

CORRECTION OF MEETING DATE

AGENDA

MILWAUKIE CITY COUNCIL

APRIL 3, 2007

MILWAUKIE CITY HALL

10722 SE Main Street

2003rd MEETING

REGULAR SESSION – 7:00 p.m.

- I. CALL TO ORDER**
Pledge of Allegiance

- 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, & AWARDS**
 - A. Recognize Tony Hough for Meritorious Service to His Country and Community**
 - B. Recognize Juli Howard for Her Outstanding Action by Saving a Life**
 - C. Recognize Ed Zumwalt for His Outstanding Service to His Community by Organizing Community Events**

- 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, February 6, 2007 Regular Session**
 - B. Authorization to Execute the Sale of Three Surplus Properties Located at the Corners of Highway 99E and Jackson Street and Harrison Street – Resolution**
 - C. Well No. 8 Reconstruction Project Award for Engineering Services (CIP Project No. 0143) – Resolution**
 - D. Town Center Site Development Services Contract Authorization – Resolution**

- 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.)*

Removal of 11022 SE 47th Avenue (The Bertman House) from the Historic Resources List – Final Order for HR-07-01 (Brett Kelper)

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. **Lease Agreement between the City of Milwaukie and New Century Players for Property at 11022 SE 37th Avenue – Resolution (Kenny Asher)**
- B. **City Manager Performance Review and Compensation (Mayor Bernard)**
- C. **Council Reports**

7. **INFORMATION**

Riverfront Board Meeting Minutes of February 13, 2007

8. **ADJOURNMENT**

Public Information

- Executive Session: The Milwaukie City Council will meet in executive session immediately following adjournment pursuant to ORS 192.660(2)(d) labor negotiator consultations. 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.

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
FEBRUARY 6, 2007**

CALL TO ORDER

Mayor Bernard called the 1999th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Council President Stone and Councilors Deborah Barnes, Carlotta Collette, and Joe Loomis

Staff present: City Manager Mike Swanson, Human Resources Director Mary Rowe, Resource and Economic Development Specialist Alex Campbell, Building Official Tom Larsen, and Police Chief Larry Kanzler

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Mr. Swanson announced the City Attorney was excused pursuant to Resolution 9-2003.

Mayor Bernard thanked Paula Harris for her service to the community on the Library Board and accepted her resignation with regrets. Ms. Harris was a Board member from July 2005 through December 2006. Chair Greg Chaimov commended Paula on her creativity when faced with tough decisions. The Board members would miss her wit and wisdom and looked forward to her continued volunteer work at the Ledding Library.

Mayor Bernard announced the City Council Teambuilding Session on February 10, 2007 at 9:00 a.m. at the Public Safety Building.

CONSENT AGENDA

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

- A. City Council Minutes of the December 19, 2006 Regular Session
- B. OLCC Application for Mekong Thai Cuisine, 10880 SE McLoughlin Boulevard – Obtain Liquor License

Motion passed unanimously. [5:0]

AUDIENCE PARTICIPATION

- Les Poole, 15115 SE Lee, Milwaukie 97267

Mr. Poole was pleased to see there was a Master Plan for Spring Park. Even though it had taken so long, maybe they would be able to move forward with Kronberg Park a little quicker. He noticed the grass was still in the park in the Hector Campbell Neighborhood after someone decided to steal it a couple of times. Hopefully that will not happen again. The ballfields were in at North Clackamas Park. He was really pleased about all of that. At this meeting he was going to make a couple of comments

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about Kronberg Park and ask a couple of questions. One was when would he be seeing a sign noting the site. The City honored that request earlier this week, and there was a sign that would help bring notoriety to it, not that it had not had notoriety, but the right kind of notoriety. Hopefully that would help with fundraising in the future. We are short on green space and short on open space. With higher density coming, he would like to see in the future some type of a resolution, binding or otherwise, that would require a process of vote or some type of a check and balance whenever undeveloped City-owned property was being considered for commercial or rezoning. Twenty to thirty years from now if we don't save what's left of that precious land it will be gone. The values are so high and the pressures are high. He was not sure if the City had created a new deed yet or not for Kronberg Park, but the last time he talked to Dena Swanson which was some time ago, nothing was in the works. She was not sure if they really had to create a new deed or simply modify the old one. He needed something in writing there. The sign was great, but he certainly needed something that solidified the situation. He would also like to see the Kellogg Lake Park combined with Kronberg Park, and obviously the entire area developed as a park with the Kronberg name. It was odd that we lost the park for 10, 12, or 14 years, and it was hard to lose a park. As hard as it was to believe, it apparently happened. We cannot let things like that happen in the future. The whole situation was very divisive, and fortunately things were moving in a better direction. He was curious about the progress on the River Road and McLoughlin Boulevard intersection. Carolyn Tomei was all over that issue, and especially during the time when it looked like a transit center was going in there. He certainly wanted to see some focus there in the future. He wanted to see safety addressed, and certainly improvements to the Kellogg Lake waterfront.

Mayor Bernard understood the Island Station Neighborhood got frequent updates at its meetings on the McLoughlin Boulevard Project and the River Road intersection. He had understood the intersection had not resulted in exactly what the Neighborhood wanted because of funding, but it was an improvement.

Mr. Swanson added that in the last quarter of last year, the Council was presented with a correction to the parcels that had been designated as the park. The Council approved that resolution in November and December, and Dena Swanson received a draft and a fully-executed version.

- **Charles Mae, Canby Asparagus Farm, 3241 South Needy Road**

Mr. Mae expressed his gratitude for being part of the Sunday Farmers' Market. Mayor Bernard was doing a wonderful job with the Market. He attended 13 farmers' markets, and Milwaukie ranked third behind Astoria and Beaverton in his opinion. He was under the impression this might be the last year in the parking lot. He recommended visiting the Astoria Farmers' Market to look at its wonderful layout in the downtown. He noted as a vendor that most of the shops in downtown Milwaukie were closed on Sundays, but in Astoria 90% of the shops were open. The Council was part of the community, and he was part of the community and wanted the Market to continue. The Milwaukie Market had grown and would continue to grow if it stayed in the downtown area. Portland was considering opening a Sunday Market which might hurt the Milwaukie Market. This was the right time to think about moving, and he urged people to go to Astoria to check out its market. He thought it would be a good guide. In Astoria, 70% of the people were from out of town, and the same was true in Milwaukie. This was the best Sunday Market in the area. He added that 8,000 people attended his recent Canby Tamale Festival as a result to the Sunday Markets.

Councilor Collette thanked Mr. Mae for bringing his wonderful products to the Sunday Market and suggested he open a restaurant in downtown Milwaukie.

Mr. Mae said restaurants were a lot of work, but he was being asked to participate in wine festivals.

- **Kirin Das Bala, 9725 SE 29th Avenue**

Ms. Bala said her identity had been stolen, and she was having a lot of problems. Banks were stealing her money and giving it to anyone who came. She wanted help getting her ex-husband's phone number.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

A. Criminal History Record Check – Ordinance

Ms. Rowe stated the ordinance would allow the police department to provide criminal and driving record checks under certain circumstances and would save the City a great deal of time and expense. Background checks were run on all finalists for positions in City departments. Oregon Administrative Rules (OAR) required that the governing body adopt an ordinance authorizing its police department to run criminal history checks on applicants other than those for the police department. The ordinance also included volunteers with the City, contractors and their employees, and those working with non-profit youth organizations operating within the City of Milwaukie. State statute allowed the police department to run background checks on people working around youth. She asked that the ordinance be adopted with an emergency clause, as there were people waiting to be hired.

Councilor Barnes thought overall this was a good concept. However, the ordinance referred to appointed volunteers, which to her meant City board and commission members such as the Riverfront Board and Library Board.

Ms. Rowe replied the intent was to allow people who were appointed as volunteers and particularly at the Library. The proposed ordinance gave the police department authorization, but it did not have to be done for every volunteer.

Councilor Barnes noted the actual wording said "all finalists for positions in all departments at the City, volunteers, contractors ..." Her concern was with the actual wording of the ordinance. She did not want to concern people volunteering to have their background information in a file with the City.

Ms. Rowe said that was certainly not the intent of the ordinance but understood the concern with the wording. The word "all" referred to people employed with the City.

Councilor Barnes felt the wording needed to be cleaned up before she would adopt it. The intent was correct; however, she was concerned with the wording of the ordinance.

Councilor Stone suggested it might be worded to pertain to volunteers working with children or youth organizations.

Councilor Barnes thought that would be appropriate. The School District mandated that volunteers including those in advisory capacities had to go through the same kind of background checks. Those working with non-profit youth organizations would go through the background check with the District and might be possible to share information between the agencies.

Councilor Loomis asked if youth groups would be charged for background checks.

Ms. Rowe responded that a police officer had volunteered to do so on his time.

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The group discussed possible wording for Section 2.A and the use of the adjective “all.”

Councilor Barnes asked how long the information was kept if the person were not hired.

Ms. Rowe replied it had to do with state records retention laws. Most people had no problems with their background checks, but if a situation did come up, those were reviewed on case-by-case basis.

Councilor Collette understood the City was already doing these kinds of checks, and this ordinance would authorize the Milwaukie police department to do so.

Mr. Swanson commented the City of Canby hired an outside person to perform the background check on its human resources director and were estimating 50 hours of contract work.

Ms. Rowe added that the State Law Enforcement Division provided the model ordinance.

Councilor Loomis asked if the Parks District could use this program.

Ms. Rowe replied it could if the programs were being operated within the City of Milwaukie.

It was moved by Councilor Collette and seconded by Councilor Loomis for the first and second readings by title only and adoption of an ordinance establishing criminal history record check policies and declaring an emergency as amended. Motion passed unanimously. [5:0]

Mr. Swanson read the amendment to Section 2.A – Finalists for employment with the City, contractors and employees of contractors with the City of Milwaukie, volunteers working with children, and volunteers with youth organizations operating within the City of Milwaukie would be required to authorize ...” Mr. Swanson read the ordinance for the first and second time by title only with that amendment.

The City Recorder polled the Council: Mayor Bernard and Councilors Barnes, Collette, Loomis, and Stone voting ‘aye.’

ORDINANCE NO. 1968:

AN ORDINANCE ESTABLISHING CRIMINAL HISTORY RECORD CHECK POLICIES CONCERNING APPLICANTS FOR EMPLOYMENT, APPOINTED VOLUNTEERS, CONTRACTORS AND THOSE EMPLOYED BY CONTRACTORS WITH THE CITY AND VOLUNTEERS OF YOUTH ORGANIZATIONS OPERATING WITHIN THE CITY OF MILWAUKIE AND DECLARING AN EMERGENCY

B. State Motor Vehicle Fuels Tax Increase – Resolution

Mr. Campbell updated the City Council on transportation funding issues. The City recently applied for three projects which were the replacement of the Kellogg Creek Bridge and dam removal and sidewalk projects on 17th Avenue and Logus Road. The dam removal and bridge replacement was included on the draft final list for Metropolitan Transportation Improvement Funding (MTIP), and there would be public hearing and public comment period. He encouraged people to reiterate their support for these projects. The 17th Avenue project did not make the final cut for MTIP or Transportation Enhancement (TE) funds. Logus Road was funded by the Oregon Department of Transportation (ODOT) bike/pedestrian program, and the Council would likely see an intergovernmental agreement (IGA) in March. The Trolley Trail was still on the list.

The proposed resolution expressed support for the legislators' considering an increase in the state gas tax.

Councilor Barnes talked with Paul Romain in Salem, and he thought two legislators might move forward but was having a difficult time with the rest. She recommended sending a copy of the resolution to the local legislators as well as the Governor.

It was moved by Councilor Barnes and seconded by Councilor Stone to adopt the resolution urging the state legislature to increase motor vehicle fuel tax. Motion passed unanimously. [5:0]

RESOLUTION NO. 04-2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, URGING THE STATE LEGISLATURE TO INCREASE THE TAX ON MOTOR VEHICLE FUELS.

Mayor Bernard noted that Clackamas County only got 8% of the MTIP funding. Oregon City had an economic development project that was very important and similar to the City's McLoughlin Boulevard Improvement project, and he urged support. There were some very important people putting projects on the table.

Mr. Swanson commented that legislators would champion certain projects

Mr. Asher added the politics notwithstanding, he would provide the methodology used by Metro staff in compiling its funding list. The methods included geographic distribution, mode, public comments, readiness to proceed, and things of that nature. He felt the Metro staff worked to be qualitative and as non-political as possible.

Mayor Bernard said in the end, it was the policy makers that made the decisions.

Mr. Asher explained the City was seeking additional funding in the appropriations process in Washington for the Kellogg Bridge removal. In that process it was necessary to have the support of the Congressman.

C. Revision to the Intergovernmental Agreement with the City of Happy Valley for Shared Inspection Services -- Resolutions

Mr. Larsen sought approval of two resolutions. One was to authorize the City Manager to amend the existing IGA between Milwaukie and Happy Valley for shared inspection services, and the second would authorize the transfer of \$10,000 from building contingency to contractual services.

In 2003 the City executed an IGA with the City of Happy Valley for shared inspection services. At the time Happy Valley was understaffed, and Milwaukie was not as busy as it was today. The agreement was written so that services were traded hour for hour. Now Milwaukie had seen increased in building activity, and Happy Valley had sufficient staff to cover the inspection work. Mr. Larsen worked with the Happy Valley building official to draft the proposed amendment. The cost for both parties was \$70 per hour. Happy Valley would bill quarterly, and Mr. Larsen would deduct his hours from that. He estimated it would cost approximately \$16,000 annually. Mr. Larsen now had his plumbing certification, so that expense would be eliminated. At this time the volume of work did not warrant adding a full-time position. Clackamas County was responsible for electrical inspections.

Councilor Stone understood up to this point Mr. Larsen had been bartering for services. Because the .2 FTE plumbing inspector position was eliminated the department would save \$10,000 annually, but that \$16,000 would be paid to Happy Valley. It would cost roughly \$6,000 based only an hourly rate.

Mr. Swanson reminded the Council that four years ago Milwaukie contracted with Happy Valley for all building services. During that time his phone rang off the hook with complaints. Ms. Rouyer convinced him to take back building inspection services under the terms that she had to find an inspector that understood how to work with people, and that the department would be financially self-sufficient. He had not gotten a complaint since Mr. Larsen started working for the City, and the department paid for itself. The industry supported a 35% fee increase last year because the builders valued the service they received in Milwaukie.

It was moved by Councilor Collette and seconded by Councilor Barnes to adopt the resolution authorizing the city manager to amend an intergovernmental agreement with the City of Happy Valley for shared inspection services. Motion passed unanimously. [5:0]

RESOLUTION 05-2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO AMEND AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF HAPPY VALLEY FOR SHARED INSPECTION SERVICES, ON AN AS-NEEDED BASIS

It was moved by Councilor Stone and seconded by Councilor Loomis to adopt the resolution approving a transfer of appropriations from building department contingency to building department contractual services. Motion passed unanimously. [5:0]

RESOLUTION 06-2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING A TRANSFER OF APPROPRIATIONS FROM BUILDING DEPARTMENT CONTINGENCY TO BUILDING DEPARTMENT CONTRACTUAL SERVICES FOR THE PURPOSE OF REIMBURSING THE CITY OF HAPPY VALLEY FOR INSPECTIONS PERFORMED IN THE CITY OF MILWAUKIE

Councilor Collette spoke with someone doing a major remodel who thanked Mr. Larsen and Bonnie Lanz for their service delivery.

Mr. Larsen added that Ms. Lanz had things in place when he came and agreed she did a wonderful job.

D. Photo Radar and Traffic Enforcement Support

Chief Kanzler requested that the Council adopt a resolution authorizing the City to use photo radar for speed enforcement and photo red light enforcement for intersections. He provided a copy of the 2005 collision data from Portland that showed a reduction in traffic accidents at the photo red light enforced intersections of approximately 75%. Milwaukie experienced approximately 80,000 transient vehicle trips per day on Hwy 224 and 99E, and there is a certain amount of cut-through traffic in the neighborhoods. With the use of these two enforcement tools, the number of citations would likely increase to about 30,000. It would be a revenue neutral program that increased safety and reduced citizen concerns with traffic and speeding. If the legislature approved the programs, these resolutions would authorize implementation.

Councilor Barnes asked how many units would be purchased and where they would be located.

Chief Kanzler replied the City would contract for the units, and they would be located where the most crashes occurred on Hwy 224, 99E, and Lake Road. The Milwaukie

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police department investigated 215 accidents within the City last year of which 20% involved injuries. There were 42 crashes on McLoughlin Boulevard, 29 on Hwy 224, and 20 on Lake Road. It would behoove the City to put the red light camera enforcement at those intersections where the most accidents occurred including Harrison, Oak, and McLoughlin Boulevard at Ochoco. The current statute allowed five photo red lights that would be supplied by a contractor who was paid on a percentage basis. Once expenses were paid including salaries, the program would be revenue neutral. If authorized by the legislature, five cameras would go in but not necessarily all at one time. The current structure set up one photo radar van that had to be manned during operation. It can only be in one location for a maximum of four hours. The City would purchase the van, and the contractor would install the equipment and generate the citations and court docket.

Councilor Stone asked for clarification in terms of the increase in citations to 30,000. Was that based on Portland's experience?

Chief Kanzler replied the wet film process was much more efficient with a higher resolution making it easier to identify individuals. The contractor based the estimate on four-hours of engagement during a five-day week. The City would operate more frequently than that, so the projections could be higher. There would be no way to verify the number until the equipment was on the street.

Councilor Stone guessed it would depend on the type of street and the amount of vehicular traffic.

Chief Kanzler understood there were a lot of complaints in Portland about speeding in school zones, and 50,000 citations were written in one day with three pieces of equipment. Milwaukie would have one van that would be periodically located in school zones. The City had two traffic enforcement officers who were spread thin right now. The van would be rotated through a number of locations.

Councilor Stone understood the cameras mounted at intersections would be semi-permanent.

Chief Kanzler replied the cameras would likely be permanent because of the cost involved with installing them. The City would pay the contractor a percentage of the citations. There was a flat rental fee of \$2,500 per month for the equipment in the van plus a fee for each citation adjudicated guilty. The contractor maintains the equipment in the van to ensure it was calibrated correctly. The City would purchase the van.

Councilor Stone thought it would be great if citations went up that much. Can staff handle the additional volume?

Chief Kanzler proposed an increase of 1 FTE in court and three part-time police officers. There would also be an increase in the number of court trials.

Councilor Collette asked if the money would be fronted to hire the new employees that would then be offset by court revenues.

Chief Kanzler replied that was correct. He had asked for a two-month delay in billing to let the revenue accrue to offset the expense. Rep. Tomei would likely be the chief sponsor.

It was moved by Councilor Stone and seconded by Councilor Collette to adopt the resolution supporting the use of photo traffic enforcement and photo red-light enforcement in Milwaukie. Motion passed unanimously. [5:0]

RESOLUTION 07-2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, SUPORTING THE USE OF PHOTO TRAFFIC ENFORCEMENT AND PHOTO REDLIGHT ENFORCEMENT

E. Resolution Amending Resolution No. 24-2006 Establishing a Fee Schedule for the City of Milwaukie by Approving a Library Fine Amnesty for the week of April 15 through April 21, 1007 in Recognition of National Library Week

Mr. Swanson reported this resolution would authorize the Library to accept canned goods and nonperishable food items in lieu of library fines during National Library Week.

It was moved by Councilor Barnes and seconded by Councilor Stone adopt the resolution amending Resolution 24-2006 by establishing a library fine amnesty in recognition of National Library Week. Motion passed unanimously. [5:0]

RESOLUTION 08-2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING RESOLUTION 24-2006 BY ESTABLISHING A LIBRARY FINE AMNESTY WEEK FROM APRIL 15, 2007 THROUGH APRIL 21, 2007 IN RECOGNITION OF NATIONAL LIBRARY WEEK

F. Council Reports

Councilor Loomis spoke at a Boy Scout meeting to assist them in earning their Citizenship Badge.

Councilor Collette chaired her first Clackamas County Coordinating Committee (C4) meeting, and the Mayors' Agreement on Climate Protection would be a big issue in the County. She would like to discuss this at a future Council work session.

Councilor Stone attended the Milwaukie Town Center Project tour and got an overview of other projects in the region.

Councilor Barnes met with Ms. Mangle regarding Measure 37 claim and procedure and suggested the other Council members do so. She went to Salem with her upper level students to meet the local delegation.

