



Regular Session

RS

Milwaukie City Council



**MILWAUKIE CITY COUNCIL
REGULAR SESSION**

City Hall Council Chambers
10722 SE Main Street
www.milwaukieoregon.gov

**AGENDA
FEBRUARY 2, 2016**

2,215th Meeting

- | | Page # |
|--|---------------|
| 1. CALL TO ORDER | |
| Pledge of Allegiance. | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | |
| None scheduled. | |
| 3. CONSENT AGENDA | |
| These items are considered routine, and therefore, will not be allotted discussion time on the agenda; these items may be passed by the Council in one blanket motion; any Councilor may remove an item from the "Consent" agenda for discussion by requesting such action prior to consideration of that part of the agenda. | |
| A. Urban Renewal Advisory Group – Resolution | 2 |
| B. Community Development Block Grant (CDBG) Intergovernmental Agreement (IGA) – Resolution | 8 |
| C. Reimbursement of Potential Tax-Exempt Expenditures – Resolution | 29 |
| 4. AUDIENCE PARTICIPATION | |
| The presiding officer will call for citizen statements regarding City business. Pursuant to Milwaukie Municipal Code (MMC) Section 2.04.140, 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 submit it to the City Recorder. Pursuant to MMC Section 2.04.360, "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 under this part of the agenda following a brief staff report presenting the item and action requested. The presiding officer may limit testimony. | |
| None Scheduled. | |
| 6. OTHER BUSINESS | |
| These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item. | |
| A. Library Services Expansion Ballot Measure | 33 |
| Staff: Katie Newell, Library Director | |
| B. Level 3 Communications Franchise Agreement – Ordinance | 35 |
| Staff: Casey Camors, Finance Director | |

- D. Riverfront Park Bridge Update**
Staff: Chuck Eaton, Engineering Director

48

- C. Council Reports**

- 7. INFORMATION**

- 8. ADJOURNMENT**

Public Notice

Executive Sessions: The Milwaukie City Council will meet in Executive Session immediately following adjournment pursuant to ORS 192.660(2). All Executive Session discussions are confidential and those present may disclose nothing; representatives of the news media may attend as provided by ORS 192.660(3) but must not disclose any information discussed. Executive Sessions may not be held for the purpose of taking final actions or making final decisions and they are closed to the public.

The Council requests that mobile devices be set on silent or turned off during the meeting.

The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities Act. For special accommodations, please call 503-786-7502 or email ocr@milwaukieoregon.gov at least 48 hours prior to the meeting.



**Regular Session
Agenda Item No.**

3

Consent Agenda



MILWAUKIE CITY COUNCIL
STAFF REPORT

RS 3. A.
Feb. 2, 2016

To: Mayor and City Council

Through: Bill Monahan, City Manager
Alma Flores, Community Development Director

Subject: Urban Renewal Advisory Group – Council Resolution

From: Denny Egner, Planning Director

Date: January 15, for the February 2, 2016, Regular Session

ACTION REQUESTED

Adopt a resolution creating an Urban Renewal Advisory Group and appointing members.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

December 15, 2015: The Council adopted a resolution directing staff and the consultant team to develop a draft urban renewal plan for the downtown and central Milwaukie.

December 1, 2015: The Council held a work session and received a presentation from Nick Popenuk of ECONorthwest regarding urban renewal feasibility in Milwaukie.

November 3, 2015: The Council held a work session at which the City's consultant team consisting of ECONorthwest and Elaine Howard provided an overview of issues related to urban renewal.

June 30, 2015: The City Council held a study session regarding their 2015 Goal to develop an urban renewal strategy for the downtown and the north industrial area.

May 19, 2015: The City Council adopted goals for the 2015-16 fiscal year including a goal to develop an "Urban Renewal Strategy for the Downtown and the North Industrial Area."

BACKGROUND AND DISCUSSION

Staff is seeking Council approval of a resolution creating advisory group for the preparation of the draft urban renewal plan. It is expected that the group will need to meet five to six times over the next six months to prepare a plan for Council adoption.

CONCURRENCE

No other departments reviewed the draft report.

FISCAL IMPACTS

The urban renewal feasibility and plan project carries out a Council goal and was included in the Community Development Department budget.

WORK LOAD IMPACTS

The work associated with this project is assumed to be within the normal workload capacity of the Planning and Community Development staff.

ALTERNATIVES

The resolution documents the Council direction to prepare an urban renewal plan. No alternative approaches have been explored.

ATTACHMENTS

1. Draft Resolution with Exhibits 1 and 2



CITY OF MILWAUKIE

"Dogwood City of the West"

Resolution No.

A resolution of the City Council of the City of Milwaukie, Oregon, creating an Urban Renewal Advisory Group to assist with preparation of an urban renewal plan encompassing the downtown and central Milwaukie.

WHEREAS, on December 15, 2015, the City Council adopted resolution no. 109-2015 directing staff and the consultant team to prepare an urban renewal plan for the downtown and central Milwaukie;

WHEREAS, public involvement and public engagement are important community values in Milwaukie;

WHEREAS, it is imperative to include community partners in the planning process so that there is a complete understanding of the impacts and benefits of urban renewal;

WHEREAS, the consultant's scope of work to prepare a draft urban renewal plan for the downtown and Central Milwaukie provides extensive opportunities for community discussion about district boundaries, development assumptions, financial forecasts, urban renewal projects, and impacts on taxing districts;

NOW, THEREFORE, BE IT RESOLVED that:

1. The City Council hereby establishes an ad-hoc Urban Renewal Advisory Group to provide advice and direction to staff, the consultant team, and the City Council during the process of developing and adopting an urban renewal plan for the downtown and central Milwaukie.
2. The Urban Renewal Advisory Group shall consist of individuals representing a variety of stakeholders and community groups as set forth in Exhibit 1.
3. The charge statement for the Urban Renewal Advisory Group is set forth in Exhibit 2.

Introduced and adopted by the City Council on **February 2, 2016**.

This resolution is effective on **February 2, 2016**.

Mark Gamba, Mayor

APPROVED AS TO FORM:
Jordan Ramis PC

ATTEST:

Pat DuVal, City Recorder

City Attorney

Exhibit 1

(Draft – A final version will be provided to the Council in advance of the meeting)

Milwaukie Urban Renewal Advisory Group						
Organization	Position	No. of seats	Comments	Name	Phone	Email
City	Mayor or Council Member	1	Serves as chair	Mayor Mark Gamba	971-404-5274 (C) 503-353-9111 (W)	mark@markgamba.com gambam@milwaukieoregon.gov
City	City Manager /Assistant Manager /CD Director	1	Ex-Officio	City Manager Bill Monahan	503-786-07501	monahanb@milwaukieoregon.gov
City	Finance Director (optional)	1	Ex-Officio	Finance Director Casey Camors	503-786-7522 (W)	camorsc@milwaukieoregon.gov
City	Planning Commissioner	1	Commission Chair / Council appoints	Chair Sine Adams	971-219-8934 (C)	bones@pbworld.com
NDA – Historic Milwaukie	Chair	1	Council appoints	Chair Ray Bryan	503-593-3336 (C)	Ray1bryan2@gmail.com
NDA - Ardenwald	Chair declined – alternate selected	1	Council appoints	Kim Travis	503-975-1631	Kim.travis@gmail.com
NDA – At Large	Chair	1	Council appoints	Linwood Chair Zac Perry	503-572-8636 (C)	linwoodzp@gmail.com
Downtown Business Association	Representative	1	Council selects and appoints	TBD		
Business/Property - Downtown	Owner/Representative	1 of 2	1 large & 1 small Council appoints	Neil Hankerson, Dark Horse	503-905-2320	neilh@darkhorse.com
Business/Property - Downtown	Owner/Representative	2 of 2	1 large & 1 small Council appoints	Troy Reichlein, CPA and new owner of Duffy's	503-653-9592	Troy@ReichleinCPA.com
Business/Property	Owner/Representative	1 of 2	1 large & 1 small	DJ Heffernan representing	503-310-	djheff1@gmail.com

