



**Regular Session**

**RS**

**Milwaukie City Council**



**MILWAUKIE CITY COUNCIL  
REGULAR SESSION**

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

**AGENDA  
MAY 17, 2016**

2,222<sup>nd</sup> Meeting

- |  | <b>Page #</b> |
|--|---------------|
| <b>1. CALL TO ORDER</b>  |               |
| Pledge of Allegiance.  |               |
| <b>2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS</b>  |               |
| <b>A. Milwaukie High School (MHS) Outstanding Student Achievement Award for May 2016 to Lydia Daschel-Lloyd</b><br>Presenter: Mark Pinder, MHS Principal   |               |
| <b>B. Dogwood Day Proclamation</b><br>Introduced by Mayor Mark Gamba   | <b>2</b>      |
| <b>C. Public Works Week Proclamation</b><br>Introduced by Public Works Director Gary Parkin  | <b>3</b>      |
| <b>3. CONSENT AGENDA</b>   |               |
| 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.  |               |
| <b>A. A Resolution Authorizing an Intergovernmental Agreement (IGA) with Clackamas County for Solid Waste Rates</b>  | <b>5</b>      |
| <b>B. Authorize a Transit Oriented Development (TOD) Intergovernmental Agreement (IGA) with Metro for the Harrison Street / Main Street Development Site</b>   | <b>10</b>     |
| <b>C. Approve an Oregon Liquor Control Commission (OLCC) Application for Locally Sourced NW LLC, 11238 SE 21<sup>st</sup> Ave, Suite 3 – New Outlet</b>  | <b>41</b>     |
| <b>4. AUDIENCE PARTICIPATION</b>   |               |
| 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. 19<sup>th</sup> Avenue and Sparrow Street Greenway Concept Plan – Resolution 43**

Staff: Brett Kever, Associate Planner, Chuck Eaton, Engineering Director,  
and Denny Egner, Planning Director

**B. Expedited Annexation of the Property Located at 4425 SE Johnson Creek Boulevard – Ordinance 72**

Staff: Brett Kever, Associate Planner

**C. Amend Milwaukie Municipal Code (MMC) Chapter 19.706 Fee in Lieu of Construction – Ordinance 97**

Staff: Chuck Eaton, Engineering Director

**D. Council Reports**

**7. INFORMATION**

**8. ADJOURNMENT**

**Public Notice**

Executive Sessions: The Milwaukie City Council may 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.

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**Regular Session  
Agenda Item No.**

**2**

**Proclamations,  
Commendations,  
Special Reports,  
& Awards**

**RS 2. B.**  
**May 17, 2016**



**CITY OF MILWAUKIE**  
*"Dogwood City of the West"*  
**PROCLAMATION**

**WHEREAS**, the territory along the east bank of the Willamette River has long been noted for its wild and naturally beautiful flora and fauna; and

**WHEREAS**, the beauty of the native *Cornus nuttallii*, or Pacific Dogwood, was nurtured and cultivated by the earliest settlers of the area; and

**WHEREAS**, this community was incorporated on May 21, 1903, with the consent of the Oregon State Legislative Assembly and Governor George E. Chamberlain; and

**WHEREAS**, on July 9, 1962, the City Council designated the Dogwood as the City's official flower and "The Dogwood City of the West" as the City's nickname; and

**WHEREAS**, this City has previously declared May 21<sup>st</sup> as Dogwood Day as an annual reminder of our shared heritage with the earth and each other; and

**WHEREAS**, this City wishes to recognize its historic relationship with the Dogwood as a symbol of our shared civic life which commenced this month One-Hundred-Thirteen years ago.

**NOW, THEREFORE**, I, Mark Gamba, Mayor of the City of Milwaukie, a municipal corporation in the County of Clackamas, in the State of Oregon, do hereby proclaim **May 21<sup>st</sup>, 2016**, as **Dogwood Day** in the City of Milwaukie, the Dogwood City of the West.

**IN WITNESS WHEREOF**, and with the consent of the City Council of the City of Milwaukie, I have hereunto set my hand on this 17<sup>th</sup> day of **MAY, 2016**.

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Mark Gamba, Mayor

ATTEST:

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Pat DuVal, City Recorder





**CITY OF MILWAUKIE**  
*"Dogwood City of the West"*  
**PROCLAMATION**

**WHEREAS**, Public works infrastructure, facilities and services are of vital importance to sustainable communities and to the health, safety and well-being of the citizens of Milwaukie, and

**WHEREAS**, the quality and effectiveness of this infrastructure, as well as their planning, design and construction are dependent upon the efforts and skill of public works professionals who are responsible for and must plan, design, build, operate and maintain the transportation, wastewater, water, stormwater systems essential to serve our citizens; and

**WHEREAS**, , it is in the public interest for the citizens to gain knowledge of and to maintain a progressive interest and understand the importance of public works in their community; and

**WHEREAS**, the City employs qualified and dedicated personnel who staff the City of Milwaukie Public Works Department to operate and maintain the transportation, wastewater, water, stormwater systems the City depends on; and

**WHEREAS**, National Public Works week was instituted in 1960 by the American Public Works Association to call attention to the importance of public works in community life, and the United States Senate passed a resolution affirming the first National Public Works Week; and

**WHEREAS**, Kate Brown, Governor of Oregon, signed a similar proclamation for the state; and

**WHEREAS**, we recognize the many valuable contributions made by the professionals who comprise Public Works of the City of Milwaukie and extend our thanks for the continued commitment to public service by these professionals.

**NOW, THEREFORE**, I, Mark Gamba, Mayor of the City of Milwaukie, a municipal corporation in the County of Clackamas, in the State of Oregon, do hereby proclaim **May 15-21, 2016**, as **Public Works Week** in the City of Milwaukie, the Dogwood City of the West.

**IN WITNESS WHEREOF**, and with the consent of the City Council of the City of Milwaukie, I have hereunto set my hand on this 17<sup>th</sup> day of **MAY, 2016**.

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Mark Gamba, Mayor

ATTEST:

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Pat DuVal, City Recorder





**Regular Session  
Agenda Item No.**

**3**

# **Consent Agenda**



MILWAUKIE CITY COUNCIL  
**STAFF REPORT**

Agenda Item: **RS 3. A.**  
Meeting Date: May 17, 2016

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

Subject: **IGA with Clackamas County for Solid Waste Rate Setting**

From: Casey Camors, Finance Director

Date: May 17, 2016

**ACTION REQUESTED**

Adopt a resolution authorizing the Mayor to sign an Intergovernmental Agreement (IGA) with Clackamas County for assisting the City in its annual review and adoption of solid waste and recycling collection fees.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

**May 2016**

During City rate setting meetings, staff and the City Council discussed the approaching need to pay the County for rate setting assistance provided by the County.

**BACKGROUND**

The City has utilized and appreciated the assistance of County personnel for annual production review and rate development. These services have been provided at no cost to the City.

**CONCURRENCE**

The City desires continued assistance from the County on the annual production review of the solid waste rate setting. The review includes the services of County staff and a CPA for the preparation of a staff report with findings and recommendations on solid waste rates. The County, if requested, will attend and present City specific recommendations at City Council meetings.

**FISCAL IMPACTS**

The IGA will cost \$3,500 per fiscal year. The cost has been included in the biennium budget. Contracting with a CPA for garbage rate analysis would be a direct cost to the City estimated to be around \$7,000, in addition to staff hours (approx. 100 hrs).

**WORK LOAD IMPACTS**

Executing the IGA will add no additional work load to City staff and will save staff time being incurred.

**ALTERNATIVES**

City staff with additional professional services could perform the solid waste rate review.

**ATTACHMENTS**

1. Resolution
2. IGA



**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 FOR ASSISTANCE IN ITS ANNUAL REVIEW AND ADOPTION OF SOLID WASTE AND RECYCLING COLLECTIONS FEES.**

**WHEREAS**, ORS Chapter 190 allows for units of local government to enter into agreements for the performance of any or all functions and activities which such units have authority to perform; and

**WHEREAS**, Clackamas County has adopted a Solid Waste and Waste Management Ordinance on June 10, 1970; and

**WHEREAS**, Clackamas County has franchised the collection of solid waste and collects certain fees from the collection of such solid waste; and

**WHEREAS**, the City desires a contractual relationship with the County whereby the County will be responsible for assisting the City in its annual review and adoption of solid waste and recycling collection fees; 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 assist the City of Milwaukie with annual production and rate review for solid waste franchises.

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 the City of Milwaukie and Clackamas County**

This agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, between the City of Milwaukie (“City”), a municipal corporation of the State of Oregon, and Clackamas County (“County”), a political subdivision of the State of Oregon.

WHEREAS, ORS Chapter 190 allows for units of local government to enter into agreements for the performance of any or all functions and activities which such units have authority to perform; and

WHEREAS, Clackamas County has adopted a Solid Waste and Waste Management Ordinance on June 10, 1970; and

WHEREAS, Clackamas County has franchised the collection of solid waste and collects certain fees from the collection of such solid waste; and

WHEREAS, the City desires a contractual relationship with the County whereby the County will be responsible for assisting the City in its annual review and adoption of solid waste and recycling collection fees; and

NOW THEREFORE, Clackamas County and the City of Milwaukie hereby agree to the following:

**A. Effective Date and Termination**

Upon execution by both parties this agreement shall have an effective date of February 19, 2016 and shall apply retroactively to that date, and shall continue in full force and effect until terminated by either party.

A party may terminate the Agreement without cause upon 90 days prior written notice, or upon 30 days prior written notice for failure to perform as required by this Agreement, including failure to pay amounts appropriately due.

**B. The County Shall:**

1. Perform an annual production record review of the City’s solid waste collection franchisees in coordination with the County’s annual review. The review includes the services of County staff, the contracted services of a CPA, and a staff report with findings and recommendations from the review.

2. If requested by the City, attend and present at City of Milwaukie Council work sessions and public meetings.

**C. The City shall:**

Collaborate with the County on the annual production record review.

**D. Compensation**

County shall provide the annual review of financial and production records and fee setting services for the annual sum of \$3,500.

**E. Amendment**

This Agreement may be amended upon signed, written agreement between the City and the County.

**F. Indemnity**

Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, the City shall hold harmless and indemnify County, its officers, employees, and agents against any and all claims, damages, losses and expenses (including attorney(s) fees and costs), arising out of, or resulting from the performance of this Agreement when the loss or claim is attributable to the acts or omissions of the City.

**G. Severability**

County and City agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular term or provisions held to be invalid.

**H. Other Terms**

1. Compliance with Laws. County and City agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
2. No Assignment. This agreement may not be subcontracted, assigned or transferred by either party without the express written consent of the other party.
3. Entire Agreement. This agreement constitutes the entire agreement between the parties, and may be modified only in writing signed by both parties as indicated in section E above.

**I. Liaison and Contact Person**

Liaison and Contact Person from City for the Agreement will be:

Rebecca Crocker, 10722 SE Main St., Milwaukie, OR 97222  
503-786-7516, CrockerR@milwaukieoregon.gov

Liaison and Contact Person from County for the Agreement will be:

Rick Winterhalter, 150 Beaver Creek Rd., Oregon City 97045  
503-742-4466, rickw@clackamas.us

CITY of Milwaukie

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Recorder

Approved as to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Attorney

CLACKAMAS COUNTY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
County Administrator

Approved as to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
County Counsel

ATTEST:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Recording Secretary



MILWAUKIE CITY COUNCIL  
STAFF REPORT

Agenda Item: **RS 3. B.**  
Meeting Date: **May 17, 2016**

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

Subject: **Intergovernmental Agreement (IGA) with Metro to prepare a joint offering of Harrison and Main Street Site (formerly the "Texaco Site") for development.**

From: Alma Flores, Community Development Director

Date: May 4, 2016, for May 17, 2016, Regular Session

### **ACTION REQUESTED**

Authorize the City Manager to sign an Intergovernmental Agreement (IGA) with Metro to prepare a joint offering of Harrison and Main Street Site (formerly the "Texaco Site") for development.

### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

**October 6, 2015:** Council directed staff to begin marketing the Texaco site and start the request for proposals (RFP) process.

**2014:** As part of the *Moving Forward Milwaukie: Enhancing Our Commercial Districts* (MFM) project, the project team prepared 3 development concepts and pro formas for 5 "opportunity sites" in downtown Milwaukie, including the Texaco site. City Council approved the MFM plan and established new downtown development standards that allows for a wide range of uses including retail, office, commercial, and residential development.

**2012:** The site was identified as an "opportunity site" for the MFM project due to its public ownership and key location in the center of downtown.

**2010:** Main Street Village II IGA expired.

**2008:** The developer withdrew from the project due to the economic downturn.

**2007-2008:** Work sessions with the Design and Landmarks Committee in advance of submittal of a design review application.

**2007:** Following a public open house and discussions with a 9-member advisory committee, the project management group selected a proposal submitted by Main Street Partners. The selected proposal required amendments to the downtown zoning in order to be approved. The City agreed to pursue a Vertical Housing Development Zone for the site in order to close the financial gap.

**December 2006:** Metro and the City of Milwaukie issued a joint request for proposals (RFP) for development of the site.

**September 2005:** City Council approved Resolution No. 39-2005, authorizing the City to enter into the Main Street Village II IGA with Metro for development of Block 14. Metro subsequently purchased the western half of the site, which was the site of a former Texaco station.

## **BACKGROUND**

Block 14 consists of two sites: the City-owned site on the eastern half of the block; and the Metro-owned site on the western half of the block. The site was previously offered for development in 2005. A request for proposals (RFP) was issued and a project team was selected; however, the decline of the real estate market in 2007 as well as a shift in staff and leadership resulted in cancellation of the project.

This site (previously called the "Texaco Site") was identified as a development opportunity site through the *Moving Forward Milwaukie: Enhancing Our Commercial Districts* project. New, streamlined regulations for development in downtown Milwaukie were adopted in fall 2015.

## **CONCURRENCE**

The City Manager, City Attorney's, Metro, Community Development Department and Planning Department concur with this IGA.

## **FISCAL IMPACTS**

The IGA between the City and Metro will commit both parties to participate in the project as described.

## **WORK LOAD IMPACTS**

The IGA between the City and Metro commits staff to undertake the proposal as described in the agreement. The project will be jointly managed by Megan Gibb, Metro Development Center Manager, and Alma Flores, Community Development Director, along with staff from each agency.

## **ALTERNATIVES**

Request revisions to the proposed IGA. This would require discussions with Metro and the City Attorney and would extend the timeline for issuance of an RFP.

## **ATTACHMENTS**

1. Intergovernmental Agreement between Metro and the City of Milwaukie

**INTERGOVERNMENTAL AGREEMENT  
City of Milwaukie and Metro  
Harrison and Main Street Milwaukie Site**

This Harrison and Main Street Milwaukie Site Intergovernmental Agreement (the "Agreement" or "IGA") is entered into by and between Metro, a municipal corporation established pursuant to Oregon law and the Metro Charter ("Metro") and the City of Milwaukie (the "City"), a municipal corporation (collectively, "the Parties"). This Agreement is effective as of the last date of execution set forth below (the "Effective Date").

**RECITALS**

A. Metro Council Resolution No. 98-2619 ("For the Purpose of Authorizing Start-Up Activities for the Transit-Oriented Development (TOD) Implementation Program at Metro") adopted on April 9, 1998, as amended by Metro Council Resolution No. 04-3479 ("For the Purpose of Amending the Transit-Oriented Development (TOD) Program to Expand the TOD Program Area and Initiate an Urban Centers Program") adopted on July 15, 2004, authorized the acquisition and "Joint Development" of real property satisfying certain criteria and identified as "Opportunity Sites." Metro's TOD Program utilizes joint development tools such as land acquisition and disposition subject to development agreements that require the development of projects located near rail transit stations and satisfying the Metro Transit-Oriented Development Project Investment Criteria set forth in Exhibit A, attached hereto.

B. On March 17, 2005, the Metro Council authorized Metro to purchase a parcel of real property occupied by a Texaco service station located at 10700 SE Mcloughlin Blvd., Milwaukie, Oregon and legally described in Exhibit A hereto (the "Metro Property"), for the Transit-Oriented Development/Urban Centers Program, via Metro Council Resolution No. 05-3555A ("For the Purpose of Authorizing the Chief Operating Officer to Purchase Property in the Milwaukie Town Center for a Transit-Oriented Development/Centers Project"). The Metro Council approved the acquisition of the Metro Property subject to specific preconditions, including the entry into an IGA (the "Main Street Village II IGA") providing for a joint offering of the Metro Property and the adjacent half block of City of Milwaukie real property, occupied by a municipal parking lot located on Main Street, in Milwaukie, across from City Hall, and legally described in Exhibit B hereto (the "City Property") for a transit oriented development project.

C. In June, 2005, Metro's environmental site assessment uncovered soil and water contamination on the Metro Property, in concentrations exceeding permissible residential use levels. Metro and the Oregon Department of Environmental Quality ("DEQ") negotiated the terms of a Prospective Purchaser Agreement ("PPA"). The PPA

requires, among other things, that the existing underground gasoline storage tanks be decommissioned and that the Property not be used for residential purposes until measures are taken to reduce the risk of hazardous substance vapor intrusion to levels acceptable to DEQ. Metro subsequently decommissioned and removed the existing underground storage tanks under DEQ oversight, backfilled the excavation with clean fill, and removed the filling station buildings from the site.

D. On August 16, 2005, the Milwaukie City Council approved Resolution No. 39-2005, authorizing the City to enter into the Main Street Village II IGA with Metro.

E. On September 22, 2005, via Metro Council Resolution No. 05-3621A ("For the Purpose of Amending the Terms of the Transaction Set Forth in Resolution No. 05-3555A to Acquire Property in Milwaukie Town Center for a Transit-Oriented Development/Centers Project") the Metro Council authorized Metro to, among other things, enter into the PPA with DEQ, purchase the Metro Property subject to the PPA, and enter into the Main Street Village II IGA with the City on substantially the terms set forth in an attachment to the resolution.

F. Metro entered into the "Main Street Village II" IGA with the City on September 21, 2005, entered into the PPA with DEQ on September 22, 2005, and acquired the Metro Property on October 7, 2005.

G. Metro and the City were unable to complete the joint offering of the Harrison and Main Street Milwaukie site (previously the "Texaco Site") and the Main Street Village II IGA subsequently expired on September 21, 2010.

H. Metro and the City now wish to enter into a new IGA to govern the joint offering of the Harrison and Main Street Milwaukie site for a transit oriented development ("TOD") project satisfying the Metro TOD Program TOD Project Investment Criteria.

I. On May 3 2016, The Milwaukie City Council approved Resolution No. XX-2016, authorizing the City to enter into this Agreement with Metro.

**NOW, THEREFORE**, in reliance on the above recitals and in consideration of the mutual and reciprocal covenants and agreements set forth below, the Parties agree as follows:

- 1. General Objective.** To provide for joint solicitation by the City and Metro of a developer to construct a mixed-use transit-oriented development on the Harrison and Main Street Milwaukie site and selection of a developer followed by entry into an exclusive negotiating agreement leading to a Disposition and Development Agreement between the City, Metro and the selected developer providing for the development of the Harrison and Main Street Milwaukie site into a landmark signature 5 story mixed-use project with housing or other related uses above ground floor retail and services, satisfying the Metro TOD

Program's Opportunity Site Project Investment Criteria and Property Disposition Parameters (the "Project").

**2. Project Minimum Development Program Criteria.**

- 2.1 5 stories.
- 2.2 A transit-supportive site layout with a mix of residential and retail uses.
- 2.3 Ground floor retail space.

**3. Project Management Committee.** The City and Metro agree to establish a Project Management Committee to conduct pre-development activities and to craft, manage and implement a mutually acceptable developer solicitation and selection process to promptly select a development team for the Project.

The Project Management Committee shall be composed of the following:

- Alma Flores, City of Milwaukie Community Development Director
- Vera Koliass, or assigned staff, City of Milwaukie Associate Planner
- Megan Gibb, Metro Development Center Manager
- TBD, Metro Principal Development Project Manager

The City and Metro may assign other staff or consultants as needed.

**4. Joint Offering.** Through the Project Management Committee, the Parties will cooperate to conduct a competitive solicitation using either a Request for Qualifications or Request for Proposals process. The terms of the solicitation shall be established by mutual agreement, but shall conform to the Minimum Development Criteria set forth above, the requirements of this section, any other criteria mutually agreed upon in writing by Metro and the City, the parameters set forth in the TOD Program Workplan, the Milwaukie City Code, and all applicable provisions of ORS 279A-C (the "Joint Offering").

4.1 Concept. The initial development concept is generally described as a landmark signature mixed-use development of 5 stories of housing or housing and office above ground floor retail, with full block development.

4.2 Land Value Write Down/Proceeds. Metro and the City agree that the joint offering will include a commitment to "write down" the land value of both the Metro Property and the City Property to an amount that will ensure the desired development as set forth in Section 2 above, subject to Milwaukie City Council, TOD Program Steering Committee and Metro Council approval. The sale proceeds remaining after the write-down of the Harrison and Main Street Milwaukie site, if any, shall be shared equally between Metro and the City.