Councilor Stone noted the Council was having the teambuilding session with Dr. Bill Grace and asked if it was a public meeting.

Mr. Swanson replied it was technically a public meeting, but the Council would not be deliberating toward any decision. He did not recall anyone had ever attended.

Mayor Bernard announced the Council would meet in executive session immediately following adjournment pursuant to ORS 192.660(2)(i) performance evaluations of public officers and employees.

ADJOURNMENT

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

Mayor Bernard adjourned the regular session at 8:25 p.m.

Pat DuVal, Recorder



To: Mayor and City Council

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

From: Paul Shirey, Operations Director

Subject: Authorization to Execute the Sale of Three Surplus Properties Located at the Corners of Highway 99E and Jackson Street and Harrison Streets

Date: March 19, 2007 for April 3, 2007 City Council Meeting

Action Requested

Authorize the City Manager to execute the sale by Quitclaim Deed of surplus property located at the corners of McLoughlin Boulevard and SE Jackson and SE Harrison Streets.

Background

Pursuant to city code, the City Council granted authority to the City Manager on February 20, 2007 to negotiate the sale of three surplus properties on the corners of Highway 99E (McLoughlin Blvd), Jackson and Harrison Streets to two respective property owners (Resolution # 11-2007). The two property owners, Metro and Reliable Credit LLC have agreed to purchase the surplus property at \$16.00 per square foot, the same purchase price originally paid for the property in 2004 as part of the McLoughlin Blvd. improvement project. The properties were acquired by the City to increase the dimension of the turning radii at the street corners. Ultimately, more property was acquired than was needed for the new radii. These sales will return the unused remainder back to the adjacent property owners.

The property was acquired using federal funds (89.7%) and local match (10.27%) and the federal portion of the sale proceeds will be returned to ODOT.

The attached property descriptions legal maps show the property in question at corners of:

- Northwest corner of Harrison and McLoughlin (adjacent owner is Reliable Credit). 240 square feet (s.f.) at \$16.00 /s.f.= \$3,840 Sale Price
- Southwest corner of Harrison and McLoughlin (adjacent owner is Metro) 18.7 s.f. at \$16.00/s.f = \$300 Sale Price
- Northwest corner of Jackson and McLoughlin (adjacent owner is Metro) 166 s.f. at \$16.00/s/f = \$2,656

Quitclaim deeds have been prepared for each of the three corners in question and are attached (see Exhibits A1, A2 and B).

Concurrence

ODOT has jurisdiction of McLoughlin Boulevard (Highway 99E) and administered the federal funds for the project. ODOT concurs with the proposed sale of the surplus right of way.

Fiscal Impact

The City, under terms of agreement with ODOT, used federal funds to cover 89.73% of the cost of ROW acquisition. (\$6,089).

- 89.73%, or \$6,089 of the sale proceeds must be repaid to ODOT
- The city will retain 10.27% of the sale proceeds. (\$698). These funds will be repaid to the Street Fund.

Work Load Impacts

Minimal workload impact for Operations Director

Alternatives

None

Attachments

1. Resolution authorizing the City Manager to execute the sale of surplus property by Quitclaim Deed to Metro and Reliable Credit.
2. Legal descriptions, maps, and Quitclaim deeds:
 - Exhibit A1- Description and Map at McLoughlin and Jackson Streets (former Texaco lot)
 - Exhibit A2- Description and Map at McLoughlin and Harrison Street, south side (former Texaco lot)

- Exhibit B- Description and Map at McLoughlin and Harrison Street, north side
(Reliable Credit)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL, CITY OF MILWAUKIE, OREGON AUTHORIZING THE CITY MANAGER TO EXECUTE THE SALE OF THREE SURPLUS PROPERTIES LOCATED AT THE CORNERS OF HIGHWAY 99E AND JACKSON STREET AND HARRISON STREET THAT WERE ACQUIRED AS PART OF THE MCLOUGHLIN BOULEVARD IMPROVEMENT PROJECT

WHEREAS, the City acquired fee title to portions of the properties located at 1915 SE Harrison Street and 10700 SE McLoughlin Boulevard (the "Properties") in connection with the McLoughlin improvement project from adjacent property owners; and

WHEREAS, the City has no further need or use for remaining portions of the Properties;

WHEREAS, the properties are substandard undeveloped Properties,

WHEREAS, on February 20, 2007 the City Council declared the properties to be surplus,

WHEREAS, the City Council granted authority to the City Manager to negotiate sale of the properties and require payment at least equal on a square foot basis to the price paid by the City for the property,

WHEREAS, the City Manager has followed the procedure set forth in Milwaukie Municipal Code Section 3.15.010,

WHEREAS, adjacent property owners Metro and Reliable Credit LLC have offered to purchase the properties at \$16.00 per square foot, the same price originally paid for the property in 2004, and

WHEREAS, the City is obligated to return 89.7% of the sale proceeds to ODOT in recognition of the fact that federal funds were utilized to purchase the properties.

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

Section 1. The City Manager is authorized to sell the surplus property located at 1915 SE Harrison Street consisting of approximately 240 square feet as shown on "Exhibit A", to the adjacent property owner, Reliable Credit LLC, for \$3,840, at \$16.00 per square foot.

Section 2. The City Manager is authorized to sell the surplus properties located at 10700 SE McLoughlin Boulevard consisting of approximately 184.7 square feet as shown on "Exhibit B", to the adjacent property owner, Metro, for \$2,956, at \$16.00 per square foot.

Section 3. The City Manager shall return the appropriate federal portion of the sale proceeds, 89.7%, to ODOT.

Section 4 This Resolution takes effect upon its adoption.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon on _____, 2007.

This resolution is effective on _____, 2007.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

EXHIBIT A - 2**Parcel 1 – Fee**

A parcel of land lying in the Northeast one-quarter of Section 35, Township 1 South, Range 1 East, W.M., Clackamas County, Oregon and being a portion of Lot 8, Block 14, TOWN OF MILWAUKIE, a duly recorded plat in Clackamas County and also being all of that property described as "Parcel 1 – fee" in that Warranty Deed to the City of Milwaukie, a municipal corporation of the State of Oregon, recorded February 1, 2005 in document Number 2005-009154, Clackamas County Deed Records, EXCEPT that portion of said property included in a strip of land variable in width lying on the Easterly side of the center line of the relocated Pacific Highway East (US 99E), which center line is described as follows:

Beginning at Engineer's center line Station "US 99E" 315+00.00, said station being 972.57 feet South and 98.30 feet East from the Southwest corner of Block 28, TOWN OF MILWAUKIE in the Northeast one-quarter of Section 35, Township 1 South, Range 1 East, W.M.; thence North 8° 07' 00" West, 490.44 feet; thence on a 3274.04 foot radius curve left (the long chord of which bears North 9° 24' 02" West, 146.72 feet), 146.73 feet; thence North 10° 41' 04" West, 143.41 feet; thence on a 3274.04 foot radius curve to the right (the long chord of which bears North 9° 24' 02" West, 146.72 feet), 146.73 feet; thence North 8° 07' 00" West, 568.72 feet; thence on a spiral curve right (the chord of which bears North 4° 21' 20" West, 643.89 feet), 645.00 feet; thence on a 1637.02 foot radius curve right (the long chord of which bears North 4° 03' 05" East, 50.31 feet), 50.31 feet; thence on a spiral curve right (the chord of which bears North 9° 35' 56" East, 399.73 feet), 400.00 feet to Engineer's center line Station "US 99E" 340+91.34 back = Station 340.90.74 ahead; thence North 11° 55' 55" East, 198.87 feet to Engineer's center line Station "US 99E" 342+89.61.

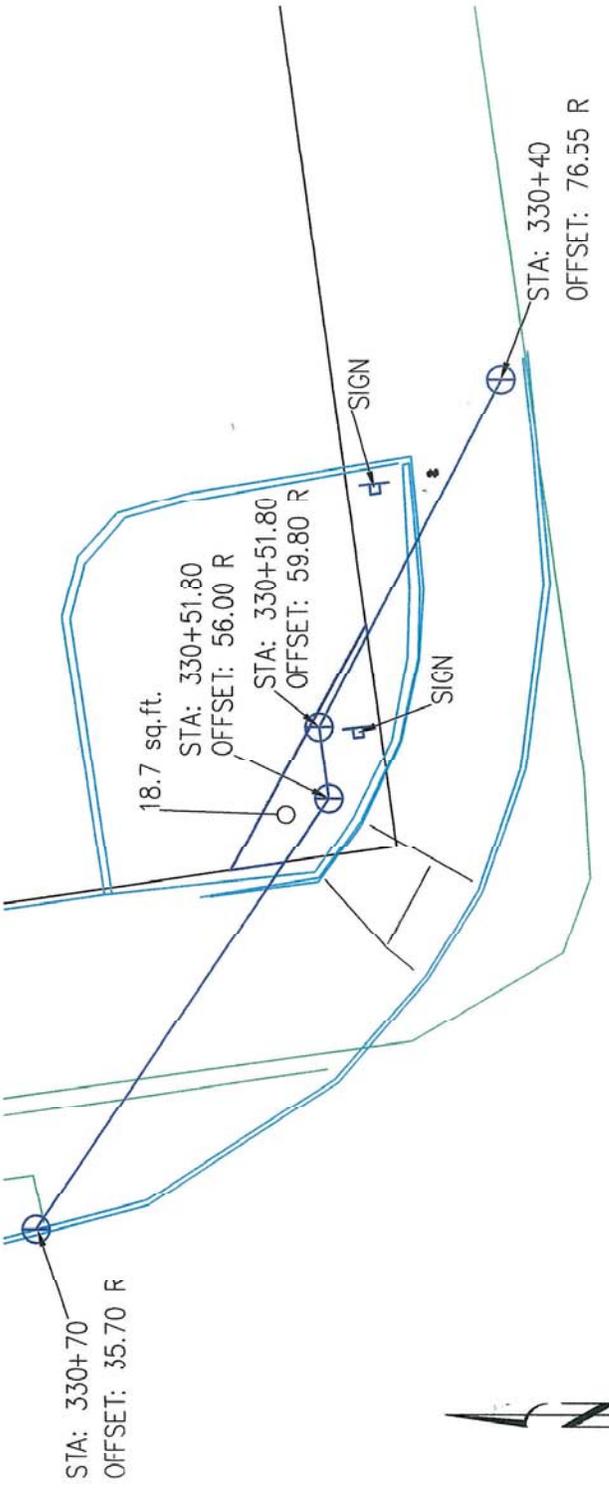
The width in feet of said strip of land is as follows:

<u>"US 99E" Station to</u>	<u>"US 99E Station</u>	<u>Width on Easterly Side of Center Line</u>
330+40.00	330+51.80	76.55 in a straight line to 59.80
330+51.80	330+70.00	56.00 in a straight line to 35.70

Bearings are based on the Oregon Coordinate System of 1983(98), North zone.

This parcel of land contains 18.7 square feet, more or less.

A-1



SE JACKSON STREET

SE McLOUGHLIN BLVD

330

EXHIBIT A - 2

Parcel 1 – Fee

A parcel of land lying in the Northeast one-quarter of Section 35, Township 1 South, Range 1 East, W.M., Clackamas County, Oregon and being a portion of Lot 5, Block 14, TOWN OF MILWAUKIE, a duly recorded plat in Clackamas County and also being all of that property described in that Warranty Deed to the City of Milwaukie, a municipal corporation of the State of Oregon, recorded February 1, 2005 in document Number 2005-009154, Clackamas County Deed Records, EXCEPT that portion of said property included in a strip of land variable in width lying on the Easterly side of the center line of the relocated Pacific Highway East (US 99E), which center line is described as follows:

Beginning at Engineer’s center line Station “US 99E” 315+00.00, said station being 972.57 feet South and 98.30 feet East from the Southwest corner of Block 28, TOWN OF MILWAUKIE in the Northeast one-quarter of Section 35, Township 1 South, Range 1 East, W.M.; thence North 8° 07’ 00” West, 490.44 feet; thence on a 3274.04 foot radius curve left (the long chord of which bears North 9° 24’ 02” West, 146.72 feet), 146.73 feet; thence North 10° 41’ 04” West, 143.41 feet; thence on a 3274.04 foot radius curve to the right (the long chord of which bears North 9° 24’ 02” West, 146.72 feet), 146.73 feet; thence North 8° 07’ 00” West, 568.72 feet; thence on a spiral curve right (the chord of which bears North 4° 21’ 20” West, 643.89 feet), 645.00 feet; thence on a 1637.02 foot radius curve right (the long chord of which bears North 4° 03’ 05” East, 50.31 feet), 50.31 feet; thence on a spiral curve right (the chord of which bears North 9° 35’ 56” East, 399.73 feet), 400.00 feet to Engineer’s center line Station “US 99E” 340+91.34 back = Station 340.90.74 ahead; thence North 11° 55’ 55” East, 198.87 feet to Engineer’s center line Station “US 99E” 342+89.61.

The width in feet of said strip of land is as follows:

<u>“US 99E” Station to</u>	<u>“US 99E Station</u>	<u>Width on Easterly Side of Center Line</u>
332+30.07	332+45.35	40.33 in a straight line to 53.76
332+45.35	332+60.00	53.76 in a straight line to 98.52

Bearings are based on the Oregon Coordinate System of 1983(98), North zone.

This parcel of land contains 166 square feet, more or less.

A.2

N.81°53'00"E.

SE HARRISON ST

SE McLOUGHLIN BLVD

332

331

STA: 332+60
OFFSET: 98.52 R

64.28 sq.ft.
0.0015 acres

STA: 332+45.35
OFFSET: 53.76 R

STA: 332+30.07
OFFSET: 40.33 R

165.62 sq.ft.
0.0038 acres

CLSON BROTHERS
ENTERPRISES LLC
88-01620

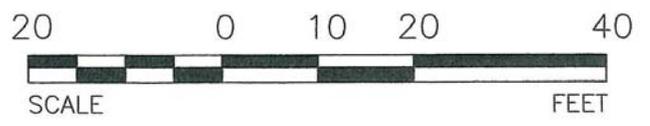


EXHIBIT A**Parcel 1 – Fee**

A parcel of land lying in the Northeast one-quarter of Section 35, Township 1 South, Range 1 East, W.M., Clackamas County, Oregon and being a portion of Lot 1, Block 1, LEWELLING PARK, a duly recorded plat in Clackamas County and also being all of that property described in that Deed to the City of Milwaukie, a municipal corporation of the State of Oregon, recorded June 6, 2005 in document Number 2005-051695, Clackamas County Deed Records, EXCEPT that portion of said property included in a strip of land variable in width lying on the Easterly side of the center line of the relocated Pacific Highway East (US 99E), which center line is described as follows:

Beginning at Engineer's center line Station "US 99E" 315+00.00, said station being 972.57 feet South and 98.30 feet East from the Southwest corner of Block 28, TOWN OF MILWAUKIE in the Northeast one-quarter of Section 35, Township 1 South, Range 1 East, W.M.; thence North 8° 07' 00" West, 490.44 feet; thence on a 3274.04 foot radius curve left (the long chord of which bears North 9° 24' 02" West, 146.72 feet), 146.73 feet; thence North 10° 41' 04" West, 143.41 feet; thence on a 3274.04 foot radius curve to the right (the long chord of which bears North 9° 24' 02" West, 146.72 feet), 146.73 feet; thence North 8° 07' 00" West, 568.72 feet; thence on a spiral curve right (the chord of which bears North 4° 21' 20" West, 643.89 feet), 645.00 feet; thence on a 1637.02 foot radius curve right (the long chord of which bears North 4° 03' 05" East, 50.31 feet), 50.31 feet; thence on a spiral curve right (the chord of which bears North 9° 35' 56" East, 399.73 feet), 400.00 feet to Engineer's center line Station "US 99E" 340+91.34 back = Station 340.90.74 ahead; thence North 11° 55' 55" East, 198.87 feet to Engineer's center line Station "US 99E" 342+89.61.

The width in feet of said strip of land is as follows:

<u>"US 99E" Station to</u>	<u>"US 99E Station</u>	<u>Width on Easterly Side of Center Line</u>
333+05.00	333+17.80	91.79 in a straight line to 67.23
333+17.80	333+45.00	53.16 in a straight line to 34.31

Bearings are based on the Oregon Coordinate System of 1983(98), North zone.

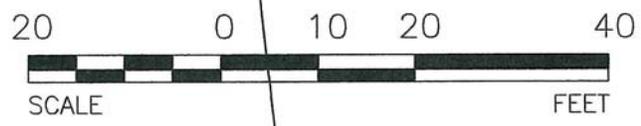
This parcel of land contains 240 square feet, more or less.

B

GALE O. TR 91.

SE McLOUGHLIN BLVD

334



MARK DICK

L & B HOLZMAN LLC
98-29746

Sta. 332+80.00
"17TH" 19+70.55
333

STA: 333+45
OFFSET: 34.31 R

Sta. 332+78.71
"HA" 0+00.00

4
239.97 sq.ft.
0.0055 acres

STA: 333+17.80
OFFSET: 53.16 R

STA: 333+17.80
OFFSET: 67.23 R

3
171.29 sq.ft.
0.0039 acres

STA: 333+05
OFFSET: 91.79 R

SE HARRISON ST

N.81°53'00"E.

STA: 332+60



To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenneth Asher, Community Development & Public Works Director

From: Gary Parkin, P.E., Engineering Director
George MacGregor, P.E., Civil Engineer

Subject: Well No. 8 Reconstruction Project Award for Engineering Services
(CIP Project No. 0143)

Date: March 6, 2007 for April 3, 2007 Regular Session

Action Requested

Authorize the City Manager to sign a contract for engineering design services for the Well No. 8 Reconstruction Project with Murray, Smith & Associates, Inc. (MSA), in the amount of \$89,950.

Background

In 2005, the pumping equipment at Well No. 8 was destroyed in a fire and the City lost about 15% of its pumping capacity. The remaining components of the City's drinking water system cannot make up for the loss of Well 8, and the City now faces an increased challenge in meeting its drinking water supply goals.

Staff appeared at the September 5, 2006 Council meeting and recommended a plan to reactivate Well 8 at its present site, as an engineering study determined this plan as the most economically feasible alternative for increasing the City's water supply. Council accordingly adopted Resolution 42-2006 authorizing staff to solicit engineering and construction services necessary to reconstruct Well 8.

The City received two proposals to provide engineering and post-design inspection services. The Scope of Work for the design effort includes the following:

Phase I (Apr. 2007 through Aug. 2007)

- Design well and prepare bid-ready plans & specifications
- Oversee well drilling operation & prepare drilling logs
- Test well production
- Sample and test water quality

Phase II (Aug. 2007 through Jan. 2008)

- Design high efficiency pump, motor, and controls
- Design chlorination & distribution components
- Inspect construction
- Perform startup and testing
- Furnish as-built drawings

Well 8 is expected to be completed by February 1, 2008. Engineering work is expected to begin immediately with construction commencing in June. Depending upon the method chosen, well drilling may take up to three months to complete. Additional time is required for site work, motor & controls, disinfection & distribution, and other appurtenances.

The proposals were evaluated by Engineering and Operations staff, and evaluations were based on the qualifications of each firm and project team, project approach, project understanding, schedule, and cost.

The engineering firms that submitted proposals, and the total proposed fees were as follows:

Firm	Proposal Score (out of 100)	Fee (does not include 10% contingency)
Kennedy/Jenks Consultants	81	\$115,936
Murray, Smith & Associates	87	\$ 89,950

Concurrence

Engineering and Operations staff worked together to develop the Scope of Work for this project, reviewed engineering proposals, and ultimately agreed to select Murray, Smith & Associates.

Engineering staff met with the Lake Road Neighborhood District Association to discuss the project and hear neighborhood concerns. The NDA understands the need to increase the City's water supply and supports the project. Staff will meet again with the NDA before construction. The Lake Road Neighborhood sign will be removed, stored, and reinstalled by City crews.

Fiscal Impact

The fee proposed by Murray, Smith & Associates is \$89,950, nearly \$13,000 higher than the \$77,000 estimated by staff. The selection committee has closely scrutinized MSA's fee estimate versus the Scope of Work, and after some negotiation, finds that the proposed fee is fair. The fee is payable on a time and materials basis with a total fee not to exceed \$89,950. The total budgeted amount for the Well 8 Reconstruction Project is \$349,000 for engineering and construction. Assuming an expenditure of \$89,950 for engineering, \$259,050 will be available for construction. Staff estimates construction will cost approximately \$253,000.

