriped to accommodate the proposed 6-lane configuration. The applicant shall design, improve, relocate, and reconfigure the traffic signal at the intersection of SE Oak Street and Highway 224 to meet the demands of the traffic impact study and the required street improvements. The applicant shall dedicate sufficient right-of-way for the traffic signal improvements. The dimensions of right-of-way dedication shall be determined as part of the public improvements design review.
- g. Landscaping, parking, and irrigation shall be installed and inspected by the Planning Director. At least 15% of the site must be covered with landscaping.
- h. Bicycle parking shall be installed. Once bicycle parking has been installed an inspection by the Planning Director is required.
- i. Prior to occupancy of any building, frontage improvements along Oak Street and Myrtle Street shall be completed or bonded in the amount of 110% of the improvements.
- j. Full-engineered plans for all the public improvements must be submitted to the City of Milwaukie Planning Department for review and approval before any construction may begin. Construction of all public

improvements must be completed and final Mylar "as constructed" drawings must be submitted.

4. Frontage improvements shall conform to the following:

**Myrtle Street**

The applicant shall reconstruct a 5-foot wide set back sidewalk to City of Milwaukie construction standards along SE Myrtle Street fronting the proposed development. The applicant may reduce the landscape strip with the sidewalk reconstruction to 5 feet in width along SE Myrtle Street.

The applicant shall construct new curb on SE Myrtle Street fronting the proposed development meeting City of Milwaukie standards for construction.

**Oak Street**

The applicant shall dedicate 20 feet of right-of-way on the south site frontage of SE Oak Street and taper back to the existing right-of-way in the northern portion of the site to accommodate the required public improvements on SE Oak Street. The dedication must be completed prior to issuance of any building permits for development of the site.

The applicant shall add a dedicated left turn lane on northbound and southbound SE Oak Street at the intersection with Highway 224 and a dedicated right turn lane on southbound SE Oak Street at the intersection with Highway 224, resulting in a six lane cross section. The concept plans submitted by the applicant illustrate the 6 lane cross section improvements required to satisfy this condition. The applicant shall widen SE Oak Street between SE Washington Street and SE Campbell Street to provide for minimum 11-foot travel lanes for all lanes of travel, existing and new. Street improvements shall be constructed to City of Milwaukie standards for construction by street classification. City of Milwaukie will share in the construction of the required street improvements on SE Oak Street up to an amount of \$140,000.

An inspection fee for these improvements must be paid at the time of the required pre-construction conference with the contractor.

The applicant shall construct new curb on SE Oak Street along the limits of street improvements meeting City of Milwaukie standards for construction.

The applicant shall construct an 8-foot wide set back sidewalk to City of Milwaukie construction standards along the northwest side of SE Oak Street between SE Washington Street and SE Campbell Street. The applicant shall construct a 5-foot wide landscape strip along the northwest side of SE Oak Street between SE Washington Street and the northeast proposed development property line and a 4-foot wide landscape strip between the northeast proposed development property line and SE Campbell Street.

5. Prior to construction or any earth disturbing activities, erosion controls, and construction barriers shall be installed and inspected in accordance with an approved erosion control plan. Tree preservation measures shall be installed and inspected prior to issuance of an erosion control permit. Construction fencing shall be installed at the drip line of all trees to be preserved.

6. MMC Section 19.313.3 (L) requires that at least 15% of the site must be left or planted in trees, grass, or shrubs.
7. The applicant shall construct concrete landing areas within the planter strip on SE Oak Street to accommodate bus riders in the future. The concrete landing areas shall be constructed to the attached Tri-Met standards and must be completed prior to occupancy of the anchor tenant building.
8. The applicant shall pay an inspection fee equal to 5.5% of the cost of the public improvements prior to the start of construction.
9. The applicant shall provide a payment and performance bond for 100 percent of the cost of the public improvements prior to the start of construction.
10. The right-in access point on Oak Street shall be constructed with a change of surface to encourage slowing. Applicant or then owner shall remove the right-in access, including restoration of planter strip and landscaping, if the City Engineer determines that the access creates a safety hazard or disrupts traffic on Oak Street.

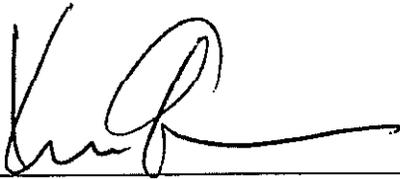
#### **Other Requirements and Advisory Notes**

1. The City of Milwaukie shall install all street signs, relative to traffic control and street names. The applicant shall be responsible for the costs of all street signing for the proposed development. Necessary street signage shall be determined as part of the public improvements design review.
2. The applicant shall demonstrate that any existing street lighting facilities fronting the proposed development meet American National Standard Practice for Roadway Lighting (latest edition), by functional classification of roadway. The applicant shall upgrade the street lighting facilities fronting the proposed development to meet the street lighting standards.
3. Access to the proposed development shall be prohibited off Highway 224.
4. ~~Access to the proposed development shall be prohibited off SE Oak Street within 300 feet of the intersection curb return with Highway 224.~~
5. Driveways shall meet all applicable guidelines of the Americans with Disabilities Act. All driveway access shall have a minimum width of 12 feet and a maximum width of 36 feet and be located at least 10 feet from the property line.
6. The applicant shall provide wastewater service from the available wastewater mains to each building of the proposed development.
7. The applicant shall cut and cap the existing wastewater service lines within 5 feet of the property line for the all demolished structures in accordance with requirements of the City of Milwaukie demolition permit and the 2004 Oregon Structural Specialty Code.
8. The applicant shall provide water service from the available water mains to each building of the proposed development.
9. The applicant shall abandon and disconnect the existing water services from the demolished houses at the water main in accordance with City of Milwaukie abandonment procedures.

10. The applicant shall design and construct a storm drainage system on the northwest side of SE Oak Street as part of the required street improvements and connect to the City of Milwaukie storm system. The minimum pipe sized allowed for storm drainage improvements is 12" in diameter.

The Building Official and Fire Marshal have conducted a preliminary review of the application and require the following:

1. Based on the number of parking spaces provided adjacent to building II, two accessible spaces are required, one space must be an accessible parking space.
2. The plans show one Fire Department Connections serving all three buildings. Each building must have its own FDC. The Fire marshal has indicated that the FDCs may be on the buildings.
3. The applicant must obtain a stamp of approval from Clackamas County Fire District No. 1 that demonstrates fire apparatus access and water supply requirements will be satisfied. Submit a final site plan to the fire district for approval.



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Kenny Asher  
Community Development and Public  
Works Director

cc: Applicant  
Planning Commission  
Kenny Asher, Community Development/Public Works Director  
Paul Shirey, Engineering Director  
Tom Larsen, Building Official  
Bonnie Lanz, Permit Specialist  
Ron Schumacher, Deputy Fire Marshal  
NDA(s): Historic Milwaukie  
Lake Road  
Hector Campbell  
Interested Persons  
File(s): Tar-05-01



## AGREEMENT MILWAUKIE, OREGON

THIS CONTRACT, made and entered into by and between the City of Milwaukie, hereinafter called "CITY" and Oak Street Square LLC, hereinafter called "DEVELOPER", which parties do hereby agree as follows:

### RECITALS

- A. DEVELOPER has been required by a condition of approval in File No. TAR-05-01, TPR 05-03, LC 05-01 (the "File") for the development of Oak Street Square on a majority of the City block between Oak Street, Highway 224, Myrtle Street and Campbell Street to construct certain street improvements on SE Oak Street, but the condition does not require DEVELOPER to pay the full costs.
- B. The CITY accepts that the CITY is responsible for \$140,000 of the costs of constructing the fifth travel lane on SE Oak Street.

### AGREEMENT

Section 1. DEVELOPER shall construct the street improvements to SE Oak Street identified in Condition 4 of the conditions of approval in the File. DEVELOPER shall construct the street improvements in accordance with the City's specifications. DEVELOPER shall not commence construction until the City Engineer has approved the plans.

Section 2. DEVELOPER agrees that all work shall be completed prior to the issuance of the occupancy permit for any building within the Oak Street Square development.

Section 3. The CITY promises and agrees, upon the satisfactory completion of the work and within 30 days of presentation of an invoice detailing the costs incurred, to pay the DEVELOPER \$140,000 of the costs incurred by DEVELOPER in constructing the street improvements to SE Oak Street.