4.3 City Incentives. The City agrees that, in addition to Land Value Write Down, it will seek to contribute the following additional incentives to the Project subject to Milwaukie City Council approval:

- Vertical Housing Development Program
- SDC assistance, such as credits, waivers sequestering and Bancroft Bonding
- Technical Assistance
- Site Preparation
- Parcel consolidation
- Other incentives, including tools and resources of the Infrastructure Financing Authority and Business Oregon.

4.4 Metro Incentives. Metro agrees that, in addition to Land Value Write Down, it will seek to contribute the following additional incentives to the Project, subject to TOD Steering Committee and Metro Council approval:

- Purchase by Metro of a Metro TOD Easement from the selected developer
- Technical Assistance
- Site Preparation

4.5 Cost Sharing Principles. With respect to cost sharing and developer incentives, the parties agree that the City's financial participation must equal or exceed Metro's financial participation. For purposes of this section, City's financial participation includes but is not limited to the full value of any grants, exemptions, and specifically the Vertical Housing Development program secured by City.

4.6 PPA Compliance. Metro and the City agree that the Joint Offering will include a requirement that the selected developer agree in the DDA to implement such measures as are needed to satisfy the terms of the DEQ PPA as part of any residential development and before any residential occupancy is permitted. Metro and the City acknowledge that the extent of such measures, if any, will be mutually determined prior to entry into the DDA and that requiring the purchaser to take such actions will affect the price a developer will pay for the Harrison and Main Street Milwaukie site.

4.7 Evaluation and Selection. The City and Metro, through the Project Management Committee, shall jointly evaluate the qualifications and/or proposals of all developers responding to the Joint Offering and select the developer ("Developer") by mutual agreement. It is recognized that each entity's respective governing body has final authority over selection as provided in each entity's rules.

4.8 Schedule. The City and Metro shall share equally in the costs to conduct the Joint Offering and shall exert best efforts to complete the Joint Offering on the following schedule:

- Issue Request For Qualifications (RFQ) 2nd Quarter, 2016
- Review RFQ responses and issue a Request For Proposal (RFP) to up to 3 highly qualified firms 2nd Quarter, 2106
- Review RFP responses 2nd Quarter, 2016
- Select developer and execute Exclusive Negotiating Agreement 3rd-4th Qtr , 2016
- Execute Disposition and Development Agreement 2nd Quarter, 2017

**5. Predevelopment Activities.** The costs of Predevelopment Activities conducted by the parties will be shared equally unless otherwise set forth herein. The City and Metro agree to conduct the following activities prior to execution of the DDA:

5.1 ALTA Survey. The City and Metro will jointly perform an ALTA survey of the Harrison and Main Street Milwaukie site. The City and Metro shall share equally in the third-party costs to comply with this section.

5.2 Environmental Assessment. The City anticipates receipt of a Business Oregon Brownfields Assessment grant, which it will use to conduct Phase I and Phase II Environmental Assessments on the Harrison and Main Street Milwaukie site to determine the environmental condition of the City Property and to characterize the extent of petroleum contamination that exists in the Metro Property's soil and groundwater, including soil vapor sampling and testing sufficient to determine whether or not a vapor barrier, separated air handling systems, or other engineering controls are necessary to reduce hazardous material vapors to concentrations that are acceptable for residential development. The City will coordinate the scope of work under this section with Metro including providing Metro and the DEQ with an opportunity to review, alter and approve the proposed scope of work for the Phase II ESA for purposes of ensuring that the Phase II satisfies DEQ PPA requirements.

5.3 Appraisal. The City and Metro agree to obtain an independent MAI appraisal performed in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”) and general appraisal standards, and confirmed by Metro’s independent review appraiser as follows: the parties will jointly select an appraiser and mutually agree upon the terms of an appraisal assignment that will report the independent fair market value of the City Property, the Metro Property, the Harrison and Main Street Milwaukie as consolidated, and the “residual land value of Lot 14” as encumbered by the DDA and TOD Easement, if any. Metro will pay for the costs to obtain the appraisal review.

5.4 Geotechnical Engineering Assessment. The City and Metro agree to jointly select a Geotechnical Engineer to evaluate the subsurface conditions on the Harrison and Main Street Milwaukie site and determine the Harrison and Main Street Milwaukie

site's ability to support a development satisfying the criteria set forth in Section 2, and specifically if needed, the development proposed by the Developer.

5.5 Land Use and Development Applications. The City acknowledges that a Project satisfying the criteria set forth in Section 2 is the preferred development form and agrees to sign and jointly submit with Metro and Developer land use and development applications submitted prior to the conveyance of the Harrison and Main Street Milwaukie site under the DDA.

5.6 Parcel Consolidation. The City and Metro will jointly submit a parcel consolidation application. The City and Metro shall conclude the consolidation concurrently with the conveyance of the Harrison and Main Street Milwaukie site to Developer under the DDA. The City and Metro shall share equally in the third-party costs to comply with this section.

5.7 Site Preparation. The City and Metro acknowledge that site preparation, if deemed necessary or beneficial to the development, may be performed independently by either party or coordinated among them. The application of the costs of site preparation performed by staff to the cost sharing equation must be determined by negotiation between the parties.

**6. Exclusive Negotiating Agreement.** The City and Metro may elect to enter into a 180-day Exclusive Negotiating Agreement with options to extend with the Developer. The Exclusive Negotiating Agreement shall provide that the Developer shall have the exclusive right to conduct due diligence and to negotiate in good faith with the City and Metro for the rights to develop the Harrison and Main Street Milwaukie site, including the terms of the DDA and all related agreements, documents and instruments providing for the transit oriented development of the Harrison and Main Street Milwaukie site, and that the City and Metro will not accept, solicit, pursue or entertain any other offers or other indications of interest with respect to the Harrison and Main Street Milwaukie site for any development, sale or other transaction with a third party during the term thereof.

**7. Disposition and Development Agreement.** The City, Metro and the Developer shall be parties to the Disposition and Development Agreement ("DDA"). The City and Metro shall jointly negotiate the terms of the DDA with Developer, which shall be mutually acceptable to Metro and the City, and shall comply in all respects with the terms of this Agreement and the Minimum Development Program Criteria set forth in Section 2. The costs of closing the DDA, including title insurance premiums and escrow fees, shall be shared equally between the City and Metro.

**8. Preconditions to Land Disposition.**

8.1 Approval of Plans. Final review and approval by the City and Metro of the schematic design drawings, final architectural plans, and construction details to ensure

that the design, finish and quality of materials and construction are consistent with developing a landmark signature mixed-use development in downtown Milwaukie. It is recognized that this approval may not be inconsistent with, and is subject to, the terms and conditions of development approval(s) issued pursuant to the Milwaukie Development Code.

8.2 Approval of Elevations. Final review and approval by the City and Metro of the building elevation details for consistency with the Conceptual Design.

8.3 Proof of Financing and Equity Capital. The Developer shall have secured adequate construction financing and equity investment capital, necessary to complete the Project. The adequacy or inadequacy of the construction financing and equity investment capital shall be subject to the mutual determination of the City and Metro.

8.4 No Litigation or Bankruptcy. The Developer and its members, partners, or principals shall be subject to no pending or existing litigation or action privately, or by regulation or government order commenced, pending, or threatened in writing that adversely affects Developer's ability to construct the Project, including a petition in bankruptcy. This requirement may be waived by mutual agreement of Metro and the City.

8.5 BOLI Predetermination Letter. The City, Metro and the Developer shall jointly submit a request for a predetermination letter from the Oregon Bureau of Labor and Industries ("BOLI") to establish the applicability of ORS 279C.800-870 ("prevailing wage laws") to the project.

**9. Environmental Indemnity.** In addition to the indemnification provided in paragraph 11.1 and 11.2, below, the City and Metro agree that no provision of this IGA or action taken by any party hereunder shall operate to limit or diminish the reciprocal Environmental Indemnities provided by the Main Street Village II IGA attached as Exhibit C hereto. City may require, however, and Metro shall cooperate in good faith in obtaining, DDA terms by which the developer assumes responsibility for environmental conditions, agrees to indemnify and defend City or otherwise relieves or ameliorates City's environmental liability to any person or entity other than Metro.

**10. Property Management Prior to Conveyance.** The City shall continue to manage the Harrison and Main Street Milwaukie site until it is conveyed to a developer pursuant to a DDA. The City shall maintain security of the Property, and shall provide additional fencing, gates, signage, and other measures necessary to maintain public safety on the Property, and to deter public nuisance use of the Property. Access to the Property shall be controlled by the City, and the City shall respond to neighborhood or citizen complaints regarding nuisance uses or noise on the Property. Any permits granted to third parties by the City to use the Property shall comply with the terms and limitations set forth in this Agreement. The City shall be responsible for obtaining all

necessary permits and for complying with all state and local rules and regulations in managing and maintaining the Property. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance or operation issues that may arise with respect to the Property. Funding for the management and maintenance of the Property and the payment of taxes or assessments applying to the Property, if any, shall be provided from the City's own resources.

## **11. General Provisions**

11.1 City Indemnification. Within the limits of the Oregon Tort Claims Act, City shall indemnify and defend Metro, and hold Metro harmless from and against any claim, loss, liability or cost suffered directly or from a third-party claim arising out of or related to the City's, its officers', employees' and agents' acts or failure to act hereunder, including but not limited to its management of the Property or any condition on the Harrison and Main Street Milwaukie site while in the possession or under the control of the City.

11.2 Metro Indemnification. Within the limits of the Oregon Tort Claims Act, Metro shall indemnify and defend the City, and hold the City harmless from and against any claim, loss, liability or cost suffered directly or from a third-party claim arising out of or related to Metro's, its officers', employees' and agents' acts or failure to act hereunder, except that Metro shall have no liability to the City for any injury, loss, or damage caused by third parties, except to the extent resulting from Metro's negligence or breach of duty under this Agreement.

11.3 Liens. Except with respect to activities for which Metro is responsible, the City shall pay as due all claims for work done on and for services rendered or material furnished to the Property, and shall keep the Property free from any liens. If the City fails to pay any such claims or to discharge any lien, Metro may do so and collect the cost from the City. Such action by Metro shall not constitute a waiver of any right or remedy that Metro may have on account of the City's default. The City may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, as long as Metro's property interests are not jeopardized. If a lien is filed as a result of nonpayment, the City shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Metro cash or sufficient surety bond or other surety satisfactory to Metro in an amount sufficient to discharge the lien plus any costs or attorney fees.

11.4 Acknowledgement. The City and Metro shall document in any signage, publication, media presentation or other presentations on the Property that a partnership was established between Metro and the City to promote redevelopment of the Property.

11.5 Term. The term of this Agreement shall be five (5) years from its Effective Date. This Agreement shall automatically renew for successive 5-year terms, unless written notice is provided by a party that it does not wish to renew no later than 30-days prior to the renewal date, or this Agreement is otherwise terminated under the provisions set forth below. The indemnities set forth in Sections 11.1 and 11.2 shall survive and shall not be affected by the expiration or termination of this Agreement. The Environmental Indemnities set forth in Exhibit C shall survive sale of the property to a developer pursuant to the DDA.

11.6 Joint Termination for Convenience. Metro and the City may jointly terminate all or part of this Agreement based upon a mutual determination that such action is in the public interest. Termination shall be effective upon mutual written agreement of the Parties to terminate.

11.7 Termination for Cause. Either party may terminate this Agreement before the date of expiration, if that party determines, in its sole discretion, that the other party has failed to comply with the terms and conditions of this Agreement and is therefore in default. The terminating party shall promptly notify the defaulting party in writing of that determination and document said default with reasonable particularity. Thereafter, the defaulting party shall have 30 days to cure the default. If the default is of such a nature that it cannot be completely remedied within the 30-day period, this provision shall be complied with if the defaulting party begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to cure the default as soon as practicable.

11.8 Laws of Oregon – ORS 279. This Agreement shall be governed by the laws of the State of Oregon, and the Parties agree to submit to the jurisdiction of the courts of the State of Oregon. All applicable provisions of ORS Chapter 279, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provisions were a part of this Agreement. The City and Metro hereby acknowledge that prevailing wage rate laws, including ORS 279C.800-870 and related regulations, may apply to this Agreement, and the DDA and Project contemplated thereby. The City and Metro agree to require the compliance of Developer with said laws when applicable.

11.9 Assignment. No party may assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the Parties may subcontract for performance of any of their responsibilities under this Agreement.

11.10 Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro: Metro  
Megan Gibb, Metro Development Center Manager  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

To City: City of Milwaukie  
William Monahan, City Manager  
10722 SE Main Street  
Milwaukie, OR 97222

Copy to:

Alma Flores, Community Development Director  
6101 SE Johnson Creek Blvd  
Milwaukie, OR 97206

11.11 Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform to the terms and requirements of applicable law and the intent of this Agreement.

11.12 Entire Agreement. Except as set forth in Section 10, this Agreement, as supplemented by the Exclusive Negotiating Agreement, if any, and DDA, constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous oral or written communications, agreements or representations relating to the Harrison and Main Street Milwaukie site. No course of dealing between the parties and no usage of trade shall be relevant to supplement any term used in this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by any party of that or any other provision.

IN WITNESS WHEREOF, the Parties hereto have set their hands on the day and year set forth below.

CITY OF MILWAUKIE

METRO

\_\_\_\_\_  
William Monahan  
City Manager

\_\_\_\_\_  
Martha Bennett  
Metro Chief Operating Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibits:**

Exhibit A - Transit-Oriented Development Project Investment Criteria

Exhibit B - Legal Description and Depiction of Metro Property and City Property

Exhibit C - Main Street Village II IGA

DRAFT

Adopted Aug. 2012

## TRANSIT-ORIENTED DEVELOPMENT

## Project investment criteria



The Transit-Oriented Development Program has a unique and critical role in implementing the region's 2040 Growth Concept of vibrant, urban centers and station areas linked by transit. TOD program activities help to optimize the existing transit system by bringing more people to live, work and shop in areas with a functional pedestrian connection to transit. The core program activity is providing development project funding to stimulate construction of higher-density and mixed-use projects near transit. Related program activities include opportunity site acquisition, investment in urban living infrastructure, and technical assistance.

The TOD project investment criteria have been adopted by the Metro Council as part of the TOD work plan. These excerpts are provided as a resource for real estate professionals and local officials interested in partnering with Metro's TOD Program to implement transit-oriented development in areas where the real estate market is not yet able to support those higher cost development forms.

**The core mission of the TOD program is to stimulate private sector investment to create the vibrant communities envisioned in the region's 2040 Growth Concept.**

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GREAT  
PLACE



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## THRESHOLD REQUIREMENTS

TOD project investments must meet the following threshold requirements to be eligible for funding consideration:

### Site control

Must meet **all** of the following

- The applicant must be a public entity or a willing and capable developer with site control or the ability to establish site control.
- The TOD development must be privately owned and operated.

### Connection to transit

Must meet **one** of the following

- **Station communities** Properties must have a functional pedestrian connection between the site and existing or planned rail stations, generally less than 1/2 mile.
- **Frequent bus and streetcar** Properties must have a functional pedestrian connection between the site and the transit corridor, generally less than 1/4 mile.
- **Urban centers** Properties must be within the boundary of an urban center, have a functional pedestrian connection to the main street or commercial core, and be within an eligible TOD typology place type.

### Eligible TOD typology areas

Must meet **one** of the following

- **Catalytic project** investments and site improvements are eligible in Catalyze and Connect areas and may be considered conditionally in Plan and Partner areas.
- **Catalytic Plus project** investments are eligible in Infill and Enhance and Catalyze and Connect areas and may be considered conditionally in Plan and Partner areas.
- **Housing Choice project** investments may be considered conditionally in Infill and Enhance, Catalyze and Connect and Plan and Partner areas.

### Transportation and environmental benefits

Must meet **all** of the following

- The project development program will generate additional transit trips as a result of more intensive use of the site compared to what

would occur without public participation in the proposed project.

- The project development program is expected to reduce regional Vehicle Miles Traveled compared to what would occur without public participation in the proposed project.
- The site plan and building design enhance the pedestrian and bicyclist experience, and makes the pedestrian realm more visually attractive, active, vibrant and safe.
- The development has the lowest reasonable parking ratio.

### Land use efficiency

Must meet **all** of the following

- The development has the highest reasonable floor area ratio.
- The development has the highest reasonable site coverage ratio.

### Financial need

Must meet **all** of the following

- The project has cost premiums related to higher density, urban infill, or vertically integrated mixed use development.
- There are not adequate local, state, or federal resources or incentives available to close the financing gap without Metro participation.
- Metro funding shall not exceed the minimum amount necessary for the project to move forward and be constructed.

### Cost effectiveness

Must meet **all** of the following

- Metro funding will leverage significant private investment.
- Cost per induced transit rider is reasonable relative to other development project investments.
- Metro's program, legal and other administrative costs are reasonably proportionate to the TOD Program development investment in the project.
- Upon stabilization, the project is expected to be financially feasible and successful in the market.



## COMPETITIVE INVESTMENT CRITERIA

In addition to the threshold requirements, proposed projects are evaluated according to a set of competitive investment criteria. Competitive investment criteria allow a project to distinguish itself among other qualified projects. These criteria are considered by TOD staff in determining whether and what level of TOD project funding to recommend for approval, and what conditions to apply. Not all of these criteria apply to every investment opportunity. The relative importance of these criteria varies depending on the characteristics of the project and the area in which it is located.

### Increase transit ridership

- Increased transit ridership is induced from more intense development.
- Features are incorporated that improve access to the transit system, transit information services, way-finding signage, lighting, sidewalk improvements, additional bike parking/storage, or new access routes.
- Transportation demand management strategies are integrated such as limited or no parking, charging for parking, car sharing, bike storage, or transportation alternatives programming efforts.
- Significant transit ridership is generated by the creation of new employment, institutional, or entertainment destinations near transit.

### Creates new market comparables

- New market comparables are created as a result of demonstrating market acceptance of new product types, faster absorption, or higher achievable pricing.

### Builds community acceptance of urban style buildings

- Higher quality of design and/or materials are used than is typical in the area.
- Innovative green building elements or development practices are demonstrated that serve to improve the environmental impact of the development and enhance both the human and natural environment.

### Improves availability of urban living infrastructure retail services and amenities

- Economic base to support retail services and amenities is strengthened.

- Urban living infrastructure amenities or retail services are integrated into the new development.

### Expands base of developers with TOD expertise

- New development partners are engaged for the TOD program.
- Developers are inspired to innovate in compact and mixed-use development forms.

### Contributes to placemaking and local identity

- Elements are incorporated that help create a sense of place.
- Elements are incorporated that reflect and/or build unique local identity.
- A large scale initiative is advanced that will improve the TOD readiness of the area.
- Downtown revitalization is supported.
- Affordable housing is provided in areas where it increases housing choices and does not exacerbate concentrations of poverty.

### Removes barriers to compact and mixed-use development

- Changes to local plans or development regulations are necessitated.
- Product types, building materials, or building systems are introduced that are relatively new to the area.

### Attracts investment, create jobs and strengthen local tax bases

- Direct investment in the development is attracted.
- Jobs are created.
- Contributions are leveraged from other public and non-profit entities such as: local government (tax abatement, tax increment financing, reduced SDCs, or support for entitlement changes); state/federal government (low income housing tax credits, public bond financing, grants); or private foundations.
- Additional property tax revenues are generated.





Clean air and clean water do not stop at city limits or county lines. Neither does the need for jobs, a thriving economy, and sustainable transportation and living choices for people and businesses in the region. Voters have asked Metro to help with the challenges and opportunities that affect the 25 cities and three counties in the Portland metropolitan area.

A regional approach simply makes sense when it comes to providing services, operating venues and making decisions about how the region grows. Metro works with communities to support a resilient economy, keep nature close by and respond to a changing climate. Together, we're making a great place, now and for generations to come.

Stay in touch with news, stories and things to do.

[www.oregonmetro.gov/connect](http://www.oregonmetro.gov/connect)

**Metro Council President**

Tom Hughes

**Metro Council**

- Shirley Craddick, District 1
- Carlotta Collette, District 2
- Craig Dirksen, District 3
- Kathryn Harrington, District 4
- Sam Chase, District 5
- Bob Stacey, District 6

**Auditor**

Suzanne Flynn

**TYOLOGY DEFINITIONS**

**Infill and Enhance** transit communities are the most “TOD ready” areas in the region outside of downtown Portland. Given the relative strength of these areas, TOD program project investments should leverage significantly higher residential and/or employment densities, prototypical projects, urban living amenities (e.g. restaurants, shops), and/or workforce housing.

**Catalyze and Connect** areas offer some physical market foundation for supporting transit-oriented development. Projects that help catalyze future private development, and increase activity levels through density and/or urban amenities are appropriate. There is also an opportunity to work with local jurisdictions to identify placemaking and infrastructure needs to enhance the pedestrian orientation of the street network and provide better connectivity for all modes.

**Plan and Partner** transit communities are not currently ripe for direct TOD program investments, since they generally lack the built form and market environment that would attract private investment. Given their transit accessibility, however, these areas are ideally suited for station area planning and development implementation technical assistance. The TOD program will work with local and regional partners as strategic opportunities arise to develop partnerships for future projects.