Well drilling and related work will be performed under separate construction bid-build contracts to be awarded by the City at a later date. Engineering plans to award a construction contract for well drilling in May 2007. Engineering plans to award a construction contract for site work, motor & controls, disinfection & distribution, and related items in September 2007

Work Load Impacts

This project is included in the work plans for the Engineering and Operations Departments for fiscal years 06/07 and 07/08. Engineering will prepare and manage the design contract, review submittals, and submit plans to the State of Oregon for approval. Both Engineering and Operations will review the plans and specifications to ensure compliance with standards set forth by the State of Oregon Drinking Water Program, the American Water Works Association, and the City of Milwaukie.

Alternatives

1. Defer the project to a later date. This alternative will postpone reactivation of Well 8, leave the City without necessary reserve water capacity, and prolong or increase the City's dependence on Clackamas River Water (CRW).
2. Reject proposals and re-advertise. Although delaying project, this alternative may result in a lower engineering fee. However, this seems unlikely in light of the proposals already received. While Engineering contracts are typically not awarded based on lowest bid, MSA's fee was considerably less than the next highest fee proposal. MSA was chosen based on the firm's superior experience and knowledge of the project, and also happened to propose a lower fee. It is unlikely that re-advertising the project will result in retaining a firm with MSA's qualifications at a lower price.

Attachments

1. Attachment 1: Resolution authorizing City Manager to enter into Engineering Services Agreement with Murray, Smith & Associates in the amount of \$89,950.
2. Attachment 2: Engineering Services Agreement between the City of Milwaukie and Murray, Smith & Associates.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN AN ENGINEERING SERVICES AGREEMENT FOR THE DESIGN OF A REPLACEMENT WELL AND APPURTANENCES AT CITY WATER WELL NO. 8.

WHEREAS, the City has authorized the Engineering Director to solicit engineering service proposals for the design of a replacement well and appurtenances at the existing Well No. 8 site pursuant to Resolution No. 42-2006; and

WHEREAS, the Engineering Director has solicited and received engineering service proposals; and

WHEREAS, a proposal review committee has selected Murray, Smith & Associates as the firm with the strongest proposal; and

WHEREAS, the fee for service of \$89,950 is within the budgeted amount of \$90,000

NOW, THEREFORE, BE IT RESOLVED, by the City Council, City of Milwaukie, Oregon, that the City Manager is authorized to sign an Engineering Services Agreement in the amount of \$89,950 for the design of a replacement well and appurtenances as described in the recitals of the resolution.

Introduced and adopted by the City Council on April 3, 2007.

This resolution is effective on April 3, 2007.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

Document3 (Last revised)



**CITY OF MILWAUKIE, OREGON
ENGINEERING SERVICES AGREEMENT
WELL NO. 8 RECONSTRUCTION**

THIS AGREEMENT is made and entered into this 3rd day of April, 2007, by and between the City of Milwaukie, a municipal corporation of the State of Oregon, hereinafter called the CITY, and Murray, Smith & Associates, Inc., 121 SW Salmon, Suite 900, Portland, Oregon 97204-2919, whose authorized representative is James L. Helton, P.E., and having a principal being a registered engineer of the State of Oregon, hereinafter called ENGINEER

RECITALS

WHEREAS, CITY's Fiscal Year 2006-07 budget provides for the design and construction of Well No. 8 Rehabilitation, Project No. 0143; and

WHEREAS, the accomplishment of the work and services described in this Agreement is necessary and essential to the public works improvement program of the CITY; and

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

WHEREAS, CITY has solicited and reviewed ENGINEERING service proposals from qualified companies, and

WHEREAS, CITY has determined that ENGINEER is qualified and capable of performing the professional ENGINEERING services for the project described in this Agreement.

THEREFORE, in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

TERMS OF THE AGREEMENT

1. ENGINEER's Scope of Services

The ENGINEER shall perform professional ENGINEERING services relevant to the Project in accordance with the terms and conditions set forth herein, and as provided in Exhibit 1, which is attached hereto and by this reference made a part of this Agreement.

Contractor agrees to complete work that is detailed in Exhibit 1 and by this reference made a part hereof. Contractor may have some contact with the public in the course of performing this contract and shall maintain good relations with the public. Failure to maintain good relations with the public shall constitute a breach of the contract. The CITY may treat the failure to maintain good relations as a non-curable breach allowing the CITY to terminate the contract and to disqualify Contractor from future work for the.

2. Effective Date and Duration

This agreement shall become effective upon the date of execution by the CITY's Local Contract Review Board, and shall expire, unless otherwise terminated or extended, on completion of the work or June 30, 2008, whichever comes first. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. ENGINEER's Fee**A. Basic Fee**

- 1) As compensation for Basic Services as described in Exhibit 1 of this Agreement, and for services required in the fulfillment of Paragraph 1, the ENGINEER shall be paid on an hourly rate based upon the "Schedule of Rates" in Exhibit 1 of this agreement, which shall constitute full and complete payment for said services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement. The Basic Fee shall not exceed the amount of Eighty-nine thousand nine hundred fifty dollars (\$89,950) without prior written authorization.
- 2) The parties hereto do expressly agree that the Basic Fee is based upon the Scope of Services to be provided by the ENGINEER and is not necessarily related to the estimated construction cost of the Project. In the event that the actual construction cost differs from the estimated construction cost, the ENGINEER's compensation will not be adjusted unless the Scope of Services to be provided by the ENGINEER changes and is authorized and accepted by the CITY.

B. Payment Schedule for Basic Fee

Payments shall be made upon receipt of billings based on the work completed. Billings shall be submitted by the ENGINEER periodically, but not more frequently than monthly. Payment by the CITY shall release the CITY from any further obligation for payment to the ENGINEER for service or services performed or expenses incurred as of the date of the statement of services. Payment shall be made only for work actually completed as of the date of invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

C. Payment for Special Services

Only when directed in writing by the CITY, the ENGINEER shall furnish or acquire for the CITY the professional and technical services based on the hourly rate schedule as described in Exhibit 1 of this contract for minor project additions and/or alterations.

D. Certified Cost Records

The ENGINEER shall furnish certified cost records for all billings pertaining to other than lump sum fees to substantiate all charges. For such purposes, the books of account of the ENGINEER shall be subject to audit by the CITY. The ENGINEER shall complete work and cost records for all billings on such forms and in such manner as will be satisfactory to the CITY.

E. Contract Identification

The ENGINEER shall furnish to the CITY its employer identification number, as designated by the Internal Revenue Service, or social security number, as the CITY deems applicable.

F. Payment – General

- 1) ENGINEER shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 2) ENGINEER shall pay employees at least time and a half pay for all overtime worked in excess of 40 hours in any one week except for individuals under the contract who are excluded under ORS 653.010 to 653.261 or under 29 USC sections 201 to 209 from receiving overtime.
- 3) ENGINEER 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 ENGINEER or all sums which ENGINEER agrees to pay for such services and all moneys and sums which ENGINEER collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- 4) The CITY certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.
- 5) ENGINEER shall make payments promptly, as due, to all persons supplying services or materials for work covered under this contract. ENGINEER shall not permit any lien or claim to be filed or prosecuted against the CITY on any account of any service or materials furnished.
- 6) If ENGINEER fails, neglects or refuses to make prompt payment of any claim for labor, materials, or services furnished to ENGINEER, sub-consultant or subcontractor by any person as such claim becomes due, CITY may pay such claim and charge the amount of the payment against funds due or to become due to the ENGINEER. The payment of the claim in this manner shall not relieve ENGINEER or their surety from obligation with respect to any unpaid claims.

4. Ownership of Plans and Documents: Records

- A. The field notes, design notes, and original drawings of the construction plans, as instruments of service, are and shall remain, the property of the ENGINEER; however, the CITY shall be furnished, at no additional cost, one set of previously approved reproducible drawings, on 3 mil minimum thickness mylar as well as diskette in “DWG” or “DXF” format, of the original drawings of the work. The CITY shall have unlimited authority to use the materials received from the ENGINEER in any way the CITY deems necessary.
- B. The CITY shall make copies, for the use of and without cost to the ENGINEER, of all of its maps, records, laboratory tests, or other data pertinent to the work to be performed by the ENGINEER pursuant to this Agreement, and also make available any other maps, records, or other materials available to the CITY from any other public agency or body.
- C. The ENGINEER shall furnish to the CITY, copies of all maps, records, field notes, and soil tests which were developed in the course of work for the CITY and for which compensation has been received by the ENGINEER at no additional expense to the CITY except as provided elsewhere in this Agreement.

5. Assignment/Delegation

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If CITY agrees to assignment of tasks to a subcontract, ENGINEER 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. ENGINEER is Independent Contractor

- A.** The CITY's project director, or designee, shall be responsible for determining whether ENGINEER's work product is satisfactory and consistent with this agreement, but ENGINEER is not subject to the direction and control of the CITY. ENGINEER shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Section 3 of this Agreement.
- B.** ENGINEER is an independent contractor and not an employee of CITY. ENGINEER acknowledges ENGINEER's status as an independent contractor and acknowledges that ENGINEER is not an employee of the CITY for purposes of workers compensation law, public employee benefits law, or any other law. All persons retained by ENGINEER to provide services under this contract are employees of ENGINEER and not of CITY. ENGINEER acknowledges that Murray, Smith & Associates, Inc. is not entitled to benefits of any kind to which a CITY employee is entitled and that Murray, Smith & Associates, Inc. shall be solely responsible for workers compensation coverage for Murray, Smith & Associates, Inc. employees and all other payments and taxes required by law. Furthermore, in the event that ENGINEER is found by a court of law or an administrative agency to be an employee of the CITY for any purpose, CITY shall be entitled to offset compensation due, or to demand repayment of any amounts paid to ENGINEER under the terms of the agreement, to the full extent of any benefits or other remuneration ENGINEER 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 ENGINEER or to a third party) as a result of said finding.
- C.** The undersigned ENGINEER hereby represents that no employee of the CITY or any partnership or corporation in which a CITY employee has an interest, has or will receive any remuneration of any description from the ENGINEER, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.
- D.** If this payment is to be charged against Federal funds, ENGINEER certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his/her normal charge for the type of service provided.
- E.** ENGINEER and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

- F. ENGINEER certifies that it currently has a CITY business tax receipt or will obtain one prior to delivering services under this Agreement.
- G. ENGINEER is not an officer, employee, or agent of the CITY as those terms are used in ORS 30.265.

7. Indemnity

- A. The CITY has relied upon the professional ability and training of the ENGINEER as a material inducement to enter into this Agreement. ENGINEER represents to the CITY that the work under this contract will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of the ENGINEERING profession under similar conditions and circumstances as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of an ENGINEER's work by the CITY shall not operate as a waiver or release. Acceptance of documents by CITY does not relieve ENGINEER of any responsibility for design deficiencies, errors or omissions.
- B. Claims for other than Professional Liability. ENGINEER shall defend, save and hold harmless the CITY of Milwaukie, its officers, agents, and employees from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, of whatsoever nature, including intentional acts resulting from or arising out of the activities of ENGINEER or its subcontractors, sub-consultants, agents or employees under this contract. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.
- C. Claims for Professional Liability. ENGINEER shall defend, save and hold harmless the CITY of Milwaukie, its officers, agents, and employees from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, arising out of the professional negligent acts, errors or omissions of ENGINEER or its subcontractors, sub-consultants, agents or employees in performance of professional services under this agreement. Any design work by ENGINEER that results in a design of a facility that is not readily accessible to and usable by individuals with disabilities shall be considered a professionally negligent act, error or omission.
- D. As used in subsections B and C of this section, a claim for professional responsibility is a claim made against the CITY in which the CITY's alleged liability results directly or indirectly, in whole or in part, from the quality of the professional services provided by ENGINEER, regardless of the type of claim made against the CITY. A claim for other than professional responsibility is a claim made against the CITY in which the CITY's alleged liability results from an act or omission by ENGINEER unrelated to the quality of professional services provided by ENGINEER.

8. Insurance

ENGINEER and its subcontractors shall maintain insurance acceptable to CITY in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of ENGINEER's activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is

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

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

A. Commercial General Liability Insurance

ENGINEER shall obtain, at ENGINEER'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	\$2,000,000
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. Professional Liability

ENGINEER shall obtain, at ENGINEER's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent. Annual aggregate limit shall not be less than \$2,000,000 and filed on a "claims-made" form.

C. Commercial Automobile Insurance

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

D. Workers' Compensation Insurance

The ENGINEER, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are 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. 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. ENGINEERS 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 \$100,000 each accident.

E. Additional Insured Provision

The Commercial General Liability Insurance Policy and other policies the CITY deems necessary shall include the CITY its officers, directors, and employees as additional

insureds with respect to this contract. Coverage will be endorsed to provide a per project aggregate.

F. Extended Reporting Coverage

If any of the aforementioned liability insurance is arranged on a “claims made” basis, Extended Reporting coverage will be required at the completion of this contract to a duration of 24 months or the maximum time period the ENGINEER’s insurer will provide such if less than 24 months. ENGINEER will be responsible for furnishing certification of Extended Reporting coverage as described or continuous “claims made” liability coverage for 24 months following contract completion. Continuous “claims made” coverage will be acceptable in lieu of Extended Reporting coverage, provided its retroactive date is on or before the effective date of this contract. Coverage will be endorsed to provide a per project aggregate.

G. Notice of Cancellation

There shall be no cancellation, material change, 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 30 days notice of cancellation provision shall be physically endorsed on to the policy.

H. Insurance Carrier Rating

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

I. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the ENGINEER 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 address below ten days prior to coverage expiration.

J. Primary Coverage Clarification

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

K. Cross-Liability Clause

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

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

Office of CITY Recorder
CITY of Milwaukie Business Phone: 503-786-7504
10722 SE Main St. Business Fax: 503-643-2444
Milwaukie, Oregon 97222 Email Address: ocr@ci.milwaukie.or.us

Such policies or certificates must be delivered prior to commencement of the work. Thirty days cancellation notice shall be provided CITY by certified mail to the name at the address listed above in event of cancellation or non-renewal of the insurance.

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

9. Termination Without Cause

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

10. Termination With Cause

A. CITY may terminate this Agreement effective upon delivery of written notice to ENGINEER, 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 ENGINEER, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4) If ENGINEER becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against ENGINEER, if a receiver or trustee is appointed for ENGINEER, or if there is an assignment for the benefit of creditors of ENGINEER.

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 ENGINEER, may terminate the whole or any part of this Agreement:

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

- 3) If ENGINEER fails to eliminate a conflict as described in Section 14 of this agreement.

The rights and remedies of CITY provided in the above clause related to defaults (including breach of contract) by ENGINEER 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), ENGINEER 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 ENGINEER 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 ENGINEER. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

11. Non-Waiver

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

12. Method and Place of Giving Notice, Submitting Bills and Making Payments

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail, 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:

CITY OF MILWAUKIE

Accounts Payable
10722 SE Main St.
Milwaukie, Oregon 97222

Business Phone: 503-786-7523
Business Fax: 503-786-7528
Email Address: finance@ci.Milwaukie.or.us

CONTRACTOR

Murray, Smith & Associates, Inc.
121 SW Salmon, Suite 900
Portland, OR 97204-2919

Business Phone: (503) 225-9010
Business Fax: (503) 225-9022
Email Address: heltonj@msa-ep.com

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

13. Merger

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

14. Force Majeure

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

15. Non-Discrimination

ENGINEER agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. ENGINEER 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.

16. Errors

ENGINEER 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.

17. Extra (Changes) Work

Only the ENGINEERING Director, Gary Parkin, P.E., may authorize extra (and/or change) work. Failure of ENGINEER 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 ENGINEER thereafter shall be entitled to no compensation whatsoever for the performance of such work.

18. Governing Law

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

19. Conditions of Supplying a Public Agency.

Contractor shall pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract

20. Compliance With Applicable Law

ENGINEER shall comply with all federal, state, and local laws and ordinances applicable to the work under this Agreement, including those set forth in ORS 279C.220 to 279C.235.

21. 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.

22. Access to Records

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

23. Audit

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

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

CITY OF MILWAUKIE

By: Signature (Mike Swanson)

Print Name & Title (Mike Swanson, CITY Manager)

Date

ENGINEER

By: _____
Print Firm's Name

Print Name & Title of ENGINEER's Authorized Representative

Signature of Firm's Representative

Date

**EXHIBIT 1
DUTY OF ENGINEER**

**SCOPE OF WORK
FOR
ENGINEERING SERVICES
FOR
WELL NO. 8 RECONSTRUCTION**

The ENGINEER shall render professional ENGINEERING services as described below:

1. Basic Services

Phase 1 - Well Design, Well Drilling, Aquifer Testing and Sampling

Phase 1 includes well and wellhead design efforts, preparation of the technical specifications, contractor selection, construction oversight, permitting and initial testing and sampling of the replacement well. The scope of work is based on design of a 16 to 20-inch diameter well drilled, cased and screened to approximately 450 to 500 feet below ground surface, preparation of contract documents, drilling oversight and well testing. Phase 1 also includes the abandonment of the existing well. It is anticipated that the new well will be drilled using the CITY's standard design-bid-build procurement procedures under contractual agreement between the CITY and well driller.

Task 1.1 - Well Design and Technical Specifications:

This task consists of designing the new well. Specific subtask elements include the following:

- 1.1-1* Prepare a conceptual design of the new well and submit it to the CITY for review.
- 1.1-2* Prepare technical specifications and drawings suitable for competitive bid for the new well. The specifications also will include provisions for testing the new well.
- 1.1-3* Prepare technical specifications and drawings suitable for abandonment of the existing well.
- 1.1-4* Incorporate CITY supplied standard contract documents, bidding requirements, general and supplementary general conditions into the bidding documents.
- 1.1-5* Submit six (6) sets of pre-final plans, specifications and cost estimates to CITY staff for review.
- 1.1-6* Submit pre-final well design plans and specifications as required for review and approval by State of Oregon Department of Human Services Drinking Water Program.
- 1.1-7* Prepare final well design plans and specifications based on comments received. Print and bind 15 sets of bid-ready construction contract documents.
- 1.1-8* Provide an ENGINEER's estimate of the old well abandonment, new well drilling and aquifer testing for use during the bidding process.

Task 1.2 - Well Drilling and Development Oversight:

This task includes providing construction oversight during drilling and development of new well. This task will include:

- 1.2-1* Answer questions from CITY staff during the bidding process as requested.
- 1.2-2* Inspect well drilling, well development, well disinfection and existing well abandonment to ensure construction is in accordance with the plans and specifications. Up to 72 hours of inspection will be provided while the well is being drilled below 300 feet.
- 1.2-3* Prepare a driller's log.
- 1.2-4* Prepare an as-built of the completed well.

Task 1.3 - Well Testing and Sampling:

This task includes coordinating, observing and analyzing hydraulic testing of the well and aquifer and developing pre-design parameters for design of the pump system for the well. Both step-rate and constant-rate pumping tests will be performed. Water level measurements will be collected from other CITY wells so that drawdown influence affects can be evaluated. The task will include the following elements:

- 1.3-1* Conduct pre-test baseline monitoring.
- 1.3-2* Observe the tests. The step-rate test will be performed at three to four incremental rates over a 1 to 2 hour period. The constant-rate test will be performed for a period of approximately 24 hours.
- 1.3-3* Analyze well test data and provide recommendations for the design discharge rate and pump setting. The data collected during the drilling, installation, and testing of the well will be reduced and analyzed to evaluate the following:
 - Aquifer properties (transmissivity, hydraulic conductivity, storage coefficient)
 - Well efficiency
 - Long-term sustainable well yield
 - Water quality conditions as they relate to public drinking water criteria
 - Recommendations for future operation of the well

A well construction and testing report will be prepared that incorporates all the data and analysis identified above.

- 1.3-4* Assist CITY with obtaining samples for water quality testing. Three water quality samples will be collected during the constant-rate pumping tests and analyzed for total iron and manganese. These data will be used to assess temporal trends in critical water quality parameters. In addition, a final suite of water quality samples will be collected at the end of the tests and submitted for analysis of regulated inorganic compounds, volatile organic compounds (VOCs), pesticides/herbicides, radionuclides, and bacteria. Biological Activity Reaction Test (BART) samples will also be collected at the end of the test to assess iron and sulfur bacteria. Field

parameters such as pH, conductivity, and temperature will also be monitored during the test. CITY will pay all sampling and lab test fees.