Section 4. The DEVELOPER shall notify the City in writing when the DEVELOPER considers the project complete, and the City shall, within 15 days after receiving the written notice, either determine that the work has been satisfactorily completed or notify the DEVELOPER in writing of any deficiencies.

Section 5. The DEVELOPER shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work.

Section 6. The street improvements shall become the property of the CITY when installed and accepted by the CITY. The street improvements shall be deemed accepted if no notification of deficiency is issued within the time period specified in Section 4.

Section 7. The DEVELOPER shall:

- (a) Make payment promptly, as due, to all persons supplying to such DEVELOPER labor or material for the prosecution of the work provided for in such contract.
- (b) Pay all contributions or amounts due the State Industrial Accident Fund incurred in the performance of the contract.
- (c) Not permit any lien or claim to be filed or prosecuted against the CITY on account of any labor or material furnished.
- (d) Pay to the Revenue Department all sums withheld from the employees pursuant to ORS 316.197.

Section 8. The DEVELOPER 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. The DEVELOPER agrees to pay for such services and all moneys and sums which the DEVELOPER collected or deducted from the wages of his employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

Section 9. The DEVELOPER shall pay prevailing wages and comply with all State and Federal laws in the employment and payment of labor for the work of this agreement. Particular reference is made to the requirements of ORS chapter 279C, which relates to wage rates to be paid on public works. Under such laws, no person shall be employed for more than ten (10) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279.051, the employee shall be paid at least time and one-half pay : (A) for all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive days, Monday through Friday; or (B) for all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive days, Monday through Friday; and (C) for all work performed on Saturday and on any legal holiday. Employers must give written notice to employees of the days and hours of required work.

(1) Each worker in each trade or occupation employed in the performance of the contract either by the DEVELOPER or other person doing or contracting for the whole or any part of the work on the contract, shall be paid not less than the applicable prevailing rate of wage. Prevailing rate information is provided with this contract.

Section 10. The DEVELOPER agrees to indemnify, save harmless and defend the CITY, its officers, Mayor and Council, and employees from and against all claims and action, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the DEVELOPER or the DEVELOPER'S employees.

Section 11. DEVELOPER and its contractor 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 DEVELOPER's activities or work hereunder. Such insurance shall

include provisions that such insurance is primary insurance with the respect to the interests of CITY and that any other insurance maintained by CITY is excess and not contributory insurance with the insurance required hereunder.

Section 12. It is understood and agreed that the DEVELOPER, upon completion of the requirements of this contract, is to promptly remove from the work location, and other property owned or controlled by the CITY, all equipment, materials and other property the DEVELOPER has placed or caused to be placed thereon that is not to become the property of the CITY. It is further understood and agreed that any such equipment, materials and other property that are not removed within 30 days after the day this contract terminates, or within such longer time as may be agreed upon in writing between the DEVELOPER and the CITY, shall become the property of the CITY and may be used or otherwise disposed of by the CITY without obligation to the DEVELOPER or to any party to whom the DEVELOPER may transfer title. Nothing in this section shall be construed as relieving the DEVELOPER from an obligation to clean up, remove or dispose of debris, waste materials, and such, in accord with other provisions of the contract.

Section 13. The DEVELOPER shall at all times observe and comply with all federal and state laws and lawful regulations issued thereunder and local bylaws, ordinances, regulations and codes which in any manner affect the activities of the DEVELOPER under this contract.

By their signatures below, the parties to this contract agree to the terms, conditions, and content expressed herein.

DEVELOPER  
Oak Street Square LLC

By: Gramor Oak Street Square, LLC  
Manager

By: Gramor Investments, Inc.  
Manager

THE CITY OF MILWAUKIE, OREGON



Authorized Signature

Mike Swanson, City Manager

Barry A. Cain  
Printed Name

President  
Title

Date

6/6/06

Date

(503) 245-1976 / (503) 654-9188  
Telephone / Fax Number



To: Mayor and City Council  
Through: Mike Swanson, City Manager  
From: Pat DuVal, City Recorder  
Subject: Contract for Municipal Court Judge Services  
Date: June 26, 2006 for July 6, 2006 Regular Session

### **Action Requested**

Authorize the City Manager to sign a contract with Ronald L. Gray extending Municipal Court Judge Services to December 31, 2006.

### **Background**

By City Charter, the Municipal Court Judge is the judicial officer of the City and is appointed directly by the City Council. The Milwaukie Municipal Court Judge handles cases involving building code violations, City ordinance civil infractions such as zoning violations, and all traffic infractions under Milwaukie Municipal Code. The position requires an average of 15 to 20 hours per month on the bench plus several hours per month preparing and reviewing court-related material.

Mr. Gray was selected in a competitive process in 1988 and again in 1995. The current contract with Mr. Gray for Municipal Court Judge Services expired June 30, 2006. There are no changes to the previous year's contract requested by either Mr. Gray or the City.

### **Concurrence**

The proposed agreement has been reviewed by Mr. Gray and approved as to form by the City Attorney.

### **Fiscal Impact**

The amount of the contract is \$18,000 annually and is included in the FY 2006 – 2007 Adopted Budget.



**CITY OF MILWAUKIE, OREGON  
PERSONAL SERVICES CONTRACT  
MUNICIPAL COURT JUDGE SERVICES**

THIS AGREEMENT made and entered into this 6<sup>th</sup> day of July, 2006 by and between the City of Milwaukie, a municipal corporation of the State of Oregon, hereinafter called City, and Ronald L. Gray, hereinafter called Contractor.

**RECITALS**

WHEREAS City has need for the services of a company with a particular training, ability, knowledge, and experience possessed by Contractor, and

WHEREAS City has determined that Contractor is qualified and capable of performing the professional services as City does hereinafter require, under those terms and conditions set forth,

THEREFORE the Parties agree as follows:

**1. SERVICES TO BE PROVIDED**

Contractor shall initiate services immediately upon receipt of City's notice to proceed, together with an executed copy of this Agreement. Contractor agrees to complete work that is detailed in Exhibit A and by this reference made a part hereof.

**2. EFFECTIVE DATE AND DURATION**

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, on December 31, 2006. All work under this Agreement shall be completed prior to the expiration of this Agreement.

**3. COMPENSATION**

City agrees to pay Contractor not to exceed One Thousand Five Hundred Dollar (\$1,500) per month for performance of the services a described in Exhibit A, which payment shall be based upon the following applicable terms:

- A. Payment by City to Contractor for performance of services under this Agreement includes all expenses incurred by Contractor, with the exception of expenses, if any identified in this Agreement as separately reimbursable.
- B. Payment will be made in installments based on Contractor's invoice, subject to the approval of the City Manager, or designee, and not more frequently than monthly. Payment shall be made only for work actually completed as of the date of invoice.
- C. Payment by City shall release City from any further obligation for payment to Contractor, for services performed or expenses incurred as of the date of the invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

- D. 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 order. Contractor must pay all contributions or amounts due from Contractor to the Industrial Accident Fund incurred in the performance of this order. 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.
- E. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person as such claim becomes due, City's Finance Director may pay such claim and charge the amount of the payment against funds due or to become due the Contractor. The payment of the claim in this manner shall not relieve Contractor or their surety from obligation with respect to any unpaid claims.
- F. If labor is performed under this order, 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 279C.540. 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 653.260 or under 29 USC SS 201-209.
- G. 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 Contractor or all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- H. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

**4. OWNERSHIP OF WORK PRODUCT**

City shall be the owner of and shall be entitled to possession of any and all work products of Contractor which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by

or computed by Contractor prior to termination of this Agreement by Contractor or upon completion of the work pursuant to this Agreement.

**5. ASSIGNMENT/DELEGATION**

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, Contractor shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.

6. **STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR**

Contractor certifies that:

- A. Contractor acknowledges that for all purposes related to this Agreement, Contractor is and shall be deemed to be an independent contractor as defined by ORS 670.700 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 Agreement, 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.
- B. The undersigned Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

If this payment is to be charged against Federal funds, Contractor certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.

Contractor and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

- C. Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- D. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. **INDEMNIFICATION**

City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a contractor's work by City shall not operate as a waiver or release.