**INVESTMENT TYPE DEFINITIONS**

**Catalytic projects** have relatively modest public financial participation, generally of less than 20 percent total development costs, and are expected to improve the financial feasibility of future private sector projects within the real estate submarket.

**Catalytic plus projects** qualify as catalytic project investments and significantly contribute to place-making or serve as a new prototype for development in the submarket.

**Housing choice projects** have higher levels of public financial participation, such as low income housing tax credits, and are expected to expand the income diversity of households in a particular area by producing additional affordable or workforce housing units.

**Site improvement projects** or site preparation projects are separated in time, responsibility, or financing structure from the TOD project development.

For more information, call 503-797-1757 or visit [www.oregonmetro.gov/tod](http://www.oregonmetro.gov/tod)

*Printed on recycled-content paper.  
14071 Sept. 2013*

## **EXHIBIT B**

### **Legal Description of Property and City Property**

#### **Metro Property:**

Lots 5, 6, 7 and 8, Block 14, MILWAUKIE, in the County of Clackamas, and State of Oregon. The Easterly boundary of said lots to be a line more particularly described:

Beginning at a brass screw set in the South sidewalk of Harrison Street in the Town of Milwaukie, at a point which is South 800 West 5 feet and North 9° 20' West 4 feet from the Northeast corner of said Lot 5, Block 14, MILWAUKIE, thence South 9° 20' East, along the center line of the vacated alley in said Block 14, as vacated by Milwaukie City Ordinance 35 recorded in Book 516, Page 124 Deed Records, a distance of 204 feet to an iron pipe set in the South line of said Block 14, said iron pipe being the point of terminus of said boundary as shown by Survey 2615 in the office of the Clackamas County Surveyor.

#### **City Property:**

Lots 1, 2, 3 and 4, Block 14, MILWAUKIE, according to the duly recorded plat thereof, said western boundary of said lots to be a line described particularly as follows:

Beginning at a brass screw set in the South sidewalk of Harrison Street in the Town of Milwaukie, at a point which is South 800 West 5 feet and North 9° 20' West 4 feet from the Northeast corner of said Lot 5, Block 14, MILWAUKIE; thence South 9° 20' East, along the center line of the vacated alley in said Block 14, as vacated by Milwaukie City Ordinance 35, recorded in Book 516, page 124 Deed Records, a distance of 204 feet to an iron pipe set in the South line of said Block 14; said iron pipe being the point of terminus of said boundary, as shown by Survey 2615 in the Office of the Clackamas County Surveyor.

**INTERGOVERNMENTAL AGREEMENT  
MAIN STREET VILLAGE PHASE II**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into by and between Metro, a municipal corporation established pursuant to Oregon law and the Metro Charter ("Metro") and the City of Milwaukie (the "City"), a municipal corporation (collectively, "the Parties"). This Agreement is effective as of the last date of execution set forth below (the "Effective Date").

**RECITALS**

A. Metro Council Resolution No. 98-2619 ("For the Purpose of Authorizing Start-Up Activities for the Transit-Oriented Development (TOD) Implementation Program at Metro") adopted on April 9, 1998, as amended by Metro Council Resolution No. 04-3479 ("For the Purpose of Amending the Transit-Oriented Development (TOD) Program to Expand the TOD Program Area and Initiate an Urban Centers Program") adopted on July 15, 2004, authorizes the acquisition and "Joint Development" of real property satisfying certain criteria and identified as "Opportunity Sites." Metro's TOD Program utilizes joint development tools such as land acquisition and development agreements to encourage the development of projects located in close proximity to rail transit stations, "Frequent Bus Stops" and in Urban Centers throughout the region.

B. On March 17, 2005, the Metro Council authorized Metro to purchase the Property for the Transit-Oriented Development/Urban Centers Program, via Metro Council Resolution No. 05-3555A ("For the Purpose of Authorizing the Chief Operating Officer to Purchase Property in the Milwaukie Town Center for a Transit-Oriented Development/Centers Project"). The Metro Council approved the acquisition of the Property subject to specific preconditions, including the entry into this Agreement by the Parties on terms set forth in the Letter of Intent set forth below.

C. Metro and the City have entered into a Letter of Intent expressing the mutual intent of the Parties to provide for the acquisition of a Texaco filling station site located at 10700 SE McLoughlin Boulevard, Milwaukie, Oregon, and described and depicted in the attached Exhibit A (the "Property") as TOD Program Urban Centers Opportunity Site. The Letter of Intent attached as Exhibit B sets forth the general terms of acquisition and co-ownership of the Property by Metro and the City, and provides for a joint offering of the Property with the adjacent City property at 10721 SE Main Street ("City Property"), also described and depicted in the attached Exhibit A, so that the entire block may be developed by a future purchaser. The development called for in the Letter of Intent is a landmark signature mixed-use project of 4-5 stories, with retail uses on the ground floor and residential uses on higher floors.

D. Soil and water contamination have been discovered on the Property in concentrations that exceed permissible levels if the Property is to be developed for residential use. The Oregon Department of Environmental Quality ("DEQ") has agreed

to issue Metro a Prospective Purchaser Agreement (“PPA”). The PPA requires that the existing underground gasoline storage tanks be decommissioned and that measures be taken to reduce the risk from vapor intrusion into buildings to levels acceptable to DEQ.

E. Metro has entered into an Agreement of Purchase and Sale with Olson Brothers Enterprises, L.L.C., to purchase the Property, has performed due diligence in accord with Metro standard real estate acquisition guidelines, and is prepared to close the acquisition of the Property upon execution of this Agreement.

F. On August 16, 2005, the Milwaukie City Council approved Resolution No. 39-2005, authorizing the City to enter into this Agreement with Metro.

**NOW, THEREFORE**, in reliance on the above recitals and in consideration of the mutual promises described below, the Parties agree as follows:

1. **General Objective.** To provide for the acquisition of the Property as a TOD Program Urban Centers Opportunity Site, setting forth the terms of co-ownership of the Property by Metro and the City, and providing for a joint offering of the Property with the City Property for the development of Main Street Village, Phase II, a landmark signature mixed-use project of 4-5 stories with housing above ground floor retail.

2. **Property Acquisition**

2.1 Metro shall close escrow and acquire the Property upon the execution of this Agreement by both Parties.

2.2 At closing, the City shall take an undivided 5% interest in title to the Property, and Metro shall take an undivided 95% interest in title to the Property as tenants-in-common.

3. **Project Management/Joint Offering**

3.1 The Parties will cooperate jointly to offer the entire city block, consisting of the Property, the City Property, and the ROW Parcels (defined below) for development (“Block 14”). The initial development concept is for a landmark signature mixed-use development of 4-5 stories of housing above ground floor retail, with the building footprint covering most of Block 14, to be called Main Street Village, Phase II (the “Joint Offering”). The terms of the Joint Offering shall be established by mutual agreement, but shall conform to the parameters set forth in the TOD/Urban Centers Workplan.

3.2 Metro and the City agree to establish a project management committee to manage parcel consolidation, craft and market a public Joint Offering document, determine the appropriate land value write-down, solicit proposals and select a developer. The Joint Offering may be made either through an open competitive process or an unsolicited proposal process, upon the mutual written agreement of the Parties. The Parties shall

share equally in the cost of conducting the Joint Offering, and shall exert best efforts to complete the Joint Offering within 18 months from the Effective Date.

3.3 Metro agrees to write down the land value of the Property to an amount that will ensure the desired development as set forth in Section 3.1 above, subject to TOD/Centers Steering Committee and Metro Council approval. The City agrees to market the City Property at an equivalent value per square foot as Metro markets the Property. The proceeds of any sale of Block 14 shall be allocated pro rata between the Parties based on the square footage of their respective properties.

3.4 Metro and the City agree that the Joint Offering will include a requirement that the purchaser implement such measures as are needed to satisfy the terms of the DEQ PPA as part of any residential development and before any residential occupancy is permitted. Metro and the City acknowledge that requiring the purchaser to take such actions will affect the price a developer will pay for Block 14.

3.5 The City staff agrees to support and recommend to the Milwaukie City Council the vacation of certain portions of the right-of-way of SE Harrison Street and SE Jackson Street (the "ROW Parcels"), as depicted on Exhibit A, and the incorporation of said ROW Parcels into the Joint Offering.

3.6 City will exert its best efforts to amend its zoning and development ordinance and regulations to permit a project to be developed on Block 14 consisting of residential over ground floor retail, a minimum of 5 stories with a floor area ratio ("FAR") of 1 to 1, a housing/parking ratio not to exceed one space per housing unit and a building type that is economically feasible.

3.7 Metro agrees to demolish the existing buildings on the Property, close and stub all utilities and remove all demolition materials in accord with all state and local regulations, such that the Property is in a reasonably safe condition after closing.

3.8 Metro agrees to decommission the Underground Storage Tanks ("UST") located in the tank nest on the Property after closing, in compliance with all DEQ UST decommissioning rules and regulations, either by removal or in place, such that they may be used as stormwater storage vessels for future development.

3.9 Metro agrees to exert its best efforts to obtain a No-Further-Action Letter from DEQ, stating that no further investigation, remediation or cleanup is required to be performed upon the Property in connection with commercial use.

#### **4. Environmental Assessment and Indemnity**

4.1 Environmental Assessment. Metro's Phase I and Phase II Environmental Assessments revealed that petroleum contamination exists in the Property's soil and groundwater, in concentrations that are acceptable for commercial development but exceed permissible levels if the Property is to be developed for residential use, and that

petroleum contamination originating on the Property has migrated from the Property in a southwesterly direction, into the soil and groundwater underlying SE Jackson Street and SE McLoughlin Boulevard. In accord with the Letter of Intent, and in consideration for Metro's agreement to acquire the Property for purposes of mixed-use development, the City has agreed to indemnify Metro as set forth below.

4.2 Environmental Indemnity. The City hereby covenants to indemnify and defend (with legal counsel reasonably acceptable to Metro) Metro and hold Metro, its officers and employees, successors and assigns, harmless from and against all claims, demands, causes of action, or any other action or proceeding, meritorious or not, and all liabilities, losses, damages, costs and expenses relating to or arising, in whole or in part, directly or indirectly, from: (a) the past, present or future Environmental Condition of the Property; (b) past, present or future Adverse Environmental Activity occurring on or related to the Property; (c) any and all Government Action related to the Property or past, present or future activities thereon; (d) the past, present or future Environmental Condition of real property surrounding the Property, relating to or resulting from the Environmental Condition of the Property or Adverse Environmental Activity on the Property; and (d) City or City's agents failure to comply with any and all future Environmental Requirements relating to the Property.

Metro hereby covenants to indemnify and defend (with legal counsel reasonably acceptable to the City) the City, and hold the City, its officers and employees, successors and assigns, harmless from and against all claims, demands, causes of action, or any other action or proceeding, meritorious or not, and all liabilities, losses, damages, costs and expenses relating to or arising, in whole or in part, directly or indirectly, from Metro's activities under Sections 3.7 and 3.8 above.

4.2.1 For purposes of this Section, "Environmental Condition" shall be interpreted to include, but not be limited to, the release of or contamination by any Hazardous Substance(s), pollutant or contaminant, as those terms are defined in CERCLA, TOSCA, ORS Chapters 465 and 466, and all other applicable federal and state environmental statutes, rules and regulations now or hereafter in effect, but shall not include conditions directly resulting from the acts of Metro, its officers and employees, agents and contractors.

4.2.2 For purposes of this Section, "Government Action" shall be interpreted to include any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency which results directly or indirectly from the Environmental Condition of the Property or Environmental Activity related on or related to the Property.

4.2.3 For purposes of this Section, "Adverse Environmental Activity" shall be interpreted to include any past or current, actual, proposed or threatened surface or subsurface, storage, holding, existing, release, emission, discharge, generation, processing, abatement, removal, remediation, disposition, handling or transportation of any Hazardous Substance(s), pollutant or contaminant (as though they are defined in CERCLA, TOSCA, ORS Chapters 465 and 466, and other applicable federal and state

environmental statutes, rules and regulations hereinafter in effect), from, under, into or on, the Property, or otherwise relating to the Property or the use of the Property or neighboring properties, or any other activity or occurrence, cause or causes that would cause any such event to exist, but shall not include activity by Metro, or on behalf of Metro by its officers and employees, agents and contractors

4.2.4 For purposes of this Section, "Environmental Requirements" shall be interpreted to include past, present and future state and federal local laws and ordinances, including CERCLA, TOSCA, and ORS Chapters 465 and 466, as amended from time to time, including any administrative court order, judgment or decree arising therefrom.

4.2.5 The City and Metro hereby agree that the Environmental Indemnity contained herein shall survive the sale of the Property to a third party. Metro may, at its option, tender any defense of any claim, action or suit covered under this Environmental Indemnity to the City.

**5. Property Management.** Upon acquisition of the Property by Metro and the City, the City shall manage the Property until it is conveyed to a developer pursuant to the Joint Offering. The City shall maintain security of the Property, and shall provide additional fencing, gates, signage, and other measures necessary to maintain public safety on the Property, and to deter public nuisance use of the Property. Access to the Property shall be controlled by the City, and the City shall respond to neighborhood or citizen complaints regarding nuisance uses or noise on the Property. Any permits granted to third parties by the City to use the Property shall comply with the terms and limitations set forth in this Agreement. The City shall be responsible for obtaining all necessary permits and for complying with all state and local rules and regulations in managing and maintaining the Property. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance or operation issues that may arise with respect to the Property. Funding for the management and maintenance of the Property and the payment of taxes or assessments applying to the Property, if any, shall be provided from the City's own resources.

## **6. General Provisions**

6.1 General Indemnification. The City shall indemnify and defend Metro, and hold Metro harmless from and against any claim, loss, liability or cost suffered directly or from a third-party claim arising out of or related to the City's management of the Property or any condition on the Property in the possession or under the control of the City. Metro shall have no liability to the City for any injury, loss, or damage caused by third parties, except to the extent caused by Metro's negligence or breach of duty under this Agreement. The indemnity obligations of the City under this clause shall survive any expiration or termination of this Agreement.

Metro shall indemnify and defend the City, and hold the City harmless from and against any claim, loss, liability or cost suffered directly or from a third-party claim arising out of or related to Metro's activities under Sections 3.7 and 3.8, above. The indemnity

obligations of Metro under this clause shall survive any expiration or termination of this Agreement.

6.2 Liens. Except with respect to activities for which Metro is responsible, the City shall pay as due all claims for work done on and for services rendered or material furnished to the Property, and shall keep the Property free from any liens. If the City fails to pay any such claims or to discharge any lien, Metro may do so and collect the cost from the City. Such action by Metro shall not constitute a waiver of any right or remedy that Metro may have on account of the City's default. The City may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, as long as Metro's property interests are not jeopardized. If a lien is filed as a result of nonpayment, the City shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Metro cash or sufficient surety bond or other surety satisfactory to Metro in an amount sufficient to discharge the lien plus any costs or attorney fees.

6.3 Signage. The City may provide on-site signage informing the public that the City is managing the site, but said signage shall state that funding for the acquisition came from Metro's Transit-Oriented Development/Urban Centers Program. The City shall also document in any publication, media presentation or other presentations on the Property that funding was provided by Metro's Transit-Oriented Development/Urban Centers Program.

6.4 Term. The term of this Agreement shall be five (5) years from the Effective Date of this Agreement, renewable by mutual written agreement for additional five (5) year periods. The indemnities set forth herein shall survive and shall not be affected by the expiration or termination of this Agreement.

6.5 Joint Termination for Convenience. Metro and the City may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective upon 10 days' written notice of termination issued by Metro, subject to the mutual written agreement of the Parties.

6.6 Termination for Cause. Either party may terminate this Agreement before the date of expiration, if that party determines, in its sole discretion, that the other party has failed to comply with the terms and conditions of this Agreement and is therefore in default. The terminating party shall promptly notify the defaulting party in writing of that determination and document said default with reasonable particularity. Thereafter, the defaulting party shall have 30 days to cure the default. If the default is of such a nature that it cannot be completely remedied within the 30-day period, this provision shall be complied with if the defaulting party begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to cure the default as soon as practicable. If this Agreement is terminated under this provision, the City shall quitclaim its interest in the Property to Metro.

6.7 Metro Termination for Failure to Vacate Right of Way and/or Obtain Necessary Zone Change. If the City's best efforts do not result in the incorporation of the ROW

Parcels and/or the amendment of its zoning ordinance as set forth in Section 3 above, then Metro may at its sole option terminate this Agreement, and the City shall quitclaim its interest in the Property to Metro.

6.8 City Termination for Failure to Obtain No Further Action Letter. If Metro's best efforts do not result in the receipt of a No-Further-Action Letter from DEQ as set forth in Section 3.9 above, then the City may at its sole option terminate this Agreement, and the City shall quitclaim its interest in the Property to Metro.

6.9 Laws of Oregon. This Agreement shall be governed by the laws of the State of Oregon, and the Parties agree to submit to the jurisdiction of the courts of the State of Oregon. All applicable provisions of ORS Chapter 279, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provisions were a part of this Agreement, including but not limited to ORS 279.015 to 279.320.

6.10 Assignment. No party may sell its undivided interest in the Property, or assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the Parties may subcontract for performance of any of their responsibilities under this Agreement.

6.11 Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro: Metro  
Phil Whitmore, TOD Program Manager  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

To City: City of Milwaukie  
Mike Swanson, City Manager  
10722 SE Main Street  
Milwaukie, OR 97222

6.12 Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform to the terms and requirements of applicable law and the intent of this Agreement.

6.13 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreements or representations relating to this Property. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties.

IN WITNESS WHEREOF, the Parties hereto have set their hands on the day and year set forth below.

CITY OF MILWAUKIE

METRO

By:

Title:

Mayor of City of Milwaukie

By:

Title:

Chief Operating Officer

Date: 9/21/05

**Exhibits:**

Exhibit A – Legal Description and Depiction of Property and City Property

Exhibit B – Signed Letter of Intent

## EXHIBIT A

### Legal Description of Property and City Property

#### Property:

**Lots 5, 6, 7 and 8, Block 14, MILWAUKIE, in the County of Clackamas, and State of Oregon. The Easterly boundary of said lots to be a line more particularly described:**

**Beginning at a brass screw set in the South sidewalk of Harrison Street in the Town of Milwaukie, at a point which is South 80° West 5 feet and North 9° 20' West 4 feet from the Northeast corner of said Lot 5, Block 14, MILWAUKIE, thence South 9° 20' East, along the center line of the vacated alley in said Block 14, as vacated by Milwaukie City Ordinance 35 recorded in Book 516, Page 124 Deed Records, a distance of 204 feet to an iron pipe set in the South line of said Block 14, said iron pipe being the point of terminus of said boundary as shown by Survey 2615 in the office of the Clackamas County Surveyor.**

#### City Property:

**Lots 1, 2, 3 and 4, Block 14, MILWAUKIE, according to the duly recorded plat thereof, said western boundary of said lots to be a line described particularly as follows:**

**Beginning at a brass screw set in the South sidewalk of Harrison Street in the Town of Milwaukie, at a point which is South 80° West 5 feet and North 9° 20' West 4 feet from the Northeast corner of said Lot 5, Block 14, MILWAUKIE; thence South 9° 20' East, along the center line of the vacated alley in said Block 14, as vacated by Milwaukie City Ordinance 35, recorded in Book 516, page 124 Deed Records, a distance of 204 feet to an iron pipe set in the South line of said Block 14; said iron pipe being the point of terminus of said boundary, as shown by Survey 2615 in the Office of the Clackamas County Surveyor.**

**EXHIBIT B**

Signed Letter of Intent

## LETTER OF INTENT

The purpose of this Letter of Intent is to set forth the terms for discussion by Metro, a Metropolitan Service District ("Metro"), and the City of Milwaukie ("City") for the purpose of entering into an agreement to provide a joint offering ("TOD/Centers Joint Offerings") of the Olson Bros service station ("Olson Property") site and the adjacent city-owned surface parking lot ("City Parking Lot") depicted in Exhibit A, subject to the legislative approval of each party's governing body. The TOD/Centers Joint Offering will provide for the development of an Urban Centers Project of 4-5 stories, containing housing above retail, in downtown Milwaukie, Oregon hereafter referred to as "Main Street Village, Phase II." Unless and until such time as a definitive written agreement has been approved and properly executed by all parties, no party shall have any legal obligation to the other with respect to the potential transactions discussed in this Letter. This Letter of Intent shall in no way be construed as a binding agreement between the parties. Subject to the foregoing, the following is a statement of potential deal points and actions by the parties that are intended to provide a framework for negotiation of a definitive written agreement.

### Metro Participation

1. Metro will obtain an appraisal and appraisal review for the Olson Property at 10700 SE McLoughlin, Milwaukie, Oregon.
2. Metro will seek the approval of the TOD/Centers Steering Committee and the Metro Council for the acquisition of the Olson Property.
3. Metro will complete said acquisition and become the record owner of the Olson Property.
4. Metro will cooperate with the City to jointly offer the Olson Property and the adjacent City parking lot for development as a signature mixed-use project of 4-5 stories with housing above retail to be called the Main Street Village, Phase II.
5. Metro will write down the land value of the Olson Property to an amount that will ensure the construction of a mixed-use development, subject to TOD/Centers Steering Committee and Metro Council approval.