– Cent. Milwaukie			- Council appoints	the Murphy family	2306	
Business/Property – Cent. Milwaukie	Owner/Representative	2 of 2	1 large & 1 small - Council appoints	Kimberly Maguire Kimco Realty Corp Director of Real Estate - Oregon	503-709-1424 (C) 503-336-9203 (P)	KMaguire@kimcorealty.com
Taxing District – School District	Finance Director or Representative	1	District recommends - Council appoints	Finance department declined to be represented – request made to superintendent		
Taxing District – Comm. College	Finance Director or Representative	1	District recommends - Council appoints	Dean of Campus Services Bob Cochran, PE	503-594-6790	bobc@clackamas.edu
Taxing District – NCPRD	Finance Director or Representative	1	District recommends - Council appoints	Director Gary Barth	503-742-4299	GaryBar@co.clackamas.or.us
Taxing District – Fire District	Finance Director or Representative	1	District recommends - Council appoints	Finance Director Susan Geiger	503-742-2649	Susan.Geiger@ClackamasFire.com
Clackamas County	Finance representative	1	County recommends - Council appoints	Asst. Director Christa Bosserman Wolfe	503-742-5407	CWolfe@co.clackamas.or.us

15 members – not counting two ex-officio members

 - not confirmed or pending

Exhibit 2

Milwaukie Urban Renewal Advisory Group

Charge Statement

The City Council of the City of Milwaukie has directed its staff and the City's consultant team to develop a draft urban renewal plan that encompasses the downtown and the central Milwaukie area. The Council has formed a Milwaukie Urban Renewal Advisory Group (MURAG) to assist in the process of developing the draft plan. The Urban Renewal Advisory Group is charged with carrying out the following tasks:

1. Represent the views of your organization or association at the meetings of the MURAG.
2. Communicate information about the draft Urban Renewal Plan with leadership of your organization or association.
3. Ask questions. Provide advice and comments to the staff and the consultant team through the course of the development of the draft plan.
4. Attend all meetings of the MURAG. If unable to attend a meeting, contact staff to get meeting materials and an update regarding the outcome of the meeting.
5. Come prepared to participate. Meeting materials are scheduled to be distributed one week in advance of the meeting.
6. Make a formal recommendation to the Milwaukie City Council regarding the final draft urban renewal plan.
7. Cooperate and respect the opinion of others. The Mayor or his designee shall convene and preside over meetings of the MURAG.



MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 3. B.**
Meeting Date: **Feb. 2, 2016**

To: Mayor and City Council
Through: Bill Monahan, City Manager

Subject: **Community Development Block Grant IGA**

From: Charles Eaton, Engineering Director

Date: January 21, 2016

ACTION REQUESTED

Adopt a resolution authorizing the Mayor to sign an Intergovernmental Agreement (IGA) with Clackamas County to receive Community Development Block Grant (CDBG) funds for the construction of Milwaukie High School Crossing and ADA Ramp Improvements.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

The City applied for CDBG funds to construct safety improvements across Washington to provide better access to Milwaukie High School in December 2014. The City also submitted for ADA Ramp Improvements at various locations during the same application process and was awarded both projects but during different budget years due to funding constraints by the County. Subsequently Clackamas County has asked us if we could accelerate both of these projects into the current fiscal year and have worked with staff to finalize the attached IGA for a combined project for both projects.

BACKGROUND

The scope of the project is to enhance and promote safe pedestrian use within the City of Milwaukie by bringing 35 sidewalk ramps up to code along bus routes and heavily used streets, some of which are planned for repaving in the near future under the SSMP program. The target populations are low to moderate income Milwaukie residents and disabled Milwaukie Residents but the project will benefit the entire City of Milwaukie. The project, together with other planned improvements, will complete an ADA accessible corridor on Lake Road from the transit station to Where Else Lane and is anticipated to be part of the priority 1 corridors within the new ADA transition for the City.

The Milwaukie High School Crossing Improvement was developed from the need for improved pedestrian connectivity between the parking lots across Washington at the Milwaukie High School. This project will construct a new mid-block crosswalk directly connecting the two parking lots on each side of Washington Street, install bulb-out extensions to calm traffic and improve pedestrian visibility along with enhanced lighting.

The CDBG program provides federal funding in low and moderate income areas. This program is administered by Clackamas County Department of Health, Housing and Human Services. To be eligible a project must benefit residents of low and moderate income, prevent or eliminate blight, or meet an urgent community development need within an area serving low and moderate income households.

The project meets the CDBG funding criteria. The IGA sets out the purpose, scope, budget, financial obligations, terms and special requirements for the combined project.

The Milwaukie High School Crossing Improvement grant application was for \$85,000 (\$10,000 City funds, \$75,000 in CDBG funds). The ADA Ramp Improvement grant application was for \$137,000 (\$12,500 in City funds, \$124,500 in CDBG funds). This results in a total project cost of \$222,000 (\$22,500 in City funds, \$199,500 in CDBG funds).

The CDBG grant was awarded at \$150,000, requiring a city cash match of \$72,000 to complete the project as originally submitted. Staff has identified three intersections that are outside of the CDBG eligibility areas and have removed these from the project for an estimated \$24,000 reduction bringing the anticipated match to \$48,000.

FISCAL IMPACTS

The IGA provides \$150,000 in infrastructure improvements the City could otherwise be responsible for with City funds. The IGA does obligate City FILOC, SSMP and State gas tax funds to complete the proposed improvements. The County will contribute up to \$150,000 (80%) with a city minimum match of \$37,500 (20%) plus all additional cost to complete the project over \$187,500.

WORK LOAD IMPACTS

The IGA obligates staff time to provide engineering design, construction inspection and that required administering the grant. The City is also required to hire a professional Land Surveyor and file a formal right-of-way survey prior to construction. County staff will provide environmental approvals and contract administration, including contractor payments during construction.

ALTERNATIVES

The City could choose not to authorize the IGA and pursue alternative funding or provide City funds for the projects identified.

ATTACHMENTS

1. Resolution
2. Intergovernmental Agreement



CITY OF MILWAUKIE

"Dogwood City of the West"

Resolution No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO SIGN AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MILWAUKIE AND CLACKAMAS COUNTY DEPARTMENT OF HEALTH, HOUSING AND HUMAN SERVICES COMMUNITY DEVELOPMENT DIVISION FOR A COMMUNITY DEVELOPMENT BLOCK GRANT.

WHEREAS, THE City of Milwaukie has identified the desire to improve pedestrian accessibility throughout the City; and

WHEREAS, the identified pedestrian improvements meet Community Development Block Grant requirements; and

WHEREAS, the City submitted grant applications to the Clackamas County Community Development Block Grant program and was selected for funding under fiscal years 2016 & 2017; and

Now, Therefore, be it Resolved that the City Council of the City of Milwaukie authorizes the Mayor to sign an intergovernmental Agreement with Clackamas County to accept Community Development Block Grant funds for the Milwaukie High School Crossing and ADA Ramp Improvement project.

Introduced and adopted by the City Council on _____.

This resolution is effective on _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

INTERGOVERNMENTAL AGREEMENT

BETWEEN

**CLACKAMAS COUNTY DEPARTMENT OF
HEALTH, HOUSING AND HUMAN RESOURCES,
HOUSING AND COMMUNITY DEVELOPMENT DIVISION**

AND

THE CITY OF MILWAUKIE

I. Purpose

- A. This Intergovernmental Agreement (this "Agreement") is entered into between Clackamas County, acting by and through its Housing and Community Development Division ("COUNTY") and the City of Milwaukie ("CITY") for the cooperation of units of local government under the authority of ORS 190.010.
- B. This Agreement provides for the design and construction of a new pedestrian crosswalk at 25th Avenue and creates bulb-out extensions to calm traffic, provide new signage, new lighting to raise awareness of pedestrians. This Agreement further provides for demolition of existing curbs and sidewalks, grading for new construction of an estimated 35 new ADA Ramps in designated intersections selected by CITY Public Works. The project is located in the City of Milwaukie. These improvements are herein referred to as the "PROJECT."
- C. The COUNTY has determined that the PROJECT is made up of two components. First component being the Crosswalk on the North side of Milwaukie High School on Washington near 25th. Second component is 35 ADA Ramps to be added in various locations within the City of Milwaukie. The COUNTY reviewed the entire area around Milwaukie High School and determined most adjacent properties are businesses and transit (i.e. Tri-Met Light Rail) Northwest, West and Southwest. Therefore, the COUNTY qualifies this PROJECT eligible for Community Development Block Grant ("CDBG") funds as a Low-Mod Clientele Benefit Activity because the targeted PROJECT areas are mixed property types (residential, commercial, transit lines) in nature. The COUNTY will review the City's most current Census Tract and Block Group information, as attached as ATTACHMENT A (1) and ATTACHMENT A (2) and incorporated by reference for the PROJECT Area Maps, provided by the CITY.