Contractor agrees to indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except to the extent that the liability arises out of the negligence of the City and its employees. Such indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

**8. 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 activities of the contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier.

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

A. Commercial General Liability Insurance

Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	1,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one fire)	50,000
Medical Expense (Any one person)	5,000

B. Commercial Automobile Insurance

Contractor shall also obtain, at contractor's expense, and keep in effect during the term of the 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 that are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. 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 such coverage. This shall include Employer's 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 and other policies the City deems necessary shall include the City, its officers, directors, employees and volunteers as additional insureds with respect to this contract.
- E. 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. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days notice of cancellation to the City
- F. Insurance Carrier Rating  
Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- G. 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 effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

H. Independent Contractor Status

The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.

I. Primary Coverage Clarification

The parties agree that Contractor’s coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

J. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution and errors and omissions policies required by this contract.

Contractor’s insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

Office of City Recorder	
City of Milwaukie	Business Phone: 503-786-7504
10722 SE Main St.	Business Fax: 503-653-2444
Milwaukie, Oregon 97222	Email Address:
kwapichb@ci.milwaukie.or.us	

Such policies or certificates must be delivered prior to commencement of the work.

The procuring of such required insurance shall not be construed to limit contractor’s liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

9. **METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS**

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

<b>City</b>	<b>Contractor</b>
City of Milwaukie	Company: Ronald L. Gray, Attorney
Attn: Accounts Payable	Attn: Same
10722 SE Main St., Milwaukie, Oregon 97222	Address: 615 Main Street #201, Oregon

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	City, OR 97045
Phone: 503-786-7523	Phone: (503) 655-1111
Fax: 503-786-7528	Fax: (503) 655-1910
Email Address: sheildsb@ci.milwaukie.or.us	Email Address: grayareas@earthlink.net

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and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to who notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

**10. MERGER**

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

**11. TERMINATION WITHOUT CAUSE**

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the contract pursuant to this paragraph, it shall pay Contractor for services rendered to the date of termination.

**12. TERMINATION WITH CAUSE**

A. City may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds
- 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- 3) If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4) If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

- B. City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:
- 1) If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
  - 2) If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.
  - 3) If Contractor fails to eliminate a conflict as described in Section 11 of this agreement.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (b), Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

**13. ACCESS TO RECORDS**

City shall have access to such books, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

**14. FORCE MAJEURE**

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause;

provided that the parties so disabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

**15. NON-WAIVER**

The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

**16. NON-DISCRIMINATION**

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

**17. ERRORS**

Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

**18. EXTRA (CHANGES) WORK**

Only the City Manager or designee may 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.

**19. ATTORNEY'S FEES**

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

**20. GOVERNING LAW**

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

**21. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES**

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working

hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapter 279B, the provisions of which are hereby made a part of this agreement

**22. CONFLICT BETWEEN TERMS**

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

**23. AUDIT**

Contractor shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the contract period. Contractor agrees to permit City, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

**24. SEVERABILITY**

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

**25. COMPLETE AGREEMENT**

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

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

**CITY OF MILWAUKIE**

\_\_\_\_\_  
By: Mike Swanson, City Manager

\_\_\_\_\_  
Date

**CONTRACTOR**

\_\_\_\_\_

By: Ronald L. Gray, Attorney

Date

**EXHIBIT A**  
**SERVICES TO BE PROVIDED**

Pursuant to Milwaukie Charter (1975) Section 28, the municipal court judge shall:

1. Act as the judicial officer of the city. The municipal judge shall be appointed by and hold office during the pleasure of the council.
2. Be a member in good standing of the Oregon State Bar during the entire term of office. Disbarment shall be a basis for removal from office.
3. Hold a court within the city, which shall be known as the municipal court for the City of Milwaukie, Clackamas County, Oregon. The court shall be open for transaction of judicial business for such days and hours as the council may establish.
4. Conform to the general laws of the State of Oregon governing justice courts except as the City Charter or Code prescribes to the contrary
5. The municipal court has original jurisdiction of all offenses defined and made punishable by ordinances of the city and of all actions brought to recover or enforce forfeitures or penalties defined or authorized by any ordinance of the city. The municipal judge may:
  - A. Render judgments and, for enforcing them, impose sanctions on persons and property within the court's territorial jurisdiction;
  - B. Order the arrest of anyone accused of an offense against the City;
  - C. Commit to jail or admit to bail anyone accused of such an offense;
  - D. Issue and compel obedience to subpoenas;
  - E. Compel witnesses to appear and testify and jurors to serve in the trial of matters before the court;
  - F. Penalize contempt of court;
  - G. Issue process necessary to effectuate judgments and orders of the court;
  - H. Issue search warrants; and
  - I. Perform other judicial and quasi-judicial functions prescribed by ordinance.
6. A municipal judge may appoint municipal judges pro-tem, which judges shall serve at the pleasure of the council.
7. Notwithstanding this section, the council may transfer some or all of the functions of the municipal court to an appropriate state court.



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Stewart Taylor, Finance Director

Subject: Agreement for Banking Services

Date: June 19, 2006 for July 6, 2006 City Council Meeting

Action Requested

Approve the services agreement with Wells Fargo Bank.

Background

Key Bank has been providing banking services for the City of Milwaukie for several years. The services have included treasury management functions of the City's primary checking account and some online services such as direct deposits, EFT transfers and ACH payments. Proposals for banking services were requested to identify the range of services available in the market today and the services that would be most beneficial for the City of Milwaukie.

Written proposals were received from Bank of America, Key Bank, US Bank and Wells Fargo Bank. All were very good proposals that offered a wide range of services. Each bank was also asked to present their unique qualifications and services to a staff review panel.

The products and services that were identified to be of particular benefit to the City of Milwaukie include the following:

- Online real time access to treasury management functions and reporting through a secure and user-friendly portal.
- Positive pay to increase fraud prevention of checks issued by the City.
- Lockbox services to facilitate receiving and posting payments to the City.
- Purchasing cards to increase control and better manage the high volume of small dollar purchases.

- Merchant services to continue to accept credit card payments at multiple locations.

The staff review panel evaluated the proposals and presentations in terms of price, products and presentation and recommends that the City Council approve the services agreement with Wells Fargo Bank.

#### Fiscal Impact

Banking services are typically paid through direct service charges or through a minimum compensating balance left on deposit at the bank. The City's investment policy provides for diversity in investment that is anticipated will offset the banking charges.

#### Work Load Impacts

The change to a new bank and new banking services will increase work load in the Finance Department during the transition but is expected to increase efficiencies and productivity in the long run. The transition to purchasing cards will also require training in each of the operating departments.

#### Alternatives

Approve the agreement as proposed.  
Modify the agreement.  
Do not approve the agreement.

#### Attachments

Services agreement.



**CITY OF MILWAUKIE, OREGON  
PERSONAL SERVICES CONTRACT  
(BANKING SERVICES)**

THIS AGREEMENT made and entered into this 6th day of July, 2006 by and between the City of Milwaukie, a municipal corporation of the State of Oregon, hereinafter called City, and Wells Fargo Bank, NA, hereinafter called Contractor.

**RECITALS**

WHEREAS City has need for the services of a company with a particular training, ability, knowledge, and experience possessed by Contractor, and

WHEREAS City has determined that Contractor is qualified and capable of performing the professional services as City does hereinafter require, under those terms and conditions set forth,

THEREFORE the Parties agree as follows:

**1. SERVICES TO BE PROVIDED**

Contractor shall initiate services immediately upon receipt of City's notice to proceed, together with an executed copy of this Agreement. Contractor agrees to complete work that is detailed in Exhibit A and by this reference made a part hereof.

**2. EFFECTIVE DATE AND DURATION**

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, on July 6, 2011 or June 30, 2011, whichever comes first. All work under this Agreement shall be completed prior to the expiration of this Agreement.

**3. COMPENSATION**

City agrees to pay Contractor not to exceed (see attachment) (\$see attachment) for performance of those services described herein, which payment shall be based upon the following applicable terms:

- A. Payment by City to Contractor for performance of services under this Agreement includes all expenses incurred by Contractor, with the exception of expenses, if any identified in this Agreement as separately reimbursable.
- B. Payment will be made in installments based on Contractor's invoice, subject to the approval of the City Manager, or designee, and not more frequently than monthly. Payment shall be made only for work actually completed as of the date of invoice.
- C. Payment by City shall release City from any further obligation for payment to Contractor, for services performed or expenses incurred as of the date of the invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.
- D. 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 order. Contractor must pay all contributions or amounts due from Contractor to the Industrial

Accident Fund incurred in the performance of this order. 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.