### City of Milwaukie Participation

1. City will offer the City Parking Lot at 10721 SE Main Street in a joint offering with the Olson Property, at an equivalent value per square foot as Metro offers the Olson Property. By writing down the land value of the City Parking Lot Property, the City will share in the financial burden of ensuring the construction of a mixed use project. However, it is understood that because Metro is purchasing land supporting a service station and converting it to commercial-residential use, Metro's total land value write down for the Olson Property will likely exceed the City's, despite equivalent sale values.

2. City will complete the necessary process to have the right-of-way parcels at SE Harrison Street and SE Jackson Street ("ROW Parcels"), depicted on Exhibit B, become part of the TOD/Centers Joint Offering.
3. City will use its best efforts to modify its planning and development regulations to permit a project composed of a minimum of five stories with a floor area ratio ("FAR") of 1 to 1, housing/parking ratio not to exceed one space per housing unit and a building type that is economically feasible
4. City will execute an environmental indemnity prior to Metro's acquisition of the Olson Property, agreeing to indemnify, defend and hold harmless Metro against all liability relating to the environmental condition of the Olson Property.

### **Joint Participation**

1. Metro and the City will establish a project management committee to manage parcel consolidation including the ROW Parcels, craft and market a public offering document, solicit proposals and select a developer. The City and Metro will share decision-making equally for the project.
2. The Joint Offering may be offered through either an open competitive process or an unsolicited proposal process. The initial development concept is for a landmark mixed-use development of four to five stories, with the building footprint covering most of the parcel.

### **Schedule**

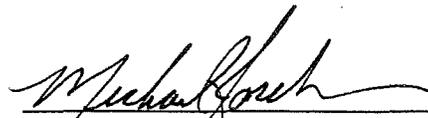
The parties' intent is that the Joint Offering will issue within 18 months or less from the date of this Agreement.

Neither Metro nor City shall have any obligation to the other with respect to transactions and matters discussed above until a definitive written agreement encompassing said transactions and matters has been approved by the respective governing bodies of Metro and the City and executed by the parties. Unless and until such a written agreement has been so executed, neither party shall have any obligation to the other with respect to any costs incurred, including but not limited to, legal and consulting fees incurred in connection with the proposed transactions and actions described herein.

**City of Milwaukie**

  
\_\_\_\_\_  
City Manager

**Metro**

  
\_\_\_\_\_  
Chief Operating Officer

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EXHIBIT A

LEGAL DESCRIPTION

Lots 5, 6, 7 and 8, Block 14, MILWAUKIE, according to the duly recorded plat thereof, in the City of Milwaukie, County of Clackamas and State of Oregon, the Eastern boundary of said lots to be a line more particularly described as follows:

Beginning at a brass screw set in the South sidewalk of Harrison Street in the Town of Milwaukie, at a point which is South 80° West 5 feet and North 9°20' West, 4 feet from the Northeast corner of said Lot 5, Block 14, MILWAUKIE; thence South 9°20' East, along the center line of the vacated alley in said Block 14, as vacated by Milwaukie City Ordinance 35, recorded in Book 516, Page 124, Deed Records, a distance of 204 feet to an iron pipe set in the South line of said Block 14, said iron pipe being the point of terminus of said boundary, as shown by Survey 2615 in the Office of the Clackamas County Surveyor.

EXCEPTING THEREFROM those portions deeded to the City of Milwaukie by Deeds recorded February 1, 2005, Fee No. 2005-009153 and also Fee No. 2005-009154.



**RS 3. C.**  
**May 17, 2016**



**To:** Mayor Gamba and Milwaukie City Council  
**Through:** **Bill Monahan, City Manager**  
**From:** Steve Bartol, Chief of Police   
**Date:** May 5, 2016  
**Subject:** **O.L.C.C. Application – Locally Sourced NW LLC – 11238 SE 21<sup>st</sup> Ave, Suite 3**

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**Action Requested:**

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from **Locally Sourced NW LLC – 11238 SE 21<sup>st</sup> Ave, Suite 3**

**Background:**

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



**Regular Session  
Agenda Item No.**

**6**

**Other Business**



MILWAUKIE CITY COUNCIL  
STAFF REPORT

**To:** Mayor and City Council

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

**Subject:** **19<sup>th</sup> Avenue/Sparrow Street Greenway Design—  
Adoption of Concept Plan**

**From:** Dennis Egner, Planning Director  
Brett Kelper, Associate Planner

**Date:** May 10, 2016, for May 17, 2016, Regular Session

**ACTION REQUESTED**

Hold a public hearing to take final testimony before adopting (by resolution) the proposed Concept Plan for the 19<sup>th</sup> Avenue and Sparrow Street Neighborhood Greenway design.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

**April 13, 2016:** Final public meeting with Island Station neighbors to review and discuss the final draft of the Concept Plan.

**January 2016:** Staff updated Council on the latest version of the draft Concept Plan.

**November 2015:** Council heard directly from neighborhood residents about the preferred design for the 19<sup>th</sup> Avenue greenway; refinements to the Sparrow Street design were still in process at that time.

**August 2015:** Council authorized the City Manager to sign an Intergovernmental Agreement (IGA) with the Oregon Department of Transportation (ODOT) to allow the City to utilize consultant services funded by a Quick Response grant from the Oregon Department of Land Conservation and Development (DLCD) via the State's Transportation and Growth Management (TGM) program for this project.

**Spring/Summer 2015:** On a number of occasions as part of the Community Development update portion of Council work sessions, staff provided information regarding the TGM Quick Response grant program and the opportunity to secure a grant for consultant assistance to develop a concept plan for a 19<sup>th</sup> Ave woonerf.

**April 2015:** During the audience participation portion of the April 21 Council meeting, the Island Station Fee in Lieu of Construction (FILOC) Committee presented a proposal for a woonerf (a pedestrian-oriented street) on 19<sup>th</sup> Avenue.

**BACKGROUND**

The City's Transportation System Plan (TSP) designates 19<sup>th</sup> Avenue and Sparrow Street as a "neighborhood greenway" route, a street with low traffic speeds that provides important connections for bicyclists and pedestrians (such as between Spring Park and Riverfront Park). However, since the City's public works standards do not include a "greenway" design, any development that triggers street frontage improvements results in the City requiring construction

of a typical neighborhood street cross-section, including curb and sidewalk. Neighborhood residents have strongly expressed the desire for an alternative design for 19<sup>th</sup> Avenue and Sparrow Street that does not include a traditional curb and sidewalk.

In 2015, the City secured a Quick Response grant from DLCD through the State's TGM program to develop a concept plan that provides a design for neighborhood greenway improvements for these two streets. The project team was comprised of City staff from the Planning and Engineering Departments as well as consultants from multi-disciplinary firm OTAK. Two public design workshops in the Fall of 2015 provided the primary opportunities for residents and property owners in Island Station to discuss the needs and preferences of the community with respect to the greenway streetscape. In December 2015, a special meeting with Sparrow Street-area residents provided the additional input necessary to develop a preferred option for that street.

### **Concept Design**

The final revised version of the Concept Plan for the 19<sup>th</sup> Avenue and Sparrow Street greenway route is included as Attachment 1. For 19<sup>th</sup> Avenue, the concept essentially maintains the street as it currently is, with a 15-ft-wide paved surface. Flush curbs on either side protect the asphalt edges of the street. Gravel shoulders on both sides (3-ft wide) represent a "flexible zone," which could be used for parking, landscaping, stormwater management, or other streetscape treatments. A linear tactile strip set 5 ft from one flush curb runs the length of the street as a guide to the visually impaired. The tactile strip and accompanying 5-ft-wide area (graded to certain cross-slope standards) are two key features that make the 19<sup>th</sup> Avenue design compliant with the Americans with Disabilities Act (ADA). Painted intersections and accompanying signage and pavement markings announce the 19<sup>th</sup> Avenue greenway to users. Bioswales located in the cross-street rights-of-way just west of 19<sup>th</sup> Avenue provide additional stormwater treatment.

On Sparrow Street, which experiences slightly higher volumes and speeds than 19<sup>th</sup> Avenue, the concept presents a 20-ft-wide paved street between 22<sup>nd</sup> Avenue and the railroad trestle just west of 20<sup>th</sup> Avenue. To provide safe pedestrian facilities and direct stormwater runoff to appropriate facilities, a raised curb and 6.5-ft-wide sidewalk extend along the southern side of the street. Raised curbing features at the west side of the intersection with 22<sup>nd</sup> Avenue help narrow the roadway to calm traffic and provide some refuge for pedestrians. Traffic-control signage at the intersection with 20<sup>th</sup> Avenue provides additional traffic calming and serves as a gateway to the 19<sup>th</sup> Avenue portion of the greenway. West of the railroad trestle, the greenway improvements on Sparrow Street are similar to those on 19<sup>th</sup> Avenue.

The Concept Plan provides a guide for the desired safety improvements on 19<sup>th</sup> Avenue and Sparrow Streets, but it does not strictly prescribe improvement details in specific locations. Prior to any construction, an additional level of design and engineering will be necessary to determine precisely which features go in which location. Some residents have wondered aloud about the existing conditions in front of their properties and how the concept design would be physically implemented there. Until a closer look is taken at the next stage of engineering design, the concept design should be understood as the general expectation for improvements on both streets, with details to be worked out later. But residents and owners on 19<sup>th</sup> Avenue, for example, can rest assured that the concept does not include traditional sidewalks and raised curbs.

### **Low Volume Streets**

In the process of developing the Concept Plan for the 19<sup>th</sup> Avenue and Sparrow Street neighborhood greenway route, the project team developed a general design that could be applied to other residential streets in the city that have low volumes, are dead ends, and/or serve a small number of dwellings. Engineering staff will bring that design forward in the near future for incorporation into the City's Public Works Standards, so that it can be available for application when appropriate. A future staff report and Council presentation will address the Public Works Standards, which will be updated to include the new standards for 19<sup>th</sup> Avenue and Sparrow Street that have emerged from this process.

### **CONCURRENCE**

The Planning, Engineering, and Public Works Departments continue to coordinate in this process.

### **FISCAL IMPACTS**

The Quick Response project is officially finished and closed. The TGM program provided approximately \$50,000 for consultant services, with the City providing an in-kind match of staff time valued at approximately \$6,000. No matching funds from the City were required beyond the commitment of staff time.

Regarding the question of who would pay for construction of any proposed greenway improvements, there are a number of different options. New development could trigger a requirement for street improvements along the frontage of the developing property (likely to be collected primarily through fees in lieu of construction). The City could seek grants from outside sources to build complete sections of the designated greenway. Property owners could elect to establish a Local Improvement District (LID) in a specific area and essentially tax themselves to pay for the improvements; with that option, the City could choose to call in some of the relevant non-remonstrance agreements on file along the greenway route.

### **WORK LOAD IMPACTS**

The project has been managed by Planning Director Denny Egner, with assistance from Associate Planner Brett Kolver and close coordination with Engineering Director Chuck Eaton. The project represented a small portion of staff workload for the early part of 2016.

### **ALTERNATIVES**

If Council chooses not to adopt the proposed Concept Plan as presented at the May 17 hearing, Council could opt to continue the public hearing to another date certain to allow time for more public comment. Council could also direct staff to make revisions to the proposed Concept Plan.

### **ATTACHMENTS**

1. Proposed Resolution for Adoption of the Concept Plan
  - Exhibit A – Proposed Concept Plan for 19<sup>th</sup> Avenue and Sparrow Street Neighborhood Greenway



## CITY OF MILWAUKIE

*"Dogwood City of the West"*

### Resolution No.

#### **A resolution of the City Council of the City of Milwaukie, Oregon, adopting a Concept Plan for the 19<sup>th</sup> Avenue and Sparrow Street Neighborhood Greenway.**

**WHEREAS**, the City's Transportation System Plan (TSP) identifies 19<sup>th</sup> Avenue and Sparrow Street as one of several neighborhood greenways, where low-volume, low-speed streets provide safe, quiet routes for motorists, pedestrians, and bicyclists; and

**WHEREAS**, a significant number of residents and property owners in the Island Station neighborhood have expressed a preference for an alternative street design for 19<sup>th</sup> Avenue and Sparrow Street instead of the standard cross-section for local streets, which requires raised curbs, sidewalks, landscape strips, and a wider paved street width; and

**WHEREAS**, public input has been integrated into the proposed Concept Plan for neighborhood greenway improvements on 19<sup>th</sup> Avenue and Sparrow Street, including input provided at open public workshops and public information meetings held in Fall 2015 and Winter/Spring 2016 to present and discuss the design project with Island Station neighbors, which helped to shape the design team's efforts to develop the proposed Concept Plan; and

**WHEREAS**, the proposed Concept Plan provides an overall vision of the recommended improvements that will make 19<sup>th</sup> Avenue and Sparrow Street a functional neighborhood greenway route, with more specific engineering and design details to be finalized prior to any future construction activity; and

**WHEREAS**, the proposed Concept Plan does not obligate any current or future property owners or residents along the 19<sup>th</sup> Avenue and Sparrow Street neighborhood greenway route to directly pay for or construct any of the proposed improvements unless they participate in a local improvement district for the improvements, develop or redevelop their properties to such a degree that triggers a requirement for street improvements, or participate in a city-wide financing program aimed at local street improvements;

**NOW, THEREFORE, BE IT RESOLVED** that:

- 1) The City Council adopts the Concept Plan for the 19<sup>th</sup> Avenue and Sparrow Street Neighborhood Greenway, attached as Exhibit A, as a framework for implementing the neighborhood greenway concept outlined in the TSP; and
- 2) The Council directs City staff to capitalize on opportunities to implement the Concept Plan, including opportunities to fund further design and construction.

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



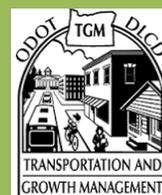
# Island Station Neighborhood Greenway Milwaukie, Oregon

January 2016

Prepared for:



RS48



ODOT/DLCD  
Transportation Growth  
Management Program



*“This project is partially funded by a grant from the Transportation and Growth Management (TGM) Program, a joint program of the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development. This TGM grant is financed, in part, by federal Moving Ahead for Progress in the 21st Century (MAP-21), local government, and the State of Oregon funds.”*



Otak Inc.  
808 SW Third Avenue, Suite 300  
Portland, OR 97204  
Otak Project No. 17671  
February 9, 2016

Glen Bolen, AICP, Jackie Davis,  
Ben Bortolazzo Intl. Assoc. AIA and Andy Kutansky, PE

**RS49**

The City of Milwaukie's (City) Transportation System Plan (TSP) identifies four different neighborhood greenway routes. Neighborhood greenways are low-volume, low-speed routes that provide a safe, quiet streetscape for bicycles and pedestrians.



*Drivers and pedestrians share 19<sup>th</sup> Avenue which is often narrower than 15'*

The Island Station neighborhood is home to the 19th Avenue and Sparrow Street neighborhood greenway. Both 19th Avenue and Sparrow Street provide a popular route for local neighbors and visitors to or from Riverfront Park and Spring Park. And 19th Avenue functions like a shared street, where motor vehicles, bicycles, and pedestrians are all equal users of the public roadway. But this is more of a result of circumstance than of deliberate design.

The City's TSP does not have an overall plan or common design standard for greenways. As a result, if and when new development projects are proposed, they will trigger the same requirements for street improvements as on any other local street, which include wider lanes, traditional curbs, and sidewalks.

Looking for new, more appropriate, context-sensitive solutions, the City and the Island Station neighbors engaged in a process to develop a design concept for the 19th and Sparrow greenway. The concept depicts a shared vision of the future for this neighborhood greenway and provides direction for future improvements.

## Existing Greenway Conditions

### SE 19<sup>th</sup> Avenue

Southeast 19<sup>th</sup> Avenue travels in a north and south direction for four city blocks. The roadway is narrow, averaging around 15 feet, with gravel shoulders at the edges. The City's right-of-way is considerably wider, but much of the land slopes steeply toward the Willamette River. The paved surface is predominately located east of the right-of-way center line.



*SE 19<sup>th</sup> Avenue: Looking north Unpaved shoulders are often landscaped or used for parking. Also note the rapid drop-off toward the river (left side of photo) that constrains the right of way*



*SE Sparrow Street: Looking east*

### SE Sparrow Street

Southeast Sparrow Street travels east and west for three city blocks. The western terminus is at Spring Park where it intersects with SE 19<sup>th</sup> Avenue. The street span from SE 19<sup>th</sup> Avenue to SE 20<sup>th</sup> Avenue is similar to that of SE 19<sup>th</sup> Avenue, with a roughly 15 foot width of pavement; a railroad trestle constricts this street span. East of SE 20<sup>th</sup> Avenue the roadway widens to 20 feet with gravel and planted shoulders.



*The elevation increases rapidly on the east side of the street (right side of photo) limiting the ability to widen the roadway*



*Some locations have wide shoulders that can be used for parking, benches, landscaping or stormwater planters. Note the free library box on the left side of the photo*



*Both 19<sup>th</sup> Avenue and Sparrow Street lead walkers toward Spring Park.*



## Neighborhood Greenway Design

The design concept for the Island Station neighborhood greenway is customized for the unique conditions presented by these two streets. As a design concept, it should be noted that it conveys potential solutions, but specific details regarding the individual elements will be determined at the time of final design. The concept allows for flexibility in both timing and costs.

**19<sup>th</sup> Avenue** – In the short-term, the existing pavement width will be retained. As a first phase, a textured, tactile warning strip will be added to the road surface to provide a guideway for visually impaired users along with signage, pavement painting to be added. Gravel shoulders will continue to serve as clear space for emergency vehicles.

In the long-term, the entire street, 19<sup>th</sup> and west of 20<sup>th</sup> on Sparrow, should be constructed to a width of 15 feet with 6-inch wide flush-mount curbs at the edge. Similar to short-term solution, a load-bearing shoulder of at least 3 feet would extend beyond the curb. Stormwater planters can be added over time, as funding becomes available.

**Sparrow Street** – Roadway width, east of the intersection with SE 20<sup>th</sup> Avenue will remain at 20 feet wide. A sidewalk will be programmed for the southern side of the street from SE 20<sup>th</sup> Avenue, eastward up the hill. Speed humps, redesigned corners, and signs will slow traffic. A series of raised pedestrian improvements will slow traffic turning westward onto SE Sparrow Street and provide safety for people walking in the area.

### Design Concept Summary

| Roadway Section                             | Pavement Width   | Shoulder   | Sidewalk                      |
|---|--|--|-------------------------------|
| 19 <sup>th</sup> Ave. 1 <sup>st</sup> Phase | 15 feet wide with tactile warning strip, signs & pavement painting | 3 foot load bearing (typ. gravel)  | NA                            |
| 19 <sup>th</sup> Ave. Design Standard       | 15 feet wide with tactile warning strip, signs & pavement painting | 6-inch flush-mount curb and 3 foot load bearing (typ. gravel) with flexible zone | NA                            |
| Sparrow Street                              | 20 feet  | 3 foot load bearing (typ. gravel) flexible zone on north side                    | 5 foot sidewalk on south side |

Island Station - 19th Ave & Sparrow St.  
Greenway Concept Design

1" = 40'



January 25th 2016



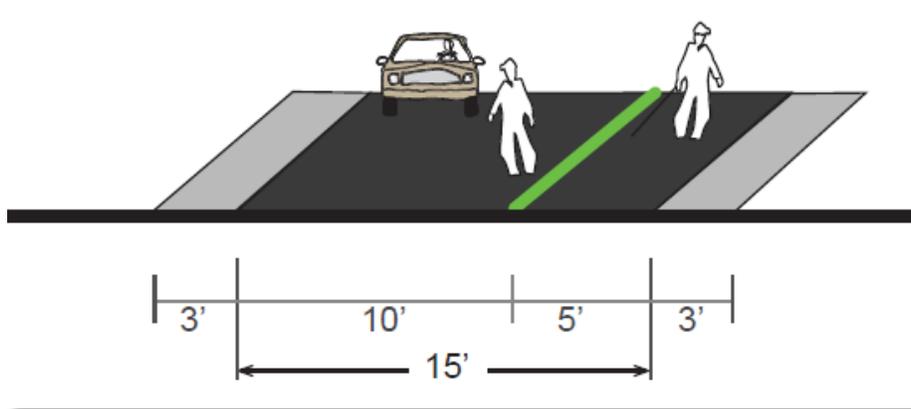
**Note:** This is a PLANNING LEVEL DESIGN CONCEPT. Elements are subject to change during final design and review.

\* Water quality & conveyance facilities yet to be determined.