II. Scope of Responsibilities

- A. Under this Agreement, the responsibilities of the CITY shall be as follows:

1. The CITY shall provide all necessary supervisory and administrative support to assist the COUNTY with the completion of the PROJECT.
2. The CITY shall obtain any easements or approvals necessary to allow access onto private property through the course of the PROJECT. Acquisition of any easement shall be obtained pursuant to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URAö). If assistance is needed for URA guidance, the COUNTY has a Right-Of-Way Acquisition Specialist.
3. The CITY shall provide Engineering services internally or externally for the design and construction oversight of the PROJECT. Such services shall be provided at no cost to the COUNTY. The CITY shall assume responsibility for ensuring the following:
 - a. The CITY shall employ a registered professional Engineer (herein after referred to as Engineer) to prepare all plans and specifications necessary to publicly bid the PROJECT for award to a construction contractor (herein after referred to as Contractor) and provide construction oversight including staking and surveying of the PROJECT. Any Engineering firm hired to perform these duties may donate staff time as well as donate materials for the PROJECT.
 - b. The CITY shall require any Engineering firm to maintain comprehensive general (including contractual liability) and automobile liability insurance for personal injury and property damage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to Engineer's or any of Engineer's subcontractor's performance of this Agreement under the following provisions listed in the matrix below.

Minimum Insurance Requirements for Contracts with Government, Architect or Engineer:

Reason for Contract:	Commercial General Liability:	Automobile Liability Commercial:	Professional Liability:
Consulting Services/ Professional	\$1,000,000/ \$2,000,000	\$1,000,000	\$1,000,000/ \$2,000,000
Design Services	\$1,000,000/ \$2,000,000	\$1,000,000	\$1,000,000/ \$2,000,000
Engineers	\$1,000,000/ \$2,000,000	\$1,000,000	\$1,000,000/ \$2,000,000
Professional Services	\$1,000,000/ \$2,000,000	\$1,000,000	\$1,000,000/ \$2,000,000

- c. The Engineer shall endeavor to use good faith in order to maintain in force such coverage for not less than three (3) years following completion of the PROJECT. The CITY shall require any Engineering firm to include the COUNTY as an additional insured and refer to and support the Engineer's obligation to hold harmless the COUNTY, its officers, commissioners and employees. Such insurance shall provide 30 days written notice to the COUNTY in the event of cancellation, non-renewal, or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the COUNTY under this insurance. The insurance company will provide written notice to the COUNTY within thirty (30) days after any reduction on the general annual aggregate limit.

- d. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the Engineering firm's insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of the contract.

- e. The CITY shall require any Engineering firm to furnish the COUNTY evidence of professional liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence / \$2,000,000 general annual aggregate for malpractice

or errors and omissions coverage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.

- f. The insurance, other than the professional liability insurance, shall include the COUNTY as an expressly scheduled additional insured. Proof of insurance must include a copy of the endorsement showing the COUNTY as a scheduled insured. Such insurance shall provide sixty (60) days written notice to the COUNTY in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the COUNTY under this insurance. This policy(s) shall be primary insurance with respect to the COUNTY. Any insurance or self-insurance maintained by the COUNTY shall be excess and shall not contribute to it.

- g. The CITY shall ensure that the Responsibilities of the Engineer include, but not be limited to, the following:
 - (i) During construction, the Engineer shall endeavor to guard the COUNTY against apparent defects and deficiencies in the permanent work constructed by the Contractor.

 - (ii) All reports and recommendations concerning construction shall be submitted to the COUNTY for their approval. The COUNTY agrees that no decisions affecting construction shall be made without CITY approval.

 - (iii) In the event modifications to the construction contract, which result in an increase in the contract amount, are made without the prior approval of the COUNTY, CITY shall be solely responsible for these modifications.

 - (iv) Notify the County Surveyor of the PROJECT and provide CITY, design Engineer, surveyor and contractor contacts as applicable.

 - (v) File a Pre-Construction Record of Survey with the County Surveyor prior to the PROJECT final award of the construction contract in order to identify and preserve the locations of survey monuments that may be disturbed or removed during the construction as described in ORS 209.150.

- (vi) File a post construction document with and acceptable to the County Surveyor after the construction PROJECT is completed. The Engineer is responsible to replace any property corner monuments that were disturbed or removed during construction as described in ORS 209.150.
 4. The CITY shall operate and maintain the improvements for public purposes for their useful life subject to the limitations on the expenditure of funds by the CITY as provided by Oregon Statute.
 5. The CITY shall complete and submit a Performance Measures Report following completion of the PROJECT, attached as ATTACHMENT A and incorporated by reference.
 6. The CITY shall complete and submit a Matching Funds Report following completion of the PROJECT, attached as ATTACHMENT B and incorporated by reference.
 7. Upon completion of the PROJECT, the CITY:
 - a. Agrees to accept the improvements and take ownership, including responsibility for any claims against the PROJECT from that point forward; and
 - b. Agrees to become the successor of the PROJECT construction contract and assume all of the corresponding rights and responsibilities.
 8. The CITY agrees to maintain ownership of the property for the life of the PROJECT.
- B. Under this Agreement, the responsibilities of the COUNTY will be as follows:
1. The COUNTY will appropriately bid and contract for construction of the PROJECT and with the advice of the CITY, will approve changes, modifications, or amendments as necessary to serve the public interest.
 2. In such contracts, the COUNTY will assume the rights and responsibilities of the owner of the PROJECT. Moreover, the COUNTY will assign a Project Coordinator to perform the following duties:
 - a. Provide PROJECT Manual Documents and Bid the PROJECT;
 - b. Award the PROJECT;
 - c. Hire the lowest responsive/ responsible General Contractor;
 - d. Issue the Notice to Proceed to General Contractor;
 - e. Process Pay Request using CDBG funds and CITY funds;

- f. Conduct on-site interviews of workers for Federal Prevailing Wage Rates for Davis-Bacon as well as review submitted Payroll Forms for the Project;
 - g. Collect all HUD required PROJECT Close-Out Documents;
 - h. Release Retainage to Contractor will occur only after the Engineer and the CITY approve and sign-off on PROJECT after the scope of work has been completed; and
 - i. Relinquish ownership of PROJECT to the CITY upon completion.
3. The COUNTY agrees to provide and administer available Federal Community Development Block Grant (CDBG) funds (CFDA 14.218) granted by the U.S. Department of Housing and Urban Development (HUD) to finance the PROJECT.
 4. The COUNTY shall conduct necessary environmental reviews described in 570.604 of the CDBG regulations for compliance with requirements of the CDBG program prior to the start of construction.
 5. The COUNTY shall provide reasonable and necessary staff for administration of the PROJECT.
- C. The COUNTY and CITY agree to jointly review and approve all design, material selection, and contract documents for the PROJECT.
- D. The COUNTY and CITY agree that in order for this PROJECT to occur, HUD has to release CDBG funds to bid and construct the PROJECT as stated in Section I(B), Purpose.
- E. The COUNTY and CITY agree to work together to schedule the PROJECT start and completion between March 2016 and November 2016.

III. Budget & Financial

- A. The COUNTY will apply CDBG funds received in the amount not to exceed **\$150,000** to the PROJECT. The obligations of the COUNTY are expressly subject to the COUNTY receiving funds from HUD for the PROJECT, and in no event shall the COUNTY'S financial contribution exceed the amount finally granted, released and approved by HUD for this PROJECT.
- B. The CITY agrees to contribute the greater of:
 1. Twenty percent (20%) of the total design and construction cost of the PROJECT, or
 2. All costs for design and construction which exceed available CDBG funds budgeted (\$150,000) for the PROJECT.