- E. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person as such claim becomes due, City's Finance Director may pay such claim and charge the amount of the payment against funds due or to become due the Contractor. The payment of the claim in this manner shall not relieve Contractor or their surety from obligation with respect to any unpaid claims.
- F. If labor is performed under this order, 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 279C.540. 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 653.260 or under 29 USC SS 201-209.
- G. 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 Contractor or all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- H. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

#### **4. OWNERSHIP OF WORK PRODUCT**

City shall be the owner of and shall be entitled to possession of any and all work products of Contractor which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by Contractor prior to termination of this Agreement by Contractor or upon completion of the work pursuant to this Agreement.

#### **5. ASSIGNMENT/DELEGATION**

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, Contractor shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.

**6. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR**

Contractor certifies that:

- A. Contractor acknowledges that for all purposes related to this Agreement, Contractor is and shall be deemed to be an independent contractor as defined by ORS 670.700 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 Agreement, 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.
- B. The undersigned Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

If this payment is to be charged against Federal funds, Contractor certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.

Contractor and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

- C. Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- D. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

**7. INDEMNIFICATION**

City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a contractor's work by City shall not operate as a waiver or release.

Contractor agrees to indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the

work described in this contract, except to the extent that the liability arises out of the negligence of the City and its employees. Such indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

**8. 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 activities of the contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier.

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

A. Commercial General Liability Insurance

Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	1,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one fire)	50,000
Medical Expense (Any one person)	5,000

B. Commercial Automobile Insurance

Contractor shall also obtain, at contractor's expense, and keep in effect during the term of the 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 that are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. 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 such coverage. This shall include Employer's 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 and other policies the City deems necessary shall include the City, its officers, directors, employees and volunteers as additional insureds with respect to this contract.

E. 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. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days notice of cancellation to the City

F. Insurance Carrier Rating

Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

G. 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 effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

H. Independent Contractor Status

The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.

I. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

J. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution and errors and omissions policies required by this contract.

Contractor's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance

company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

Office of City Recorder	Business Phone: 503-786-7504
City of Milwaukie	Business Fax: 503-653-2444
10722 SE Main St.	Email Address: ocr@ci.milwaukie.or.us
Milwaukie, Oregon 97222	

Such policies or certificates must be delivered prior to commencement of the work.

The procuring of such required insurance shall not be construed to limit contractor’s liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

**9. METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS**

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

<b>City</b>	<b>Contractor</b>
City of Milwaukie	Company: Wells Fargo Bank, NA
Attn: Accounts Payable	Attn: Jim Bednark
10722 SE Main St., Milwaukie, Oregon 97222	Address: PO Box 3131, Mac P6101-133
Phone: 503-786-7523	Phone: 503 886-2280
Fax: 503-786-7528	Fax: 503 886-3210
Email Address: finance@ci.milwaukie.or.us	Email Address: james.r.bednark@wellfargo.com

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to who notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

**10. MERGER**

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

**11. PROFESSIONAL SERVICES**

The City requires that services provided pursuant to this agreement shall be provided to the City by a Contractor that does not represent clients on matters contrary to City interests. Further, Contractor shall not engage services of an attorney and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to City interests.

Should the Contractor represent clients on matters contrary to City interests or engage the services on an attorney and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to City interests, Contractor shall consult with the appropriate CITY representative regarding the conflict.

After such consultation, the Contractor shall have 60 days to eliminate the conflict to the satisfaction of the City. If such conflict is not eliminated within the specified time period, the agreement may be terminated pursuant to Section 13 (B) (3) of this agreement.

**12. TERMINATION WITHOUT CAUSE**

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the contract pursuant to this paragraph, it shall pay Contractor for services rendered to the date of termination.

**13. TERMINATION WITH CAUSE**

A. City may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds
- 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- 3) If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4) If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:

- 1) If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.
- 3) If Contractor fails to eliminate a conflict as described in Section 11 of this agreement.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (b), Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

**14. ACCESS TO RECORDS**

City shall have access to such books, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

**15. FORCE MAJEURE**

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

**16. NON-WAIVER**

The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

**17. NON-DISCRIMINATION**

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

**18. ERRORS**

Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

**19. EXTRA (CHANGES) WORK**

Only the Finance Director may 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.

**20. WARRANTIES**

All work shall be guaranteed by Contractor for a period of one year after the date of final acceptance of the work by the owner. Contractor warrants that all practices and procedures, workmanship and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve Contractor from liability under warranties contained in or implied by this Agreement.

**21. ATTORNEY'S FEES**

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

**22. GOVERNING LAW**

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

**23. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES**

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapter 279B, the provisions of which are hereby made a part of this agreement

**24. CONFLICT BETWEEN TERMS**

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

**25. AUDIT**

Contractor shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the contract period. Contractor agrees to permit City, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

**26. SEVERABILITY**

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be

affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

**27. COMPLETE AGREEMENT**

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

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

**CITY OF MILWAUKIE**

\_\_\_\_\_  
By: Stewart Taylor, Finance Director

\_\_\_\_\_  
Date

**CONTRACTOR**

\_\_\_\_\_  
By: Jim Bednark, Senior Vice President

\_\_\_\_\_  
Date

**EXHIBIT A**  
**SERVICES TO BE PROVIDED**

See proposal, implementing documents and fee schedule incorporated herein.



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Kenneth Asher, Community Development & Public Works Director

Subject: Advisory Committee Representation for the Texaco Site Redevelopment

Date: June 21, 2006 for the July 6, 2006 Meeting

#### Action Requested

Authorize the Mayor to appoint four City of Milwaukie representatives on a joint Advisory Committee with Metro, formed to assist staff in evaluating development opportunities for the property at 10700 SE McLoughlin Boulevard (Metro-owned) and 10721 SE Main Street (City-owned). *(Interviews are scheduled for July 6. Names of nominees are therefore not included in this report).*

#### Background

In work session on June 6, 2006, City Council agreed to a process whereby the City of Milwaukie would select four members from the community to participate in the Texaco Site Advisory Committee, alongside members representing Metro's interest in the development. The process began on June 7, 2006 with City Councilors and Planning Commissioners forwarding the names of nominees to staff. Members of the community were invited to make nominations as well, through a notice that was placed on the City's website. Interviews with City Council were scheduled for July 6, 2006, with the hope that a consensus would form around four nominees.

This process is intended to ensure that the representatives have the full support of City Council to discharge the duties and assignments described in the attached charge and job description.

### Concurrence

Metro, the City's partner in this development offering process, concurs with this approach and is performing its own process to identify representatives of its own. The City will not weigh in on Metro's representation, nor will Metro have a role in the City's selection of committee members. No other concurrence has been sought on this action.

### Fiscal Impact

None.

### Work Load Impacts

None.

### Alternatives

Council may select fewer than four representatives. This alternative would not impact the project schedule.

Council may elect not to select any members, in which case staff will work with Council to identify a different process that would achieve the goals described in this report. This alternative would certainly delay the committee formation and would impact the project schedule (RFP scheduled for release in August). Under this alternative, staff would seek additional input from Councilors to better understand the hurdles to committee representation for the City.

### Attachments

Advisory Committee charge and job description.

*(Names of nominees and appointees to be provided on 7/06).*

Resolution

**Joint Milwaukie-Metro**  
**Project Advisory Committee Charge and Job Description**  
**15 May, 2006**

The City of Milwaukie and Metro each own half of a full city block at the heart of downtown Milwaukie and are partnering to attract a development project that meets multiple public goals. Control of this property provides an opportunity for attracting development that meets multiple public goals. City and Metro staff have identified a development process that combines the perspectives and priorities of both agencies as well as the local community.

To support this process, the City and Metro recommend formation of an 8-member Project Advisory Committee whose charge will be to participate in a consensus-based process to identify a preferred development team to:

1. Review development proposals and developer qualifications submittals against project selection criteria identified in a Request for Proposals document.
2. Interview development teams for their responsiveness to City and Metro goals and values.
3. Report its observations and recommendations to the Project Management Group, which will forward a recommendation for approval by City Council, the Metro TOD Steering Committee and Metro Council.