Phase 2 - Pumping Equipment Design and Construction

Phase 2 includes pumping equipment and site improvements design efforts, preparation of the technical specifications, contractor selection, construction oversight and startup of the replacement well. The scope of work is based on the following assumptions and understandings.

- Pumping system. The project will include furnishing and installing the well pump that will be a vertical turbine-type pump with a motor of up to 100 horsepower (HP). Wellhead piping will be connected to existing piping inside well house. New piping and valving including isolation and control valves will be installed inside well house. Sand separator and associated piping will be installed.
- Electrical power system and instrumentation and control system. Power supply to the station will be from the existing 480-volt 3-phase electrical service. A new variable frequency drive motor starter and associated electrical work will be installed inside the existing well house. Instrumentation and control systems will be upgraded where required and will be incorporated into the CITY's existing telemetry system.
- Disinfection system. Disinfection facilities will be included. Such system will consist of chlorine gas feed equipment, solution pump and piping.
- Site improvements. Site improvements will include security fencing for new well, landscaping and chlorine contact facility consisting of a large diameter buried pipeline.

The work for this phase is broken down into the following tasks:

Task 2.1 - Basic Services, Preliminary Phase

- 2.1-1 Review the "Well No. 8 Replacement Assessment Report for the CITY of Milwaukie, Oregon" by Murray, Smith & Associates, dated December 2005. Review additional reports, as-built plans, etc., pertaining to Well 8 and the underlying aquifer, water rights and CITY design and construction standards.
- 2.1-2 Coordinate and conduct meetings and site visits with CITY of Milwaukie Public Works staff to discuss general site layout and specific operational requirements.
- 2.1-3 Conduct design surveys to provide horizontal and vertical location of existing well facility, property lines and utilities for inclusion on the construction drawings.
- 2.1-4 Develop preliminary schedule for project from design through final as-built drawings. Indicate project milestones.

- 2.1-5 Prepare preliminary (50%) design drawings and details in conformance with CITY of Milwaukie, State of Oregon, AWWA, and APWA Standards, as well as any special details required for this project.
- 2.1-6 Prepare special specifications to supplement the Standard AWWA, APWA, and CITY of Milwaukie Technical Construction Specifications as required to cover conditions specific to the project.
- 2.1-7 Prepare preliminary construction cost estimate and operation & maintenance (O&M) cost estimate.
- 2.1-8 Submit six (6) sets of preliminary plans, specifications, and cost estimates to CITY staff for review. Plans shall be plotted on 24"x 36" paper. Specifications and cost estimate shall be printed double-sided on 8 1/2"x 11" paper.
- 2.1-9 Review preliminary plans, specifications, and cost estimates with CITY staff and make modifications as required for pre-final (95%) design phase.

Task 2.2 - Basic Services, Design Phase

- 2.2-1 Prepare pre-final (95%) design plans. Pre-final plans should be complete in all material aspects of the project and require only minor revisions that do not involve significant changes to the design, layout, operation, construction cost or O&M cost of the facility.
- 2.2-2 Submit six (6) sets of pre-final plans, specifications, and cost estimates to CITY staff for review. Plans shall be plotted on 24"x 36" paper. Specifications and cost estimate shall be printed double-sided on 8 1/2"x 11" paper.
- 2.2-3 Submit pre-final design plans and reports as required for review and approval by State of Oregon Department of Human Services Drinking Water Program. Coordinate with State of Oregon for submittal requirements.
- 2.2-4 Prepare final (100%) design plans and details on 24" x 36" Mylar media, using AutoCAD 2006 or later version. Final construction drawings shall incorporate comments from the pre-final (95%) review phase from the CITY of Milwaukie and State of Oregon. Final construction drawings shall conform to the CITY of Milwaukie standards.
- 2.2-5 Prepare final special specifications and details to cover conditions specific to this project.
- 2.2-6 Incorporate CITY supplied standard contract documents, bidding requirements, general and supplementary general conditions into the bidding documents.
- 2.2-7 Print and bind 15 sets of bid-ready construction contract documents. Contract documents shall consist of bidding requirements, contract forms, conditions of contract, technical specifications, special technical specifications, and bound "half-sized" 11"x17" construction drawings and details. Bid documents shall be consecutively numbered.
- 2.2-8 Prepare final estimates of construction cost based on the CITY approved construction plans, specifications, and details.

Task 2.3 - Additional Services, Design Phase (Alternate proposal item: Chlorine Contact Chamber)

2.3-1 Prepare design plans and specifications for a chlorine contact chamber able to treat a minimum 700 gallons per minute with 30-minute residence time. This item of work shall be bid as an alternate construction item and may be constructed as part of this project. Consultant shall ensure that Well No. 8 design will be able to incorporate either the existing chlorination system or the alternate chlorine contact chamber.

Task 2.4 - Basic Services, Construction Phase

2.4-1 Answer questions from CITY staff during the bidding process as requested.

2.4-2 Inspect motor, pump, valves, piping, controls, and all other appurtenances to ensure construction is in accordance with the plans and specifications.

2.4-3 Not used.

2.4-4 Perform start-up and testing of well and related systems in the presence of CITY Water Department personnel and Contractor.

2.4-5 Complete as-built drawings from Consultant's inspection notes and records in both hard copy (full size 24"x36" Mylar) and electronic format (AutoCAD 2006 or later version).

Task 2.5 - Additional Services, Construction Phase (Alternate proposal item: Chlorine Contact Chamber)

2.5-1 Inspect and test chlorine contact chamber if this alternate bid item is accepted by the CITY of Milwaukie for construction under this project.

Tasks to be performed by CITY of Milwaukie staff:

M.1-1 Provide electronic copy of base map.

M.1-2 Provide copies of all available, relevant CITY utility "as-built" plans in the vicinity of the project.

M.1-3 Provide electronic copies of CITY of Milwaukie standard construction details.

M.1-4 Provide contract bid documents and related forms for inclusion in the contract documents.

M.1-5 Review preliminary plans and specifications.

M.1-6 Prepare the Invitation to Bid for advertisement in the *Daily Journal of Commerce* and in the *Clackamas Review*.

M.1-7 Distribute bid documents to bidders.

- M.1-8* Respond to all bidders inquires during the bid period.
- M.1-9* Prepare and distribute any necessary bid addenda.
- M.1-10* Conduct bid opening, prepare bid summary sheet, and provide recommendation of construction contract award.
- M.1-11* Coordinate and conduct pre-construction conference.
- M.1-12* Coordinate and conduct regular construction progress meetings.
- M.1-13* Review Consultant’s inspection notes and record of changes during construction and review as-built drawings completed by Consultant.
- M.1-14* Perform programming of existing control system at the well site and at the CITY of Milwaukie Water Utility Department located at 6101 SE Johnson Creek Blvd. Services include logic development, screen modification development, loading, testing and documentation of changes to existing programming.

Design documentation furnished by CITY of Milwaukie

- M.2-1* “Well No. 8 Replacement Assessment Report for the CITY of Milwaukie, Oregon” by Murray, Smith & Associates, dated December 2005.
- M.2-2* As-built drawings for the existing Well 8 facility dated 12-30-86.
- M.2-3* As-built drawings for nearby water utilities.
- M.2-4* Operational data as requested.

2. Special Services

Only when directed in writing by the CITY, the ENGINEER shall furnish or acquire for the CITY other professional and technical services. Where applicable, services shall be billed to the rates shown below.

Personnel:

Senior Principal	\$158.00
Principal	148.00
Senior Associate	140.00
Senior ENGINEERING Associate	126.00
Senior ENGINEER	122.00
ENGINEER VII	115.00
ENGINEER VI	109.00
ENGINEER V	102.00
ENGINEER IV	95.00
ENGINEER III	89.00
ENGINEER II	83.00

ENGINEER I	76.00
Senior Technician	95.00
Technician	78.00
Junior Technician	62.00
Administrator	70.00
Clerical	56.00

Project Expenses:

Expenses incurred in-house that are directly attributable to the project will be invoiced at actual cost. These expenses include the following:

Computer Aided Design and Drafting System	\$13.00/hr
Mileage	Current IRS Rate
Long Distance Telephone	At Cost
Postage	At Cost
Printing and Reproduction	At Cost
Lodging and Subsistence	At Cost

Outside Services:

Outside technical, professional and other services will be invoiced at actual cost plus 5 percent to cover administration and overhead.

Only when directed in writing by the CITY, the ENGINEER shall furnish or acquire for the CITY the following professional and technical services:

- A. Provide a competent resident ENGINEER/inspector together with such inspectors as the CITY deems necessary during the time when construction is in progress.
- B. Provide the necessary field parties, draftsmen, and other personnel for the setting of grades, lines, and limits of the work, and to verify the accuracy of the work as it is in progress.
- C. Make land surveys of real property for right-of-way acquisitions and prepare plats and legal descriptions of same.
- D. Enter into subcontracts for soil investigations, soil and water tests and analyses of test results, and other third party specialty services.
- E. Make detailed mill, shop, and/or laboratory inspection of materials and equipment when outside the metropolitan area.
- F. Provide additional copies of reports, drawings, and contract documents in excess of the specified number furnished in the Basic Services.
- G. Assist the CITY as expert witness in any litigation arising from the development or construction of the Project.

- H. Design minor Project additions and/or alterations as may be authorized by the CITY ENGINEER.
- I. Provide electronic computer time when used in connection with authorized Special Services.

3. **Performance**

- A. The ENGINEER hereby agrees that, immediately upon the execution of this Agreement, it will enter upon the duties herein prescribed, proceed with the work continuously, and make the various submittals on or before the schedule specified herein. The CITY is not liable and will not pay the ENGINEER for any services rendered before the ENGINEER receives written authorization.
 - 1) The ENGINEER shall submit:
 - a) Phase I – Well Design, Drilling, and Testing: Design analysis, bid-ready plans & specifications, and estimate of costs for abandoning old well and drilling new well within thirty (30) calendar days from the date of receipt of written Notice to Proceed from the CITY.
 - b) Phase II – Pump System Design & Construction Preliminary (50%) Design plans, specifications, estimate of costs, and bid proposal documents for review within sixty (60) calendar days from the date of receipt of written Notice to Proceed from the CITY.
 - c) Phase II – Pump System Design & Construction Pre-Final (95%) Design plans, specifications, estimate of costs, and bid proposal documents for review within sixty (60) calendar days from the date of receipt of written comments from the CITY on the preceding submission. ENGINEER shall also submit Pre-Final (95%) plans, specifications, and other reports and data as required for review and approval by the State of Oregon Department of Human Services Drinking Water Program.
 - d) Phase II – Pump System Design & Construction Final (100%) Design plans, specifications, estimate of costs, and bid proposal documents for review within fifteen (15) calendar days from the date of receipt of written comments from the CITY and from and State of Oregon Department of Human Services on the preceding submission, whichever is later.
 - e) The final ENGINEER's report within sixty (60) calendar days after date of award of the construction contract.
 - f) "As-built Drawings" within thirty (30) calendar days after satisfactory completion of the Project.
 - 2) If any delay is caused to the ENGINEER by order of the CITY to change the design or plans; or by failure of the CITY to designate right-of-way, or to supply or cause to be supplied any data not otherwise available to the ENGINEER which is required in performing the work described; or by other delays due to causes entirely beyond the control of the ENGINEER; then, in that event the time schedules will be adjusted equitably in writing, as mutually agreed between the CITY and the ENGINEER at the moment a cause for delay occurs.
 - 3) Since the work of the ENGINEER must be coordinated with the activities of the CITY (including firms employed by and governmental agencies and subdivision working with the CITY), the ENGINEER shall advise the CITY in advance, of

all meetings and conferences between the ENGINEER and any governmental agency, political subdivision, or third party which is necessary to the performance of the work of the ENGINEER.



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Kenneth Asher, Community Development and Public Works Director

Subject: Town Center Site Development Services Contract Authorization

Date: March 21, 2007 for April 3 City Council Meeting

Action Requested

Authorize the City Manager to execute a \$46,740 contract with Shiels Oblatz Johnsen ("SOJ") for Development Services associated with the sale and development of the Milwaukie Town Center site. This contract will ensure continuation of services through the sale of the property to a private developer, anticipated to occur in the first half of 2008.

Background

For the past 12 months, the City has benefited from development services provided under contract by SOJ. These services have provided project management for the Town Center project, including coordination of the Project Management Group and Advisory Committee, meeting preparation and facilitation, Request for Proposals drafting and process management, and expert consulting on various real estate development matters that naturally arise around a redevelopment project.

As the City is preparing to enter disposition and development negotiations with Metro and a selected developer on the project, there remains a need for ongoing professional development services. As the City has two partners in this project (Metro and the private developer), internal coordination and communication is absolutely essential. SOJ has served this role to date. The introduction of the third party, the private developer, only heightens the City's reliance on a skilled and diligent development services consultant.

This contract seeks to continue the city's relationship with SOJ. Because the proposed contract is more than 25 percent of the original contract (executed by the City Manager under his purchasing authority in March 2006 for \$21,000), this would not be considered a contract amendment. Because the new contract is for work related to an existing personal services contract, the total value of both contracts (\$46,000 and \$21,000) must be considered in determining purchasing authority. As the total value of the two contracts is greater than \$25,000, City Council approval is required. And because SOJ is uniquely qualified to provide these services, given the firm's prior experience on the project and detailed grasp of the project dynamics, staff is recommending the action without having conducted a formal or informal solicitation of other firms for the work.

Under this contract, SOJ will continue to provide the City with the following services (as more fully described in Attachment 2):

- Project Management Group Coordination
- Advisory Committee Coordination
- Evaluation of Request for Proposal respondents
- Interview and Selection Process for development teams
- Approval process for City of Milwaukie and Metro
- Memorandum of Understanding negotiations
- Disposition and Development Agreement negotiations

Concurrence

Metro, the City's partner in the Town Center redevelopment project, concurs as to the selection of SOJ for continued development services. Metro would likely object to the replacement of this contractor at this stage of the process, given the contractor's integral role in managing the project, in which Metro has invested considerable time and money. The former Finance Director concurs with the appropriateness of the action and the fiscal impact.

Fiscal Impact

Funds for this contract are available in the Community Development budget. Funds have been approved in the 2006/07 and 2007/08 annual budgets. The current fiscal year budget has sufficient capacity to cover the cost of the contract. The proposed budget for fiscal year 2007-08 also has sufficient funds in anticipation of this contract.

Work Load Impacts

There are no workload impacts associated with this action. There would be significant workload impacts were this action to be denied, as the Community Development

Director has limited availability and resources and would be unable to bring these services "in-house."

Alternatives

Staff is not aware of any alternatives that could be pursued without compromising the project. SOJ has performed capably on the first contract, and staff sees no reason to pursue an alternative firm or process at this time.

Attachments

1. Resolution
2. SOJ Proposed Scope of Work

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REQUESTING APPROVAL OF A CONTRACT WITH SHIELS OBLITZ JOHNSEN FOR DEVELOPMENT SERVICES ASSOCIATED WITH DEVELOPMENT OF THE MILWAUKIE TOWN CENTER SITE.

WHEREAS, the City of Milwaukie and Metro have partnered to develop the property known as the Town Center site, located between Harrison, Main, Jackson Streets and McLoughin Boulevard into a mixed use development in downtown Milwaukie ; and

WHEREAS, Shiels Oblitz Johnsen has previously provided the City and Metro with development services to assist with the process for redeveloping the Town Center site; and

WHEREAS, further assistance is required in advancing the project and supporting the City and Metro through final selection of a developer and approval of a Disposition and Deveopment Agreement with that developer.

NOW, THEREFORE, BE IT RESOLVED that City Council authorize the City Manager to execute a contract with Shiels Oblitz Johnsen in the amount of _____.

Introduced and adopted by the City Council on April 3, 2007.

This resolution is effective on _____ .

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

Document3 (Last revised _____)

Attachment 2

Milwaukie Town Center Project Development Services Scope of Work

The City of Milwaukie has asked Shiels Obletz Johnsen (SOJ) to prepare an outline of work for development services associated with development of the Milwaukie Town Center site located between Harrison, Main, Jackson Streets and McLoughlin Boulevard. Half of the site is owned by the City, the other half is owned by Metro.

It has been determined that development of the entire site would provide the greatest opportunity for achieving an economically successful mixed-use project. Metro and the City have signed a Memorandum of Understanding recognizing the common agency goals and benefits in building a successful project. SOJ has been providing development assistance and project management services for the Town Center site since March of 2006. During this time period, SOJ: coordinated City/Metro agreement on the developer selection process; facilitated the formation of a citizens' Advisory Committee and three public meetings; managed preparation of preliminary site massing and financial evaluation studies, and; prepared a Request for Proposals and associated addenda.

Under this agreement SOJ would assist the City in advancing the project and supporting staff in its work with City Council and Metro through preparation and execution of a Disposition and Development Agreement. Should the City desire additional professional assistance beyond that point, SOJ would be available to assist through, final design, permitting and project construction.

SOJ Responsibilities

SOJ will provide the following services as a consultant to the City:

Project Management Assistance

- Track City/Metro agreements and communications to ensure a consistent project message
- Incorporate City and Metro development criteria into the developer MOU and the RFP.
- Assist City with presentations to City Council or other groups as requested.
- Coordinate regular project management team meetings and prepare minutes

Developer Selection

- Prepare agendas and intended outcomes for Advisory Committee meetings
- Serve as point of contact for developers throughout the selection process
- Review and comment on proposals and financial strength (coordinate review by separate consultant for financials)
- Coordinate materials as requested for City Council, TOD Steering Committee and Metro Council approvals

Memorandum of Understanding

- Prepare draft MOU "deal points" based upon agreed-upon criteria from selection process and proposed building concept
- Conduct meetings with City, Metro and Developer to draft MOU, provide revisions as needed.

Disposition and Development Agreement

- Work with Project Management Group (PMG) to identify key “deal points” to be included in the document.
- Coordinate meetings with PMG and the selected developer to discuss and resolve issues.
- Forward agreed-upon deal points to legal council for their review and incorporation of additional contract information.
- Coordinate resolution of final DDA
- Assist through formal approvals as requested

City Responsibilities

Project Management

- Serve on Project Management Group
- Provide regular communications with neighborhood groups and local stakeholders
- Schedule meeting rooms/locations
- Coordinate and conduct City Council work sessions and reviews

Developer Selection

- Manage communications and coordinate meetings with Advisory Committee members and public meetings
- Preparation of materials and coordination of City Council approval

Memorandum of Understanding

- Participate in meetings and provide review and comment on MOU draft documents
- Provide legal review of MOU and secure City Council approval

Disposition and Development Agreement

- Participate in PMG meetings and developer discussions
- Provide legal review of DDA and secure City Council approval.

Budget

The following budget has been broken down to cover work during FY2007 and FY2008. SOJ is prepared to work on a time-and-materials, not-to-exceed basis. Total estimated SOJ contract is \$46,740 for work completed from January 2007 through June of 2008. Douglas Obletz (\$180/hour) will provide project oversight and development expertise as needed and Kim Knox (\$95/hour) will serve as the project manager at meetings, preparing project management group meeting minutes, assessments and document preparation (300 hours in FY2007 and 180 hours in FY2008).

SOJ Budget Breakdown					
	\$95	FY2007	\$95	FY 2008	Total
PMG Coordination	\$8,075	85	\$11,400	120	\$19,475
Advisory Comm Coordination	\$6,270	66	\$0	0	\$6,270
RFP Evaluation	\$2,850	30	\$0	0	\$2,850
Interviews/Selection	\$3,800	40	\$0	0	\$3,800
Agencies approval	\$2,470	26	\$0	0	\$2,470
Memorandum of Understanding	\$4,750	50	\$0	0	\$4,750
Development Agreement	\$1,425	15	\$5,700	60	\$7,125
Contract Total	\$29,640	312	\$17,100	180	\$46,740



To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenneth Asher, Community Development and Public Works Director
Katie Mangle, Planning Director

From: Brett Kelter, Assistant Planner

Subject: Removal of 11022 SE 37th Ave. (the Bertman House) from the Historic Resources list

Date: March 22, 2007 for April 3, 2007 Regular Session

Action Requested

Approve the removal 11022 SE 37th Ave. from the local list of Unranked Historic Resources, as recommended by the Milwaukie Planning Commission.