3. Match credit(s) for this PROJECT must be approved by the COUNTY, and will not be a reimbursable expense. If match credit(s) items are approved by the COUNTY, the COUNTY will not reimburse the CITY in the form of a check (\$).
- C. The CITY will be credited towards the matching requirements stated in Part III.
- B. an amount equal to 15% of the final construction cost for Engineering services as detailed in Part II. A. 3. a.
- D. In the event the PROJECT can not be completed with available funds, the COUNTY and CITY will jointly determine the priorities of the improvements to be made within funding limits.
- E. The CITY agrees to provide funds for the PROJECT to the COUNTY in the following manner:
1. In the event a contractor is entitled to payments for work completed above and beyond the amount of CDBG funds received from HUD for the PROJECT, the COUNTY shall request a transfer of funds from the CITY for the amount necessary to make such payments. The CITY shall transfer funds which exceed available CDBG funds and are owed to a contractor to the COUNTY within thirty (30) consecutive calendar days of a written request.
 2. Upon receipt of written notification from the COUNTY, the CITY shall provide payment within thirty (30) consecutive calendar days to the COUNTY the funds necessary to meet the matching contribution requirement in Part III. B. All checks shall be made payable to Clackamas County, include a Project Number and be mailed to the following address:

Attn: Toni Hessevick
Clackamas County - Finance Office
Public Services Building
2051 Kaen Road
Oregon City, OR 97045
 3. In the event that unforeseeable conditions arise which necessitate the execution of a change in the amount of the construction contract, the CITY and the COUNTY will jointly evaluate the circumstances surrounding the conditions. Upon approval by the CITY and the COUNTY, the COUNTY shall instruct the Engineer to execute a change order.
 4. Funds for the change order(s) shall be funded primarily by the CITY. The COUNTY will provide CDBG funds for change order(s) if there are still those funds available to use as outlined in Section III, A.

IV. **Liaison Responsibility**

The CITY will assign a project manager who will act as liaison from the CITY for the PROJECT. Steve Kelly will act as liaison from the COUNTY.

V. **Special Requirements**

- A. Law and Regulations. The COUNTY and CITY agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. Public Contracting Requirements. To the extent applicable, the provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235 are incorporated by this reference as though fully set forth.
- C. Relationship of Parties. Each party is an independent contractor with regard to the other party. Neither party is an agent or employee of the other. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- D. Indemnification. Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, the CITY agrees to indemnify, defend and hold harmless the COUNTY, its officers, commissioners, agents and employees from and against all liability, loss and costs arising from actions, suits, claims and actions, and all expenses incidental to the investigation and defense thereof (including attorney's fees), arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the CITY or its employees or agents, in performance of this Agreement.

Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, the COUNTY agrees to indemnify, defend and hold harmless the CITY, its officers, commissioners, agents and employees from and against all liability, loss costs arising from actions, suits, claims and actions, and all expenses incidental to the investigation and defense thereof (including attorney's fees), arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the COUNTY or its employees or agents, in performance of this Agreement.

- E. Notice. Each party shall give the other immediate written notice of any action or suit filed or any claim made against the party which may result in litigation in any way related to this Agreement.
- F. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any

records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.

- G. Access to Records. The COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the CITY which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- H. Debt Limitation. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Obligations of the COUNTY are also expressly subject to the COUNTY receiving funds from HUD for this project and in no event shall the COUNTY's financial contribution exceed the amount finally granted, released and approved by HUD for this project.
- I. Conflict of Interest. No officer, employee, or agent of the CITY or COUNTY who exercises any functions or responsibilities in connection with the planning and carrying out of the Block Grant Program, or any other person who exercises any functions or responsibilities in connection with the program, shall have any personal financial interest, direct or indirect, in the use of the funds provided pursuant to this Agreement, and the Parties shall take appropriate steps to assure compliance. The Parties will insure that no contractor, subcontractor, contractor's employee or subcontractor's employee has or acquires any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services.
- J. Insurance. The CITY will bear the risk of loss from fire, extended coverage, and will purchase and maintain property insurance on all affected CITY property. The CITY will bear the risk of loss from accidents coverable by owner's liability insurance and may, at its option, maintain such insurance. If applicable, the CITY shall be required to maintain flood insurance. Each party agrees to maintain insurance, or self-insurance, in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.272.
- K. Nondiscrimination. The CITY and the COUNTY agree to comply with all Federal, State, and local laws prohibiting discrimination of the basis of age, sex, marital status, race, creed, color, national origin, familial status, or the presence of any mental or physical handicap. These requirements are specified in ORS chapter 659; Section 109 of the Housing and Community Development Act of 1974; Civil Rights Act of 1964, Title VII; Fair Housing Amendments Act of 1988; Executive Order 11063; Executive Order 11246; and Section 3 of the Housing and Urban Development Act of 1968; all as amended; and the regulations promulgated thereunder.

- L. Handicapped Accessibility. The CITY agrees that all improvements made under this Agreement shall comply with standards set for facility accessibility by handicapped persons required by the Architectural Barriers Act of 1968, as amended. Design standards for compliance are contained in 26 CFR Part 1190 or 24 CFR 8.31-32 and the document entitled Uniform Federal Accessibility Standards published by HUD in April, 1988 as a joint effort with other Federal agencies.
- M. Nonsubstituting for Local Funding. The CDBG funding made available under this Agreement shall not be utilized by the CITY to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of funds under this Agreement.
- N. Evaluation. The CITY agrees to participate with the COUNTY in any evaluation project or performance report, as designed by the COUNTY or the appropriate Federal department, and to make available all information required by any such evaluation process.
- O. Audits and Inspections. The CITY will ensure that the COUNTY, the Secretary of HUD, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to all books, accounts, records, reports, files, and other papers or property pertaining to the funds provided under this agreement for the purpose of making surveys, audits, examinations, excerpts, and transcripts.
- P. Acquisition. If completion of the project requires acquisition of any real property the parties agree to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended.
- Q. Change of Use. The CITY agrees to comply with applicable change of use provisions contained in 24 CFR 570.505 (refer to Attachment C).
- R. Reversion of Assets. Upon expiration or termination of this Agreement, CITY shall transfer to COUNTY any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Also for any real property under CITY'S control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to CITY in the form of a loan) in excess of \$25,000 or less based on the CDBG amount shall ensure said real property is either:
1. Used to meet one of the National Objectives in CFR 570.208 for the term of this Agreement; or
 2. Not used to meet on the National Objectives for the term of this Agreement, in which event, the CITY shall pay to COUNTY an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

VI. Amendment

This Agreement may be amended at any time with the concurrence of both Parties. Amendments become a part of this Agreement only after the written amendment has been signed by both Parties.

VII. Term of Agreement

- A. This Agreement becomes effective when it is signed by both Parties.
- B. The term of this Agreement is a period beginning when it becomes effective and ending fifteen (15) years after completion of the PROJECT.
- C. This Agreement may be suspended or terminated prior to the expiration of its term by:
 - 1. Written notice provided to the COUNTY from the CITY before any materials or services for improvements are procured; or
 - 2. Written notice provided by the COUNTY in accordance with 24 CFR 85.43, included as ATTACHMENT D, resulting from material failure by the CITY to comply with any term of this Agreement; or
 - 3. Mutual agreement by the COUNTY and CITY in accordance with 24 CFR 85.44.
- D. Upon completion of improvements or upon termination of this Agreement, any unexpended balances of CDBG funds shall remain with the COUNTY.

VIII. Integration

This Agreement contains the entire agreement between the CITY and the COUNTY and supersedes all prior written or oral discussions.

IX. Severability

If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the parties.

X. Oregon Law and Forum

This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of laws provisions thereof.

XI. Waiver

The CITY and COUNTY shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

[Signature Page Follows]

CITY OF MILWAUKIE

10722 S.E. Main Street
Milwaukie, Oregon 97222

CLACKAMAS COUNTY

Chair John Ludlow
Commissioner Jim Bernard
Commissioner Paul Savas
Commissioner Martha Schrader
Commissioner Tootie Smith

Signing on Behalf of the Board.

Mark Gamba, Mayor

Richard Swift, Director
Health, Housing & Human Services
Department

Date

Date

ATTACHMENT A (1) - CDBG Performance Measures Report

FOR THE PERIOD: JULY 1, 2016 TO JUNE 30, 2017

Project Name: Milwaukie High School Crossing & ADA Ramps Improvements Project

The Service Area for this project is contained within Census Tract **XXXXXX** Block Group **X** of the City of Milwaukie portion of this Block Group is **XX.X%** Low- and Moderate-Income.

Choose all that apply:

of persons _____ with new access to this Public Facility or Infrastructure Improvement
of persons _____ with improved access to Public Facility or Infrastructure Improvement
of persons _____ with access to this type of Public Facility or Infrastructure Improvement that is No Longer Substandard.