**Job Description**

Advisory Committee Members should be prepared to participate as follows:

- Attend kick off Committee meeting to be briefed on project goals and development considerations. This meeting may include a driving tour of comparable buildings.
- Attend a meeting to receive proposals and review RFP criteria.
- Review proposals thoroughly based upon the review criteria.
- Attend meeting to discuss proposals with Committee members and identify a short list of candidate firms for interviews. Staff to provide technical summary of proposals to support discussions.
- Attend public open house intended to solicit community input on proposals and teams.

Participate in team interviews, discuss strengths and weaknesses of proposals, identify any additional review information needed from proposers and review summary comments prepared by Project Management Group.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING FOUR CITIZEN REPRESENTATIVES TO A JOINT METRO/MILWAUKIE TEXACO SITE ADVISORY COMMITTEE.**

**WHEREAS**, the City of Milwaukie is engaged in the disposition and development process for jointly owned property with Metro at 10700 SE McLoughlin Boulevard (Metro-owned) and 10721 SE Main Street (City-owned); and

**WHEREAS**, the City of Milwaukie and Metro agree that the disposition and development process will be greatly supported with the active involvement of Milwaukie and Metro area citizens committed to the formation of the Milwaukie Town Center, and

**WHEREAS**, the City of Milwaukie has determined that it should have four appointees to an Advisory Committee, the candidates for which to be nominated by City Councilors, Planning Commissioners and citizens and interviewed by City Council, with four candidates to be appointed by the Mayor;

**NOW, THEREFORE, BE IT RESOLVED** that the following four Milwaukie citizens are hereby appointed to the Milwaukie/Metro Texaco Site Advisory Committee, for the purpose of advising the Project Management Group as to the interests and aspirations of the Milwaukie community in the disposition and development of the Texaco block;

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

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

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

\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:  
Ramis, Crew, & Corrigan, LLP

\_\_\_\_\_

\_\_\_\_\_

Pat DuVal, City Recorder

City Attorney

Document4 (Last revised )

**May 2, 2006**

**Riverfront Board Meeting  
Minutes**

Members present: Wall, Green, Martin, Stacey, Klein, St. Clair, Darling

Staff: Herrigel (late)

Visitors: Gill Williams, David Evans Associates

**Minutes:**

The minutes for both the March and February meeting were approved 7-0.

**Concept Plan discussion:**

Dave Green asked Board members for their impressions of the boat ramp facilities and parks visited over the last few weeks. Discussion included permeable paving for parking areas, scale of regional boating facilities (OR City, Willamette Park, etc) vs the Riverfront Park, terraced seating and pavilion in Lake Oswego, etc.

Gill Williams described the four concept plan drawings (Options A-D) that he had drawn.

Comments and concerns from board:

- Green: we could loop parking to the north, similar to the concept shown on last fall's survey, rather than looping toward McLoughlin Blvd.
- Klein: What are we to do tonight? Green, response: pick the park elements that are critical to communicate to Council on May 16.
- Klein: I think we should close Jefferson access (and use only Washington) to decrease pedestrian car interaction along Trolley Trail.
- Wall: Can we just close Jefferson? Will ODOT let us? Green: ODOT would likely prefer fewer access points on McLoughlin, and the traffic light controlled intersection at Washington Street would be safer for trailers entering McLoughlin.
- St. Clair: Let's move all parking toward McLoughlin and have Washington access only (described a loop road with parking up close to McLoughlin). Also- put amphitheater between the parking lots to use that space or have the lower lot BE the amphitheater. Whatever we do should be usable year round (multi-purpose.)

Gill Williams then sketched a loop road on the south side of the existing boat ramp to illustrate how that might look and the space required. Gill also explained his concerns regarding the slope and grades in that area and how they might be addressed. (This option became known as Option E.)

Green: let's focus on parking between the creeks – how many spaces should we have?

- Green: is there enough parking in option B?
- Stacey: Not enough spaces because you can't get that many at the log dump
- Klein: The highest day use of the Jefferson St. ramp lately was 53 cars (3 out of 5 of which had trailers) and that was 2-3 weeks ago. (There are 40 actual spaces at the lot) (Klein counted cars at the lot for several weeks)
- Green: we shouldn't design for worst case parking that can accommodate all potential users on the days when recreational and fishing boats are all trying to use the boat ramp
- Wall: can cars use the trailers spaces? (Group: the signs say trailer use only but that is not enforced)
- St. Clair: Maybe spaces should convert from trailer to car use during the off season
- Darling: I like Option C. I like the amphitheater and we could use it as a parking lot seasonally. I like the multiple docks but want them to point north.
- Stacey: I like the modification that St. Clair came up with (loop road and parking up near McLoughlin Blvd.)

Green: Let's tally what everyone thinks we need:

<u>Name</u>	<u>Trailer Spaces Between the Creeks</u>	<u>Trailer Spaces at Log Dump</u>	<u>Car Spaces</u>
Darling	15	15	
St. Clair	10-12	16	2-4 (@Log dump)
Stacey	25	cars	
Wall	10	16	
Martin	12	8-10	8-10 (@Log dump)
Klein	13	15	cars somewhere
Green	8-10	12	cars (@Log dump)

Darling: We could average spaces and see what we have (average is 13.5 spaces)

St. Clair: I like the turning and parking aspects of the loop road idea.

Stacey: That's what the survey said people wanted – more parking.

Green: It eats up most of the greenspace on the south side of the ramp

Martin: The loop road does pull parking off the river.

Green: If that's what you want – it will be very similar to what you have right now!

St.Clair: I disagree. I think this provides multiple amenities and meets many goals. I think it's more usable than we have right now.

Klein: I concur with Shane – it's more functional.

Green asked if all were supportive of St. Clair's concept to put lot with loop road near McLoughlin. Most agreed. Then there was some discussion regarding the possibility of moving this parking to another location in the future. Green noted that if you build this extensive parking lot and ramp, you've built a boating facility, and it will never be relocated.

St. Clair: I think you can do a lot with this space.

Wall: What do you like, Dave?

Green: I'd move a limited number of trailer spaces up to McLoughlin and have an expanse of green between the parking lot and the water like we saw in Lake Oswego.

Martin: Question re: reorienting spaces near McLoughlin in the opposite direction.

Group agreed that Jefferson access should be closed. Stacey said he wasn't sure (?).

Williams: Having the amphitheatre between the parking lots is not advisable. It won't allow the amphitheater to become a destination for events.

Green: It's okay to watch the Christmas Ships but it won't be a draw for other events.

Group agreed that they wanted a dock at the log dump location and a pedestrian bridge from the log dump across Kellogg Creek.

Green: Looks like the pull through loop described by Shane is attractive to all?

So here's what I'm hearing:

- 13-14 trailer spaces between creeks
- 10 trailer spaces at log dump
- Close Jefferson access
- Attach dock for non-motorized boats to dock between the creeks
- All parking spaces should be made with pavers (not asphalt)
- Road should be paved
- Try to put bathroom underground

Some discussion ensued about the possible location of the Sunday market. Wall: Does Sunday Market have to be on parking area or could it also go on the green area along McLoughlin Blvd. north of the present day Jefferson Street ramp Access? Discussion concluded that there would be area available to accommodate the market.

**Darling: Motioned to approve the consensus of 13-14 spaces between the creek (with 2 ADA spaces for cars and two ADA trailer spots) and 10 trailer spaces and several car spaces at the log dump.**

Stacey: Second the motion.

Discussion:

- How many car spots? Minimum of 10.
- Trailer spots for trailers only and change the signs later in season (it was noted that this was policy decision that should be left to City)
- We should recommend a policy that 13-14 spaces be dedicated to trailers during the fishing season and that they be used otherwise during off season.
- Wall: When's the "on" season?
- Stacey: January to May from sunrise to sunset

**Motion was modified to be 14 spaces for trailers (including 2 ADA trailer spots) plus 2 ADA car spots between the creeks, 10 trailer spaces at the log dump and other car spots to be placed within the loop road between the creeks as feasible.**

**Vote was taken: 7 – 0**

Green: All are ok with closing Jefferson?