Background

As a result of the City's recent activity to reverse the decline and deferred maintenance of the City-owned property at 11022 SE 37th Avenue (also known as the Bertman House), the Planning Director discovered that the property is covered by a special zoning overlay for Unranked Historic Properties. For "Unrankable" properties, Milwaukie Municipal Code (MMC) Subsection 19.323.5 requires that prior to undertaking any exterior alteration or demolition of an Unrankable resource, the property must go through a process to either rank it or delete it from the list of historic properties. This code requirement motivated the City to perform an evaluation of the Bertman House, which was never completed with the City's previous effort in 1988.

The Property

John and Emilie Bertman built the house at 11022 SE 37th Avenue in 1930. Immigrants from Latvia, the Bertmans were early farmers in the Milwaukie area, providing fresh dairy products, eggs, and bread to the community for many years. John Bertman died in 1953, and Emilie died in 1979. The City of Milwaukie acquired the house and, as early as 1971, used it to house administrative offices of the City Fire Department. The local Parks Department has also had offices in the building, though it is currently vacant.

In a 1988 inventory of local historic resources, 40 properties in Milwaukie were ranked to reflect their level of historic value to the community. The ranking categories were “Significant” and “Contributing.” The Bertman House and five other properties were included in the inventory but listed as “Unrankable” because there was not enough information available at the time to complete the evaluation process.

The Application

Milwaukie Municipal Code (MMC) Subsections 19.323.5 and 19.323.7 put Unrankable properties in limbo with regard to development issues. The code requires that owners of Unrankable resources complete the designation process prior to attempting to make exterior alterations or demolish the structure. Such properties must be designated as either Significant or Contributing or otherwise be removed from the list. Although there have been several alterations to the Bertman House since the 1988 designation (e.g., addition of an ADA-accessible ramp, replacement of windows, placement of a detached shed on the property), the City (as owner) never completed the designation process.

To complete the designation process, the City engaged Martha Richards, an expert in historic preservation, to evaluate the Bertman House using the same methodology as the 1988 inventory. The three primary areas of review were Historical Association, Architecture, and Environment. According to the consultant’s analysis, the Bertman House did not score well enough to merit even the lower-standard designation of “contributing.” Her recommendation is that the City remove the property from the list.

Consequences of the Decision

The result of the recommended de-listing is simply that no review will be necessary prior to demolition of the Bertman House. The City’s lease negotiation is not connected to this application and can proceed regardless of whether the Council decides to remove the house from the Historic Resource list or add it as a Contributing Resource.

The recommended findings of approval are provided in the attached Final Order (see Attachment 1 - Final Order, Exhibit A, Recommended Findings in Support of Approval).

Concurrence

The Planning Commission has concurred with the Planning Director’s assessment and is recommending that the Bertman House be removed from the local list of historic resources. Comments were received from two community members, neither of whom expressed opposition to the proposed de-listing. In addition, staff contacted Madeline Bohl with the Milwaukie Museum. She asked about the consequences of de-listing the Bertman House. Staff sent her a copy of the Planning Commission staff report and relevant code sections upon her request.

Fiscal Impact

This decision has no fiscal impacts to the City.

Work Load Impacts

Removing the Bertman House from the historic resources list will not result in additional workload impacts.

Alternatives

If the City Council rejects the Planning Commission's recommendation, the Council may remand the application to the Planning Commission for reconsideration. The City Council may not decide to list the property as Contributing Resource without remanding the application to Planning Commission.

Attachments

1. Final Order
Exhibit A: Recommended Findings in Support of Approval
2. Application for HR-07-01
Exhibit A: Consultant Memo
Exhibit B: Cultural Resource Survey Form for 11022 SE 37th Ave.
Exhibit C: Statement of Significance for 11022 SE 37th Ave.
Exhibit D: Cultural Resource Evaluation Form for 11022 SE 37th Ave.

Attachment 1

CITY COUNCIL OF THE CITY OF MILWAUKIE

FINAL ORDER APPROVING APPLICATION HR-07-01

Based on the evidence in the record, including evidence provided at hearings of the Planning Commission and City Council, after duly noticed public hearings, the Milwaukie City Council orders as follows:

1. The Planning Commission recommended that the City Council remove the Bertman House from the City's list of Historic Resources.
2. Application HR-07-01 is approved, thereby removing the Bertman House from the City's list of Historic Resources.
3. The attached recommended findings (Exhibit A) are adopted as findings of the City Council.

DATE OF COUNCIL ACTION: April 3, 2007

James Bernard, Mayor

Exhibit A

Recommended Findings in Support of Deletion of Historic Resource ranking

1. Milwaukie Municipal Code (MMC) Subsection 19.323.5 requires that any historic resource designated as “Unrankable” must go through a process to either give it a more specific designation (i.e., “Significant” or “Contributing”) or remove it from the list of historic properties. The designation process is a Major Quasi-Judicial one subject to the provisions of MMC Subsection 19.1011.4. A pre-application conference is required and the application must have hearings before both the Planning Commission and the City Council.

The application is being processed according to the standards of MMC Subsection 19.1011.4. A pre-application conference was held among City Department heads. Public notice was provided according to the standards of MMC Subsection 19.1011.4 (Major Quasi-Judicial Review). A public hearing with the Planning Commission was held on March 13, 2007. A public hearing with the City Council was held on April 3, 2007.

2. The 40 historic properties on the City’s list that are ranked as “Significant” or “Contributing” were evaluated using a Cultural Resource Evaluation Form that was part of the 1988 Milwaukie Historic and Cultural Resources Inventory. The evaluation form has three categories of criteria: Historical Association, Architecture, and Environment.

The City engaged Martha Richards, an historic preservation consultant, to evaluate the Bertman House. She was asked to use the Cultural Resources Inventory Form and Cultural Resources Evaluation Form along with her best professional judgment to recommend a course of action for the City among three options: 1) designate the Bertman House as Significant, 2) designate it as Contributing, or 3) remove it from the inventory list.

3. The consultant completed the Cultural Resource Survey Form, which provides basic facts and data about the house. The consultant also produced a Statement of Significance for the property, which provides a narrative description of the history and architectural features of the house.

The consultant completed the Cultural Resource Evaluation Form, which provides scoring criteria for three areas of concern: Historical Association, Architecture, and Environment (see Attachment 6 – Cultural Resource Evaluation Form for 11022 SE 37th Avenue). The Bertman House scored 34 out of 88 possible points and did not score a “10” in any of the possible categories. As such, it does not meet the standards for either “Significant” or “Contributing” resources as outlined in MMC Subsection 19.323.3.

The consultant produced a memorandum to elaborate on her findings and recommended that the property be removed from the list of historic resources. The Planning Commission voted to recommend that the City Council remove 11022 SE 37th Avenue from the local list of historic resources. The City Council finds that it is appropriate to remove 11022 SE 37th Avenue from the local list of historic resources.



Memorandum

To: Katie Mangle, Planning Director, Milwaukie
From: Martha Richards
Date: February 12, 2007
Subject: John Bertman House (#44, 11022 SE 37th Ave.)

This memo is to recommend that Milwaukie Planning Commission remove the John Bertman House, located at 11022 SE 37th Avenue, from the local list of historic resources. As the attached Cultural Resource Survey Form notes, the house and grounds have suffered from numerous alterations that have compromised its historical integrity. Numerous windows have been replaced with modern aluminum sash windows; a large wooden ADA ramp was built on the north side of the house and caused the removal of a portion of the original front porch balustrade; the second story porch balustrade was replaced with a decidedly un-decorative railing; and the north side of the house is pierced with an impressive array of air conditioning units. The house's historical context – a single-family home on a residential lot in a developing neighborhood – has likewise been compromised by the addition of a large asphalt parking lot and prominent maintenance shed in the front yard. In its current state, the house is only a fair representation of the architecture of its period.

The Bertman House is one of Milwaukie's many early twentieth-century houses and its history is readily documentable; indeed, many descendants of the Bertmans still live in the Milwaukie area. Many of the alterations are potentially reversible, some more easily than others. If future renovations were made to rehabilitate the house in a way that is historically appropriate, the house could become an asset to the neighborhood and a visual reminder of the area's history. As it now stands, however, the house is not worthy of being designated either a "Significant Historic Resource" or a "Contributing Historic Resource."

Cultural Resource Survey Form

Clackamas County

I.D. Number M-36-328

Study Area: Milwaukie
Legal: T: 1 R: 1E Sec.: 36AD
Tax (lots): 2500
Zone: R-5 Lot Size: 17,258 sf

IDENTIFICATION

Common/Historical Name: John Bertman House
Address: 11022 SE 37th Avenue Area: Milwaukie
Current Owner: City of Milwaukie Use: Government Offices
Original Owner: John & Emilie Bertman Original Use: Residence
Area of Significance: Town: _____ County: _____ City: _____ Nation: _____

HISTORIC INTEREST

Theme: Architecture -- 20th Century Date: 1930
Description: Built in 1930 by John and Emilie Bertman, this house replaced an earlier structure at the same location. The Bertmans immigrated from Latvia and had a farm that supplied food to area residents. The City of Milwaukie now owns the house and has used it to house a variety of offices and services.

ARCHITECTURAL INTEREST

Style: Eclectic, with Prairie Style influences Stories: 2
Date Constructed: 1930 Condition: fair Architect: _____
Siding: Painted Stucco
Roof: Clipped front gable with gable end returns. Wide overhanging eaves.
Doors: Panel and single pane door
Windows: Some 1/1 double-hung wood sash; some aluminum sash horizontal sliding windows. Multi-light Queen Anne fixed sash with colored glass in gable peak.
Main Entrance: Two-story front porch supported by thick plain posts on concrete bases. Decorative balustrade on first floor and replacement balustrade on 2nd.
ADA ramp wraps around north side of house and enters porch from north.
Notes: Numerous alterations have compromised the house's historical integrity. Modern shed and asphalt parking lot compromise the context.



View of west facade

Date: Martha Richards
Recorder: February 2007

CITY OF MILWAUKIE
CULTURAL RESOURCE INVENTORY
Statement of Significance

ADDRESS: 11022 SE 37th Avenue, Milwaukie

This house was constructed by John Bertman, a carpenter who had immigrated from Latvia around 1908. His wife Emilie immigrated in 1912; they moved to Milwaukie in 1926. It appears that this house, constructed by the Bertmans in 1930, replaced an earlier structure at the same location. According to the 1988 Cultural Resource Inventory, that earlier structure was built by the Bertmans in 1926. The reason for its replacement is unknown.

The Bertmans farmed the land around the house and provided fresh dairy products, eggs and bread to much of the surrounding community for many years. John Bertman died in 1953 and Emilie in 1979. The house was eventually acquired by the City of Milwaukie. It has been used to house a variety of public services, including Fire Department Offices, and, most recently the Parks Department.

The house is an eclectic design combining a variety of styles. It is two stories tall with a clipped front gable. The windows were originally one over one double-hung wood sash, but many have been replaced with horizontal aluminum frame sliders. The house is rectangular in plan with a shed roofed back porch. The front facade faces west and has a two-story porch with wide cement steps leading to the single front door. The door is flanked by two large double-hung windows. The wooden porch railing on the first floor has an ornamental starburst design flanked by closely spaced vertical slats. The railing on the north side of the porch has been sawn off to accommodate a wooden ramp leading from the parking lot to the porch. The railing on the second floor porch was the same design when the house was inventoried in 1983, but it has since been replaced by regularly-spaced 2x2 posts. A wide assortment of window air conditioners adorns the windows and walls of the north facade of the house.

The house currently sits on a small city lot at the corner of 37th and Railroad Avenues across the street from the railroad tracks. The northern portion of the lot is paved with an asphalt parking lot, and a modern gable-roofed shed with T-111 siding is located in the northeastern corner of the lot.

This house has been modified to serve municipal, rather than residential, uses during the City's ownership. Although many of the alterations are reversible, in its current state the house has lost much of its architectural integrity, not to mention its historical context as a residence.

BIBLIOGRAPHY:

1983 Clackamas Cultural Resource Survey Form
Sanborn Fire Insurance Maps (1928 and 1936)

Date: February 2007
Recorder: Martha Richards

CITY OF MILWAUKIE
CULTURAL RESOURCE EVALUATION FORM
Criteria for Establishing Significance

Name: Bertman House
Address: 11022 SE 37th Ave
Date of Construction: 1930
Style:
Type:

Rank:
Legal:
Zone:
Land Size:
Use:

HISTORICAL ASSOCIATION

A PERSON/GROUP/ORGANIZATION: Associated with the life or activities of a person, group, organization, or institution that has made a significant contribution to the community, state, or nation.

Particularly Strong		10
Strong	Milwaukie's early history was strongly agricultural, and the	7
Some	Bertmans were farmers. Their products were important to the	5
None	community. However, the Bertmans were important but not significant	0

B EVENT: Associated with an event that has made a significant contribution to the community, state, or nation.

Particularly Strong		10
Strong		7
Some		5
None		0

C PATTERN: Associated with, and illustrative of, broad patterns of cultural, social, political, economic, or industrial history in the community, state, or nation.

Particularly Strong		10
Strong	Milwaukie's early history was strongly agricultural. Bertmans	7
Some	were farmers.	5
None		0

SUBTOTAL: 12

ARCHITECTURE.

A. **STYLE/BUILDING TYPE/CONVENTION:** Significance as an example of a particular architectural style, building type, or convention.

Excellent	Bertman was a carpenter, and it looks like he might have	10
Very Good	designed and built the house himself (not altogether uncommon	5
Good	to do that in the area and at the time). Good house, but	3
Of little interest	not necessarily architecturally spectacular.	0

B. **DESIGN/ARTISTIC QUALITY:** Significance due to quality of composition, detailing, and craftsmanship.

Excellent	Original railing pattern, gable-end window, and (originally)	4
Very Good	fully trimmed. Somewhere between "Good" and "Very Good"	3
Good	because it's a well-built place that has nice proportions.	2
Of little interest		0

C. **MATERIALS/CONSTRUCTION:** Significance as an example of a particular material or method of construction.

Excellent	Continuing on that theme...a fine (but not spectacular) example	4
Very Good	of what it is -- a carpenter's farmhouse from the early part	3
Good	of last century.	2
Of little interest		0

D. **INTEGRITY:** Significance because it retains its original design features, materials, and character.

	In spite of historically inappropriate	
No apparent alterations	(but reversible) alterations, the house has	7
Minor alterations	maintained its overall character	5
Major alterations but overall character preserved		3
Severely altered little character preserved		0

E. **RARITY:** Significance as the only remaining, or one of the few remaining, properties of a particular style, building type, design, material, or method of construction.

One of a kind	It's unique in that there is no other exact copy of the	10
One of a few	house, but its overall style, massing, and materials	7
One of several	are consistent with other houses of that period.	3
One of many		0

SUBTOTAL:

14

ENVIRONMENT

LANDMARK: Significance as a visual landmark.

It's a large, two-story house on a major street

Symbol for the City	across from an open lot.	10
Conspicuous/well-known in community		7
Conspicuous/well-known in neighborhood		(5)
Not conspicuous/well-known		0

SETTING: Significance because current land-use surrounding the property contributes to the integrity of the pertinent historic period.

Doesn't convey the sense of a farmhouse. The asphalt parking lot

Excellent	and maintenance shed make it look particularly non-residential.	4
Very Good		3
Good	The historical museum's streetcar on display next door	2
Fair/Poor	contributes to the non-residential character of the vicinity.	(0)

CONTINUITY: Significance because the property contributes to the continuity or character of the street, neighborhood, or community.

House on a residential street.

Establishes character		7
Important in maintaining character		5
Compatible		(3)
Incompatible		0

SUBTOTAL: 8

TOTAL: 34
28 pts. possible



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Kenny Asher, Community Development and Public Works Director

Subject: Lease Agreement with New Century Players for Property at 11022 SE 37th Avenue

Date: March 22, 2007 for April 3 Regular Session

Action Requested

Authorize the City Manager to execute a commercial lease agreement with the New Century Players theater group for the purpose of restoring city property at 11022 SE 37th Avenue and supporting local arts in Milwaukie.

Background

On September 13, the City received a proposal from a local theater nonprofit organization called the New Century Players ("NCP"), requesting that the City consider NCP's offer to renovate and then lease from the city, the city-owned house at 37th and Washington. The City Manager subsequently asked Community Development/Public Works staff to address the feasibility of NCP's proposal, which included tens of thousands of dollars worth of in-kind renovation work in exchange for use of the property.

City staff presented its findings to the City Council November 21, 2006. Staff reported to council on the city's ongoing interest in an on-site well utility, land use considerations like zoning, parking, transportation impacts and historic preservation, and the feasibility and desirability of the NCP proposal itself, which included an itemization from the city Building Official of necessary and desired restoration elements.

There was consensus among the council that staff should proceed with NCP to determine if an agreement could be reached concerning the property.

Staff would direct Council to the November 21st staff report for additional background on the NCP proposal and city interests on the site.

Since November, staff has worked with NCP on a lease agreement that meets the needs of both organizations (Attachment 2). The City's principal interest in the arrangement is to restore the property back to a stable and functional state, through the occupancy and care of the tenant (NCP). Secondly, the City seeks to establish the seed for an incubator space that can support the work of local artists and arts organizations.

NCP's principal interest is in the use of commercial space in Milwaukie to support its growing operation. NCP is an IRS recognized 510c3 not for profit arts organization, dedicated to building community in Milwaukie by providing opportunities for artistic expression through live performance. The theater company is three and a half years old and in need of office, meeting and storage space.

After several months of negotiations, City staff and NCP are prepared to move forward with a five-year lease for the use of the property, pending City Council approval. The lease meets the needs of both parties by stipulating a schedule of building repair and renovation work that NCP will provide at their own expense, in lieu of rent payments to the City. These include:

- Repair of the entry ramp and exterior handrails
- Improvements to the electrical and HVAC systems, as necessary
- Refurbishment of the first and second floors and basement
- Removal and replacement of all insect damaged wood
- Roof, chimney and window replacement and repair
- Continual maintenance and upkeep of the building grounds and exterior

Additionally, the lease requires that NCP make office space, meeting space and wall space available to other local artists and arts organizations as such space is available.

The lease further limits the use of the property to office space (it will not be a venue for public theater performances), limits the parking on site to the paved areas only (and not next to the well house), and continues the city's real property tax exemption.

Please refer to the lease (Attachment 2) for a complete description of the agreement.

Concurrence

The City Attorney drafted the lease and consulted with the Community Development Director on all aspects of this transaction. The City Attorney concurs with the action. The Planning Director consulted on the land use questions and concurs with the action. The Building Official has made several tours of the property and has consulted with NCP on the renovation schedule and NCP's capacity to execute the repairs. The Building Official concurs with the action. The Operations Director has consulted with the city Water Quality Specialist and Facilities Manager. The Operations Director concurs with the action. Finally, city staff consulted with the Hector Campbell Neighborhood Association and Madeleine Bohl early in the process. Both expressed support for the new use.

Fiscal Impact

The lease does not bind the City to any future fiscal obligations. As a city owned asset, the action will lead to an appreciation in value for the property (and surrounding properties) and will therefore have a positive fiscal impact on the City's balance sheet. Indirectly, the availability of arts and support for the arts has been shown to support local economic development efforts, and is sound economic development strategy.

Work Load Impacts

Workload impacts are minimal. The city currently expends virtually no time and energy at the property (which accounts for its declining state). In a landlord position, operations staff (facilities) can expect to see a nominal increase in its requests for information and support. Likewise, the Building Official can expect to be called on for inspections and advice. These are negligible workload impacts.

Alternatives

Council can direct staff to seek to modify the lease, according to some clearly stated criteria or desire. Council can also reject the lease altogether, though this would reverse the direction provided at the November 21st 2006 meeting.

Attachments

Attachment 1: Resolution

Attachment 2: Lease, with attachments showing the premises, property and recently completed inspection report.