Total Number of persons assisted: _____

See Attached Project Map Area:

ATTACHMENT A(2)

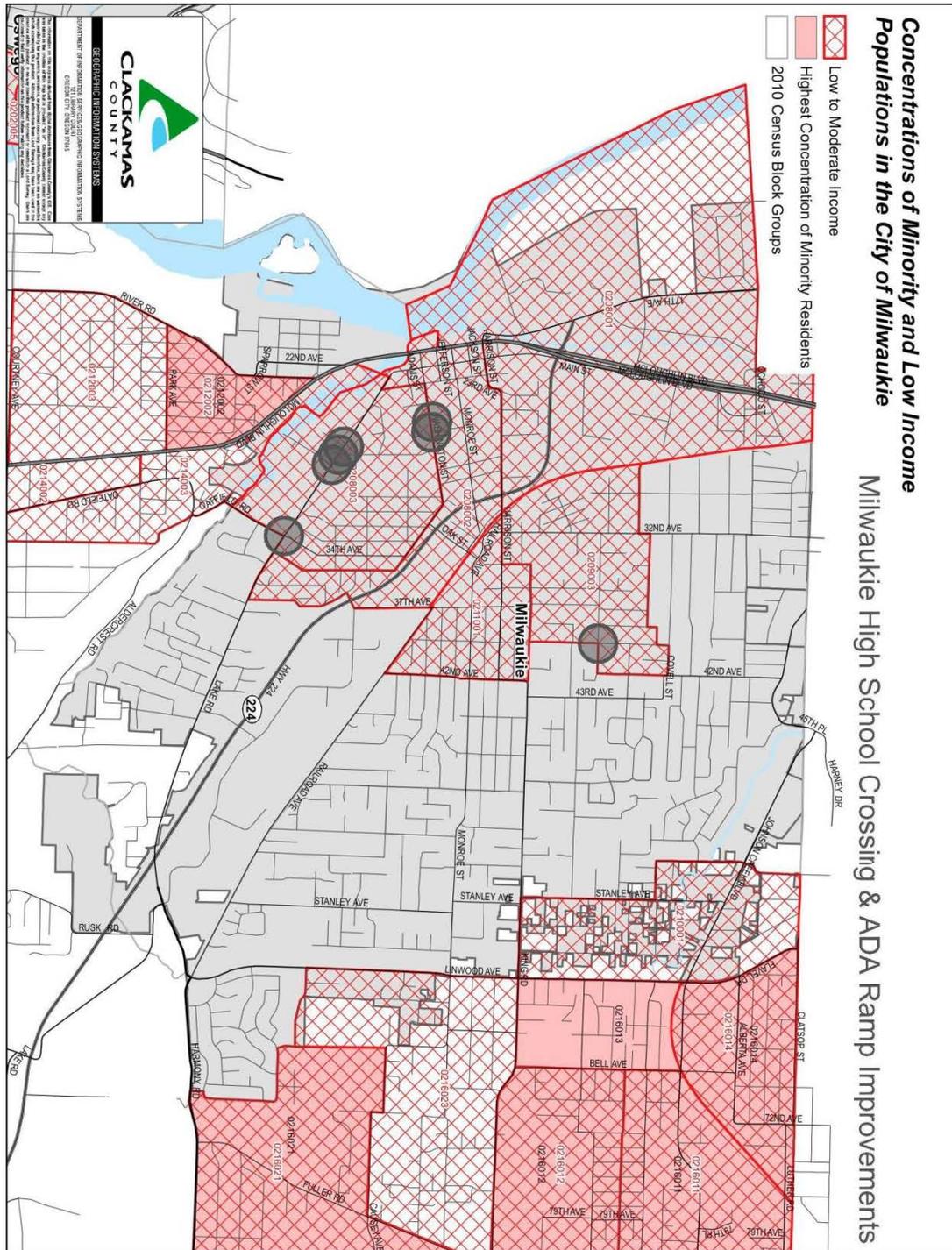
Other benefits to the service area:

Signature

Date

Organization

ATTACHMENT A (2) - Project Map Area



ATTACHMENT B - CDBG Project Matching Funds Report

For reporting to HUD at the end of the year, indicate the specific sources and amounts of matching funds for the Milwaukie High School Crossing & ADA Ramps Improvements Project (City of Milwaukie):

2015-16 CDBG Funds	\$150,000 (max.)
--------------------	------------------

SOURCES OF LOCAL MATCH:	
Other Federal (including pass-through funds, e.g. County CDBG, State FEMA, etc.)	
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

State/Local Governmental Funding (e.g. State Housing Trust Funds, Local Assessment, etc.)	
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Private (including recipient) Funding	
Fund Raising/Cash	\$ _____
Loans	\$ _____
Building Value or Lease	\$ _____
Donated Goods	\$ _____
New Staff Salaries	\$ _____
Volunteers (\$5/hr)	\$ _____
Volunteer Medical/Legal	\$ _____
Other _____	\$ _____

Prepared By: (Print name)

Signature

Date

ATTACHMENT C

Change of Use

Excerpt from 24 CFR Part 570

570.505 Use of real property.

The standards described in this section apply to real property within the recipient's control which was acquired or improved in whole or in part using CDBG funds in excess of \$25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of an entitlement recipient's participation in the entitlement CDBG program or, with respect to other recipients, until five years after the closeout of the grant from which the assistance to the property was provided.

(a) A recipient may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the recipient provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either;

(1) The new use of such property qualifies as meeting one of the national objectives in 570.208 (**formerly 570.901**) and is not a building for the general conduct of government; or

(2) The requirements and paragraph (b) of this section are met.

(b) If the recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

(c) If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in 570.504(b) (4) or (5), as applicable, shall apply to the use of funds reimbursed.

(d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of this section, the property no longer will be subject to any CDBG requirements.

ATTACHMENT D

Excerpt from 24 CFR Part 85

§85.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,
- (2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,
- (3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
- (4) Withhold further awards for the program, or
- (5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after

termination which are necessary and not reasonably avoidable are allowable if:

- (1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,
 - (2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.
- (d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to Debarment and Suspension under E.O. 12549 (see §85.35).

§85.44 Termination for convenience.

Except as provided in §85.43 awards may be terminated in whole or in part only as follows:

- (a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or
- (b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §85.43 or paragraph (a) of this section.



MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item:
Meeting Date:

RS 3. C.
Feb. 2, 2016

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Reimbursement Resolution**

From: Casey Camors, Finance Director

Date: February 2, 2016

ACTION REQUESTED

Adopt a resolution declaring the City's official intent to reimburse certain expenditures from the potential proceeds of tax-exempt obligations.

BACKGROUND

City Council has been considering placing a bond measure on the May 2016 ballot to issue tax exempt bonds. The proceeds of these bonds would go towards funding construction of a new City library. The City may incur charges prior to issuance of the bonds. In order to be reimbursed for any incurred costs or permit fees and charges by a tax-exempt obligation prior to issuance, the City must declare its official intent to do so. The City may be reimbursed for cash expenditures up to 60 days prior to the effective date of such a reimbursement resolution.

FISCAL IMPACTS

If the reimbursement resolution is not adopted, the City will forgo the ability to use the potential proceeds of a tax-exempt bond issue to reimburse itself for cash expenditures made prior to the tax-exempt obligation funding.

WORK LOAD IMPACTS

N/A

ALTERNATIVES

Not adopt the reimbursement resolution, forgoing the ability to use the potential proceeds of a tax-exempt bond issue to reimburse the City for cash expenditures made prior to the tax-exempt obligation funding.

ATTACHMENTS

1. Reimbursement Resolution



CITY OF MILWAUKIE

"Dogwood City of the West"

Resolution No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON DECLARING OFFICIAL INTENT TO REIMBURSE CERTAIN EXPENDITURES FROM PROCEEDS OF TAX-EXEMPT OBLIGATIONS, AND RELATED MATTERS.

WHEREAS, the City of Milwaukie, Oregon (the "City") expects to incur capital expenditures (the "Reimbursement Expenditures") in connection with a library project (the "Project") prior to the issuance of tax-exempt obligations (the "Debt") to finance such Project; and

WHEREAS, the City reasonably expects that the Debt will be issued in an amount not to exceed \$10,000,000 and that certain of the proceeds of such Debt will be used to reimburse the Reimbursement Expenditures; and

WHEREAS, Section 1.150-2 of the Treasury Regulations (the "Treasury Regulations") requires the City to declare its reasonable official intent to reimburse prior expenditures for the Project with proceeds of a subsequent borrowing.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MILWAUKIE, OREGON, as follows:

Section 1. Recitals. That the foregoing recitals are true and correct.

Section 2. Purpose of Resolution. That this resolution is adopted solely for purposes of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations. This resolution does not bind the City to make any expenditure, incur any Debt, or proceed with the Project.