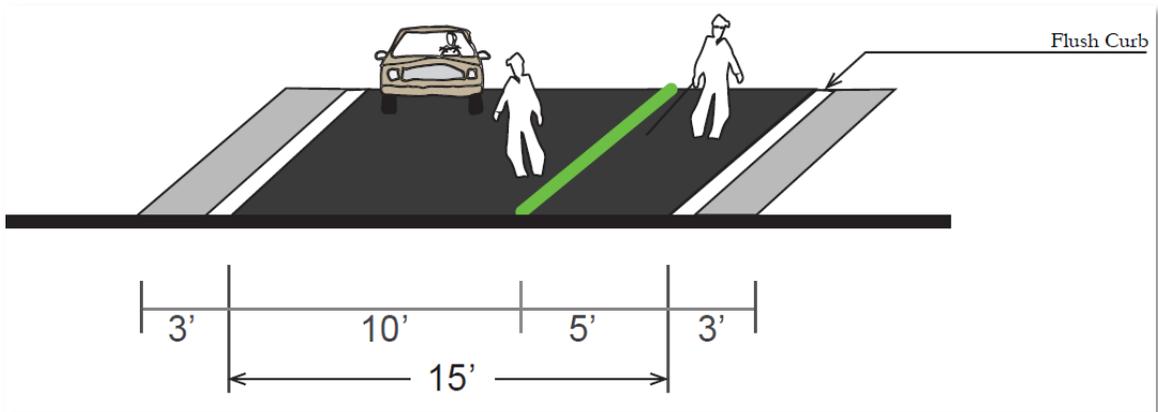
Legend

-  Property Lines
-  Existing Paved Surface
-  Existing Gravel Shoulders
-  Signage
-  Sharrows
-  Sidewalk
-  Tactile Guidance Strip
-  Flexible Zone
-  Painted Intersection
-  Bioswale
-  Existing Driveway
-  Raised Table
-  Bulb Out





*SE 19<sup>th</sup> Avenue in the interim would be modified by adding a tactile warning strip to help guide visually impaired pedestrians.*



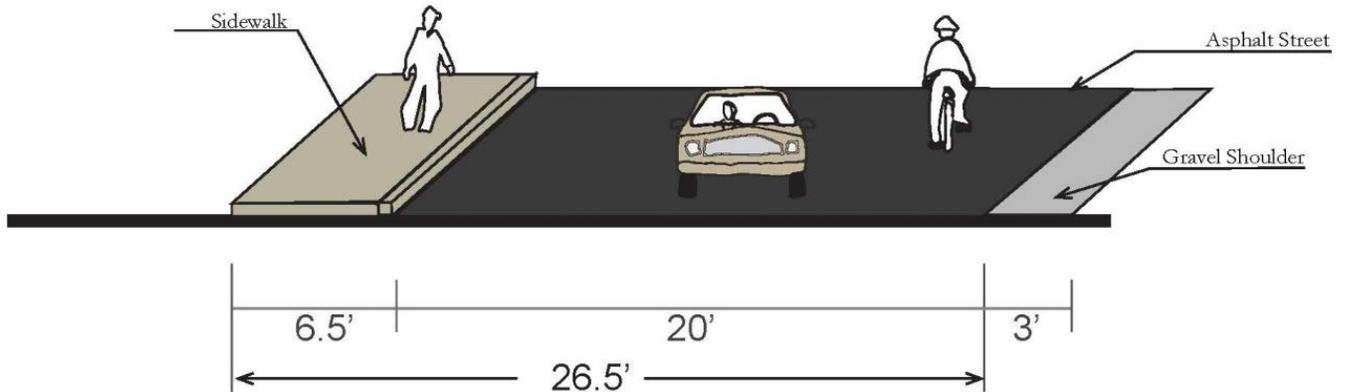
*The long-term concept for SE 19<sup>th</sup> Avenue would introduce narrow, 6-inch flush mount curbs at the pavement edge to further delineate the roadway and stabilize the shoulder*



*Examples of tactile warning strips that can be adhered to road surface*



## Sparrow Street Concept



*SE Sparrow Street would get a curb and sidewalk on the south side for pedestrians and managing stormwater*

### Flexible Shoulder Zones

For both of 19<sup>th</sup> and Sparrow, the improved area is narrower than the public right-of-way. These areas beyond the travel way (including road, load-bearing shoulder, and curb/sidewalk) can be used for a number of purposes. Use of these shoulder zones helps the road to continue feeling narrow to discourage cars from driving above the speed limit. Currently these areas are used informally, predominantly as landscaping and parking. The design concept includes new uses such as:

- Bioswales for stormwater treatment
- Formalized parking with paint, pavers, or curbs
- Furnishings such as benches, lights, and signage
- Trees and other landscape treatments



*Bioswales can treat stormwater and look great at the same time*



*Painted areas can formalize on-street parking*

*Trees in the flexible zone can create visual pinch points to slow traffic*



### Street Treatments

The design concept on page 5 also highlights a number of other roadway treatments. Intersections are treated with signage, including traffic control (stop), directional, and simple graphics to denote the shared space. Other popular treatments for greenways are painted or raised intersections. Painting of the roadway is often done as a community building activity. Adding art to the street communicates the treasured nature of the space to visitors and show that the community is active in planning and managing traffic in the area.

Signage can also be used along the facilities to communicate with drivers, and sharrows, affixed to the roadway surface, remind users that the roadway is for everyone.



*Signage; traffic control, directional and graphic*

Raised intersections also have the benefit of forcing vehicles to slow as they mount the devices. Some intersections, such as the connection from SE 22<sup>nd</sup> Avenue to SE Sparrow Street also include raised pedestrian tables to direct walkers safely, provide a barrier from autos, and tighten the radius of the corner to slow vehicles.



*Raised intersections force vehicles to slow as they mount the devices*

Together, these treatments will signal to motorists that they are entering a special place. The visual triggers will lead them to slow down, look around, and make sure that they are indeed sharing the road.



*Painted intersections are great ways for neighborhoods to express their unique character*

## Potential Costs

Following are planning level cost estimates for the improvements portrayed by the design concept for Island Station's greenways.

Estimated Construction Costs for Proposed Design Concepts

| Design Concept                  | Estimated Construction Cost |
|---------------------------------|-----------------------------|
| 19 <sup>th</sup> Ave. Interim   | \$126,000                   |
| 19 <sup>th</sup> Ave. Long-Term | \$1,081,000                 |
| Sparrow Street                  | \$922,000                   |

The table above describes complete replacement of the entire roadways for both SE 19<sup>th</sup> Avenue and SE Sparrow Street. If incremental investments are considered, the standalone estimates can be extracted to provide general guidance regarding scale of investment to anticipate.

## Funding Mechanisms

Construction of local streets is conventionally either built by developers to serve their projects, or paid for incrementally as development occurs. The Island Station neighborhood is what many describe as “built out” and has only a limited few development opportunities. Accordingly, building the greenways described in the design concept using only development generated funds would not be possible. However, Milwaukie’s Transportation System Plan lists ten funding sources currently in use. The following is a listing of those that appear most applicable to a greenway project such as this:

### Grant/Competitive Programs

Metropolitan Transportation Improvement Program (MTIP) identifies how all federal transportation money is to be spent in the region in two-year increments. MTIP "regional flexible funds" can be used for most aspects of the local transportation system.

### City Share of State Highway Trust Fund

The primary sources of the State High Trust Fund are the state motor vehicle fuel tax, a weight-mile charge on heavy trucks, and vehicle registration fees. The Oregon Department of Transportation (ODOT) requires that cities set aside 1 percent (1.0%) of the local share of State Highway Trust Fund proceeds for the construction and maintenance of bicycle facilities. The shared street could potentially be eligible for this funding.

### Local Funding Sources

- **Local Gas Taxes** are separate and apart from the state gasoline tax. Milwaukie gas stations pay a tax on fuel sold in Milwaukie, which is sent to the city for street maintenance use only.
- **Local Improvement Districts (LIDs)** are special assessment districts in which property owners benefiting from a transportation improvement pay for that

improvement. These special assessment districts have not been frequently used by the city, but are available to interested property owners.

- **Fee In Lieu of Construction** is collected when required street frontage improvements, typically associated with residential construction, are impractical to build. These funds are limited in both how and where they can be spent, but would be expected to be directly applicable to the greenways for properties with direct adjacency.

# Appendix

## Project Activities

### Site Visit

To initiate the project, the City’s design and engineering team visited the site, walking, talking, measuring, and photo documenting the greenway. On the warm early September day the area was alive with people walking, biking, and driving. Some were passing through the area, while others were simply using the street for recreation. Southeast 19<sup>th</sup> Avenue stood out as it acts very much as a shared street.



Cars, trucks, and people on foot: Looking west



SE 19<sup>th</sup> Avenue on a typical September day on SE 19<sup>th</sup> Avenue

### Traffic Speed Study

The Milwaukie Police Department conducted a traffic speed study for SE 19<sup>th</sup> Avenue in October 2014. The speed study results confirmed the low volumes described by neighbors and the lower than average speeds compared to similar streets.

#### SE 19<sup>th</sup> Avenue Speed Study Results – October 2014

|                       |   |
|-----------------------|---|
| Total Volume          | Average 125 cars per day                    |
| Busiest time          | 2 –7 pm                                     |
| Average Vehicle Speed | 8.93 mph / Fastest recorded speed: (35 mph) |
| Posted Speed Limit    | 15 mph                                      |

## Urban Design Assessment

The urban design assessment below shows that the 19<sup>th</sup> and Sparrow neighborhood greenway is in a unique situation. This section of the Island Station neighborhood is enclosed between the natural barrier of the Willamette River on the west side and the major thoroughfare SE River Road or SE 22<sup>nd</sup> Avenue on the east side. Capped on the north and south by parks and larger lots, this somewhat isolated cove has just five access points for cars, four from SE River Road and one from SE 20<sup>th</sup> Avenue. The area is divided, secluded by the interruption of a train rail line. There are several areas used for on-street parking and houses have driveways accessing the streets.



*Urban Design Assessment*

## Goals and Objectives

Participants were passionate about the neighborhood and its shared streets. They were mostly in favor of relatively simple and cost effective design solutions.

The primary concern of the workshop attendees was that elaborate design solutions could be out of place with the area's quiet setting. Secondly, people were worried that homeowners would be required to pay for the improvements.



*Weighing in on project goals and objectives*

## Top Neighborhood Participants Priority Goals and Objectives

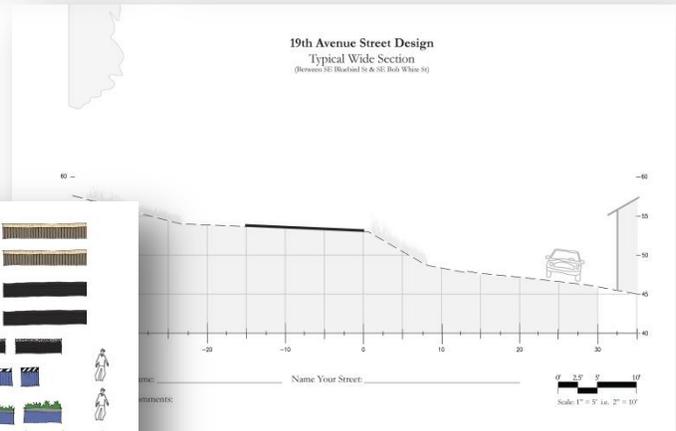
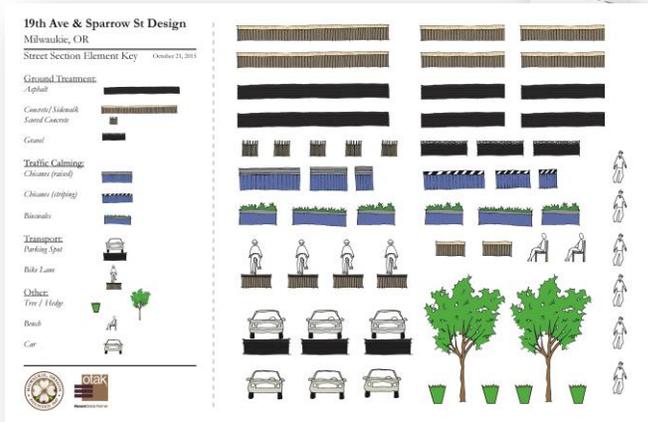
- A pleasant and safe walking and biking connection between Riverfront Park and Spring Park is an important asset for all residents of Milwaukie
- Neighborhood Greenways should be shared by drivers, walkers, and cyclists
- Guidelines for neighborhood greenways should be flexible, allowing for designs to be influenced by local neighborhood conditions and values
- Design solutions should be simple; use low technology / low cost techniques where possible
- Design standards should include components that help clean and treat stormwater runoff
- Improvement costs should be shared among all of the City's taxpayers

## Cross Sections

Participants developed a number of design ideas, from keeping things “as-is” to more elaborate programs. All of the ideas resulted in a street section that is narrower than either the right-of-way or the current Local Street standard.



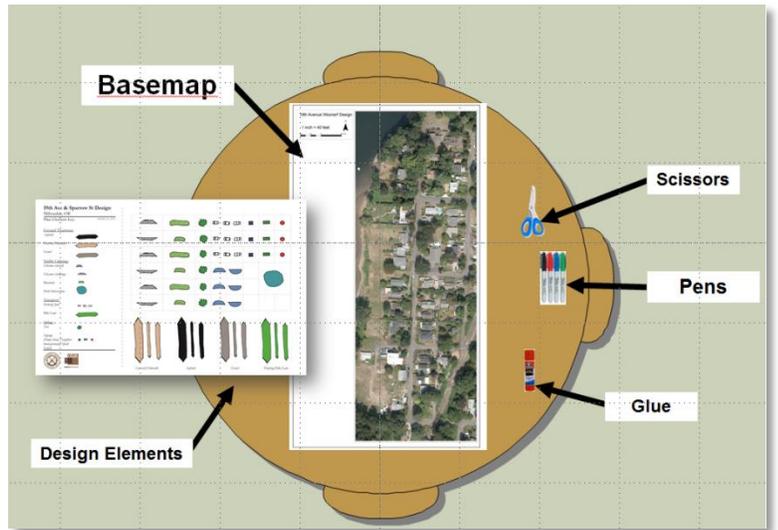
*Participants applied scale drawn icons, representing streetscape elements, to cross-section images*



### Map Design Activity

Participants worked together in groups to develop maps of how the greenway should be designed. As with the cross-section activity, pavement widths were narrow with the shoulders hosting a range of uses, from landscaping and benches to bioswales or parking.

Designs were shared aloud and discussions continued.



*Participants groups designed their ideal versions of Island Station's greenway*



*Sharing ideas with a group discussion at the end of evening*



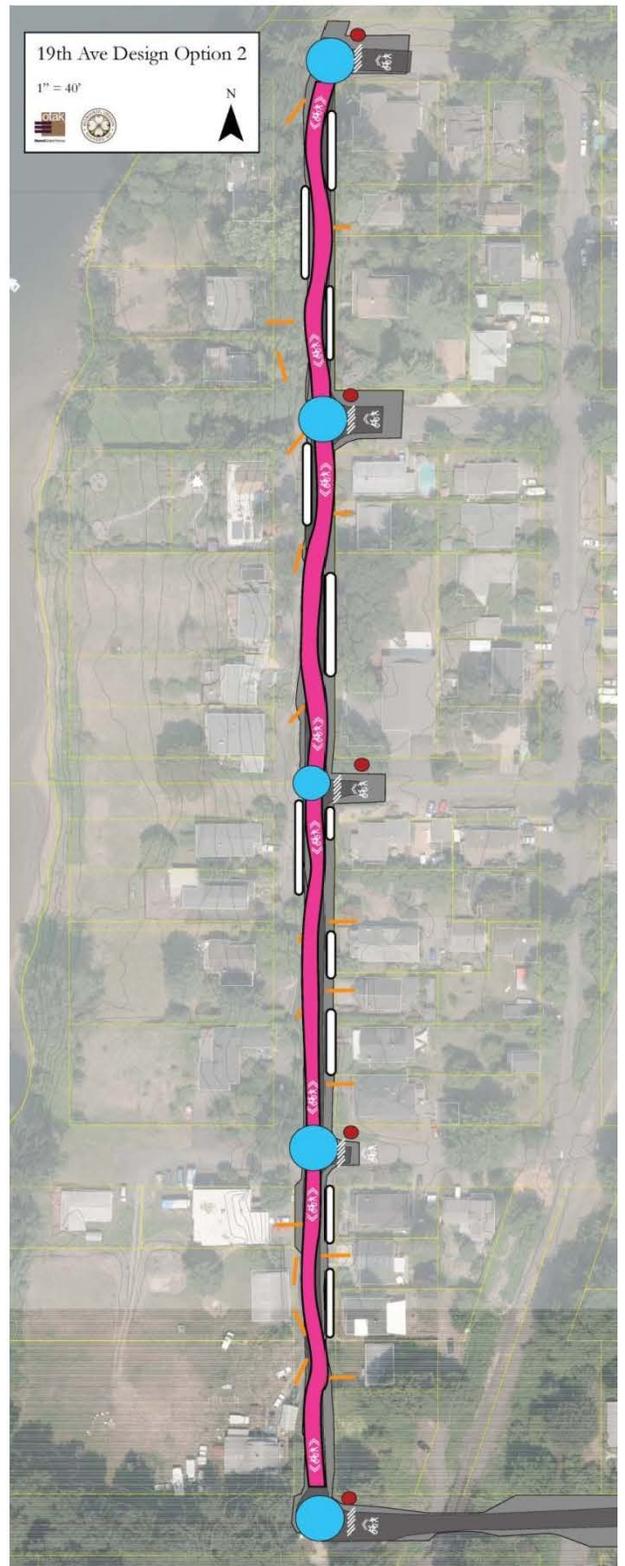
## Neighborhood Greenway Design Options

The design team distilled the workshop participant’s ideas into a series of options for presentation at a joint meeting with stakeholders and the Milwaukie City Council.

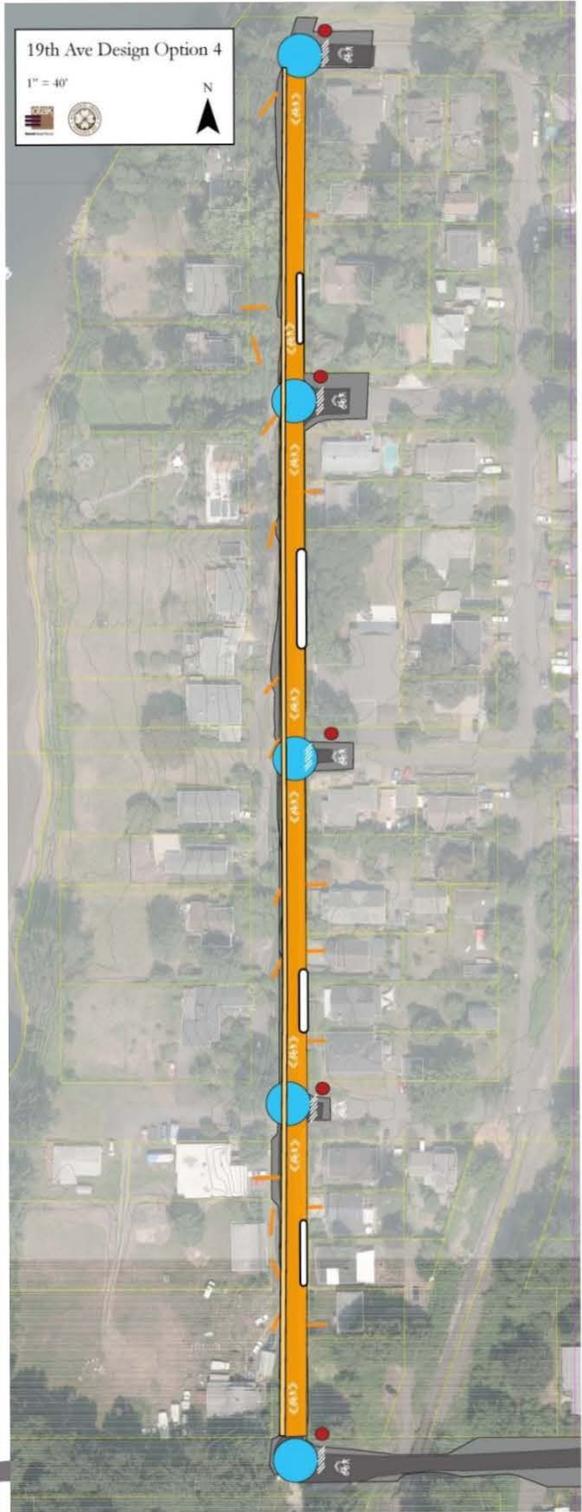
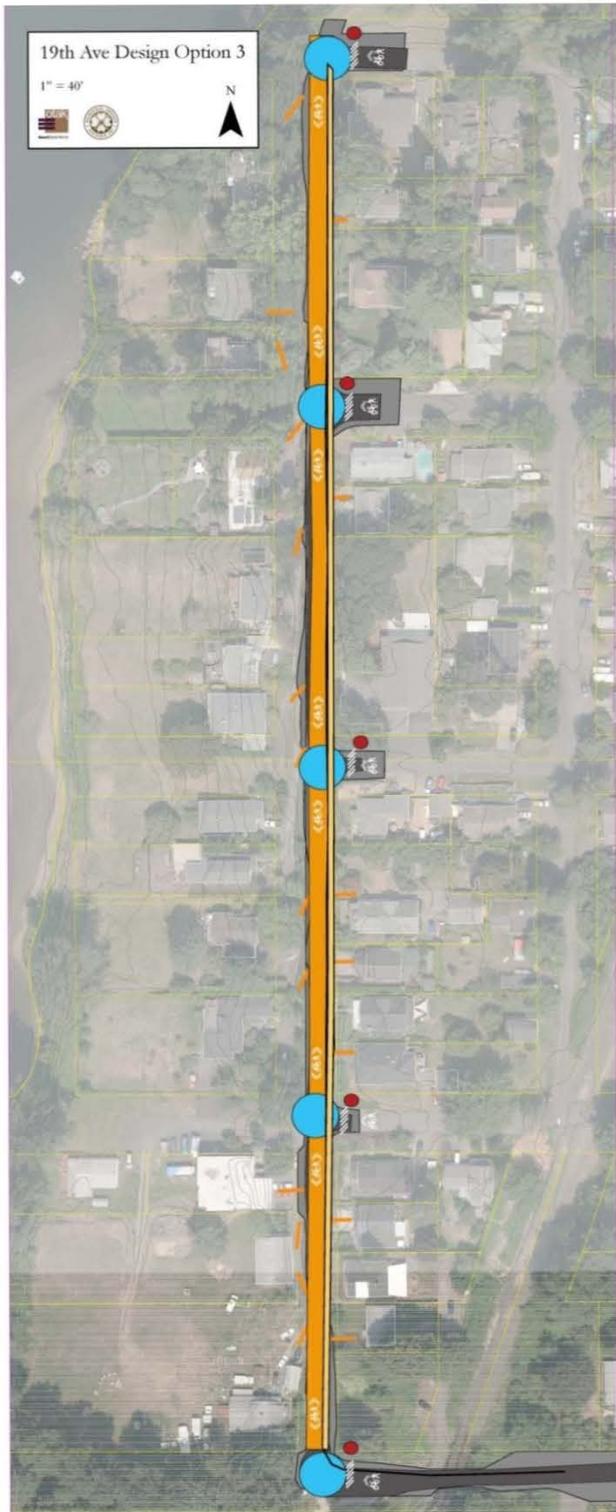
Three design options were prepared for SE 19<sup>th</sup> Avenue ranging from the low cost / low tech to more elaborate designs. Input for Sparrow Street was less varied; two options were prepared.