Attachment 1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH NEW CENTURY PLAYERS, AN IRS RECOGNIZED 501C3 ARTS ORGANIZATION, FOR RENOVATION AND USE OF CITY-OWNED PROPERTY AT 11022 SE 37TH AVENUE

WHEREAS, the City of Milwaukie owns real property at 11022 SE 37th which for several years has been vacant and vulnerable to continued decline and disrepair; and

WHEREAS, in September 2006, the City received a proposal from the New Century Players, a local IRS recognized 501(c)3 nonprofit theater group, offering to restore the property in exchange for its use as an office and storage area for the theater group; and

WHEREAS, the City Council expressed strong support for this proposal at a council meeting on November 21 2006, owing to the theater company's Milwaukie roots and the clear advantages available to communities that have strong arts offerings; and

WHEREAS, the City has no existing plans for an alternate use of the property, nor any plans to demolish the property, nor any significant funding available to maintain the property; and

WHEREAS, the City and the New Century Players have developed a draft lease that details the improvements that will be made to the property and the obligations that the New Century Players will have for maintenance of the building and grounds; and

WHEREAS, the City Council has reviewed the draft lease and agrees that the terms of the lease benefit both the City and the new Century Players, and

WHEREAS, once certain repairs are completed, in accordance with the lease, the New Century Players will make portions of the building available for use to other artists, arts organizations or city-sponsored events; and

WHEREAS, the adjoining neighborhood association (through its Chair) and Milwaukie Museum (through its Executive Director) have expressed support for the new use; and

WHEREAS, the City expects to benefit from the improved appearance of the building and its grounds, stronger property values in the immediate vicinity, and enhanced theater offerings as a result of the operational efficiencies gained by the theater company as a result from the lease arrangement; and

WHEREAS, the City is engaged in multiple activities that support its adopted vision as a vibrant and family-friendly Town Center, of which the arts are one important aspect.

NOW, THEREFORE, BE IT RESOLVED that the City Council authorizes the City Manager to finalize and execute a lease agreement that is substantially in conformance with the draft lease reviewed by Council on April 3, 2007, and any other necessary documents required to make the

Attachment 1

real property at 11022 SE Washington available to the New Century Players for office, meeting and storage space.

Introduced and adopted by the City Council on April 3, 2007.

This resolution is effective on April 3, 2007.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

COMMERCIAL LEASE

Date: _____, 2007

Between: THE CITY OF MILWAUKIE ("Landlord")
10722 SE Main Street
Milwaukie, OR 97222

And: NEW CENTURY PLAYERS ("Tenant")
7740 SE Harmony Road 2
Milwaukie, OR 97222

Landlord leases to Tenant and Tenant leases from Landlord the following described property (the "Premises") on the terms and conditions stated below:

See Exhibit "A" attached hereto

Section 1. Occupancy

1.1 Original Term. The term of this lease shall commence April 4, 2007, and continue through April 4, 2012 unless sooner terminated as hereinafter provided.

1.2 Possession. Tenant's right to possession and obligations under the lease shall commence on April 4, 2007.

1.3 Renewal Option. If the lease is not in default at the time each option is exercised or at the time the renewal term is to commence, Tenant shall have the option to renew this lease for one (1) five year term as follows:

(1) The renewal term shall commence on the day following expiration of the preceding term.

(2) The option may be exercised by written notice to Landlord given not less than 6 months prior to the last day of the expiring term. The giving of such notice shall be sufficient to make the lease binding for the renewal term without further act of the parties, other than the Landlord and Tenant shall then be bound to negotiate the rent. The rent will be negotiated once the notice of election to renew is received by Landlord. The terms and conditions of the lease for each renewal term shall be identical with the original term except for rent and except that Tenant will no longer have any option to renew this lease that has been exercised.

(3) If the parties do not agree on the rent within 60 days after notice of election to

renew, the rent shall be determined by arbitration as provided in Section 14.

Section 2. Rent

2.1 Tenant shall secure any required permits or approvals, complete the following improvements to the property, and complete an annual report documenting the repairs and maintenance performed in lieu of rent payments to Landlord, in exchange for use of the property within the five year lease term:

- Year One:
- a. Repair the accessible entry ramp to a safe condition.
 - b. Install a code compliant handrail on at least one side of the front entry stair.
 - c. Install a code compliant handrail on at least one side of the stairs to the second floor and replace the window on the landing with tempered glazing.
 - d. Contract with a licensed electrical contractor to permit and repair all electrical deficiencies noted in the inspection report provided by Crawford Inspection Service dated July 13, 2004.
 - e. Engage a reputable HVAC contractor to service the existing furnace and verify its safety.
 - f. Refurbish the interior first and second floors to the satisfaction of the tenant.
 - g. Refurbish, clean or improve basement/cellar access to the satisfaction of the tenant. Structural alterations will require permits and prior approval from the landlord.
 - h. Maintain continual upkeep and landscaping maintenance on building grounds and exterior.
 - i. Make available office space, meeting space and wall space for other local artists, arts organizations or city-sponsored events. Availability shall be determined at the sole discretion of the tenant. Tenant shall notify landlord of any arrangements that will result in on ongoing co-occupancy of the premises, subject to Section 9.
 - j. Prepare and submit to Landlord an annual report documenting progress made toward the completion of items a. through i. noted above. The report shall include photo documentation of work performed and the results.
- Years Two & Three:
- a. Repair all damaged or blocked attic or under-floor vents.
 - b. Remove and replace all insect damaged wood noted in inspection report and treat the structure for the removal of carpenter ants and powder post beetles. Chemicals used to accomplish this must have prior approval of Landlord described in Section 3.3.

- c. Abandon use of the existing oil furnace. This may be accomplished by converting to an alternative heating system or by utilizing a series of electric baseboards or cadet type heaters. A permit will be required for this work.
- d. Replace the roof and repair any related dry rot or structural damage. Remove chimney or clean and implement additional chimney stabilization measures on the north side of the building. A licensed structural engineer must design any such measures. A permit will be required for this work.
- e. Maintain continual upkeep and landscaping maintenance on building grounds and exterior.
- f. Make available office space, meeting space and wall space for other local artists, arts organizations or city-sponsored events. Availability shall be determined at the sole discretion of the tenant. Tenant shall notify landlord of any arrangements that will result in on ongoing co-occupancy of the premises, subject to Section 9.
- g. Prepare and submit to Landlord an annual report documenting progress made toward the completion of items a. through e. noted above. The report shall include photo documentation of work performed and the results.

- Years Four & Five:
- a. Permit and install energy efficient windows throughout the building. Permit and repair any related dry rot or structural damage.
 - b. Maintain continual upkeep and landscaping maintenance on building grounds and exterior.
 - c. Make available office space, meeting space and wall space for other local artists, arts organizations or city-sponsored events. Availability shall be determined at the sole discretion of the tenant. Tenant shall notify landlord of any arrangements that will result in on ongoing co-occupancy of the premises, subject to Section 9.
 - d. Prepare and submit to Landlord an annual report documenting progress made toward the completion of items a. and b. noted above. The report shall include photo documentation of work performed and the results.

2.2 Additional Rent. All taxes, insurance costs, and utility charges shall be additional rent to be paid by the landlord in years one, two and three of the original term. Landlord and tenant shall negotiate payment of additional rent for years four and five during year three.

Section 3. Use of the Premises

3.1 Permitted Use. The Premises shall be used for office space and for no other purpose without the consent of Landlord, which consent shall not be withheld unreasonably.

3.2 Restrictions on Use. In connection with the use of the Premises, Tenant shall:

(1) Conform to all applicable laws and regulations of any public authority affecting the premises and the use, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use.

(2) Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Landlord to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional cost of the insurance.

(3) Refrain from any use that would be reasonably offensive to owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the premises.

(4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Landlord.

(5) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the premises without the written consent of Landlord. Tenant is permitted to hang a temporary (e.g. "New Home of...") banner or sign for up to 90 days from occupancy, provided the banner or sign is no larger than 16 square feet. Tenant is also permitted to display a permanent sign provided it is no larger than four square feet.

3.3 Protective Restrictions.

1) Tenant shall not cause or permit use of herbicides or pesticides on the premises without permission of Landlord. A written request for such use must be presented to Landlord at least 45 days in advance and reviewed by the City's Water Quality Control Coordinator and the Oregon Drinking Water Program Hydrologist. The request must contain the following information:

- A. Purpose of chemical use.
- B. Label name of product and copy of label and Material Safety Data Sheet (MSDS).
- C. Graphic depiction of area of use.
- D. Application rate and total use.

2) Tenant may use only small amounts of low nitrate organic fertilizer in landscape areas and only with prior approval of the City's Water Quality Control Coordinator.

3) Storage of Hazardous Substances (other than routine household cleaners in less than one gallon containers) is prohibited. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material organic or synthetic as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

4) Parking. Vehicle parking is limited to paved areas only. There is no parking allowed in the first position next to north side of well house located on the site. All tenant vehicles must be able to be moved on short notice to facilitate emergency repair to well site or emergency operations.

Section 4. Obligations

4.1 Landlord's Obligations. Landlord shall be under no obligation to make or perform any repairs, maintenance, replacements, alterations, or improvements on the Premises.

4.2 Tenant's Obligations. The following shall be the responsibility of Tenant:

(1) Repair of interior walls, ceilings, doors, windows, and related hardware, light fixtures, switches, and wiring and plumbing from the point of entry to the Premises.

(2) Any repairs necessitated by the negligence of Tenant, its agents, employees, and invitees, except as provided in Section 5.2 dealing with waiver of subrogation.

(3) Ordinary maintenance of the heating and air conditioning system and any repairs necessary because of improper maintenance.

(4) As set forth in Section 3.2, any repairs or alterations required under Tenant's obligation to comply with laws and regulations as set forth in Section 4.2.

(5) Prepare and provide annual reports documenting repairs and maintenance that are required in Section 2.

4.3 Landlord's Interference with Tenant. In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall not cause unreasonable interference with use of the Premises by Tenant.

4.4 Reimbursement for Repairs Assumed. If Tenant either fails or refuses to make repairs that are required by Section 3 or this Section 4, Landlord may make the repairs and charge the actual cost of repairs to Tenant. Such expenditures shall be reimbursed by Tenant on demand by Landlord.

4.5 Inspection of Premises. Landlord shall have the right to inspect the Premises at any reasonable time or times with 24 hour written notice to Tenant.

4.6 Limitation on Tenant Obligation to Make Repairs. If while performing repairs Tenant encounters unforeseen latent conditions in the building that cause it to be unable to complete the requirements of Section 2.1, Tenant shall inform Landlord to discuss the concern. Tenant and Landlord shall meet and discuss whether a modification of the improvement schedule in Section 2.1 is needed. Upon independent evaluation and verification of the conditions, Landlord will grant permission to a modification of the improvement schedule.

Section 5. Insurance

5.1 Insurance Required. Landlord shall keep the Premises insured at Landlord's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Tenant shall carry similar insurance insuring the property of Tenant on the Premises against such risks.

5.2 Waiver of Subrogation. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

Section 6. Taxes

6.1 Personal Property Taxes. Tenant shall pay as due all taxes on its personal property located on the Premises.

6.2 Real Property Taxes. Landlord is exempt from paying real property taxes levied against the Premises as long as Tenant files an Application For Real and Personal Property Tax Exemption under ORS 307.166 and is approved for an exemption under ORS 307.130. As used herein, real property taxes includes any fee or charge relating to the ownership, use, or rental of the Premises, other than taxes on the net income of Landlord or Tenant or personal property.

Section 7. Liability and Indemnity

7.1 Liens.

(1) Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent which shall be

payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant ' s default.

(2) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord ' s property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

7.2 Indemnification. Tenant shall indemnify and defend Landlord from any claim, loss, or liability arising out of or related to any negligent activity of Tenant on the Premises or any condition of the Premises in the possession or under the control of Tenant including any such claim, loss, or liability that may be caused or contributed to in whole or in part by Landlord ' s own negligence or failure to effect any repair or maintenance required by this lease. Landlord shall have no liability to Tenant for any injury, loss, or damage caused by third parties, or by any condition of the Premises.

7.3 Liability Insurance. Before going into possession of the Premises, Tenant shall procure and thereafter during the term of the lease shall continue to carry the following insurance at Tenants cost: 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:

Coverage	Limit
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

Such insurance shall cover all risks arising directly or indirectly out of Tenant ' s activities on or any condition of the premises. Such insurance shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant, and shall name Landlord as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring a 10 day written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant ' s occupancy of the property.

Section 8. Quiet Enjoyment; Mortgage Priority

Landlord ' s Warranty. Landlord warrants that it is the owner of the Premises and has the right to lease them free of all encumbrances. Landlord will defend Tenant ' s right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

Section 9. Assignment and Subletting

No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of Landlord. This provision shall apply to all transfers by operation of law. Landlord may withhold or condition such consent in its sole and arbitrary discretion.

Section 10. Default

The following shall be events of default:

10.1 Default in Rent. Failure of Tenant to perform its obligations as stated in Section 2.

10.2 Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease (other than Section 2) within 15 days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 15 day period, this provision shall be complied with if Tenant begins correction of the default within the 15 day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

10.3 Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within 10 days shall constitute a default. If Tenant consists of two or more individuals or business entities, the events of default specified in this Section 10.3 shall apply to each individual unless within 10 days after an event of default occurs, the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If the lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the lease.

10.4 Abandonment. Failure of Tenant for 30 days or more to occupy the Premises for one or more of the purposes permitted under this lease, unless such failure is excused under other provisions of this lease.

Section 11. Remedies of Default

11.1 Termination. In the event of a default, the lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant of the default, and Landlord may reenter, take possession of the premises, and remove any persons or property by legal

action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

11.2 Reletting. Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purpose other than that specified in the lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant that Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

Section 12. Surrender at Expiration

12.1 Condition of Premises. Upon expiration of the lease term or earlier termination on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition and broom clean. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Tenant is responsible shall be completed to the latest practical date prior to such surrender.

12.2 Fixtures

(1) All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.

(2) Prior to expiration or other termination of the lease term Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within 10 days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Landlord.

12.3 Holdover

(1) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of

this lease except the provisions for term and renewal, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

(2) If a month-to-month tenancy results from a holdover by Tenant under this Section 12.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than 60 days prior to the termination date which shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

Section 13. Miscellaneous

13.1 Nonwaiver. Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party ' s right to require strict performance of the same provision in the future or of any other provision.

13.2 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

13.3 Notices. Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this lease or to such other address as may be specified from time to time by either of the parties in writing.

13.4 Succession Subject to the above-stated limitations on transfer of Tenant ' s interest, this lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

13.5 Recordation. This lease shall not be recorded without the written consent of Landlord.

13.6 Time of Essence. Time is of the essence of the performance of each of Tenants obligations under this lease.

THE CITY OF MILWAUKIE, an Oregon
municipal corporation

NEW CENTURY PLAYERS, an Oregon
non-profit corporation

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

By: _____

By: _____

CRAWFORD INSPECTION SERVICE

P.O Box 665; West Linn, OR 97068

(503) 628-1003 Fax: (503) 892-9599

CCB# 76914

BUILDING ANALYSIS REPORT



Property Location:

**11022 SE 37th Ave.
Milwaukie, OR 97222**

CRAWFORD INSPECTION SERVICE

P.O Box 665; West Linn, OR 97068
(503) 628-1003 Fax: (503) 628-4901
CCB# 76914

<u>Customer</u>	<u>Property Location</u>
City of Milwaukie Attn: William Miller 6101 SE Johnson Creek Blvd. Milwaukie, OR 97206	11022 SE 37 th Ave. Milwaukie, OR 97222

This is our report of a visual inspection of the readily accessible areas of this building, in accordance with the terms, conditions and limitations in the INSPECTION AGREEMENT, which is a part of this report and incorporated herein. Please read the REMARKS printed on each page as well as our typed or hand written notes. Call us for an explanation of any aspect of this report, written or printed, which you do not fully understand. Also, call us if you want a more thorough inspection, and can obtain the sellers permission.

This report is prepared for the sole, confidential and exclusive use of the named Customer; no other person should rely on, or take action based on, its contents. No other use is permitted, and Crawford Inspection Service shall not be responsible for any such use unless authorized in writing and signed by both the customer and the President of Crawford Inspection Service.

This report is written assuming that the front of the house faces to the: North South East West

Inspection Date: 7/13/04

Weather Conditions: Clear

Outside Temperature: Mid 70 's

Oregon Certified Home Inspector: Paul E. Louis (OCHI # 583)

Inspector Signature: 

STRUCTURAL

Structure	<p>Single family home converted to governmental office use.</p> <p>Foundation Type: <input checked="" type="checkbox"/> Concrete <input checked="" type="checkbox"/> Masonry <input type="checkbox"/> Other <input type="checkbox"/> Not Visible Floor Framing: <input type="checkbox"/> Post and Beam <input checked="" type="checkbox"/> Joists <input type="checkbox"/> N/A Floor Surface: <input checked="" type="checkbox"/> T&G Decking <input checked="" type="checkbox"/> Plywood/OSB Sheeting <input checked="" type="checkbox"/> Concrete Slab Roof Structure: <input checked="" type="checkbox"/> Rafters <input type="checkbox"/> Trusses <input type="checkbox"/> Open Beam Decked <input type="checkbox"/> Vaulted Walls: <input checked="" type="checkbox"/> Wood Frame <input type="checkbox"/> Other</p> <p>Inaccessible areas, obstructions, etc. in the living space and around the exterior of the house at the time of the inspection: Fixed ceilings, fixed wall covering, floor covering, insulation, cabinets or shelving, appliances, furniture and personal items, stored items, and exterior finishes. The offices were actively being used and minimal disruptions were caused. Most of the switches and outlets in the office areas were not tested or evaluated.</p> <p>Live carpenter ants were found crawling on the front porch, near the steps. Powder post beetle infested wood was found in the front porch crawl space. Beetle damage was noted in the front two main support posts, under the remaining tree bark. All insect damaged wood should be removed and replaced with new materials. A treatment for wood destroying insects is recommended. These insects typically are more active during the spring and fall.</p>
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BASEMENT (OR LOWER LEVEL)

Basement <input type="checkbox"/> N/A	<input type="checkbox"/> None <input checked="" type="checkbox"/> Partial <input type="checkbox"/> Full Inaccessible areas and/or items restricting view: <input checked="" type="checkbox"/> Personal items <input checked="" type="checkbox"/> Finished walls/ceiling <input checked="" type="checkbox"/> Heating ducts <input checked="" type="checkbox"/> Other: Stored Items
Floor	<input checked="" type="checkbox"/> Concrete <input type="checkbox"/> Dirt Other _____ <input type="checkbox"/> N/A
Floor Drain	<input checked="" type="checkbox"/> Present <input type="checkbox"/> Not Found <input type="checkbox"/> Tested <input checked="" type="checkbox"/> Not Tested <input type="checkbox"/> N/A
Sump Pump	<input type="checkbox"/> Operating <input type="checkbox"/> Not Operating <input checked="" type="checkbox"/> None Found
Basement Ceiling	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Finished <input checked="" type="checkbox"/> Signs of Past or Present Leaks <input type="checkbox"/> N/A
Basement Dampness	<input type="checkbox"/> None Noted <input type="checkbox"/> Some Signs <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Extensive <input type="checkbox"/> N/A <input type="checkbox"/> Past <input checked="" type="checkbox"/> Present <input type="checkbox"/> Not Known The interior skim coat on the basement walls is deteriorated in many areas due to moisture penetration through the foundation. Spaulding on the exposed bricks on the south foundation wall was noted due to moisture penetration. The skim coat has fallen off most of the brick.