All agreed that closing the Jefferson access to McLoughlin was preferred if ramp could be connected directly to the log dump area through the park.

Green: So, Gill will draft this conceptual plan (Option E) and get it to us mid week next week. Herrigel will then send to Council and include in the agenda packet for May 16<sup>th</sup>.

Green then handed out a Consensus Scale, ranking degrees of support for the option selected. Green: Using this consensus scale (see attached), I'd like each of you to tell the group where you are with the vote we just took.

Stacey: 4  
Darling: 1  
St. Clair: 1  
Wall: 2  
Martin: 2  
Klein: 1  
Green: 3

Key: 1 Wholeheartedly agree  
2 Good idea  
3 Supportive  
4 Reservations about decision, but can set them aside  
5 Serious concerns, but will support majority decision  
6 Cannot participate in and will speak against the decision

Green: Let's talk about the Marine Board funding issue. Do we want to send a message to Council regarding limits or constraints regarding Oregon Marine Board funds?

Wall: The shorter the term of the agreement with OMB the better off you are.

Stacey: 20 years. That's the term.

St. Clair: If it doesn't hurt us (taking their money) why not take it?

Green: With the uncertainty of the Kellogg Creek WWTP and the possibility of relocating the ramp in the future, we don't want to box ourselves in again. If you had another option, would you really choose to put the boat ramp right there in the middle of the park?

Suggestion: maybe we could have OMB fund other amenities and not the boat ramp specifically.

Klein: I'd like to have the flexibility to move the ramp within the next ten years if we are able to.

**Motion: The Riverfront Board recommends a limit of 10 years term for any agreement signed for funding for the boat ramp in its current location.**

**Second.**

**Vote: 6 (yes) 1 (no) (Stacey opposed)**

Green: Thanks to all for your hard work and hope all will be present at the May 16 Council work session.

**Design and Landmarks Committee  
Minutes  
Wednesday, February 22, 2006**

**Members Present**

Patty Wisner, Chair  
Randall Welch, Vice Chair  
Barbara Cartmill  
Scott Churchill  
Charmaine Coleman

**Staff Present**

Alice Rouyer, Interim Planning Director  
Gary Firestone, City Attorney  
Brett Kelper, Assistant Planner

**1. Call To Order**

Chair Wisner called the meeting to order at approximately 6:00 p.m.

**2. DLC Orientation**

The meeting began with an informal orientation, as two new members have joined the committee since the last time it met. Committee Member Churchill was most recently appointed to the Design and Landmarks Committee (DLC) and will be officially confirmed by the City Council at the March 7 City Council meeting. He is an architect who grew up in Seattle and has returned to the Northwest after working in other parts of the country. Committee Member Coleman grew up in Milwaukie, worked in Planning and Zoning with Clackamas County, and is now a high school health teacher.

Introductions were suspended in order to proceed with the orientation prior to arrival of the applicant for the Design Review hearing. Interim Director Rouyer reiterated the mission of the DLC as an advisory group to the Planning Commission on urban design, architectural, and historic preservation activities. An ongoing shortage of staff resources makes it unlikely that the DLC will return to "commission" status anytime soon. For the foreseeable future, DLC meetings will be intermittent and application-specific. Interim Director Rouyer pointed to several downtown design issues that will be coming soon (Texaco site, Chopsticks Express building).

Committee Member Cartmill asked whether the DLC would be meeting quarterly in joint worksessions with the Planning Commission in order to keep abreast of the Commission's activity and work program. Interim Director Rouyer affirmed that notion and agreed to see if an initial meeting could be arranged. Chair Wisner asked whether there was any update on the status of the home renovation on Cambridge Lane that the

DLC had been involved in earlier. Interim Director Rouyer promised that staff would look into that as well.

### **3. Design Review Hearing—Broken Arrow Archery**

Chuck Pedracini, the applicant for Design Review file # DR-05-01, arrived. Chair Wisner officially opened the hearing for consideration of a request to illuminate a cabinet sign at 2044 SE Adams Street in the Downtown Office (DO) Zone.

Assistant Planner Kelper made a short presentation for staff, setting the context and explaining the nature of the request. He noted that, although internally illuminated cabinet signs are not prohibited by the Sign Ordinance, they are discouraged in the Downtown Zones and are described as “not recommended” in the Downtown Design Guidelines. Staff recommended denial of the application.

Mr. Pedracini presented his case for using the cabinet sign, explaining that it is an existing asset from his previous store location farther south on McLoughlin Boulevard. He bought out the previous occupant (On-Target Archery) last summer and is completing an extensive interior remodel of the lease space. During several months of the year, the business is open after dark (closes at 9 p.m.) and Mr. Pedracini believes an illuminated sign will help customers find the new location. He would like to use the existing Broken Arrow Archery cabinet sign and does not think it will visually impact the downtown area in a negative way. He has observed many nonconforming signs in the downtown area and believes he should be allowed to use his sign until these other nonconforming signs are phased out. Mr. Pedracini said he understands and appreciates the direction the City is going with the Downtown Design Guidelines. He feels that his business is a community asset because of its involvement with schools and youth groups.

Chair Wisner asked for questions from DLC members. Vice Chair Welch asked several questions, including whether the sign would have to be illuminated 24 hours a day and if it would be highly visible from McLoughlin Boulevard. Mr. Pedracini responded that the sign could be lit only during business hours and that it would be visible to traffic going both directions on McLoughlin, though more visible to traffic heading south. Committee Member Churchill asked whether there was any possibility of lighting the sign externally. Mr. Pedracini said he had not investigated that option because he thought it would not make the sign more visible.

Staff was asked whether the sign would comply with current regulations if externally illuminated. It was noted that the sign would not have to go through this review process if externally illuminated. Chair Wisner asked staff about a timeline for phasing out nonconforming signs downtown. Staff noted that all new signs must conform to the current code and that existing nonconforming signs are allowed to remain for up to 10 years. Since most of the Sign Ordinance for Downtown Zones was adopted in 2003, these nonconforming signs may remain until 2013. Interim Director Rouyer commented that it could be politically difficult to enforce the Code for these nonconforming signs and that staff resources are scarce.

Hearing no more questions from DLC members, Chair Wisner asked for a clarification of the concepts of “conflict of interest” and “ex parte contact.” City Attorney Firestone explained that “conflict of interest” generally means having a financial interest in the outcome of a decision and that “ex parte contact” means discussion about an application with anyone other than staff. Chair Wisner continued with the hearing process, asking DLC members to declare any conflict of interest (there was none), who had visited the site (all had), and whether there had been any ex parte contact (there was none). She called for rebuttal from the applicant or other challenges to any of the presentations (there were none). Staff had nothing further to add. Mr. Pedracini was asked for final comments. He reiterated his belief that the sign presents no detrimental impacts and that there are other signs downtown that look worse.

Chair Wisner closed the public hearing and called for Committee discussion. Committee Member Coleman began by appreciating the applicant’s civic-mindedness and the procedural hoops he has had to jump through. She disagreed with Mr. Pedracini’s claim that the proposed sign presents no negative impact. She does not believe that an internally illuminated sign is the only option. She thinks that Broken Arrow Archery will not be the last applicant of this kind and is concerned about setting a dangerous precedent with a recommendation to approve.

Vice Chair Welch noted that he is a business owner himself and sympathized with the desire to save the \$5,000 that Mr. Pedracini says the existing sign is worth. Chair Wisner temporarily reopened the hearing so that Mr. Pedracini could explain the sign valuation. He said that when he bought the Broken Arrow Archery business the sign was given that value. Chair Wisner closed the hearing again, and Vice Chair Welch suggested that the existing sign was really part of the overall cost of the assets when the business was purchased. While it is important to consider the sign’s value, he does not believe that it is reason enough to approve the internal illumination request.

Committee Member Cartmill pointed to the downtown plan and its pedestrian scale. She suggested that the area where the proposed sign would be located has no sidewalk and is more auto-scaled. She noted that Mr. Pedracini failed to mention the existing sign on the Adams Street face of the building—it is huge and is externally lit by floodlights. She is not moved by the argument that “everyone else has one” but would support a recommendation to approve the request with a five-year time limit. She thinks the business might suffer if it is not more visible to the public.