Section 3. Declaration of City. That the City hereby declares its official intent to reimburse itself with proceeds of indebtedness for any of the Reimbursement Expenditures incurred by it prior to incurring such Debt.

Section 4. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption by the City Council and execution by the Mayor.

Introduced and adopted by the City Council on _____, 2016.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney



**Regular Session
Agenda Item No.**

6

Other Business



MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 6. A.**
Meeting Date: **Feb. 2, 2016**

To: Mayor and City Council
Through: Bill Monahan, City Manager

Subject: **Library Bond Measure**

From: Katie Newell, Library Director

Date: January 24, 2016

ACTION REQUESTED

Continue discussion of moving forward with a bond measure in May 2016 for a library expansion/renovation, reviewing cost estimate comparisons that will be handed out at the meeting.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

LSETF made recommendation to City Council to hire Patinkin Research and ProspectPDX to complete survey and polling of voters to determine advisability of going out to bond for a library expansion/renovation and when to do so, August 19, 2015.

Consultants Ben Patinkin (Patinkin Research) and Mike Selvaggio (ProspectPDX) met with City Council at their Study Session on January 21, 2016, to discuss the results of polling done January 12-14, 2016, to determine the support for going to bond in May 2016 for a library expansion/renovation project. Council asked to have another firm review the cost estimates from FFA for a 24,800 sq ft building.

BACKGROUND

Ledding Library opened its doors on December 16, 1964, becoming a community focal point. During the fall of 1999, the Ledding Library Board requested permission from the City Council to develop a long range plan for the Library. The ensuing document, adopted by the Council on April 3, 2001, stated that the current facility would need to be expanded within three to seven years. No funding for the project was identified or provided and the library expansion project came to a halt.

Ten years later, on March 15, 2011, City Council authorized creation of the LETF to once again evaluate the need for an expansion of the current library.

In November 2008, voters approved a countywide library district (LINCC) in Clackamas County. The voters in Milwaukie helped carried the measure with over 67% supporting it. With the formation of the District came a one-time \$1-million contribution to each library to spend on capital improvements. This is the seed money for our expansion.

CONCURRENCE

Library Director, LSETF and Library Board agree with going to bond in May 2016.

FISCAL IMPACTS

Moving forward with an expansion will entail a bond measure.

WORK LOAD IMPACTS

The Library Director and library staff's workloads will be impacted by a decision to move ahead on an expansion. But this is an impact that all will welcome.

ALTERNATIVES

Not expanding/renovating the Ledding Library.



MILWAUKIE CITY COUNCIL
STAFF REPORT

RS 6. B.
Feb. 2, 2016

To: Mayor and City Council
Through: Bill Monahan, City Manager

Subject: **Level 3 Communications, LLC Franchise Agreement**

From: Casey Camors

Date: February 2, 2016

ACTION REQUESTED

Adopt ordinance granting Level 3 Communications (Level 3), a limited liability company qualified to do business in the State of Oregon, a franchise to construct, operate and maintain a telecommunications network within the City of Milwaukie Oregon.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

December 2005 – City Council adopted Ordinance 1956 Time Warner Telecom of Oregon, LLC, a nonexclusive franchise which expired on December 7, 2015.

2014 – Level 3 purchased Time Warner Telecom.

BACKGROUND

Level 3 Communications, LLC is a provider of global communication services, creating solutions that strengthen the growth, efficiency and security of businesses around the world. Level 3 started as part of a subsidiary of a construction company that created one of the first competitive local exchange carriers, MFS Communications.

By 1998, Level 3 shifted its business to the development of a facilities-based, end-to-end communications network optimized to provide IP communication services.

Today, Level 3 builds, operates and maintains a global communications network to deliver managed solutions for enterprises, carriers and governments.

As a Fortune 500 company and a Tier 1 Internet operator, Level 3 offers fiber-based infrastructure and data center solutions, IP-based voice and data communications, wide-area Ethernet services, video and content distribution, security solutions, and cloud-based solutions. Level 3 employs over 10,000 employees worldwide and connects more than 500 markets in over 60 countries across owned fiber networks on six continents, connected by extensive undersea facilities.

Over the previous agreement term, the following has taken place:

1. The City and Level 3 have honored the agreement and enjoyed a good working relationship.
2. Level 3 has been a good partner in working in the City's right-of-way.
3. The City has received prompt franchise fee payments.

Over the past two months, the City and Level 3 have negotiated the proposed telecommunications agreement in good faith and the agreement has been edited to be in compliance with current laws and regulations. The proposed agreement is effective as of March 2, 2016 with a ten (10) year term expiring on March 2, 2026 with two five (5) year automatic renewals unless notice to terminate is received at least sixty (60) days prior to the renewal.

All current telecommunication franchise agreements held by the City will remain in place and the addition of this agreement should continue to provide customers with competitive options.

In compliance with the Comcast franchise agreement, this Level 3 franchise agreement offers terms and conditions that are reasonably comparable to those set forth in the Comcast franchise agreement effective June 15, 1999.

CONCURRENCE

The telecommunications franchise agreement has been reviewed and approved by the City Attorney and the City Engineer.

FISCAL IMPACTS

The City of Milwaukie will be compensated for continuing to grant permission to Level 3 for use of the streets and public ways of the City for construction, operation and maintenance of the system. Compensation will be 7% of the gross revenues.

WORK LOAD IMPACTS

Telecommunications companies typically require City engineering permits, from time to time, to construct and repair facilities in the right-of-way. It is the policy of the City for the Engineering Department to process franchise-related engineering permits at no cost to the franchisee (usually \$150), increasing the Engineering work load a small amount but not requiring additional resources. Allowing automatic renewals of the agreement is expected to reduce staff time in renegotiation this agreement without limiting the ability to change the agreement should the need arise.

ALTERNATIVES

Not granting this franchise would limit Level 3's ability to operating in Milwaukie, Oregon and would discontinue franchise fees received from Level 3.

ATTACHMENTS

1. Ordinance granting Level 3 Communications, LLC a franchise to construct, operate and maintain a telecommunications network with the City of Milwaukie



CITY OF MILWAUKIE

"Dogwood City of the West"

Ordinance No.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, GRANTING TO LEVEL3 COMMUNICATIONS LIMITED LIABILITY COMPANY ON BEHALF OF ITSELF AND ITS OPERATING AFFILIATES ("LEVEL 3"), A NON-EXCLUSIVE FRANCHISE TO OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM ("THE SYSTEM") IN THE CITY OF MILWAUKIE, OREGON ("THE CITY").

The City hereby ordains that it is in the public interest to grant Level 3 Communications LLC a Franchise to operate the System pursuant to the terms and conditions contained herein.

Section 1. Rights Granted

- A. The City of Milwaukie ("City") grants to Level 3 Communications, LLC ("Level 3") and its successors a nonexclusive franchise to operate as a competitive telecommunications provider as defined by ORS 759.005 within the City as it now exists or may be extended in the future. The franchise includes the privilege to install, maintain and operate poles, wires, fixtures, equipment, underground circuits necessary to supply telecommunications services, upon, over, along, under, and across the streets, alleys, roads and other public ways, parks and places. Nothing in this agreement limits the City from granting others the right to carry on activities similar to or different from the ones described in this agreement.
- B. All facilities in possession of Level 3 currently located within rights of way are covered by this agreement and are deemed lawfully placed in their current locations. The City may require relocation as further specified in Section 7 of this agreement.

Section 2. Term

- A. The term of this agreement is ten (10) years commencing on the date of acceptance by Level 3, but no sooner than thirty (30) days after the passage of this Ordinance. The agreement shall remain in effect for ten (10) years unless sooner terminated as provided in this agreement.

- B. Level 3 shall be entitled to automatic renewal of its franchise for two (2) additional five (5) year terms, up to ten (10) years, unless either party gives notice prior to sixty (60) days from the expiration of the term of the party's intent to terminate. As a condition of each automatic renewal, the City may, upon written notice provided to the City at least sixty (60) days prior to the renewal, require Level 3 to:
- a. Pay additional compensation, or pay compensation calculated in a different manner, for the rights granted by the franchise. Any additional or new compensation requirement shall be consistent with the requirements imposed on other similarly situated grantees at the time of renewal.
 - b. Comply with any amendments to the City's utility franchisee fee and public utility codes that the City has adopted since the franchise was granted.
 - c. Agree to amendments to the franchise based on changes to state or federal law; and
 - d. Execute a modification agreement setting forth all such amended terms of the franchise.
- C. Within thirty (30) days after the passage of this Ordinance by the City, Level 3 shall file an unqualified written acceptance thereof with the City Recorder; otherwise the Ordinance and the rights granted herein shall be null and void.