Crawl Space <input type="checkbox"/> N/A	Access: <input checked="" type="checkbox"/> Readily Accessible <input type="checkbox"/> Not readily accessible <input type="checkbox"/> N/A Floor: <input checked="" type="checkbox"/> Concrete <input type="checkbox"/> Dirt <input type="checkbox"/> Other _____ Joist Clearance: <input checked="" type="checkbox"/> Adequate <input type="checkbox"/> Inadequate in some areas <input type="checkbox"/> Inadequate. Dampness: <input checked="" type="checkbox"/> Some Signs <input type="checkbox"/> Standing Water <input type="checkbox"/> None Noted Ventilation: <input checked="" type="checkbox"/> Adequate <input type="checkbox"/> Inadequate Vapor Barrier: <input type="checkbox"/> Present <input checked="" type="checkbox"/> Missing <input type="checkbox"/> Partially missing/misplaced Insulation: <input type="checkbox"/> In-floor <input type="checkbox"/> Perimeter walls <input checked="" type="checkbox"/> None <input type="checkbox"/> N/A Insect damaged wood was noted in the front crawl space. All stored wood and debris should be removed from both crawl spaces to prevent an insect pest infestation. Dead animal bodies were found in the front crawl space. Inaccessible areas and/or items restricting view: <input type="checkbox"/> Insulation <input type="checkbox"/> Vapor barrier <input checked="" type="checkbox"/> Heating ducts <input checked="" type="checkbox"/> Other: Stored items and debris.
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HEATING AND COOLING

Heating System	Fuel:	<input type="checkbox"/> Gas <input checked="" type="checkbox"/> Oil <input type="checkbox"/> Electric	Medium:	<input checked="" type="checkbox"/> Forced Air <input type="checkbox"/> Gravity Distribution <input type="checkbox"/> Gravity Hot Water Boiler <input type="checkbox"/> Hot Water Boiler, Pumped <input type="checkbox"/> Steam Boiler <input type="checkbox"/> Radiant Heat <input checked="" type="checkbox"/> Baseboard Electric <input type="checkbox"/> Heat Pump <input type="checkbox"/> In-Wall Electric
Capacity	Input BTUH:	Unknown <input type="checkbox"/> N/A	Approx. Age:	Unknown
Heating System Recommendations	<p>The furnace was not operated during the inspection. A heavy smell of oil was noted when entering the basement. Oil residue was found on the floor of the basement around the furnace. An oil furnace should be serviced regularly to ensure safe and efficient operation throughout its life. Due to the age of the furnace, a service and evaluation by a licensed HVAC company is recommended.</p> <p>Checking the condition of heat exchangers, typically found in oil and gas furnaces, is beyond the scope of a home inspection.</p> <p>Homes with gas, oil, propane or other fossil fuel burning heat systems should have a carbon monoxide detector for safety.</p> <p>The baseboard electric heater in the first floor bathroom did not operate when turned on at the control knob.</p>			
Exhaust	<input checked="" type="checkbox"/> Viewed <input type="checkbox"/> Not Viewed <input checked="" type="checkbox"/> Appears Intact <input type="checkbox"/> N/A			
Distribution	<input checked="" type="checkbox"/> Ductwork Air Flow <input type="checkbox"/> Convectors <input type="checkbox"/> In-wall Electric <input checked="" type="checkbox"/> Baseboard Electric <input type="checkbox"/> Ceiling Radiant <input type="checkbox"/> Radiators <input type="checkbox"/> N/A		Comments: One of the heat ducts in the basement has been disconnected. A couple of damper controls in the duct runs appear to be missing or damaged.	
Filter system	<input type="checkbox"/> Washable <input checked="" type="checkbox"/> Disposable <input type="checkbox"/> Electronic <input type="checkbox"/> Missing Filter <input type="checkbox"/> N/A			
Supplementary Heat	Location: <input checked="" type="checkbox"/> N/A			
Cooling	<input type="checkbox"/> Central Air <input checked="" type="checkbox"/> Room Unit <input type="checkbox"/> Operated <input checked="" type="checkbox"/> Not Tested <input checked="" type="checkbox"/> N/A Compressor Age: N/A Room unit air conditioners were found in many of the individual office rooms. These units were not tested during the inspection.			

PLUMBING

Water Service	<input checked="" type="checkbox"/> Public <input type="checkbox"/> Well <input type="checkbox"/> Unknown Main shut-off location: Basement
Interior Pipes	<input checked="" type="checkbox"/> Copper <input type="checkbox"/> Plastic <input checked="" type="checkbox"/> Galvanized <input type="checkbox"/> Unknown <input type="checkbox"/> Plumbing Leaks Alterations to the plumbing lines were noted throughout the basement.
Hose Bibs	<input type="checkbox"/> Operating <input checked="" type="checkbox"/> Not Operating <input type="checkbox"/> Not Tested <input type="checkbox"/> None Found <input checked="" type="checkbox"/> Interior Shut Offs The hose bibs may be turned off at the shut off valves.
Waste Pipes	<input type="checkbox"/> Copper <input checked="" type="checkbox"/> Plastic <input checked="" type="checkbox"/> Galvanized <input checked="" type="checkbox"/> Cast Iron <input type="checkbox"/> Unknown <input type="checkbox"/> Plumbing Leaks Some reverse flow drain lines were noted at the kitchen sink drain to the main stack. Another drain line that may be abandoned was found to be installed with reverse flow from the furnace area toward the main plumbing drain stack.
Waste Discharge	<input type="checkbox"/> Slow drain <input checked="" type="checkbox"/> Fixtures Drain Adequately
Hot Water Heater	<input type="checkbox"/> Gas <input checked="" type="checkbox"/> Electric <input type="checkbox"/> Integral w/heating system <input type="checkbox"/> Seismic Straps Capacity: 50Gallons Ample for 3 -4 people Est. Age: 10 - 15 years

BATHROOMS

Fixtures	First Floor Bath: Wall sink and toilet. The toilet was loose and the sink faucet was constantly dripping. Second Floor Bath: Sink, faucet, toilet and leg tub. The leg tub has been boxed in around the perimeter and items were stored inside the tub. Its water and drain operation was not evaluated. Condition of the tub was also not evaluated.
Bathtub	<input type="checkbox"/> Built-in <input checked="" type="checkbox"/> Leg Tub <input type="checkbox"/> Tub/Shower Combo <input type="checkbox"/> Spa Tub <input type="checkbox"/> Access Panel Surround: <input type="checkbox"/> Fiberglass <input type="checkbox"/> Ceramic Tile <input type="checkbox"/> Plastic Laminate <input type="checkbox"/> Other Tub was boxed in.
Stall Shower	<input type="checkbox"/> Ceramic Tile <input type="checkbox"/> Fiberglass <input type="checkbox"/> Laminate <input type="checkbox"/> Vinyl <input checked="" type="checkbox"/> N/A <input type="checkbox"/> Other:
Floor	<input type="checkbox"/> Ceramic Tile <input checked="" type="checkbox"/> Sheet Vinyl <input type="checkbox"/> Laminate <input type="checkbox"/> Resilient Tile <input type="checkbox"/> Carpet <input type="checkbox"/> Wood <input type="checkbox"/> Other:
Ventilation	<input type="checkbox"/> Fan <input checked="" type="checkbox"/> Window <input type="checkbox"/> Vented Outside <input type="checkbox"/> Vented into Attic <input type="checkbox"/> No Ventilation

ELECTRICAL

<p>Service</p>	<p>150 Amps <input type="checkbox"/> Fuses <input checked="" type="checkbox"/> Circuit Breakers 120/240 Volts Service Entry: <input checked="" type="checkbox"/> Overhead <input type="checkbox"/> Underground <input checked="" type="checkbox"/> Grounded At Panel Service Entry Conductors: <input type="checkbox"/> Copper <input checked="" type="checkbox"/> Aluminum <input type="checkbox"/> Tin Clad Copper Service Panel Location: Basement A couple of breakers have been "double tapped" in the panel. Each circuit should have its own breaker for safety and proper breaker operation. Additional breakers or split breakers should be added to the panel and one of the circuits moved to each of the new breakers. The ground wires exiting the structure on the south side of the building near the electrical meter should be properly secured to the building for safety.</p>
<p>Conductors (120 Volt)</p>	<p>Wiring: <input checked="" type="checkbox"/> Copper <input type="checkbox"/> Aluminum <input type="checkbox"/> Tin Clad Copper A mixture of wire types was found throughout the structure. Knob and tube wires were found in the attic areas. Some may be covered with the blown-in insulation. Some non-standard wiring practices were found in the basement. Conditions observed include missing metal box bushing clamps and lock nuts, improper knob & tube wire splices, wires stapled to the bottom of the ceiling joists, etc. The electrical wire running up the north exterior wall to the wall mounted light fixture should be installed in protective conduit for safety.</p>
<p>Outlets and Fixtures (Random Testing)</p>	<p>GFI outlet(s): <input type="checkbox"/> Functioning <input type="checkbox"/> Not Functioning <input checked="" type="checkbox"/> None Found GFI outlets are recommended in all wet locations Blank plugs were missing on the surface mounted exterior conduit boxes and a plate cover was loose on the east exterior wall. Plate covers should be installed on all uncovered interior junction boxes, outlets, and switches around the house. Smoke Detectors: <input type="checkbox"/> Functioning <input type="checkbox"/> Not Functioning <input type="checkbox"/> None Found Smoke detectors were noted in various locations on the first and second floors. The detectors were not tested during the inspection. The smoke detectors throughout the house should be updated to a type containing a 'hush' button and a 10-year battery. Any electrical repairs should be carried out by a licensed electrician.</p>

KITCHEN AND APPLIANCES

Cabinets	<input checked="" type="checkbox"/> Wood <input type="checkbox"/> Wood Composite <input type="checkbox"/> Metal <input type="checkbox"/> Other <input checked="" type="checkbox"/> Satisfactory Condition
Countertop	<input checked="" type="checkbox"/> Laminate <input type="checkbox"/> Ceramic Tile <input type="checkbox"/> Wood <input type="checkbox"/> Natural Stone <input type="checkbox"/> Manmade Composite <input type="checkbox"/> Other
Sinks and Fixtures	The kitchen sink and faucet are built into the under-counter refrigerator.
Floor	<input type="checkbox"/> Resilient Tile <input checked="" type="checkbox"/> Sheet Goods <input type="checkbox"/> Wood <input type="checkbox"/> Laminate <input type="checkbox"/> Ceramic Tile <input type="checkbox"/> Carpet Other: _____
Dishwasher	<input checked="" type="checkbox"/> Operated <input type="checkbox"/> Not Tested <input type="checkbox"/> Built-In <input type="checkbox"/> Portable <input type="checkbox"/> N/A
Disposal	<input type="checkbox"/> Operated <input type="checkbox"/> Not Tested Size: N/A <input checked="" type="checkbox"/> N/A
Range/Oven	<input type="checkbox"/> Wall Oven <input type="checkbox"/> Cook Top <input type="checkbox"/> Range <input type="checkbox"/> Operated <input type="checkbox"/> Not Operating <input type="checkbox"/> Gas <input type="checkbox"/> Electric <input checked="" type="checkbox"/> N/A
Ventilation	<input type="checkbox"/> Exhaust Fan <input type="checkbox"/> Micro/Hood Combo <input type="checkbox"/> Ductless <input type="checkbox"/> Vented To Outside <input checked="" type="checkbox"/> N/A
Washer/Dryer Hook-ups	<input type="checkbox"/> Hook-Ups Present <input type="checkbox"/> Vented to Outside Dryer: <input type="checkbox"/> Gas <input type="checkbox"/> Electric <input checked="" type="checkbox"/> N/A
APPLIANCES NOT TESTED INCLUDE THE FOLLOWING: REFRIGERATORS, MICROWAVE OVENS, WASHERS AND DRYERS, AND OTHERS NOT LISTED IN THIS SECTION OF THE REPORT	

INTERIOR

Floors	<input type="checkbox"/> Wood <input type="checkbox"/> Laminate <input checked="" type="checkbox"/> Wall to Wall Carpet <input type="checkbox"/> Resilient Tile <input type="checkbox"/> Ceramic Tile <input type="checkbox"/> Rugs <input checked="" type="checkbox"/> Sheet goods <input type="checkbox"/> Marble/Granite <input type="checkbox"/> Other
Walls/Ceilings	<input checked="" type="checkbox"/> Drywall <input checked="" type="checkbox"/> Plaster <input type="checkbox"/> Wood <input type="checkbox"/> Wallpaper <input type="checkbox"/> Other <input type="checkbox"/> Dropped Ceilings <input type="checkbox"/> Fiberboard/Tile <input checked="" type="checkbox"/> Shrinkage Cracks noted <input type="checkbox"/> Nail pops noted <input checked="" type="checkbox"/> Settling Cracks noted Some interior walls have been modified from the original floor plan to accommodate office uses.
Stairs	<input checked="" type="checkbox"/> Handrails <input type="checkbox"/> N/A Hand rails should be added at the front porch steps for safety.
Closets	<input type="checkbox"/> Walk-in closet <input checked="" type="checkbox"/> Appears Satisfactory
Fireplace	<input checked="" type="checkbox"/> Masonry <input type="checkbox"/> Wood Stove <input type="checkbox"/> Metal Pre-Fabricated <input type="checkbox"/> Fireplace Insert <input checked="" type="checkbox"/> Damper <input type="checkbox"/> N/A The damper chain has broken off of the damper. The damper in the fire box was found in the closed position.
Doors (inside)	<input checked="" type="checkbox"/> Wood <input type="checkbox"/> Glass <input type="checkbox"/> Other
Windows	<input checked="" type="checkbox"/> Wood <input checked="" type="checkbox"/> Metal <input type="checkbox"/> Vinyl <input checked="" type="checkbox"/> Insulated Glass <input type="checkbox"/> Casement <input type="checkbox"/> Awning <input type="checkbox"/> Double Hung <input checked="" type="checkbox"/> Sliding <input type="checkbox"/> Storm Windows <input checked="" type="checkbox"/> Single Hung <input checked="" type="checkbox"/> Fixed Sash <input checked="" type="checkbox"/> Single Pane It is not always possible to determine if an insulated window has a damaged seal. Under some lighting conditions, or if the damage occurred recently, the evidence of damage (moisture, dirt and cloudiness) may not be visible. We do not warrant that seals are not damaged. The kitchen sink metal insulated glass window has a damaged seal. Many of the older wood windows are in poor condition. Among the conditions noted are missing/broken sash counterweight cords, missing/malfunctioning latching mechanisms, painted shut sashes, and cracked panes of glass.

ATTIC

<p>Access</p>	<p> <input checked="" type="checkbox"/> Scuttle hole <input type="checkbox"/> Pull down <input type="checkbox"/> Stairs <input checked="" type="checkbox"/> Door <input type="checkbox"/> No Access Location: Interior Hallway and second level bathroom Attic was viewed from: <input checked="" type="checkbox"/> Access Point(s) <input checked="" type="checkbox"/> Attic entered The main house attic area was entered. The single floor level attic area was observed from the access opening. </p> <p> Attic spaces will not be accessed if the entry is obstructed or restricted, when entry could damage any property, when insulation is covering the tops of the joists or lower truss cords, or when there is inadequate clearance to safely traverse the tops of the joists or lower truss cords (to avoid stepping/falling through ceilings). </p>
<p>Attic Insulation</p>	<p> Type: <input checked="" type="checkbox"/> Loose Fill <input type="checkbox"/> Batting Ave Inches; <u>10</u> Installed In: <input type="checkbox"/> Rafters <input type="checkbox"/> Attic Floor <input type="checkbox"/> Pony Walls Approx. R-Value; R30 </p>
<p>Ventilation</p>	<p> <input type="checkbox"/> Window <input type="checkbox"/> Attic Fan <input checked="" type="checkbox"/> Gable Vents <input type="checkbox"/> Thru-house Fan <input type="checkbox"/> Ridge Vent <input type="checkbox"/> Soffit Vent <input type="checkbox"/> Roof Vent <input checked="" type="checkbox"/> No Visible Ventilation The only gable vent found on the home was at the east side of the single level room addition area. It was boarded over to keep animal pests out of the attic area. The vent should be repaired and re-screened so that the attic area can ventilate. </p>

ROOFING

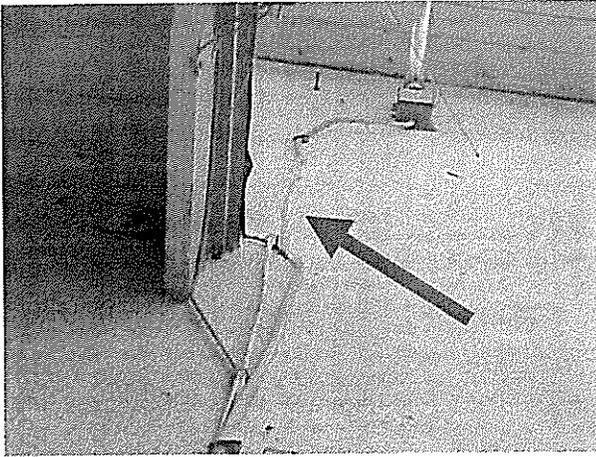
Roof Covering	Location	Material	Estimated Age
	Entire Home: Front Porch Balcony:	Composition Shingles Torch Down	more than 20 years 5 to 10 years
<p>Method used to view the roof: <input checked="" type="checkbox"/> Walked on <input checked="" type="checkbox"/> From the gutter line <input checked="" type="checkbox"/> From the ground</p> <p>Multiple layers of roof shingles were found. The top composition layer is at the end of its service life. Moss and debris build up were noted on the east single level addition area. Keeping the roof free of moss, leaves, and other debris will help prevent premature breakdown of the roofing materials.</p> <p>The front porch balcony torch down roof is not designed to take heavy foot traffic. A protective deck surface or other appropriate coverings should be installed if the balcony is to be used for people activities.</p> <p>Only roofs that can be safely accessed with a 12-foot ladder will be. Others will be viewed from the ground and/or from the top of the ladder at the gutter line.</p>			
Flashing	<p>Barge rafter edge flashings were missing in areas. The masonry fireplace chimney flashings appear to be deteriorating, with noted repairs applied at the chimney roof line.</p> <p>The front porch balcony flashings at the siding have been adhered to the surface face of the siding. The sealant is breaking down and a gap between the siding and flashing has occurred. Water can penetrate between the siding and the flashing and enter into the porch roof structure area.</p>		
Gutters and Downspouts	<p><input checked="" type="checkbox"/> Metal <input type="checkbox"/> Plastic <input type="checkbox"/> Wood <input checked="" type="checkbox"/> Rain Drains <input type="checkbox"/> Splash Blocks</p> <p>The gutter seam was leaking at the southeast corner of the newer addition to the house.</p>		

EXTERIOR

Doors	<input type="checkbox"/> Appear satisfactory The south exterior door to the basement is deteriorated due to exposure to the elements.	
Windows	<input type="checkbox"/> Appear satisfactory See interior window notes.	
Exterior Walls and Trim	Location: Entire house Keep all dirt and landscaping material at least 6" away from the bottom of the siding to prevent moisture/insect infestation.	Materials: Masonry Stucco
	Some cracking in the stucco surface was noted on the south and west walls. Patches from window changed were visible. Some cracking and deterioration in the exterior foundation skim coat was noted. Window trim on the south and west walls have some wood rot and other deteriorated conditions. The paint on the trim is also peeling and loose in areas.	
Chimney	Viewed chimneys from top of ladder only. The masonry fireplace chimney is deteriorated with cracks in the stucco covering and a loss of the chimney cap material. Water was noted at the base of the basement furnace chimney. Water could be entering through the chimney cap.	
Garage/Carport	<input type="checkbox"/> Garage <input type="checkbox"/> Carport <input type="checkbox"/> Attached <input type="checkbox"/> Detached <input type="checkbox"/> Automatic Opener <input type="checkbox"/> Operated <input type="checkbox"/> Did Not Operate <input checked="" type="checkbox"/> N/A	
Porch	The front porch is deteriorating due to its exposure to the elements. Conditions noted include rotted railings on the lower section, loose railings and warped pressure treated materials on the upper balcony, cracking and flaking concrete at the steps and pillar bases, and wood rot in the soffit boards at the eaves. The exposed rebar at the exterior and interior of the stairs is rusted and breaking apart. The underside of the stairs is crumbling as viewed in the front crawl space. The exposed rebar in this area is also breaking apart. <input type="checkbox"/> N/A	