Committee Member Churchill stated the importance of setting a precedent. He noted that the proposed sign is from an area of McLoughlin Boulevard that uses internal illumination as a standard sign format. He feels torn between the staff recommendation of denial and an approval with the condition to amend the lighting to fit the guidelines. He thinks the sign could be retrofitted for approvable lighting at minimal cost.

Chair Wisner explained that, as a small-business owner, she is torn. She also knows that she serves at the pleasure of the City Council and is aware of all that has been invested to establish the design guidelines. She noted that the design, typeface, and overall style of

the sign do not meet the design guidelines and she wondered whether there could be some compromise so that the sign could be approved with external illumination.

City Attorney Firestone reiterated that external illumination does not require DLC and Planning Commission approval—if external illumination of the sign is desired, then the application for internal illumination approval should be denied. He also noted that content, including typeface, color, or style could not be regulated—only the structure and in this case the illumination. Chair Wisner asked Interim Director Rouyer about the efficacy of setting and enforcing a timeline for removing nonconforming signs. Interim Director Rouyer answered that such timelines are hard to enforce and manage, in part because staff turnover results in a loss of institutional memory.

At this point, Mr. Pedracini interrupted to announce that he was **withdrawing his application**. He expressed his sense that the application was going to be denied and thanked the DLC for their time and consideration. He left the meeting.

Committee Member Cartmill shared her opinion that this illuminated sign decision is the wrong place to take a stand. She suggested that the proposed sign would not harm the downtown and downtown plan and that the DLC and City should not dictate design, only guide it. City Attorney Firestone noted that because the sign code does not prohibit internally illuminated signs outright, the DLC must establish criteria for what, when, and where these signs would be allowed.

Committee Member Coleman noted that Mr. Pedracini never said he liked his sign but had emphasized that he wanted to save the money and get more use out of it. There was some additional discussion and debate about the overall recommendation/approval process. City Attorney Firestone remarked that it is unfortunate that the code gives the DLC so much unguided discretion with respect to internally illuminated signs. There was a note that it would be helpful for the DLC to get additional instruction in how to conduct hearings.

Chair Wisner asked what else could be done to provide an adequate orientation to new DLC members. She asked whether staff could track down the historic resources slideshow—Interim Director Rouyer promised to check on that. Chair Wisner also commented that she would like to get the meeting agenda and script farther in advance and with more information filled in. Interim Director Rouyer agreed that the script can be better tailored for the DLC, said she also wanted to develop a standard format, and apologized for not providing better prep for Chair Wisner.

#### **4. Continuation of DLC Orientation**

Committee Member Cartmill, Vice Chair Welch, and Chair Wisner finished the DLC introductions started earlier. Committee Member Cartmill has lived in the Ardenwald neighborhood since 1980, works for the Clackamas County Development Agency, and served many years on the Planning Commission before moving over to the DLC. Vice Chair Welch was born in Milwaukie, grew up in the Ardenwald neighborhood, and joined the DLC to help make Milwaukie a more ideal place. Chair Wisner was born in

Portland but has always lived in Milwaukie, went to school here, and hated to see the downtown lose its retail businesses. She has worked as a graphic designer for 25 years and has been very involved in historic preservation in the face of losing so many historic properties.

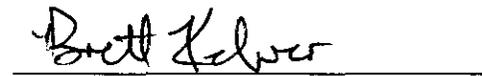
**5. Other Business**

Interim Director Rouyer reminded the group that the new Planning Director (Katie Mangle) will start on March 13.

**6. Adjourn**

There were no further items, and Chair Wisner adjourned the meeting at approximately 8:15 p.m.

  
Patty Wisner, Chair

  
Brett Kolver, Scribe

**Design and Landmarks Committee**  
**MINUTES**  
**Wednesday, May 3, 2006**

**Members Present**

Patty Wisner, Chair  
Randall Welch, Vice Chair  
Barbara Cartmill  
Scott Churchill  
Charmaine Coleman

**Staff Present**

Katie Mangle, Planning Director  
Brett Kelper, Assistant Planner  
Gary Firestone, City Attorney

**1. Call to order**

Chair Wisner called the meeting to order at approximately 6:40 p.m.

**2. Minutes**

The February 22, 2006, Minutes were approved unanimously, with no comments or amendments.

**3. Design Review Hearing for Wunderland arcade**

Chair Wisner officially opened the hearing for consideration of a request to illuminate a cabinet sign at 11011 SE Main Street in the Downtown Office (DO) Zone. She read the rules for conduct of the meeting, including a call for declarations of conflict of interest. Committee Member Churchill announced that he had just been appointed to the Planning Commission and therefore needed to resign from the Design and Landmarks Committee. He will hear this application as a Planning Commissioner and so recused himself from the hearing, leaving the meeting altogether. There were no further declarations.

Assistant Planner Kelper made a presentation for staff, setting the context of this particular request. The cabinet sign in question was permitted and installed in late 2005 with the applicant's knowledge that further review and approval would be needed in order to internally illuminate it. The Sign Ordinance does not prohibit internally illuminated cabinet signs but they are discouraged in the Downtown Zones and described as "not recommended" in the Downtown Design Guidelines. There are no fixed criteria for reviewing these signs, so Assistant Planner Kelper presented several proposed criteria drawn from the Sign Lighting and Sign categories of the Downtown Design Guidelines.

He acknowledged that the sign is well positioned to capture motorist attention on McLoughlin Boulevard and that it is designed to be internally illuminated for maximum visibility after dark. However, he cited the various aspects of the sign that are “not recommended” in the Downtown Design Guidelines and noted recent community efforts to make McLoughlin more pedestrian-oriented. Staff recommended denial of the application.

There were two clarification questions from the Committee. Assistant Planner Kelter noted that movies are indeed shown at the Wunderland facility and explained that since internally illuminated signs in Downtown Zones are not prohibited (only discouraged) the 10-year limit on nonconforming signs does not apply.

Tim Pfeifer of Vancouver Sign Company (the applicant) and Scott Brown of McKee Enterprises, Inc. (the company operating Wunderland) presented the case for allowing internal illumination. Mr. Pfeifer stated the position that illumination of the sign is an asset for the business without being a blemish on the community and noted that there are many other internally illuminated cabinet signs downtown. He explained that Vancouver Sign Co. had installed the sign but did not manufacture it. Mr. Brown provided some background on the theater building and responded to several Committee questions about particular aspects of the Wunderland business.

Chair Wisner called for testimony in favor of the application. Ed Zumwalt of the Historic Milwaukie Neighborhood District Association (NDA) came forward. He said that he would be more concerned if the sign faced Main Street but that since it faces McLoughlin Boulevard he does not see it as a problem. He encouraged the Committee to risk erring on the side of the applicant and saw no harm to the City from illuminating the sign. Vice Chair Welch asked Mr. Zumwalt about the NDA’s discussion of this matter and the process for coming to an opinion, wondering whether all sides of the argument were well represented. Mr. Zumwalt responded that the NDA members who discussed the sign did not seem to think it was a problem facing McLoughlin.

There was no further public testimony in favor, opposed, or neutral. Chair Wisner called for additional staff comments. Assistant Planner Kelter noted that this decision is a challenging one because there are no fixed criteria for evaluating when internal illumination should be allowed and when not. Chair Wisner asked for additional comments from the applicants. Mr. Brown noted that the recent rerouting of traffic from McLoughlin onto Washington Street has resulted in reduced visibility for Wunderland and that the illuminated sign would help the business’s advertising.

Chair Wisner called for Committee discussion. Committee Member Coleman said she thinks that a different type of sign would be more effective at pulling Wunderland customers in off of McLoughlin Boulevard. She also responded to the argument that other internally illuminated cabinet signs downtown justify this one, saying that the newer restrictions evolved in response to a sense that the community wanted to move away from that type of signage. She questioned the placement of both the “Cinemas” and “Wunderland” signs together because they are two different styles; she suggested that a

neon-light sign might be a better fit for this location. She clarified that she supports local businesses and knows the importance of advertising but stressed the importance of integrating sign lighting with building design.

Committee Member Cartmill had no comments. Vice Chair Welch noted the effort and money that have been spent to improve the city's appearance along McLoughlin Boulevard so that it is more inviting. He said that at night there is already a lot of light pollution on that particular block and did not understand why the applicant would put up an internally illuminated cabinet sign knowing that it could not be lit. He said he is torn on this decision because of the potential impacts on downtown—he wants to support local businesses but also wants to preserve the downtown character.