| Design Option                       | Features   |
|-------------------------------------|--|
| <b>SE 19<sup>th</sup> Avenue #1</b> | <ul style="list-style-type: none"> <li>• Retain 15-foot wide roadway</li> <li>• Add painted intersections and sharrows</li> <li>• Retain gravel shoulder for parking</li> </ul>  |
| <b>SE 19<sup>th</sup> Avenue #2</b> | <ul style="list-style-type: none"> <li>• Meandering street (to slow traffic)</li> <li>• Striped parking, swales, planter boxes at pavement edge</li> <li>• Paint intersections, sharrows, and signage</li> </ul>   |
| <b>SE 19<sup>th</sup> Avenue #3</b> | <ul style="list-style-type: none"> <li>• 20-foot wide paved street</li> <li>• Paint or textured separation of travel modes on one side</li> </ul>  |
| <b>SE 19<sup>th</sup> Avenue #4</b> | <ul style="list-style-type: none"> <li>• 20-foot wide paved street</li> <li>• Paint or textured separation of travel modes on one side</li> <li>• Parking or bioswales constructed to create pinch points</li> </ul>   |
| <b>Sparrow #1</b>                   | <ul style="list-style-type: none"> <li>• Maintain existing pavement pattern</li> <li>• Separated walking area along south edge of SE Sparrow Street via green planting strip</li> <li>• Define and add designated parking/swale areas along edges</li> <li>• Vegetated bulb outs on corners to manage stormwater and slow traffic</li> <li>• Signage at major intersections to slow traffic</li> </ul> |
| <b>Sparrow #2</b>                   | <ul style="list-style-type: none"> <li>• Create meandering asphalt road to signal to cars to be cautious</li> <li>• Designated parking/swale areas along edges</li> <li>• Separated walking area along south edge of SE Sparrow Street separated by (parking/swale) chicanes</li> <li>• Paint at intersections</li> <li>• Signage at major intersections to slow traffic</li> </ul>                    |

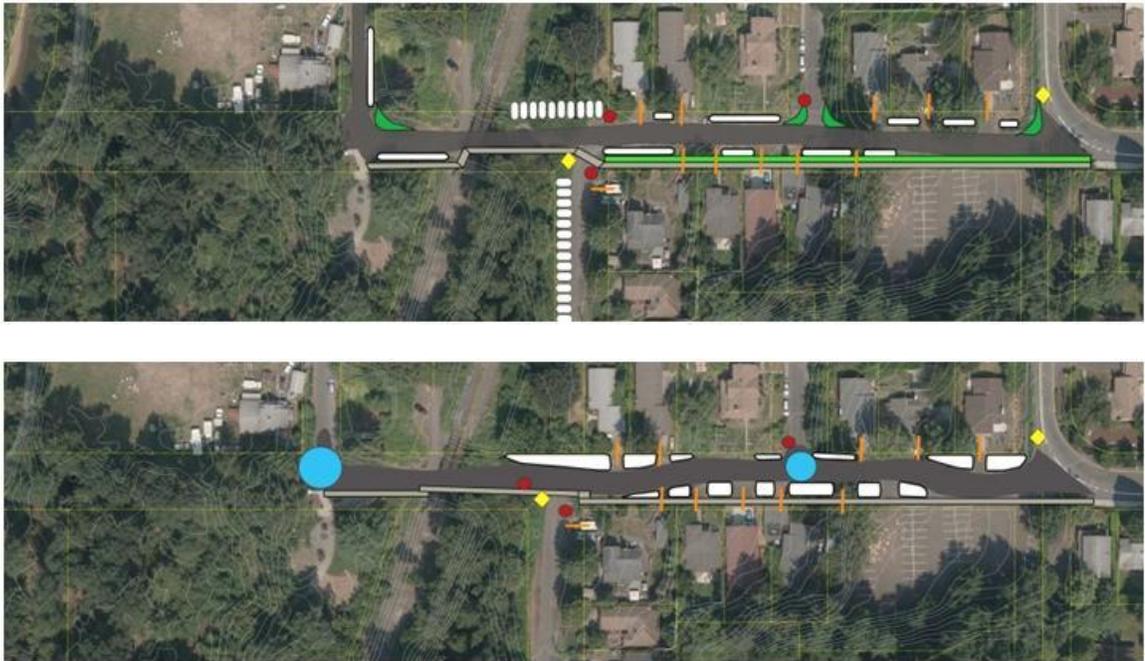
Images of the four design options for SE 19<sup>th</sup> Avenue and the two design options for SE Sparrow Street are presented on the follow pages.



SE 19<sup>th</sup> Avenue Design Options #1 and #2



SE 19<sup>th</sup> Avenue Design Options #3 and #4



*SE Sparrow Street Design Option #1 (top) and #2 (bottom)*

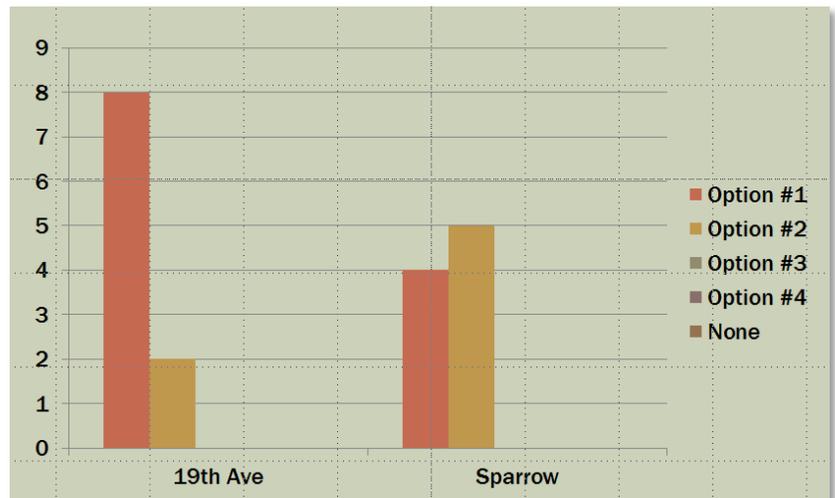


*Stakeholders joined with the City Council to review, discuss and provide refinements to the design concepts*

## Stakeholder and City Council Design Option Review

Stakeholders and city council members reviewed the public engagement workshop results, inspected the designs, and provided input toward refinement of the design concepts. In general, options #3 and #4 of the SE 19<sup>th</sup> Avenue were quickly rejected. Most stakeholder and city council members liked the minimal approach of option #1, with some embracing the additional elements in option #2. The SE Sparrow Street options found roughly similar favor, with neither option jumping to the front. Participants noted that SE Sparrow Street residents were not able to attend the work session.

*When asked about which option people preferred and found most attractive, people aligned heavily with the simpler design options for SE 19<sup>th</sup> Avenue but were divided on the design for SE Sparrow Street*



To ensure quality input, a follow-up meeting was scheduled to meet with residents living along SE Sparrow Street. Messages from that event addressed the impacts from cut-through traffic, the differing nature of Sparrow Street's east and west portions, and problems with stormwater drainage.

*Neighbors worked with the design team to mark up a map to address desires and concerns.*





MILWAUKIE CITY COUNCIL  
**AGENDA ITEM SUMMARY**

Agenda Item: **RS 6. B.**  
Meeting Date: **May 17, 2016**

Title: **Expedited Annexation of 4425 SE Johnson Creek Blvd and adjacent public right-of-way**

Prepared By: Brett Kelper, Associate Planner

Department Approval: Denny Egner, Planning Director

City Manager Approval: Bill Monahan, City Manager

Approval Date: 5/06/16

**ISSUES BEFORE COUNCIL**

Consideration of an expedited annexation for the property at 4425 SE Johnson Creek Blvd and the adjacent public right-of-way in Johnson Creek Boulevard (File #A-2016-002)

**STAFF RECOMMENDATION**

Approval of application #A-2016-002

**KEY FACTS & INFORMATION SUMMARY**

In April 2016, the City allowed the Annexation Property to make an emergency connection to the City's sewer system, with the requirement that the property owner file an application for annexation. The small adjacent portion of the public right-of-way (ROW) that is also still outside the City boundary will also be annexed. Upon annexation, the property will be zoned Residential R-7. The existing residential structure on the site is a single-family home, which is allowed outright in the R-7 zone. Staff does not believe there are any adverse impacts to annexing this property into the City.

**OTHER ALTERNATIVES CONSIDERED**

Council can approve or deny the requested annexation.

**CITY COUNCIL GOALS**

n/a

**FISCAL NOTES**

Minimal fiscal impact is expected. It is expected that property taxes received by the City for this property will be roughly offset by the cost of providing services to the property. The City already has maintenance authority for this section of the street, so the ROW annexation will not have any new fiscal impacts.

**ATTACHMENTS**

1. Annexation Ordinance
  - Exhibit A. Findings in Support of Approval
  - Exhibit B. Legal Description and Tax Map
2. Annexation Site Map
3. Applicant's Annexation Application



MILWAUKIE CITY COUNCIL  
STAFF REPORT

Agenda Item: **RS 6. B.**  
Meeting Date: **May 17, 2016**

To: Mayor and City Council  
Through: Bill Monahan, City Manager  
Subject: **Expedited Annexation of 4425 SE Johnson Creek Blvd and adjacent public right-of-way**  
From: Brett Kelper, Associate Planner  
Date: 5/10/16

### **ACTION REQUESTED**

Approve application A-2016-002, an expedited annexation petition, and adopt the attached ordinance and associated findings in support of approval (Attachment 1). Approval of this application would result in the following actions:

- Annexation of 4425 SE Johnson Creek Blvd (Tax Lot 1S2E30BB02100, the "Annexation Property") and adjacent public right-of-way on Johnson Creek Boulevard into the City.
- Application of a Low Density (LD) Comprehensive Plan land use designation and a Residential (R-7) zoning designation to the Annexation Property.
- Amendments to the City's Comprehensive Plan Land Use Map and Zoning Map to reflect the City's new boundary and the Annexation Property's new land use and zoning designations.
- Withdrawal of the Annexation Property from the following urban service district:
  - Clackamas County Service District for Enhanced Law Enforcement

### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

**April/May 2016:** The property was sold. Staff contacted the new owners and obtained their signatures on a new annexation petition, then obtained the necessary certifications from the County Assessor and County Elections.

**March 2016:** Property owner at 4425 SE Johnson Creek Blvd approached the City's Community Development Department with a request for an emergency connection to the City's public sewer system in Johnson Creek Boulevard.

**July 1990:** Clackamas County Order No 90-726 established an Urban Growth Management Agreement in which the City and County agreed to coordinate the future delivery of services to the unincorporated areas of North Clackamas County.

### **BACKGROUND**

#### **Proposal**

The current owners of the Annexation Property wish to annex to the City to access City sewer service. In March 2016, the previous owner paid the Reimbursement Fee and applicable System Development Charges for the Annexation Property and requested approval to make an emergency connection to the City sewer service, due to the pending sale of the Annexation Property. The City obtained a signed Consent to Annex form from the contemporary owner and

then issued the necessary Land Use Compatibility Statement (LUCS) to allow the owner to obtain a plumbing permit from Clackamas County and make the sewer connection.

The immediately adjacent public right-of-way (ROW) in Johnson Creek Boulevard is not within the existing City boundary. The City's Community Development and Operations Departments support the ROW annexation to "clean up" the City boundary in this area, as there are existing City utilities (water and sewer lines) within the ROW and since the City already maintains the roadway.

The Annexation Property currently has residential County land use and zoning designations and will receive equivalent residential City land use and zoning designations. The property is developed with a single-family home. Upon annexation, the existing residential use will be a conforming use, subject to the City's zoning ordinance for review and approval of any proposed alterations.

### **Site and Vicinity**

The Annexation Property is contiguous to the existing city limits via the two abutting properties to the west and northeast. The Annexation Property is within the City's urban growth management area (UGMA). The surrounding area consists of single-family dwellings, with a manufacturing/warehouse building nearby to the north within the City of Portland jurisdiction.

### **Annexation Petition**

The petition is being processed as an expedited annexation at the request of the Annexation Property's owner. Under the expedited process, a City land use and zoning designation is automatically applied to the Annexation Property upon annexation. Any property that is within the UGMA and contiguous to the city boundary may apply for an expedited annexation so long as all property owners of the area to be annexed and at least 50% of registered voters within the area to be annexed consent to the annexation. Clackamas County has certified that these thresholds are met for the Annexation Property.

As set forth in Milwaukie Municipal Code (MMC) Table 19.1104.1.E, the expedited annexation process automatically assigns City land use and zoning designations to the Annexation Property based on the existing Clackamas County land use and zoning designations. The existing County Comprehensive Plan land use designation for the Annexation Property is Urban Low Density Residential (LDR), which would assign the City's Low Density Residential (LD) Comprehensive Plan designation upon annexation. The current County zoning designation for the Annexation Property is Residential R7, which would assign a City zoning designation of Residential Zone R-7 upon annexation.

Pursuant to City, regional, and State regulations on expedited annexations, all necessary parties, interested persons, and residents and property owners within 400 feet of the site were notified of these proceedings, under MMC Subsection 19.1103.4.1.C. A public hearing is not required for an expedited annexation; however, Council must adopt an ordinance to implement the annexation.

### **Expedited Annexation Approval Criteria**

Expedited annexations must meet the approval criteria of MMC Subsection 19.1102.3. Compliance with the applicable criteria is detailed in Attachment 1 (Exhibit A, Findings).

### **Utilities, Service Providers, and Service Districts**

The City is authorized by ORS Section 222.120(5) to withdraw the Annexation Property from non-City service providers and districts upon annexation to the City. This allows for a more unified and efficient delivery of urban services to newly annexed properties and is in keeping with the City's Comprehensive Plan policies relating to annexation.

- Wastewater: The Annexation Property is within the City's sewer service area and served by the City's 8-inch sewer line accessible in Johnson Creek Boulevard.
- Water: The Annexation Property is currently served by the City through a 12-inch City water line adjacent to the Annexation Property in Johnson Creek Boulevard.
- Storm: The Annexation Property is not connected to a public stormwater system. Treatment and management of on-site stormwater will be required when new development occurs.
- Fire: The Annexation Property is currently served by Clackamas Fire District No. 1 and will continue to be served by this fire district upon annexation, since the entire City is within this district.
- Police: The Annexation Property is currently served by the Clackamas County Sheriff's Department and is within the Clackamas County Service District for Enhanced Law Enforcement, which provides additional police protection to the area. The City has its own police department, and this department can adequately serve the site. In order to avoid duplication of services, the site should be withdrawn from Clackamas County Service District for Enhanced Law Enforcement upon annexation to the City.
- Street Lights: The Annexation Property is not currently within a County service district for street lights. The City assumes operational responsibility for street lights and street light payments for properties within the City boundary.
- Other Services: Planning, Building, Engineering, Code Enforcement, and other municipal services are available through the City and will be available to the site upon annexation. The Annexation Property will continue to receive services and remain within the boundaries of certain regional and county service providers, such as TriMet, North Clackamas School District, Vector Control District, and North Clackamas Parks and Recreation District.

### **CONCURRENCE**

All City departments, necessary parties, interested persons, and residents and property owners within 400 feet of the Annexation Property were notified of these annexation proceedings as required by City, regional, and State regulations. The Lewelling Neighborhood District Association and the Southgate Planning Association also received notice of the annexation petition and meeting.

The City did not receive comments from any necessary parties with objections to the proposed annexation.

### **FISCAL IMPACTS**

The annexation of the Annexation Property will have minimal fiscal impact on the City. As with most annexations of residential properties, the costs of providing governmental services will likely be off-set by the collection of property taxes. Per Clackamas County Assessor data, the total assessed value of the Annexation Property in 2015 was \$171,214. Total property tax

collection of approximately \$2,794 is anticipated for the Annexation Property, and the City will receive approximately \$733 of this total.

### **WORK LOAD IMPACTS**

Work load impacts will be minimal and will likely include, but are not limited to, the following: utility billing, provision of general governmental services, and the setting up and maintenance of property records.

### **ALTERNATIVES**

The application is subject to Milwaukie Comprehensive Plan Chapter 6 City Growth and Governmental Relationships, Oregon Revised Statutes Chapter 222 City Boundary Changes, Metro Code Chapter 3.09 Local Government Boundary Changes, and MMC Chapter 19.1100 Annexations and Boundary Changes.

The City Council has two decision-making options:

1. Approve the application and adopt the ordinance and findings in support of approval.
2. Deny the application and adopt findings in support of denial.

### **ATTACHMENTS**

1. Annexation Ordinance
  - Exhibit A. Findings in Support of Approval
  - Exhibit B. Legal Description and Tax Map
2. Annexation Site Map
3. Annexation Application (with updated petition to reflect current property ownership)



**CITY OF MILWAUKIE**

*"Dogwood City of the West"*

**Ordinance No.**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, ANNEXING A TRACT OF LAND IDENTIFIED AS TAX LOT 1S2E30BB02100 AND LOCATED AT 4425 SE JOHNSON CREEK BOULEVARD AVENUE, AS WELL AS THE ADJACENT PUBLIC RIGHT-OF-WAY ON JOHNSON CREEK BOULEVARD, INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE. (FILE #A-2016-002)**

**WHEREAS**, the territory proposed for annexation is contiguous to the City's boundary and is within the City's urban growth management area; and

**WHEREAS**, the requirements of the Oregon Revised Statutes for initiation of the annexation were met by providing written consent from a majority of electors and all owners of land in the territory proposed for annexation; and

**WHEREAS**, the territory proposed for annexation lies within the territory of Clackamas County Service District for Enhanced Law Enforcement; and

**WHEREAS**, the annexation and withdrawal are not contested by any necessary party and will promote the timely, orderly, and economic provision of public facilities and services; and

**WHEREAS**, Table 19.1104.1.E of the Milwaukie Municipal Code provides for the automatic application of City zoning and Comprehensive Plan land use designations; and

**WHEREAS**, the City conducted a public meeting and mailed notice of the public meeting as required by law; and

**WHEREAS**, the City prepared and made available an annexation report that addressed all applicable criteria, and, upon consideration of such report, the City Council favors annexation of the tract of land and adjacent public right-of-way and the withdrawal from all applicable districts based on findings and conclusions attached hereto as Exhibit A;

**Now, Therefore, the City of Milwaukie does ordain as follows:**

Section 1. The Findings in Support of Approval and attached as Exhibit A are hereby adopted.

Section 2. The tract of land and adjacent public right-of-way described and depicted in Exhibit B are hereby annexed to the City of Milwaukie.

Section 3. The tract of land and adjacent public right-of-way annexed by this ordinance and described in Section 2 are hereby withdrawn from Clackamas County Service District for Enhanced Law Enforcement.

Section 4. The tract of land and adjacent public right-of-way annexed by this ordinance and described in Section 2 are hereby assigned a Comprehensive Plan land use designation of Low Density Residential and a Municipal Code zoning designation of Residential zone R-7.

Section 5. The City shall immediately file a copy of this ordinance with Metro and other agencies required by Metro Code Chapter 3.09.030 and ORS 222.005 and 222.177. The annexation and withdrawals shall become effective upon filing of the annexation records with the Secretary of State as provided by ORS 222.180.