GROUNDS

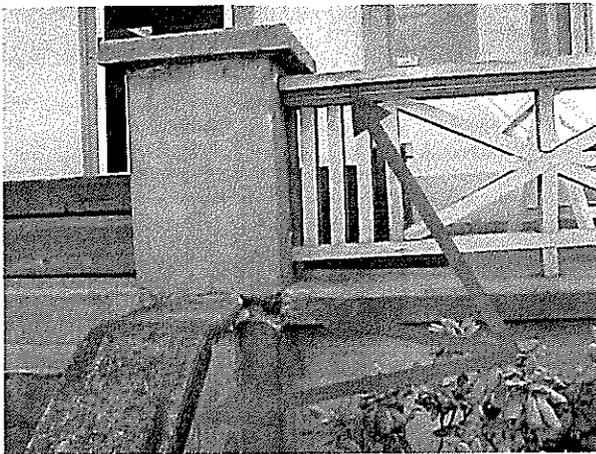
Grading	<p>General grading, slope and drainage: <input type="checkbox"/> Appears satisfactory The grade slopes from northeast to southwest. Grading and slope at house wall: (within 5 feet from building) <input type="checkbox"/> Appears satisfactory The grade at the northeast corner of the house slopes toward the foundation and could be contributing to the moisture accumulation in the basement in this area. The surface grade has washed away in areas on the north and east sides of the house. Measures should be taken to adjust the grade around the house so that it slopes away from the foundation.</p>
Sidewalk	<p><input checked="" type="checkbox"/> Concrete <input type="checkbox"/> Flagstone <input type="checkbox"/> Brick <input type="checkbox"/> Step Stones <input type="checkbox"/> Other : <input checked="" type="checkbox"/> Some Cracking and Settling <input type="checkbox"/> N/A</p>
Driveway	<p><input type="checkbox"/> Concrete <input checked="" type="checkbox"/> Asphalt <input type="checkbox"/> Brick <input type="checkbox"/> Gravel <input type="checkbox"/> Other <input checked="" type="checkbox"/> Some Cracking and Settling <input type="checkbox"/> N/A</p>
Window Wells	<p><input checked="" type="checkbox"/> N/A</p>
Retaining Wall	<p><input type="checkbox"/> Brick <input type="checkbox"/> Block <input type="checkbox"/> Stone <input type="checkbox"/> Concrete <input type="checkbox"/> Wood <input type="checkbox"/> Other; <input type="checkbox"/> Mortared Joints <input type="checkbox"/> Dry <input type="checkbox"/> Weep Holes <input checked="" type="checkbox"/> N/A</p>
Trees and Shrubbery	<p>Maintain 12" clearance from the house to prevent wood rot and/or insect infestation. Keep all vegetation trimmed away from siding and roof.</p>
Attached Wood Deck	<p><input type="checkbox"/> Underside Inaccessible <input type="checkbox"/> N/A The wheel chair ramp has loose railing posts in areas. The ramp is made of pressure treated materials.</p>
Attached Patio, Terrace	<p><input type="checkbox"/> Brick <input type="checkbox"/> Concrete <input type="checkbox"/> Flagstone <input type="checkbox"/> Other; <input type="checkbox"/> Some Cracking <input checked="" type="checkbox"/> N/A</p>
Foundation Venting	<p><input type="checkbox"/> Vents and Screens are satisfactory <input checked="" type="checkbox"/> Screens or frames are damaged and need repair <input type="checkbox"/> N/A The crawl space vent screens have been covered over in some areas on both front and rear crawl spaces. Missing screens were noted on the front porch vent openings. The vents should be opened and repaired for proper crawl space ventilation and to keep animal pests from entering the crawl spaces.</p>



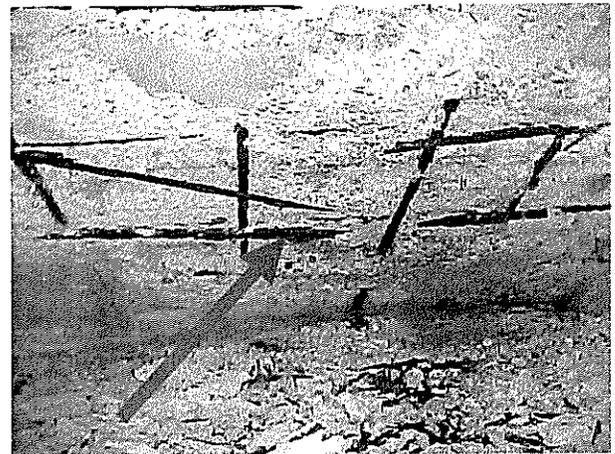
Electrical wire should be installed in exterior rated conduit.



Sample of a deteriorated basement window.



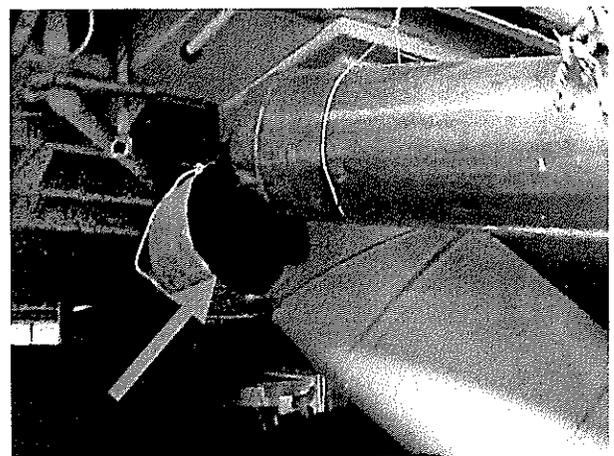
Rotted railing at the front porch. Cracked and chipped concrete At the stairs and pillars.



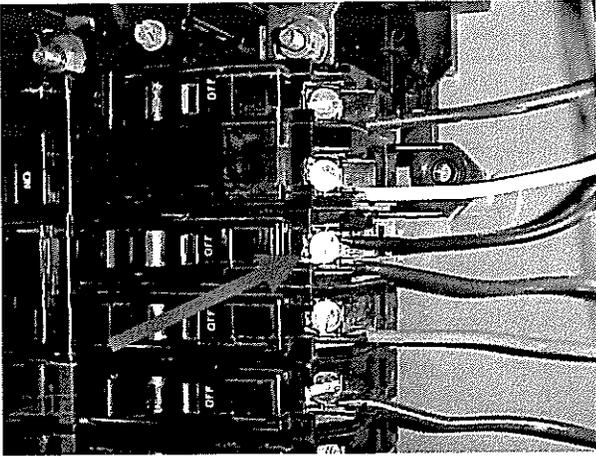
Deteriorating concrete at the underside of the front porch stairs.



Insect damaged wood at the basement center beam support post.



Separated heat duct in the basement.



Double tapped breaker in the electrical panel.



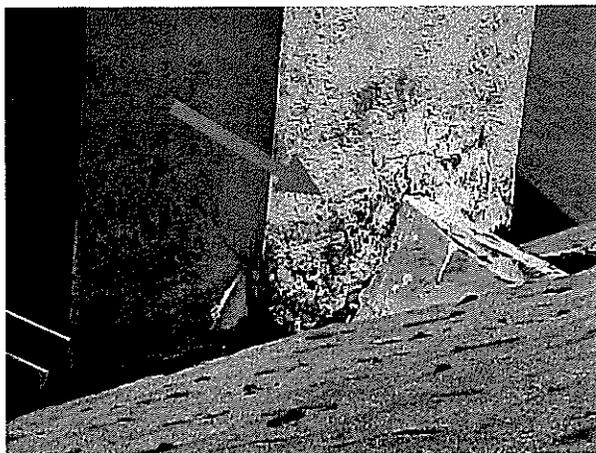
Basement interior wall skim coat deteriorated from moisture penetration.



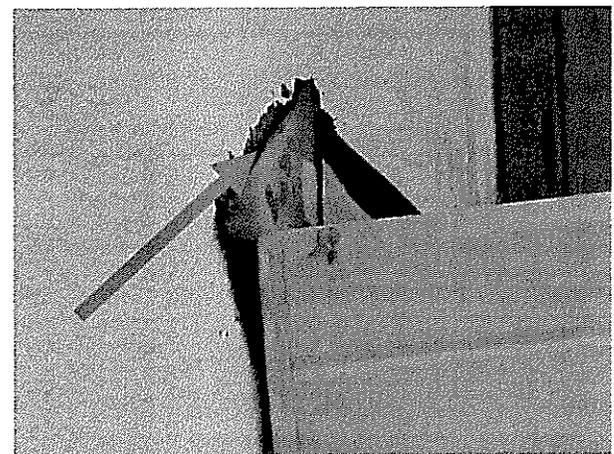
Poor roof shingle condition with moss build up and old hardware penetration through the shingles.



Cracked and chipped stucco on the fireplace chimney with deteriorated chimney cap.



Fire place chimney flashing repairs.



Improperly installed front porch balcony roof flashings.

Crawford Inspection Services Wood Destroying Insect Information	Conventional Loan Form	Report Status: Preliminary <input checked="" type="checkbox"/> Final <input type="checkbox"/>

Read the Statement of Pest Control Operator Carefully before Completing this Form.

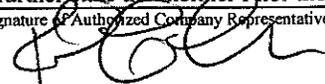
Name of Inspection Company: <p style="text-align: center;">Crawford Inspection Services</p>		Name of Property Owner/Seller if known:
Address of Inspection Company: (including zip code) <p style="text-align: center;">P.O. Box 665 West Linn, OR 97068</p>		Address of Property <p style="text-align: center;">11022 SE 37th Ave Milwaukie, OR 97222</p>
Telephone Number: (include area code) (503) 628-1003 Fax: (503) 628- 4901	Pest Control Operator License Number: <p style="text-align: center;">171089</p>	Structure(s) Inspected: <p style="text-align: center;">Dwelling only</p>

Findings

1A. Were any Areas of the Property Obstructed or Inaccessible? (If "Yes," explain) Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	1B. Obstructions or Inaccessible Areas: (specify -- read item 5B before completing) <p style="text-align: center;">Fixed ceilings, fixed wall covering, floor covering, insulation, cabinets or shelving appliances, furniture and personal items, stored items, and exterior finishes.</p>
2. Based on Careful Visual Inspection of the Readily Accessible Areas of the Property: (specify -- read Statement of Pest Control Operator below)	
<input checked="" type="checkbox"/> A. Visible evidence of wood destroying insects was observed. No control measures were performed. Insects observed: <u>Live carpenter ants were found crawling on the front porch. Crumbling wood and powder post beetle frass in the crawl space and basement.</u>	
<input type="checkbox"/> B. No visible evidence of infestation from wood destroying insects was observed.	
<input type="checkbox"/> C. Visible evidence of infestation was noted; proper control-measures were performed.	
<input checked="" type="checkbox"/> D. Visible damage due to <u>Powder post beetles and wood rot</u> has been observed in the following areas: (If necessary, continue on the reverse) <u>Wood rot in the front porch railings and eave soffit boards, beetle damage in the wood debris in the front porch crawl space and in the main basement beam center posts.</u>	
<input type="checkbox"/> E. Visible evidence of previously treated infestation, which is now inactive, was observed. (Explain in item 4)	
3. Damage Observed Above, If Any: (check one) <input type="checkbox"/> A. Will be/has been corrected by this company. <input type="checkbox"/> B. Will be corrected by another company (see attached contract). <input checked="" type="checkbox"/> C. Will not be corrected by this company. Recommend that damage be evaluated by qualified building expert.	4. Additional Comments: (If necessary, continue on the reverse.) All damaged wood should be replaced with new materials, using pressure treated materials where applicable. Grade adjustment measures should be taken to help control the moisture problem in the basement. A treatment for wood destroying insects is recommended. All wood, debris, and stored materials should be removed from the crawl space areas. Crawl space foundation vents should be opened and repaired.

5. Statement of Pest Control Operator

- A. The visual inspection covered the readily accessible areas of the property, including attics and crawl-spaces which permit entry.
- B. The inspection did not include areas which were obstructed or inaccessible at the time of inspection. Areas that were inaccessible or obstructed (*item 1B*) may include, but not limited to, wall covering, fixed ceilings, floor coverings, furniture or stored articles, insulation, wet crawlspace, wood covered by earth. The inspector should list, in item 1B, those obstructions or areas and conditions which inhibit the inspection.
- C. This is not a structural damage report. Neither is this a warranty as to the absence of wood destroying organisms.
- D. Neither I nor the company for which I am acting have had, presently have, or contemplate having any interest in the property.
- ~~I do further state that neither I nor the company for which I am acting is associated with any party to this transaction.~~

6A. Signature of Authorized Company Representative: 	6B. Title: Inspector Paul E. Louis License #: 170489	6C. Date: <p style="text-align: center;">7/13/04</p>
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Statement of Purchaser

I have received the original or a legible copy of this form.

7A. Signature of Purchaser:	(City of Milwaukie)	7B. Date:
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To: Mayor and City Council

From: Mary Rowe, HR Director

Subject: City Manager Performance Review and Compensation

Date: March 8, 2007

Action Requested

Provide the City Manager, Mike Swanson, an increase to base pay of \$3,149 per year, cell phone allowance of \$50 per month and a 2.67 hour per month increase in vacation accrual.

Background

The total compensation of comparable sized agencies was reviewed. The stated increase would place the City Manager's salary within 1.5% of the market average.

Mike is doing an excellent job as City Manager and Council feels that his performance exceeds expectations in all areas. This past year Mike received the Herman Kerhli award for outstanding public service from the League of Oregon Cities. It was noted that Mike is an outstanding example of his profession and approaches his job with a focus on stewardship of the community. Not only did Mike receive this award but the League also chose Milwaukie as a City to tour during its annual conference due to creative partnerships that have been established in order to move forward with the downtown development. The growth of the community, while well managed and positive, has been accompanied by challenges and some difficult issues. To address in part one of the issues staff liaison to one of the neighborhood associations to help reestablish lines of communication there.

The Council noted the following items are working well:

- Mike is a remarkable manager and a fine steward of the City and staff. One of his greatest skills is the ability to hire good people, manage them creatively and sustain their spirit through often difficult times
- Mike's political/public insight and ability to think strategically
- High ethical standards

- His ability to assemble and explain the City's annual budget
- Responsiveness to citizen and staff inquiries

The Council has also set goals for the upcoming year which include the following:

- Continue to work on the decommissioning of the Kellogg Sewage Treatment Plant
- Continue to work on downtown development
- Continue the dialog on transportation options
- Continue to work to resolve parking issues in downtown
- Move forward with the Transportation Systems Plan (TSP)
- Continue to look at the feasibility and profitability of annexation
- Pursue ways to delegate more work and/or protect his schedule to avoid burnout

Concurrence

The City Attorney agrees with the above stated terms. Mr. Swanson has agreed that the proposed terms are acceptable to him.

Fiscal Impact

There is an increase cost of \$3,149/year.

Work Load Impacts

None

Alternatives

Not recognizing the excellent performance of the City Manager, which would run the risk of losing his talents and recruiting for a new City Manager.

**Employment Agreement
Extension**

This agreement is made and entered in this 23 day of March 2007, by and between the City of Milwaukie, Oregon, a municipal corporation (“CITY”) and Michael F. Swanson. (“EMPLOYEE.”)

By mutual agreement the CITY and EMPLOYEE agree to extend the Employment Agreement (“Agreement”) entered into on March 17, 2004. The Agreement will be extended for a period of one year until March 1, 2008.

All terms of the Agreement will remain intact in their entirety except for the sections below which will be amended as follows (bolded language):

Section 4. Salary

CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto an initial annual base salary of \$99,720, commencing February 3, 2004, payable in installments at the same time as other CITY employees are paid. **Based on the 2007 performance review conducted by the City Council, EMPLOYEE will receive an annual base salary increase to \$120,500 effective February 1, 2007. This salary may be adjusted annually as part of EMPLOYEE’S performance review.**

Section 8. Vacation, Sick Leave, and Administrative Leave

- A. Vacation time shall accrue at the standard rate and under the conditions provided for management personnel by the CITY or at the rate of fourteen (14) hours per month worked, whichever is greater; however, no more than eight (8) weeks of vacation time may be accrued. Vacation for the entire first year of this Agreement shall be deemed accrued on September 1, 2001. Vacation for subsequent years shall be accrued at the end of each month worked. **Effective April 1, 2007, vacation accrual will increase to 16.67 hours per month worked.**

Section 5. Use of Automobile and Cell Phone

- A. CITY shall provide a monthly automobile allowance of \$250.
- B. **Effective April 1, 2007, the City shall provide EMPLOYEE with a monthly cell phone allowance of \$50.**

CITY OF MILWAUKIE

EMPLOYEE

Mayor James Bernard

City Manager Michael F. Swanson

ATTEST:

City Recorder Pat Duval

APPROVED AS TO FORM:

City Attorney Bill Monahan

Riverfront Board Meeting
Minutes
February 13, 2007

Members present: Green, St Clair, Klein, Martin, Seagler

Members absent: Stacey, Wall

Guests: Councilor Loomis, Councilor Stone

Minutes:

It was suggested that rather than using the word “revegetation” in the motion regarding Kellogg Lake from the last meeting, that the word “restoration” be used.

Klein asked if Johnson Creek should also be included in this motion. After some discussion, the minutes of the January meeting were approved as modified, 5-0.

Riverfront Design:

Herrigel updated the group on the progress of the Park design. She noted that the design was a bit behind schedule but all data had now been put into CAD by DEA. She said that although she had hoped to apply for construction funding in April 2007, she now realized that it would be premature to apply for construction funds before finishing the land use approvals and permitting for the project. She said she had placed funding in the 07-08 City budget to hire a contractor to begin the land use and permitting process. She noted that with the proximity of the two creeks and the Willamette, permitting was likely to be quite complicated and may take at least a year to complete.

Herrigel noted that she felt that the Oregon Solutions group should be reconvened in March or early April. Green said he had left a message for Brian Newman about doing so and hadn't heard back from him.

Herrigel reported on a recent meeting with the Oregon Marine Board (OMB) she had attended with DEA staff. She noted that the OMB had the following comments:

- The restroom needed to be closer to the boat ramp

- ADA parking needed to be closer to the ramp and restroom
- Parking spaces for trailers and vehicle should be the maximum length of the longest truck and trailer combination
- OMB staff did suggest that funds might be available for assistance with permitting
- The transient dock in its current location near the Sewer Plant might not be fundable.
- Facilities for non-motorized boaters and motorized boaters needed to be distinct and separated so that no conflicts arose between the two

Board comments:

- Green said that this was not intended to be a regional facility that accommodated every type of vehicle. He said that he felt that larger vehicles need not be accommodated
- Councilor Stone asked if the OMB would offer any in-kind services if the City decided to move forward with the ramp
- St Clair asked if the non-motorized boats might use a smaller dock off the south side of the boat ramp to avoid conflicts
- Councilor Stone also noted that Patty Wisner had had some comments for the DEA team at the open house regarding the style and design for the restroom being less linear and more integrated into the landscape.

Sternwheeler Rose:

Herrigel noted that she had forwarded to the group the proposal for relocating the Sternheeler Rose to Milwaukie from Portland. She said the owner, Paul Simonis, was undergoing surgery and was unable to come to the meeting. Simonis has asked if the City would let him use the Cash Spot building for an office and have the Sternwheeler moored off of the City's Riverfront. Simonis is looking for at least a five-year agreement in order to move from Swan Island where he currently moors. He has an agreement with OMSI to use their dock and parking for his cruise customers that has been negatively impacted by OMSI's recent loss of parking due to the Portland sewer project.

Herrigel noted that the Cash Spot does have a parking lot but that the City may be using this lot for municipal parking but that is as yet undetermined.

Board comments:

- Martin: how long if the boat exactly?
- Seagler: Would this be a permanent arrangement?
- St Clair: Seems like parking is a non-issue since the cruises are after hours (starting at 5 pm typically)
- Herrigel noted that Stacey has said that no parking should be allowed on the west side of McLoughlin for this purpose.
- Seagler said that parking spots near Dogwood Park are usually open
- St Clair: if we already have a transient dock – why not have the Sternwheeler
- Klein: the timing is hard – it might conflict with the construction of the park. If we could get rid of the sewer plant – that might be a good location
- Seagler: I think it would be great – I always thought we needed a boat (could call it the Lot Whitcomb..)

General consensus was that if moorage and loading of the boat could be done south of Kellogg Creek and adequate parking was found on the east side of McLoughlin, then the group was supportive of the Sternwheeler being relocated to Milwaukie.

Green noted that people may use the parking lot on the west side anyway – all the City can do is make sure the Cash Spot is set up to accommodate customers. He further noted that the Cash Spot is a very important property to the southern downtown development. He said it should be the gateway to the City and this proposal should be mindful of this and not restrict use of the property by the City. Councilor Loomis echoed Green's comments regarding parking and use of the Cash Spot being important issues to deal with in any agreement signed with Simonis.

Herrigel said she would take the proposal to Council with the Board's recommendation.

Updates:

- The Town Center proposals are due February 21. The Advisory Committee will review them March 13 and an open house will be held March 14 for public review of the proposals.
- The Kellogg Lake made it to the final cut for MTIP funds. If funded, money would be available in 2010. In the meantime, staff has applied for appropriations for Kellogg Lake with Blumenauer, Smith and Wyden's office.
- An open house on the South Corridor Phase II light rail project will be held on March 5 from 6:30 to 8:30 at Clackamas ESD on Lake Rd.
- March 3, 2007 is the Johnson Creek Watershed Council's watershed wide event. The north side of Klein Point will be one of the work sites.