Chair Wisner thanked the applicant for educating her about the nature of business at the Wunderland and expressed her best wishes for its future growth. She talked about her view of the sign while driving on McLoughlin Boulevard, noting that it was more visible when headed north because the gas station obscures the view when heading south. She noted the different styles of the "Cinemas" and "Wunderland" signs and suggested a unified sign along the top of the building to make it clear that both the movie theater and the arcade are still in business there. Committee Member Coleman cautioned against making a decision based on whether or not there are alternatives to the sign in question, and Vice Chair Welch added that the decision should focus on whether or not the proposed lighting is appropriate. Assistant Planner Kelter echoed the charge to focus the discussion and decision on the request for internal illumination of the sign.

Chair Wisner asked if the Committee was ready to hear a motion. Committee Member Coleman made a motion to deny the request for internal illumination. There was no immediate second. Vice Chair Welch said that the proposed lighting is not so bad and suggested that if this type of lighting is not desired then the City should prohibit it in the Municipal Code. Chair Wisner suggested that the City consider the problem of signs being brought in from outside the area to be combined with existing signs and repeated that she is torn in this decision. Vice Chair Welch noted that he would feel differently if the sign in question were not already installed.

Committee Member Cartmill asked staff whether the City could enforce against the applicant if the request for illumination were to be denied and they turned the sign lighting on anyway. City Attorney Firestone explained that approval is needed in order to internally illuminate the sign and that the City's decision is binding—enforcement action could be taken if the applicant disregards the decision. He added that conditions with regard to time limits could be imposed with a decision to approve the sign lighting. Committee Member Coleman asked who would enforce such conditions. City Attorney Firestone responded that they would be enforced along with all other similar regulations.

There was a general question to staff from the Committee about why internally illuminated cabinet signs have not been simply prohibited and whether the Sign Ordinance can be changed. Planning Director Mangle responded that various changes to the Municipal Code are underway and that such a change could be discussed as part of

the process. There was discussion of other possible changes to the Sign Code, including the question of bringing in signs from out of the area that do not fit with local architecture.

Mr. Brown asked to make a clarification and Chair Wisner briefly reopened the public hearing. Mr. Brown confirmed that the applicant was fully aware at the time the original sign permit was sought that it might not be able to be internally illuminated. Chair Wisner closed the hearing again and again called for a motion. It was noted that there was an unseconded motion already on the floor. Committee Member Cartmill seconded Committee Member Coleman's motion to deny the illumination request. Chair Wisner called for a vote. Committee Members Coleman and Cartmill voted in favor of the motion; there were no votes in opposition. Chair Wisner and Vice Chair Welch both abstained, which City Attorney Firestone pointed out was the same as a "no" vote.

The motion failed to carry. City Attorney Firestone outlined the Committee's options: 1) try a new motion; or 2) forward a recommendation that the Planning Commission make a decision with the understanding that the Design and Landmarks Committee was split on the question. If the second option is selected, the reasons for the "yes" and "no" decision should be stated for the Planning Commission to consider. Committee Member Coleman made a motion that the Committee forward its split decision to the Planning Commission for a final decision. Vice Chair Welch seconded the motion. Chair Wisner called for a vote. Chair Wisner, Vice Chair Welch, and Committee Member Coleman voted in favor of the motion; Committee Member Cartmill was opposed.

Staff asked the Committee members to state their positions for the Planning Commission's consideration. Chair Wisner began by saying that she does not want to encourage internally illuminated cabinet signs but also does not want to discourage business development near or along McLoughlin Boulevard. She would choose to limit the amount of time the sign in question could be allowed. Vice Chair Welch agreed and said there should be a way to more clearly define which signs are allowed in Milwaukie instead of going through this recommendation process. Committee Member Coleman expressed the position that it is important what kind of signs go up along McLoughlin Boulevard. She suggested that the presence of so many existing cabinet signs downtown is what led to them being discouraged in the code. In weighing what is best for the city versus for this particular business, she saw no compelling reason why another type of sign could not work at this location.

Committee Member Cartmill asked whether the motion could be reconsidered if there might be consensus to recommend approval of the sign with a time limit. City Attorney Firestone said that any of the three Committee members who voted in favor of the motion could move to reconsider it. Committee Member Coleman made a motion to reconsider the approved motion and Chair Wisner seconded. Chair Wisner called for a vote. Chair Wisner and Committee Members Cartmill and Coleman voted in favor; Vice Chair Welch abstained. The motion carried.

Chair Wisner called for a new motion involving a time limit. A three-year limit was suggested. Committee Member Cartmill asked whether a condition could be placed to limit the hours of operation for the sign illumination? City Attorney Firestone acknowledged that such a condition could be placed. Chair Wisner moved that the Committee recommend approval of the internal illumination for a period not to exceed three years from today's date (or by 6:00 p.m. on May 3, 2009) and to limit use of the sign illumination from 6:00 p.m. to midnight on days of business. Committee Member Cartmill seconded. Chair Wisner called for a vote. The Committee voted unanimously to approve the motion, and Chair Wisner concluded the hearing.

#### **4. Design guidelines for multifamily and commercial buildings**

At the most recent joint session of the Design and Landmarks Committee and the Planning Commission, it was suggested that the Committee take a first shot at developing design guidelines for multifamily and commercial buildings. Planning Director Mangle talked about a possible scope for this task. Chair Wisner asked what funding or budget is available and what could realistically be done. Planning Director Mangle answered that this work will come out of the Planning budget and said that defining the problem is the first step, so what is the Committee willing to take on?

Vice Chair Welch stated his belief that the community needs to have a vision as more development happens. There was a question about the Gramor development and what could be regulated in that project's design. Assistant Planner Kelter noted that regulations in the case of the Gramor development are limited more or less to the conditions of approval. Committee Member Coleman asked whether sign guidelines could be included in the scope of this design guideline project. The answer was yes. She also asked how various development projects would be affected if they were already underway when new guidelines took effect. The answer was that each project is subject to the guidelines in place at the time it comes in for various permits.

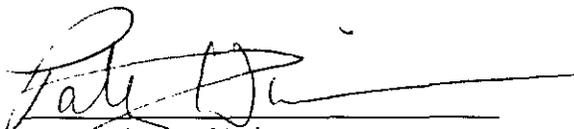
Chair Wisner noted the opportunity to expand design guidelines beyond the downtown core. Planning Director Mangle added that the scope of this project is important because it involves identifying the key areas of concern. City Attorney Firestone suggested that there might be more leeway to impose design guidelines on commercial projects than on residential development. Vice Chair Welch said he thinks it is important not to focus on just one physical area like downtown. Committee Member Cartmill suggested that the Committee "de-bug" the Downtown Design Guidelines, especially with regard to internally illuminated cabinet signs, and that they be reviewed in the real context of projects coming in piecemeal rather than as some whole vision. Planning Director Mangle and City Attorney Firestone both noted that there are ways to restrict or limit signs without prohibiting them, but that more specific standards are needed. Chair Wisner and Committee Member Cartmill agreed that the Committee should go to the Planning Commission with some preferences for commercial design.

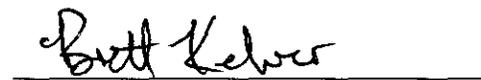
**5. Other business**

Planning Director Mangle mentioned the upcoming redevelopment of the Texaco site across from City Hall and noted several questions that the Committee might want to weigh in on, particularly that of maximum building height. Chair Wisner asked whether Milwaukie's designation by Metro as a Town Center carried any limit on height. City Attorney Firestone responded that the Municipal Code should speak to that. Planning Director Mangle asked whether the Committee wants to take on the assignment of providing input as to how the Texaco site should develop and what the community might like to see there. The group responded that it would. Planning Director Mangle said she would follow up, send more information to the Committee, and attempt to coordinate this conversation with the Planning Commission.

**6. Adjourn**

There were no further items. Committee Member Cartmill moved to adjourn the meeting, Committee Member Coleman seconded, and all voted in favor. The meeting adjourned at approximately 8:33 p.m.

  
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Patty Wisner, Chair

  
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Brett Kolver, Scribe