Section 3. **Construction Work**

- A. Before Level 3 conducts work involving excavation, new construction including placement of new wires or major relocation work in public rights of way, property or places, Level 3 shall apply for a permit from the City, which permit shall not be unreasonably withheld, conditioned, or delayed and shall comply with any special conditions relating to scheduling, coordination and public safety as determined by the City Engineer. Special conditions would include work being done in the right of way by the City or other third parties and may include a requirement that the facility be placed underground. Work could include open cuts, boring, excavations, and digging new pole holes in streets or sidewalks in the right of way. In emergencies, Level 3 may conduct emergency work at any time and must provide the City Engineer with written or oral notice of emergency work as soon as reasonably possible, no later than five (5) business days after the emergency work has commenced.
- B. The Level 3 shall file preliminary maps or drawings of its proposed construction work within the City with the City Engineer showing the location of the construction, extension or relocation of its facilities and services in public rights

of way, property or place of the City. In emergencies, Level 3 will provide the City Engineer a map of any excavations, repavings, and new facilities conducted on an emergency basis within 30 days of completion of the work. No facility may be placed other than in a location approved by the City, except in the event of an emergency.

- C. **Reasonable care.** All work by Level 3 within the right of way shall be conducted with reasonable care and with the goal of eliminating or minimizing the risk to those using City right of way and to eliminate or minimize the risk of damage to public or private property. All work shall be performed in accordance with all applicable laws and regulations. Any work within the right of way may be inspected by the City and its officers to determine whether it has been placed in its approved location. If emergency work has been done and is determined to be in a place not approved by the City, the City will notify Level 3 and Level 3 shall have 60 days following notification by the City to correct the work. If Level 3 fails to correct the work in a timely manner to City standards, the City may cause the work to be corrected and Level 3 shall be liable to the City for all actual costs incurred.

Section 4. **Supplying Maps**

Level 3 shall maintain maps and data pertaining to its facilities located in Milwaukie, Oregon. With 5 business day prior notice and without charge, Level 3 shall furnish current maps to the City in pdf format, showing the location of Level 3's facilities, including fiber cable and electrical systems, used in operating Level 3's transmission and distribution facilities within the City's Urban Growth Boundary area served by Level 3. The City will not sell or transmit Level 3 maps or data to third parties unless permitted by Level 3 or as required by law. The City will make available to Level 3 any City-prepared maps or data.

Section 5 **Excavation**

Subject to Sections 3 and 6 of this agreement, Level 3 may make all necessary excavations within any right of way for the purpose of installing, repairing or maintaining any facility. Assuming sufficient right of way, all poles shall be placed between the sidewalk and the edge of the right of way unless another location is approved by the City Engineer. Level 3 shall take all reasonable precautions to minimize interruption to traffic flow, damage to property or creation of a hazardous condition.

Section 6. **Restoration after Excavation**

Except as otherwise provided in this section, Level 3 shall restore the surface of any right of way disturbed by any excavation by Level 3 to the same condition it was in prior to its excavation. In the event that Level 3's work is coordinated with other construction work in the right of way, the City Engineer may excuse

Level 3 from restoring the surface of the right of way, provided that, as part of the coordinated work, the right of way surface is restored at least to the condition it was in prior to any excavation. All restoration of right of way surface shall be subject to the approval of the City Engineer, who may issue an order requiring correction of the restoration work. If the correction order is not complied with within 60 days or such other time as may be specified in the order, the City may restore the surface of the right of way, in which case Level 3 shall pay the City for the reasonable cost of resurfacing, including all administrative costs of resurfacing and of issuing the correction order.

Section 7. **Relocation**

- A. **Permanent Relocation - General.** In accordance with ORS 221.420, City may by written order require Level 3 to move any facility in the right of way. If the relocation is the result of a public project, Level 3 shall be responsible for the costs of relocation; however, when the City requires more than one permanent relocation in the period of two calendar years, and both the initial and subsequent relocations are for public projects and not at the request of or to accommodate a private party, the initial relocation shall be at the expense of Level 3 and subsequent relocations occurring less than two years after the initial relocation shall be at the expense of the City. If the relocation is required to accommodate a private party development or project, Level 3 shall have the right to seek reimbursement from the private party. The City shall not be responsible for the costs of relocation of any of Level 3's facilities except as otherwise provided in this Section.

- B. **Permanent Relocation - Under grounding.** As permitted by applicable law, administrative rule, or regulation, the City may require Level 3 to remove any overhead facilities and replace those facilities within underground facilities at the same or different locations subject to Level 3's engineering and safety standards. The expense of such a conversion shall be paid by Level 3, and Level 3 may recover its costs of from its customers in accordance with state law, administrative rule, or regulation. Nothing in this paragraph prevents the City and Level 3 from agreeing to a different form of cost recovery consistent with applicable statutes, administrative rules, or regulations on a case-by-case basis, including but not limited to the creation of an underground assessment district pursuant to ORS 758.210 et seq.

- C. **Temporary Relocation at Request of Third Parties.** Whenever it is necessary to temporarily relocate or rearrange any facility of Level 3 to permit the passage of any building, machinery or other object, Level 3 shall perform the work on 60 days' written notice from the persons desiring to move the building, machinery or other object. The notice shall: (1) bear the approval of the City Engineer; (2) detail the route of movement of the building, machinery, or other object; (3) provide that the person requesting the temporary relocation, if other than the City, shall be responsible for Level 3's reasonable costs; (4) provide that the requestor,

if other than the City, shall indemnify and hold harmless the City and Level 3 from any and all damages or claims resulting from either the moving of the building, machinery or other object or from the temporary relocation of Level 3 facilities; and (5) if other than the City, be accompanied by a cash deposit or other security acceptable to Level 3 for the reasonable costs of relocation. Level 3, in its sole discretion, may waive the security. The cash deposit or other security shall be in an amount reasonably calculated by Level 3 to cover Level 3's reasonable costs of temporary relocation and restoration.

- D. **Temporary Relocation at Request of City.** In accordance with ORS 221.420, the City may require Level 3 to remove and relocate its facilities in any public rights of way, property or place in the City by giving notice to Level 3. Prior to such relocation, the City agrees to attempt to provide a suitable location which includes a minimum or maximum square footage set by Level 3 and the required easements from private property owners for such relocated facilities sufficient to maintain service. The cost of removal or relocation of its facilities for public projects shall be paid by Level 3. In the event that any relocation is requested by or is to accommodate a private party, Level 3 shall seek reimbursement from the private party and not from the City. The City and Level 3 agree to cooperate to minimize the economic impact of such temporary relocation on each party.
- E. **Notice.** The notice required by Section 7 (A), (B), (C) and (D) shall be in writing and shall be provided at least 60 days before the date that Level 3 is required to move its facilities. The City will endeavor to provide as much notice as possible. The notice shall specify the date by which the existing facilities must be removed. Nothing in this provision shall prevent the City and Level 3 from agreeing, either before or after notice is provided, to a schedule for relocation. In the event that Level 3 fails to comply with a notice to relocate and the City and Level 3 have not reached agreement on a schedule for relocation, the City may remove or relocate Level 3's facilities that were the subject of the relocation notice at Level 3's expense.
- F. **Location for Relocated Facilities.** The City shall attempt to provide Level 3 with a suitable location in existing right of way sufficient to maintain service for all facilities required to be relocated pursuant to Section 7 (A), (B), and (D).

Section 8. **City Public Works and Improvements**

Nothing in this agreement shall be construed in any way to prevent the City from excavating, grading, paving, planking, repairing, widening, altering, or doing any work that may be needed or convenient in the City right of way. The City shall coordinate any such work with Level 3 to avoid, to the extent reasonably foreseeable, any obstruction, injury or restrictions on the use of any of Level 3's facilities.

Section 9. **Payment by Level 3 for Use of Right of Way**

- A. In consideration for its use of right of way and for the City's administration of the right of way, Level 3 agrees to pay the City seven percent (7%) of the gross revenue generated within the City by Level 3 from customers within the City. Gross revenue is defined in ORS 221.515 and 403.105, less net uncollectables for services rendered to subscribers within the City limits.