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

# Exhibit A

## FINDINGS IN SUPPORT OF APPROVAL

Based on the expedited annexation staff report for 4425 SE Johnson Creek Blvd (the “Annexation Property”) and adjacent public right-of-way on Johnson Creek Boulevard, the Milwaukie City Council finds:

1. The Annexation Property consists of one tax lot comprising 0.19 acres (Tax Lot 1S2E30BB02100). In addition, the larger “Annexation Area” includes the northern half of the public right-of-way (ROW) on Johnson Creek Boulevard fronting the Annexation Property and Tax Lot 2000 (4325 SE Johnson Creek Blvd). The Annexation Area is contiguous to the existing City limits on all sides and is effectively an island. The Annexation Area is within the regional urban growth boundary and also within the City’s urban growth management area (UGMA).  
  
The Annexation Property is developed with a single-family dwelling unit. The surrounding area consists of single-family dwellings.
2. The property owners seek annexation to the City to access City services, namely sewer service.
3. The annexation petition was initiated by Consent of All Owners of Land on March 29, 2016, with an application for annexation submitted to the City on the same day (March 29, 2016). The property was sold in late April 2016, and a new annexation petition was signed by the new property owners on May 4, 2016. The petition meets the requirements for initiation set forth in ORS 222.125, Metro Code Section 3.09.040, and Milwaukie Municipal Code (MMC) Subsection 19.1102.2.A.1.
4. The annexation petition was processed and public notice was provided in accordance with ORS Section 222.125, Metro Code Section 3.09.045, and MMC 19.1104.
5. The annexation petition is being processed as an expedited annexation at the request of the property owner. It meets the expedited annexation procedural requirements set forth in MMC 19.1104.
6. The expedited annexation process provides for automatic application of City Comprehensive Plan land use and zoning designations to the Annexation Area based on its existing Comprehensive Plan land use and zoning designations in the County, which are Low Density Residential and Residential R7, respectively. Pursuant to MMC Table 19.1104.1.E, the automatic City Comprehensive Plan land use and zoning designations for the Annexation Area are Low Density Residential and Residential Zone R-7, respectively.
7. The applicable City approval criteria for expedited annexations are contained in MMC 19.1102.3. They are listed below with findings in italics.

- A. The subject site must be located within the City's urban growth management area (UGMA);  
*The Annexation Area is within the City's UGMA.*
  - B. The subject site must be contiguous to the existing city limits;  
*The Annexation Area is contiguous to the existing city limits via the adjacent public right-of-way in Johnson Creek Boulevard to the south as well as all of the surrounding properties.*
  - C. The requirements of Oregon Revised Statutes for initiation of the annexation process must be met;  
*Thomas and Alan Murray, owners of the Annexation Property, consented to the annexation by signing the petition. The owners are the only registered voters residing at the Annexation Property. As submitted, the annexation petition meets the Oregon Revised Statutes requirements for initiation pursuant to the "Consent of All Owners of Land" initiation method, which requires consent by all property owners and a majority of the electors, if any, residing in the Annexation Area.*
  - D. The proposal must be consistent with Milwaukie Comprehensive Plan Policies;  
*Chapter 6 of the Comprehensive Plan contains the City's annexation policies. Applicable annexation policies include: (1) delivery of City services to annexing areas where the City has adequate services and (2) requiring annexation in order to receive a City service. City sewer service is available to the Annexation Property in Johnson Creek Boulevard. As proposed, the annexation is consistent with Milwaukie Comprehensive Plan policies.*
  - E. The proposal must comply with the criteria of Metro Code Sections 3.09.045(d) and, if applicable, (e).  
*The annexation proposal is consistent with applicable Metro Code sections for expedited annexations as detailed in Finding 8.*
8. Prior to approving an expedited annexation, the City must apply the provisions contained in Section 3.09.045.D of the Metro Code. They are listed below with findings in italics.
- A. Find that the change is consistent with expressly applicable provisions in:
    - (1) Any applicable urban service agreement adopted pursuant to ORS 195.205;  
*There are no applicable urban service agreements adopted pursuant to ORS 195 in the area of the proposed annexation. However, the City has an UGMA agreement with Clackamas County that states that the City will take the lead in providing urban services in the area of the proposed annexation. Pursuant to this agreement, the City has maintained a public sewer system*

*in this area for several decades (since at least the early 1980s). The proposed annexation is in keeping with the City's policy of requiring properties to annex to the City in order to connect to City services such as the existing sewer line.*

- (2) Any applicable annexation plan adopted pursuant to ORS 195.205;

*There are no applicable annexation plans adopted pursuant to ORS 195 in the area of the proposed annexation.*

- (3) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;

*There are no applicable cooperative planning agreements adopted pursuant to ORS 195 in the area of the proposed annexation.*

- (4) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services;

*Clackamas County completed a North Clackamas Urban Area Public Facilities Plan in 1989 in compliance with Goal 11 of the Land Conservation and Development Commission for coordination of adequate public facilities and services. The City subsequently adopted this plan as an ancillary Comprehensive Plan document. The plan contains four elements:*

- *Sanitary Sewerage Services*
- *Storm Drainage*
- *Transportation Element*
- *Water Systems*

*The proposed annexation is consistent with the four elements of this plan as follows:*

*Sewer:* *The City is the identified sewer service provider in the area of the proposed annexation and maintains a public sewer system that can adequately serve the Annexation Property.*

*Storm:* *The Annexation Property is not connected to a public storm water system. Treatment and management of on-site storm water will be required when new development occurs.*

*Transportation:* *The City may require public street improvements along the Annexation Property's frontage when new development occurs.*

*Water:* *The City is the identified water service provider in this plan and maintains a public water system that can adequately serve the Annexation Property.*

- (5) Any applicable comprehensive plan.

*The proposed annexation is consistent with the Milwaukie Comprehensive Plan, which is more fully described on the previous pages. The Clackamas County Comprehensive Plan contains no specific language regarding City annexations. The comprehensive plans, however, contain the City-County UGMA agreement, which identifies the area of the proposed annexation as being within the City's UGMA. The UGMA agreement requires that the City notify the County of proposed annexations, which the City has done. The agreement also calls for City assumption of jurisdiction of local streets that are adjacent to newly annexed areas. The City already has jurisdiction of the Johnson Creek Boulevard right-of-way adjacent to the Annexation Property; with the proposed annexation, the City will annex said right-of-way.*

- B. Consider whether the boundary change would:

- (1) Promote the timely, orderly and economic provision of public facilities and services;

*The City is the identified urban service provider in the area of the proposed annexation, and the proposed annexation will facilitate the timely, orderly, and economic provision of urban services to the Annexation Property.*

*The City has public sewer and water services in this area via Johnson Creek Boulevard.*

- (2) Affect the quality and quantity of urban services; and

*The Annexation Area includes a tax lot developed with a single-family residence. Annexation of the area is not expected to affect the quality or quantity of urban services in this area, given the surrounding level of urban development and the existing level of urban service provision in this area.*

- (3) Eliminate or avoid unnecessary duplication of facilities and services.

*The Annexation Area will be served by the Milwaukie Police Department upon annexation. In order to avoid duplication of law enforcement services, the site will be withdrawn from the Clackamas County Service District for Enhanced Law Enforcement.*

9. The City is authorized by ORS Section 222.120 (5) to withdraw annexed territory from non-City service providers and districts upon annexation of the territory to the City. This allows for more unified and efficient delivery of urban services to newly annexed properties and is in keeping with the City's Comprehensive Plan policies relating to annexation.

Wastewater: The Annexation Property is within the City's sewer service area and is served by the City's 8-inch sewer line accessible in Johnson Creek Boulevard.

Water: The Annexation Property is currently served by the City through the City's 12-inch water line adjacent to the Annexation Property in Johnson Creek Boulevard.

Storm: The Annexation Property is not connected to a public storm water system. Treatment and management of on-site storm water will be required when new development occurs.

Fire: The Annexation Property is currently served by Clackamas Fire District No. 1 and will continue to be served by this fire district upon annexation, since the entire City is within this district.

Police: The Annexation Area is currently served by the Clackamas County Sheriff's Department and is within the Clackamas County Service District for Enhanced Law Enforcement, which provides additional police protection to the area. The City has its own police department, and this department can adequately serve the site. In order to avoid duplication of services, the area should be withdrawn from Clackamas County Service District for Enhanced Law Enforcement upon annexation to the City.

Street Lights: The Annexation Area is not currently within a County service district for street lights. The City assumes operational responsibility for street lights and street light payments for properties within the City boundary.

Other Services: Planning, Building, Engineering, Code Enforcement, and other municipal services are available through the City and will be available to the site upon annexation. The Annexation Property will continue to receive services and remain within the boundaries of certain regional and county service providers, such as TriMet, North Clackamas School District, Vector Control District, and North Clackamas Parks and Recreation District.

## EXHIBIT B

### ANNEXATION TO CITY OF MILWAUKIE

#### LEGAL DESCRIPTION

##### **1-2E-30BB-02100 plus Johnson Creek Boulevard Right-of-Way**

A tract of land in the Northwest quarter of Section 30, T1S, R2E, of the Willamette Meridian, Clackamas County, Oregon, and being more particularly described as follows:

**BEGINNING** at the Southwest corner of that tract of land conveyed to Henry W Foster, et ex, by deed recorded February 27, 1943 in Book 303, Page 454, Clackamas County Deed Records, said point also being South 83°48' East, 653.34 feet and South 3°30' East, 370.98 feet from the Northwest corner of said Section 30, and a point on the Northwesterly right-of-way line of SE Johnson Creek Boulevard;

- 1) THENCE, North 3°30' West along the westerly line of said Foster tract, 116 feet, more or less, to the Northwest corner of that tract of land conveyed to Claude K. Olson in Instrument No. 96-056042, Clackamas County Deed Records;
- 2) THENCE, East along the Northerly line of said Olson tract, 55.80 feet;
- 3) THENCE South 40°09'10" East along the Northeasterly line of said Olson tract, 69.80 feet to the most Easterly corner of said Olson tract;
- 4) THENCE Southeasterly 48 feet, more or less, to the intersection of the Southeasterly right-of-way line of SE Johnson Creek Boulevard as it existed prior to 2003 with the Northwesterly boundary of the Walter N. Paulson, et ex, tract described in Book 423, Page 663, Clackamas County Deed Records;
- 5) THENCE Southwesterly along the Southeasterly right-of-way line of SE Johnson Creek Boulevard as it existed prior to 2003, 190 feet, more or less, to a point on the Southeasterly extension of the Southwesterly line of that tract of land conveyed to Rick DeVries and Janice DeVries as Parcel II in Instrument No. 2006-006563, Clackamas County Deed Records;
- 6) THENCE Northwesterly along said Southeasterly extension, 40.0 feet, more or less, to the most Southerly corner of said Devries tract, and a point on the Northwesterly right-of-way line of SE Johnson Creek Boulevard;
- 7) THENCE North 65°00' East along the Northwesterly right-of-way line of SE Johnson Creek Boulevard, 60.0 feet more or less, to the Point of Beginning.

EXHIBIT B

1 2 E 30BB

N.W.1/4 N.W.1/4 SEC.30 T.1S. R.2E. W.M.  
CLACKAMAS COUNTY  
1" = 100'

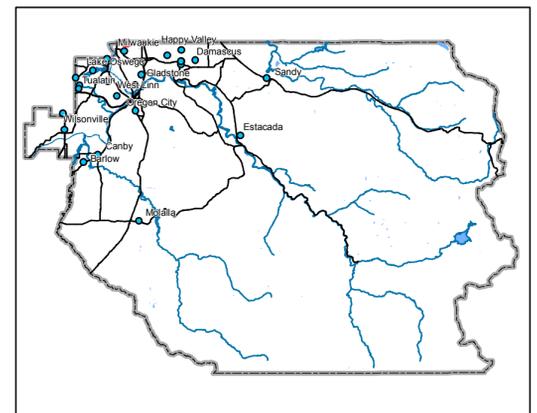
D. L. C.  
GEORGE WILLS NO. 40

Cancelled Taxlots

- 5300
- 1100
- 3300
- 890
- 2001
- 2201
- 1200A1
- 2500

- Key to legal description:**
- 1 = North 3°30' West along WLY line of Foster tract (Bk 303, Pg 454), 116', m/l
  - 2 = East along NLY line of Olson tract (Instr. No. 96-056042), 55.80'
  - 3 = South 40°09'10" East along NELY line of said Olson tract, 69.80'
  - 4 = SELY 48', m/l, to intersection of SELY ROW line of SE Johnson Cr Blvd (as prior to 2003) with NWLY boundary of Paulson tract (Bk 423, Pg 663)
  - 5 = SWLY along SELY ROW line of SE Johnson Cr Blvd (as prior to 2003), 190', m/l, to point on SELY extension of SWLY line of DeVries tract (Instrument No. 2006-006563)
  - 6 = NWLY along SELY extension of said DeVries tract, 40.0', m/l, to most SLY corner of said DeVries tract, and point on NWLY ROW line of SE Johnson Cr Blvd
  - 7 = North 65°00' East along NWLY ROW line of SE Johnson Cr Blvd, 60.0', m/l, to POB

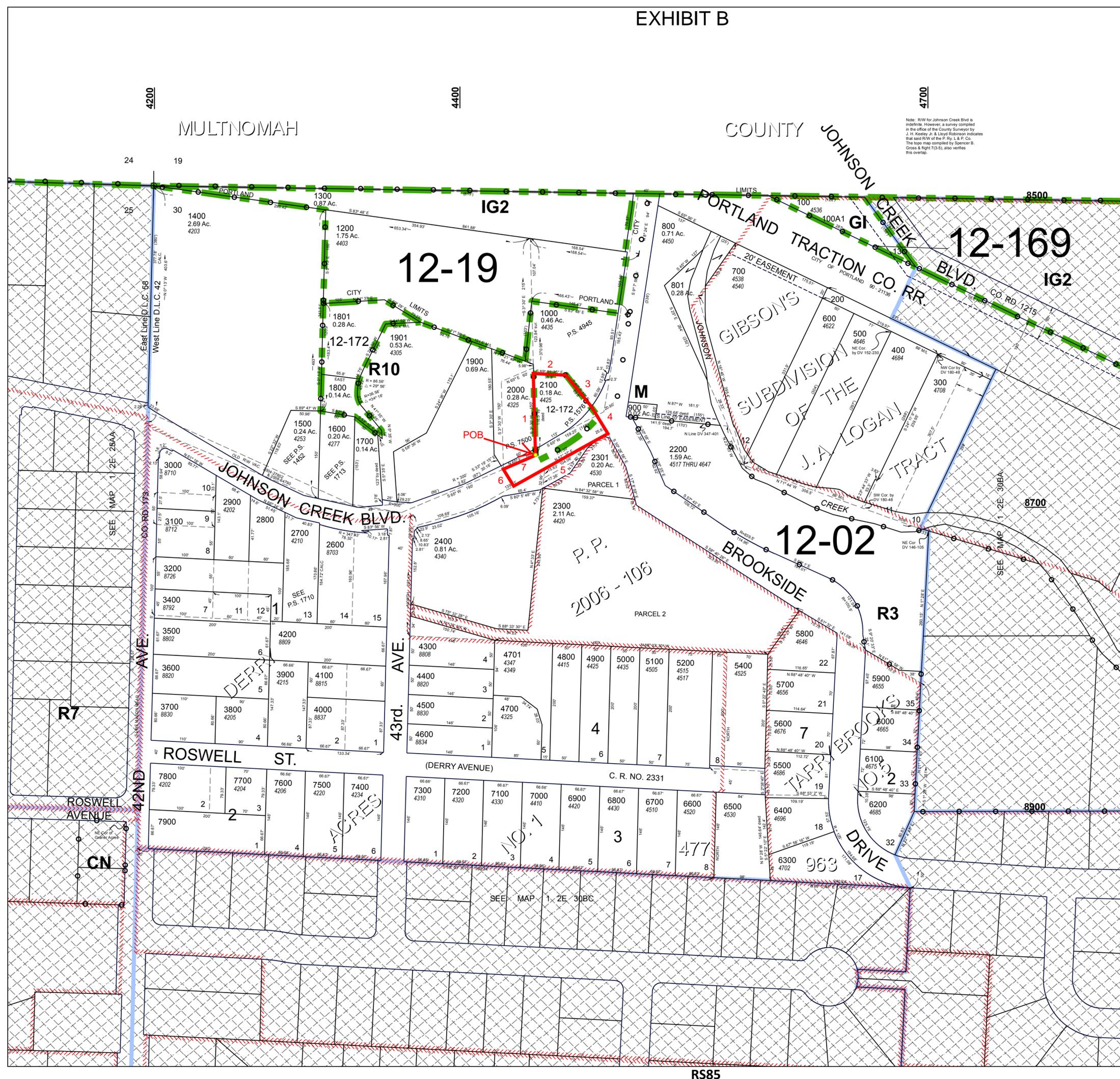
- Parcel Boundary
- Private Road ROW
- Historical Boundary
- Railroad Centerline
- TaxCodeLines
- Map Index
- WaterLines
- Land Use Zoning
- Plats
- Water
- Corner
- Section Corner
- 1/16th Line
- Govt Lot Line
- DLC Line
- Meander Line
- PLSS Section Line
- Historic Corridor 40'
- Historic Corridor 20'



THIS MAP IS FOR ASSESSMENT PURPOSES ONLY

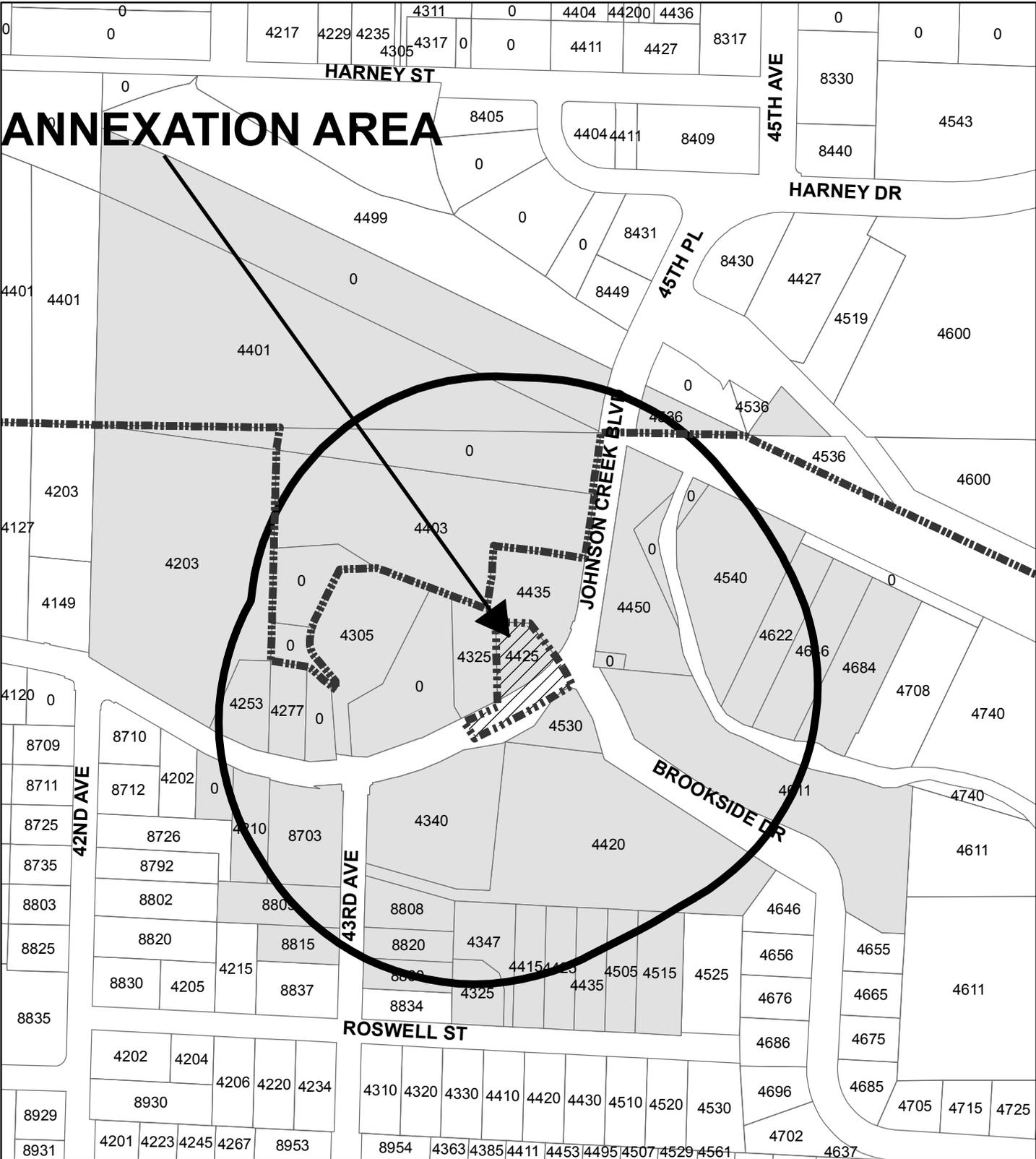
4/28/2015

1 2 E 30BB



Note: RW for Johnson Creek Blvd is indefinite. However, a survey compiled in the office of the County Surveyor by J. H. Keeley, Jr. & Lloyd Robinson indicates that said RW of the P. Ry. L & P. Co. The topo map compiled by Spencer B. Cross & flight 713-51, also verifies this overlap.