- B. Level 3 shall pay the franchise fee quarterly on or before 45 days after the preceding quarter, with quarters ending March, June, September, and December. Payments shall be accompanied by a statement of how the total due amount was calculated. Interest on late payments shall accrue from the due date at a rate of nine percent (9%) and shall be computed based on the actual number of days elapsed from the due date until payment. Interest shall accrue without regard to whether the City has provided notice of delinquency. However, should payment be insufficient due to an error in computation, interest payments shall not begin to accrue until after the discovery of the error by Level 3 or receipt by Level 3 of notice of the error.

- C. The City may audit Level 3 no more than once per calendar year while this agreement is in effect to determine the accuracy of the reporting of gross revenues. Level 3 shall make all records available to the City and any auditor retained by the City within 30 days of written request. Any difference of payment due the City following audit shall be payable within sixty (60) days after written notice to the Grantee, and shall bear interest at the lesser of the maximum rate allowed by law or the rate of nine percent per (9%) annum. In the event the audit discloses that Grantee has underpaid by more than three percent (3%) of its annual payment obligation, Grantee shall pay the City's expenses of performing the audit.

- D. Should ORS 221.515 be amended to allow the City to impose a privilege tax greater than currently allowed by this agreement, the City reserves the right to increase the fee pursuant to Section 9(A) of this agreement to the maximum allowed by statute. The City agrees to notify Level 3 of the increased privilege tax in writing, 60 days prior to the date the tax goes into effect.

- E. In consideration of Level 3's agreement to pay the franchise fee and the City's Public Utilities Privilege Tax, if implemented, the City shall not impose other fees or taxes on the Level 3 during the term of this Ordinance. This provision does not exempt the property of Level 3 from lawful ad valorem taxes, local improvement district assessments, or conditions, exactions, fees and charges that are generally applicable to businesses within the City as required by City ordinance.

- F. The obligation to pay the franchise fee imposed by Section 9 (A) shall survive expiration of this agreement as long as Level 3 continues to exercise the rights granted in Section 1. In the event this agreement is terminated before expiration,

Level 3 shall pay the City the franchise fee through the date of termination within 90 days of the termination date.

- G. Level 3 shall be responsible for all costs associated with its work and facilities in the right of way, except as otherwise specifically provided in this agreement.

Section 10. **Performance Bond**

Level 3 shall provide the City with a performance bond of \$25,000 as security for the full and complete performance of this franchise, including costs, expenses, damages or loss the City pays or incurs because of any failure attributable to Level 3 to comply with any codes, ordinances, rules, regulations, administrative rules or permits of the City.

Section 11. **Vacation of Right of Way**

Whenever the City initiates any proceeding to vacate any City right of way within which Level 3 has a facility, the City will notify Level 3. The City will maintain a public utility easement for Level 3's facility, if requested by Level 3.

Section 12. **Termination**

- A. **By City for Nonpayment.** City may terminate this agreement and Level 3's franchise if Level 3 fails to pay the franchise fee. The City shall provide 60 days' notice of termination prior to any termination for non-payment. The agreement shall not be terminated if Level 3 pays the full undisputed amount, including interest, within 60 days of the notice. Any disputed amounts owing, including interest, shall be paid within 60 days after final resolution of the dispute between the parties.
- B. **By City for Cause.** If Level 3 fails to comply with the terms of this agreement, the City may terminate this agreement by providing Level 3 60 days' notice of termination. The agreement shall not be terminated if Level 3 substantially complies within 60 days of the notice.

Section 13. **Sale of Franchise**

Level 3 shall not sell or assign this franchise without the prior written consent of the City. Level 3 shall notify the City not later than 60 days prior to any intended transfer and the City will not unreasonably withhold any consent required. Level 3 shall not be required to receive the consent of the City in the event of a transfer or assignment to an affiliate entity under common corporate control or to the surviving entity in the event of a merger or acquisition of Level 3.

Section 14. **Removal of Facilities**

Within one year of Level 3's permanent cessation of use of City's public right of way, or any portion thereof, Level 3 shall remove the affected facilities or make other arrangements reasonably acceptable to the City. Level 3 may abandon in place its facilities with written approval of the City Engineer.

Section 15. **Hold Harmless**

The City shall not be liable for any property damage or loss or injury to or death of any person that occurs in the construction, operation or maintenance by Level 3 of its facilities. Level 3 shall indemnify, defend and hold harmless the City, its elected officials, employees, agents, and contractors, from and against claims, demands, liens and all liability or damage of whatsoever kind on account of Level 3's performance of this franchise. The City shall: (a) give prompt written notice to Level 3 of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) permit Level 3 to assume the defense of such claim, demand, or lien. Level 3 shall not be subject to liability for any settlement made without its consent. Notwithstanding the other provisions contained herein, Level 3 shall in no event be required to indemnify the City for any claims, demands, or liens arising from the negligence or wrongful actions or inactions of the City, its officials, boards, commissions, agents, contractors, and/or employees.

Section 16. **Insurance**

Level 3 shall, as a condition of the franchise grant, secure and maintain the following general and automobile liability insurance policies insuring Level 3 and listing the City, and its elected and appointed officers, officials, agents and employees as additional insureds:

1. Comprehensive general liability insurance with limits not less than:
 - a. Three million dollars for bodily injury or death to each person per occurrence and in the aggregate;
 - b. Three million dollars for property damage resulting from any one accident per occurrence and in the aggregate; and,
 - c. Three million dollars for all other types of liability per occurrence and in the aggregate.
2. Automobile liability for owned, non-owned and hired vehicles with a limit of one million dollars for each person and one million dollars for each accident.
3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars.

4. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars.
5. The liability insurance policies required by this section shall be maintained by Level 3 throughout the term of the telecommunications franchise, and such other period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of its telecommunications facilities.

Section 17. **Limitation on Privileges**

All rights and authority granted to Level 3 by the City are conditioned on the understanding and agreement that the privileges in the right of way are not to operate in any way so as to be an enhancement of Level 3's properties or values or to be an asset or item of ownership in any appraisal thereof.

Section 18. **Effect of Invalidity of a Portion of this Agreement**

If any section, subsection, sentence, clause, phrase, or other portion of this franchise is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, all portions of the agreement that are not held to be invalid or unconstitutional shall remain in effect until the agreement is terminated or expired. After any declaration of invalidity or unconstitutionality of a portion of this agreement, either party may demand that the other party meet to discuss amending the agreement to adjust the relationship of the parties to conform to their original intent in entering into this agreement. If the parties are unable to agree on a revised franchise agreement within 90 days after a portion of the agreement is found to be invalid or unconstitutional, either party may terminate the agreement on 180 days' notice to the other party.

Section 19. **Reservation of Rights**

Neither the City nor Level 3 shall be excused from complying with any of the terms and conditions contained herein by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions. Each party expressly reserves any and all rights, remedies, and arguments it may have at law or equity, without limitation, and to argue, assert, and/or take any position as to the legality or appropriateness of any provision in this Franchise that is inconsistent with State or Federal law, as may be amended.

Section 20. **Definitions**

- A. "Facility" includes any poles, conduit, circuits, fiber lines, and other property necessary or convenient to the provision of telecommunications services by Level 3 within the City.

- B. "Right of way" means any right of way or public utility easement within the City and under City ownership, control or administration.
- C. "Install" means to erect, construct, build, replace or place.
- D. "Public project" means any project resulting from the City's need to provide public facilities, is a City project, or is otherwise requested by City and is made for the purpose of improving a street to City standards or other improvement for the benefit of the public.

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

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

Signed by the Mayor on _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

ACCEPTANCE AND GUARANTEE

City Manager
City of Milwaukie, City Hall
10722 SE Main Street
Milwaukie, OR 97222

This is to advise the City of Milwaukie, Oregon (the "City") that Level 3 Communications, LLC ("Level 3") hereby accepts the terms and provisions of Ordinance No. 15-XXXX, passed by the City Council on February 2, 2016 granting a franchise. Level 3 agrees to abide by all provisions, terms and conditions of the agreement subject to applicable federal, state and local law.

Authorized Signature: **Level 3 Communications, LLC**

BY: _____

TITLE: _____

DATE: _____



MILWAUKIE CITY COUNCIL
STAFF REPORT

RS 6. C.
Feb. 2, 2016
[PENDING]

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Riverfront Park Bridge Update**

From: Chuck Eaton, Engineering Director

Date: January 26, 2016

NOTICE:

The Staff Report referenced above is currently Pending and will be posted in this packet as soon as it is available.