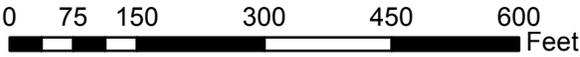
RS85



**Public Notice Map**  
**4425 SE Johnson Cr Blvd & adjacent public ROW**  
**(Tax Lot ID 1S2E30BB02100)**  
**File# A-2016-002**

**Legend**

-  City Limit
-  400-ft public notice boundary
-  Annexation area
-  Properties receiving notice
-  Other tax lots



**RS86**



PLANNING DEPARTMENT  
6101 SE Johnson Creek Blvd  
Milwaukie OR 97206

PHONE: 503-786-7630  
FAX: 503-774-8236  
E-MAIL: [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov)  
WEB: [www.milwaukieoregon.gov](http://www.milwaukieoregon.gov)

# Expedited Annexation Application

File #: A-2016-002

**RESPONSIBLE PARTIES:**

|   |                                      |
|---|--------------------------------------|
| APPLICANT (owner or other eligible applicant): <u>Heather Gillies</u> |                                      |
| Mailing address: <u>4425 SE Johnson Creek Blvd</u>                    | Zip: <u>97222</u>                    |
| Phone(s): <u>503-475-1808</u>   | E-mail: <u>heatherb911@gmail.com</u> |
| APPLICANT'S REPRESENTATIVE (if different than above):                 |                                      |
| Mailing address:  | Zip:                                 |
| Phone(s):   | E-mail:                              |

**SITE INFORMATION:**

|  |  |                           |
|--|--|---------------------------|
| Address(es): <u>4425 SE Johnson Creek Blvd</u>                 | Map & Tax Lot(s): <u>Map: 15-2E-30-NW-NW</u>                 | Property size: <u>.19</u> |
| Existing County zoning: <u>R10</u>                             | Proposed City zoning: <u>R10</u>                             |                           |
| Existing County land use designation: <u>SFR-low den. resi</u> | Proposed City land use designation: <u>SFR-low den. resi</u> |                           |

**PROPOSAL (describe briefly):**

Due to septic failing, need to attach to city sewer main on Johnson Creek Blvd, Milwaukie

**LIST OF ALL CURRENT UTILITY PROVIDERS:**

Check all that apply (do not list water or sewer service providers)

|  |   |   |
|--|---|---|
| Cable, internet, and/or phone:                           | <input checked="" type="checkbox"/> Comcast | <input type="checkbox"/> CenturyLink (formerly Qwest) |
| Energy:  | <input checked="" type="checkbox"/> PGE     | <input type="checkbox"/> NW Natural Gas               |
| Garbage hauler:  | <input type="checkbox"/> Waste Management   | <input checked="" type="checkbox"/> Mel Deines        |
|  | <input type="checkbox"/> Wichita Sanitary   | <input type="checkbox"/> Oak Grove Disposal           |
| <input type="checkbox"/> Hoodview Disposal and Recycling |   | <input type="checkbox"/> Clackamas Garbage            |
| <input type="checkbox"/> Other (please list):            |   |   |

**SIGNATURE:**

ATTEST: I am the property owner or I am eligible to initiate this application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. I have attached all owners' and voters' authorizations to submit this application. I understand that uses or structures that were not legally established in the County are not made legal upon annexation to the City. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by: Heather Gillies Date: 3/24/16

CONTINUED ON REVERSE

**RS87**

THIS SECTION FOR OFFICE USE ONLY:

|   |   |
|---|---|
| File #: <i>A-2016-002</i> Fee: \$ <i>150</i> Receipt #: Rcd. by:                            | Date stamp:   |
| Associated application file #'s: <i>—</i>   | RECEIVED<br>MAR 29 2016<br>CITY OF MILWAUKIE<br>PLANNING DEPARTMENT |
| Neighborhood District Association(s): <i>Lewelling NDA</i>                                  |   |
| Notes (include discount if any):<br><br><i>Tax code - 012-172      Acreage = 0.19 acres</i> |   |

# EXPEDITED ANNEXATION CODE EXCERPTS

## MILWAUKIE MUNICIPAL CODE SECTIONS

---

### 19.1104.1 Expedited Process

- A. A petition for any type of minor boundary change may be processed through an expedited process as provided by Metro Code Chapter 3.09.
  - 5. Approval criteria for annexations are found in subsection 19.1102.3.

**19.1102.3 Annexation Approval Criteria.** The city council shall approve or deny an annexation proposal based on findings and conclusions addressing the following criteria.

- A. The subject site must be located within the city urban growth boundary;
- B. The subject site must be contiguous to the existing city limits;
- C. The requirements of the Oregon Revised Statutes for initiation of the annexation process must be met;
- D. The proposal must be consistent with Milwaukie comprehensive plan policies;
- E. The proposal must comply with the criteria of Metro Code Sections 3.09.050(d) and, if applicable, (e).
- F. The proposal must comply with the criteria of Section 19.902 for Zoning Map Amendments and Comprehensive Plan Map Amendments, if applicable.

## METRO CODE SECTIONS

---

### 3.09.050 Hearing & Decision Requirements for Decisions Other Than Expedited Decisions.

- (d) To approve a boundary change, the reviewing entity shall apply the criteria and consider the factors set forth in subsections (d) and (e) of Section 3.09.045.

## MILWAUKIE COMPREHENSIVE PLAN

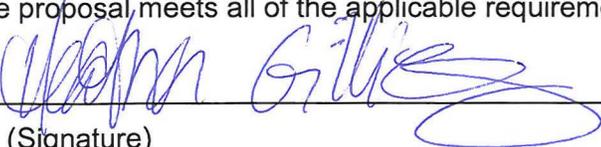
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### Chapter 6: City Growth and Governmental Relationships; City Growth Element

Goal Statement: To identify the City's future planning and service area, establish the respective responsibilities for reviewing and coordinating land use regulations and actions within the area, and determine the most cost-effective means to provide the full range of urban services within the area.

### Applicant Response

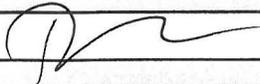
The proposal meets all of the applicable requirements listed above.

X  \_\_\_\_\_  
(Signature)



# PETITION SIGNERS

NOTE: This petition may be signed by qualified persons even though they may not know their property description or voter precinct number.

| SIGNATURE   | PRINTED NAME         | I AM A:* |        |          | DATE             |
|---|----------------------|----------|--------|----------|------------------|
|   |                      | PO       | RV     | OV       |                  |
|  | Thomas Murray        |          |        | ✓        | 5-4-14           |
| PROPERTY ADDRESS  | PROPERTY DESCRIPTION |          |        |          | VOTER PRECINCT # |
|   | TOWNSHIP             | RANGE    | ¼ SEC. | LOT #(S) |                  |
| 4425 SE Johnson Creek Blvd.   | 1S                   | 2E       | 30BB   | 02100    | 420-A            |

| SIGNATURE   | PRINTED NAME         | I AM A:* |        |          | DATE             |
|---|----------------------|----------|--------|----------|------------------|
|   |                      | PO       | RV     | OV       |                  |
|  | Alan Murray          |          |        | ✓        | 5/4/14           |
| PROPERTY ADDRESS  | PROPERTY DESCRIPTION |          |        |          | VOTER PRECINCT # |
|   | TOWNSHIP             | RANGE    | ¼ SEC. | LOT #(S) |                  |
| 4425 SE Johnson Creek Blvd.   | 1S                   | 2E       | 30BB   | 02100    | 420-A            |

| SIGNATURE        | PRINTED NAME         | I AM A:* |        |          | DATE             |
|------------------|----------------------|----------|--------|----------|------------------|
|                  |                      | PO       | RV     | OV       |                  |
|                  |                      |          |        |          |                  |
| PROPERTY ADDRESS | PROPERTY DESCRIPTION |          |        |          | VOTER PRECINCT # |
|                  | TOWNSHIP             | RANGE    | ¼ SEC. | LOT #(S) |                  |
|                  |                      |          |        |          |                  |

| SIGNATURE        | PRINTED NAME         | I AM A:* |        |          | DATE             |
|------------------|----------------------|----------|--------|----------|------------------|
|                  |                      | PO       | RV     | OV       |                  |
|                  |                      |          |        |          |                  |
| PROPERTY ADDRESS | PROPERTY DESCRIPTION |          |        |          | VOTER PRECINCT # |
|                  | TOWNSHIP             | RANGE    | ¼ SEC. | LOT #(S) |                  |
|                  |                      |          |        |          |                  |

| SIGNATURE        | PRINTED NAME         | I AM A:* |        |          | DATE             |
|------------------|----------------------|----------|--------|----------|------------------|
|                  |                      | PO       | RV     | OV       |                  |
|                  |                      |          |        |          |                  |
| PROPERTY ADDRESS | PROPERTY DESCRIPTION |          |        |          | VOTER PRECINCT # |
|                  | TOWNSHIP             | RANGE    | ¼ SEC. | LOT #(S) |                  |
|                  |                      |          |        |          |                  |

| SIGNATURE        | PRINTED NAME         | I AM A:* |        |          | DATE             |
|------------------|----------------------|----------|--------|----------|------------------|
|                  |                      | PO       | RV     | OV       |                  |
|                  |                      |          |        |          |                  |
| PROPERTY ADDRESS | PROPERTY DESCRIPTION |          |        |          | VOTER PRECINCT # |
|                  | TOWNSHIP             | RANGE    | ¼ SEC. | LOT #(S) |                  |
|                  |                      |          |        |          |                  |

\*PO = Property Owner    RV = Registered Voter    OV = Owner and Registered Voter



**EXHIBIT A**  
**ANNEXATION TO CITY OF MILWAUKIE**  
**LEGAL DESCRIPTION**

**1-2E-30BB-02100 plus Johnson Creek Boulevard Right-of-Way**

A tract of land in the Northwest quarter of Section 30, T1S, R2E, of the Willamette Meridian, Clackamas County, Oregon, and being more particularly described as follows:

**BEGINNING** at the Southwest corner of that tract of land conveyed to Henry W Foster, et ex, by deed recorded February 27, 1943 in Book 303, Page 454, Clackamas County Deed Records, said point also being South 83°48' East, 653.34 feet and South 3°30' East, 370.98 feet from the Northwest corner of said Section 30, and a point on the Northwesterly right-of-way line of SE Johnson Creek Boulevard;

- 1) THENCE, North 3°30' West along the westerly line of said Foster tract, 116 feet, more or less, to the Northwest corner of that tract of land conveyed to Claude K. Olson in Instrument No. 96-056042, Clackamas County Deed Records;
- 2) THENCE, East along the Northerly line of said Olson tract, 55.80 feet;
- 3) THENCE South 40°09'10" East along the Northeasterly line of said Olson tract, 69.80 feet to the most Easterly corner of said Olson tract;
- 4) THENCE Southeasterly 48 feet, more or less, to the intersection of the Southeasterly right-of-way line of SE Johnson Creek Boulevard as it existed prior to 2003 with the Northwesterly boundary of the Walter N. Paulson, et ex, tract described in Book 423, Page 663, Clackamas County Deed Records;
- 5) THENCE Southwesterly along the Southeasterly right-of-way line of SE Johnson Creek Boulevard as it existed prior to 2003, 190 feet, more or less, to a point on the Southeasterly extension of the Southwesterly line of that tract of land conveyed to Rick DeVries and Janice DeVries as Parcel II in Instrument No. 2006-006563, Clackamas County Deed Records;
- 6) THENCE Northwesterly along said Southeasterly extension, 40.0 feet, more or less, to the most Southerly corner of said Devries tract, and a point on the Northwesterly right-of-way line of SE Johnson Creek Boulevard;
- 7) THENCE North 65°00' East along the Northwesterly right-of-way line of SE Johnson Creek Boulevard, 60.0 feet more or less, to the Point of Beginning.

**CERTIFICATION OF LEGAL DESCRIPTION AND MAP**

I hereby certify that the description of the territory included within the attached petition (located on Assessor's Map 12E 30BB) has been checked by me. It is a true and exact description of the territory under consideration and corresponds to the attached map indicating the territory under consideration.



Name CRAIG FERRIS  
Title CARTOGRAPHER III  
Department ASSESSMENT & TAX  
County of CLACKAMAS  
Date 5-2-16

**CERTIFICATION OF PROPERTY OWNERSHIP OF  
100% OF LAND AREA**

I hereby certify that the attached petition contains the names of the owners<sup>1</sup> (as shown on the last available complete assessment roll) of 100% of the land area of the territory proposed for annexation as described in the attached petition.

Name Alice Tarachow  
Title Cartographer  
Department Assessment and Tax  
County of Clackamas  
Date 5/4/16



<sup>1</sup> Owner means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If a parcel of land has multiple owners, each consenting owner shall be counted as a percentage of their ownership interest in the land. That same percentage shall be applied to the parcel's land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.

## CERTIFICATION OF REGISTERED VOTERS

I hereby certify that the attached petition contains the names of at least 50% of the electors registered in the territory proposed for annexation as described in the attached petition.

  
Name PAUL HANES  
Title DEPUTY CLERK  
Department CLERK / ELECTIONS  
County of CLACKAMAS  
Date 05/04/16



CLACKAMAS COUNTY ELECTIONS  
SHERRY HALL, COUNTY CLERK  
1710 RED SOILS CT, SUITE 100  
OREGON CITY, OR 97045

# NOTICE LIST

(This form is NOT the petition)

**LIST THE NAMES AND ADDRESSES OF ALL PROPERTY OWNERS AND REGISTERED VOTERS IN THE TERRITORY PROPOSED FOR ANNEXATION.**

|    | Name of Owner/Voter | Mailing Street Address  | Property Address   |
|----|---------------------|-------------------------|--|
|    |                     | Mailing City/State/Zip  | Property Description<br><small>(township, range, ¼ section, and tax lot)</small> |
| 1  | Thomas Murray       | 4425 SE Johnson Cr Blvd | 1S2E 30BB 02100  |
|    |                     | Milwaukie, OR 97222     |  |
| 2  | Alan Murray         | 4425 SE Johnson Cr Blvd | 1S2E 30BB 02100  |
|    |                     | Milwaukie, OR 97222     |  |
| 3  |                     |                         |  |
| 4  |                     |                         |  |
| 5  |                     |                         |  |
| 6  |                     |                         |  |
| 7  |                     |                         |  |
| 8  |                     |                         |  |
| 9  |                     |                         |  |
| 10 |                     |                         |  |



MILWAUKIE CITY COUNCIL  
STAFF REPORT

Agenda Item: **RS 6. C.**  
Meeting Date: **May 17, 2016**

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

Subject: **FILOC Ordinance**

From: Charles Eaton, Engineering Director

Date: May 4, 2016

### **ACTION REQUESTED**

First reading of an ordinance adopting a new Fee in Lieu of Construction Ordinance.

### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

**February 2, 2016:** Staff met with City Council to discuss the interpretation being used by staff for the administration of FILOC funds in accordance with MMC 19.706

**March 1, 2016:** Staff presented draft revisions to the FILOC (Fee in Lieu of Construction) ordinance for review. Several specific items were discussed and staff was directed to draft additional language for the FILOC ordinance.

**April 5, 2016:** Staff met with City Council to discuss revised draft of new FILOC ordinance. Council discussed options for determining FILOC value determination. Staff was directed to review and evaluate several fee structures and have fees by separate resolution.

### **BACKGROUND**

The ordinance has been rewritten into chapter 13 and the restriction for use on transportation facilities only was removed. Council identified three additional areas within the existing ordinance: the 10 year time frame limitation; the restriction to the use of FILOC funds within the NDA received; and to expansion of the ability to qualify for the FILOC program. Staff drafted the additional FILOC language and removed the fee determination in favor of a reference that the fee will be established by separate resolution in accordance with further direction by City Council.

### **FISCAL IMPACTS**

No additional Impacts proposed.

### **WORK LOAD IMPACTS**

Some additional staff time for the accounting of FILOC funds due to the need to separate utilities.

### **ATTACHMENTS**

1. FILOC Proposed Ordinance



**CITY OF MILWAUKIE**  
*"Dogwood City of the West"*

**Ordinance No.**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 13.32 ADOPTING A FEE IN LIEU OF CONSTRUCTION PROGRAM.**

**WHEREAS**, the City Council, by Ordinance number 2025, adopted a Fee In Lieu of Construction on March 15, 2011; and

**WHEREAS**, the consensus of the city Council discussion has been to develop a more comprehensive Fee in Lieu of Construction Program; and

**WHEREAS**, the City Council has held two work sessions on March 1, 2016 and April 5, 2016 to develop a new Fee in Lieu of Construction Program; and

**Now, Therefore, the City of Milwaukie does ordain as follows:**

Section 1. The Milwaukie Municipal Code is amended by adding a new Chapter 13.32 Fee in Lieu of Construction Program, to read as shown on the attached Exhibit A

Section 2. This ordinance shall take effect 30 days after passage.

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

## **13.32 FEE IN LIEU OF CONSTRUCTION**

### **13.32.010 PURPOSE**

If facility improvements are required, the City will require construction of the improvements at the time of development. However, the applicant may request to pay a fee in lieu of constructing the required facility improvements determined to be proportional. The fee in lieu of construction (FILOC) program ensures that opportunities to improve public facilities are maximized and that the goals and requirements of the City of Milwaukie are met. This section provides criteria for making FILOC determinations and administering the FILOC program.

### **13.32.020 Criteria**

The City may accept a fee in lieu of construction of required facility improvements if one or more of the following conditions exist.

- A. Required improvements are not feasible due to the inability to achieve proper design standards.
- B. Required improvements would create a safety hazard.
- C. Required improvements are part of a larger approved capital improvement project that is listed as a funded project in the City's Capital Improvement Program (CIP).
- D. Required improvements would create a situation that would not comply with City standards without extensive additional offsite improvements.
- E. Required improvements are less than needed to meet City standards due to the City's inability to require full improvements based on proportionality requirements on the development.

### **13.32.030 Findings**

If the Engineering Director determines that a fee in lieu of construction satisfies one of the criteria in Subsection 13.32.020 above, the City may accept a fee in lieu of construction upon the Engineering Director finding that deferring construction of facility improvements will not result in any safety hazards and is not necessary for the development. If the Engineering Director cannot make such a finding, then the City will not accept a fee and shall require construction of the improvements. The Engineering Director has sole discretion as to what improvements constitute a safety hazard or are necessary for the development.

**13.32.040 Fees**

If determined by the Engineering Director that required facility improvements are eligible for FILOC, the applicant shall pay to the City an amount equal to the estimated cost to construct the required improvements. The amount of the fee shall be determined by resolution of the City Council. All fees shall be paid to the City prior to the issuance of any development or building permits.

A. If previous development(s) on the subject property have resulted in the full construction of facility improvements or payment of FILOC fees and the proposed development has additional impacts, the City may only assess additional FILOC fees when there has been a change to the City's design standards.

B. If previous development(s) on the subject property have resulted in the partial construction of facility improvements or payment of FILOC fees and the proposed development has additional impacts, the City may assess additional FILOC fees for the balance of the improvements to bring the facilities into compliance with the City's current design standards.

**13.32.050 Administration**

Fees collected by the City may be used to construct public facility improvements or to leverage additional grant money for larger facility improvement projects. An accounting of fees collected and expended will be made available by the City to the public on an annual basis at the end of the fiscal year. Expenditure of fees is subject to the following:

A. Fees shall be used for construction of public facility improvement projects that benefit the development site, are within the same Neighborhood District Association (NDA) boundary, or are within 1000 feet of the development site, with the following two exceptions.

1. For development within a downtown zone, fees shall be used for construction of facility improvements that benefit the development site, are within one or more of the downtown zones, or are within 1000 feet of the development.

2. For development within the Historic Milwaukie NDA and not within a downtown zone, fees shall be used for construction of facility improvements that benefit the development site, are within the Historic Milwaukie NDA and not within a downtown zone, or are within 1000 feet of the development. Fees collected in the Historic Milwaukie NDA may be spent in one or more of the downtown zones with the approval of the Historic Milwaukie NDA.

B. Staff shall identify the facility improvement projects that meet the requirement of benefiting the development site as defined in Subsection 13.32.050.A. Staff shall coordinate with the neighborhood district associations to prioritize the project lists for each neighborhood.

C. Fees will be kept separately between facility types (Water, Sewer, Storm, Streets, Parks, etc.) and utilized on like facility improvements for which they were received.

## EXHIBT A

### **13.32.060 Refunds**

Fees collected by the City may be paid or refunded to the original payee or a third party upon written request to the Engineering Director, provided that FILOC funds are available. Fees refunded in this manner may only be used for the construction of the specified improvements for which they were received, including, but not limited to, surveying, engineering, design, and construction. In no event shall the refund exceed the original amount paid. Requests for FILOC refunds shall be approved by the Engineering Director and will be issued in accordance with an "Improvement Agreement" approved by the City of Milwaukie and executed by the original FILOC payee or third party requesting the refund.