Regular Session

RS

Milwaukie City Council

MILWAUKIE CITY COUNCIL
REGULAR SESSION

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

AGENDA
JULY 5, 2016

2,225th Meeting

1. CALL TO ORDER **Page #**
Pledge of Allegiance

2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

A. None scheduled

3. CONSENT AGENDA
These items are considered routine, and therefore, will not be allotted discussion time on the agenda; these items may be passed by the Council in one blanket motion; any Councilor may remove an item from the "Consent" agenda for discussion by requesting such action prior to consideration of that part of the agenda.

A. City Council Meeting Minutes: **2**
1. **April 19, 2016 Regular Session;**
2. **June 7, 2016, Work Session; and**
3. **June 21, 2016 Work Session.**

B. Solid Waste Rate Adoption – Resolution **22**

C. Authorize IGA with Oregon Department of Administrative Services (DAS) for Offsite Storage Services – Resolution **32**

D. TriMet Property Triangle Site – Resolution [PENDING] **76**

4. AUDIENCE PARTICIPATION
The presiding officer will call for citizen statements regarding City business. Pursuant to Milwaukie Municipal Code (MMC) Section 2.04.140, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and submit it to the City Recorder. Pursuant to MMC Section 2.04.360, "all remarks shall be directed to the whole Council, and the presiding officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The presiding officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.

5. PUBLIC HEARING
Public Comment will be allowed on items under this part of the agenda following a brief staff report presenting the item and action requested. The presiding officer may limit testimony.

A. 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. Dissolution of the Library Expansion Task Force – Resolution **78**
Staff: Katie Newell, Library Director

B. Visioning Advisory Committee Appointments **82**
Staff: David Levitan, Senior Planner

C.	**Meek Street Storm System Engineering Services Agreement – Resolution** Staff: Chuck Eaton, Engineering Director	**84**
D.	**Adopt Art in Public Places Ordinance – Ordinance** Staff: Mitch Nieman, Assistant to the City Manager	**114**
E.	**2017 League of Oregon Cities (LOC) Legislative Priorities** Staff: Mitch Nieman, Assistant to the City Manager	**122**
F.	**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.	3

Consent Agenda

MINUTES
MILWAUKIE CITY COUNCIL
www.milwaukieoregon.gov

REGULAR SESSION
APRIL 19, 2016
City Hall Council Chambers

Mayor Gamba called the 2,220th meeting of the City Council to order at 6:07 p.m.

Council Present: Council President Lisa Batey and Councilors Scott Churchill, Wilda Parks, and Karin Power

Staff Present: Assistant to the City Manager Mitch Nieman, City Recorder Pat DuVal, City Attorney Peter Watts, Community Development Director Alma Flores, Finance Director Casey Camors, Planning Director Denny Egner, Sustainability Director Clare Fuchs, Associate Planner Brett Kelver, and Building Official Samantha Vandagriff

CALL TO ORDER

Pledge of Allegiance.

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Milwaukie High School (MHS) Outstanding Student Achievement Award for April 2016 to Emily McCarty

Mark Pinder, MHS Principal, introduced Ms. McCarty and noted her achievements particularly in the areas of scholarship, volunteerism, and athletics.

Mayor Gamba and the Councilors congratulated Ms. McCarty and inquired about her academic and extracurricular activities and career plans.

B. National Building Safety Proclamation

Ms. Vandagriff read the proclamation naming May 2016 as *National Building Safety Month* in the City of Milwaukie.

C. Air Quality Update

Mayor Gamba introduced Nina DeConcini, Department of Environmental Quality (DEQ) Region Administrator; and Brian Boling, DEQ Laboratory Program Manager; and Aaron Johnson and Jay Khetani, Precision Castparts Corp. (PCC).

Ms. DeConcini provided a brief recap of the context and set the stage for this update. The last time she was before the Milwaukie City Council, DEQ had not done any monitoring, and she had stated that DEQ was not proceeding with renewal of PCC's air quality permits until the regulatory reform was completed. The new program, Cleaner Air Oregon, would take into consideration health and risk based information for industrial facilities that impacted local communities. The Brentwood Darlington Community hosted a meeting, and there was a request to monitor both soil and air quality around PCC. DEQ was still in the process of developing a soils sampling plan that it would communicate with the community and public health partners. PCC had informed DEQ earlier that it intended to install pollution control equipment on some of its processes, which DEQ was pleased to hear. The community believed that monitoring should take place before that equipment was installed. DEQ worked diligently to install its monitoring instruments to get a before snapshot. There were many regulatory intersects with PCC, so Ms. DeConcini provided an update of both PCC and McClure Industries in hard copy and electronically on DEQ's website.

Mr. Boling addressed ongoing monitoring at PCC and what it took to establish and monitor both air and soil. In the case of PCC, DEQ was doing fence line monitoring. Three stations were deployed around the facility after studying wind direction and speed from a meteorological station on top of McClure. It was found that the flow was from east to west along the canyon area of Johnson Creek. The deployments were placed to determine what was contributed by PCC and was a follow up to the moss study. The US Forest Service (USFS) collected moss in the area and identified nickel along with arsenic, so the follow up monitoring looked at the air concentration. The moss takes in the metals which either accumulate or go down into the moss. The air monitoring looked at air concentrations and human health impacts. DEQ also does receptor monitoring, a national program to measure air toxics, near homes and schools. The monitoring equipment filters are collected daily for a period of 30 days and taken to the lab in Hillsboro for analysis and determination of long term impacts. There was also a concern about styrene in the area, so a volatiles monitoring instrument would be installed just east of the potential source and perhaps one in between. He discussed the funding issues faced by DEQ and the limitation on available equipment. DEQ was borrowing equipment from the Environmental Protection Agency (EPA) so that more monitoring can be done.

Council President Batey asked if Eastside Plating in that same general area was being monitored.

Mr. Boling replied that DEQ had not done direct monitoring at that location.

Ms. DeConcini added that based on its most recent inspections, Eastside Plating was in compliance with state and federal regulations and that there had been no violations since 1998. There had been no citizen complaints for the past five years.

Councilor Churchill asked about plume discharge and how DEQ would know if it was monitoring in the right location.

Mr. Boling replied that DEQ looked at the wind pattern data and whether the air was coming from a heated source. PCC did not have a heated source, and staff confirmed that a lot lays low in that canyon. There was a different wind pattern on the bluff, and he felt the monitors were in the right location.

Councilor Churchill asked if manufacturing cycles for the past few months could be taken into consideration to determine if there were any changes in processes before the monitoring took place.

Ms. DeConcini said DEQ would request that information from PCC.

Mayor Gamba asked if monitors could be installed at the smoke stack to determine what was actually being emitted rather than fence line testing.

Ms. DeConcini replied that DEQ was looking at that as part of the regulatory overhaul. She discussed Oregon's clean air benchmarks with the goal of no more than one excess cancer risk in 1 million people compared to the general population. Other states do take into account the localized impact, which Oregon's program did not at this time prior to rulemaking and potential legislation.

Councilor Power was concerned about the time lag between collecting data and release of information. She asked if there were real time monitors that could identify spikes as they occurred.

Mr. Boling replied that in the case of greenhouse gas monitors, the information was available in real time. In the case of metals there was a real time instrument, but it was very expensive. Part of the time delay was the analysis that needed to occur and the time to determine the health impact using a longer term data set. Oregon benchmarks that assessed cancer risk, for example, was a one year test period.

Ms. DeConcini discussed standards and added that the benchmarks were set at a very protective level.

Councilor Power felt there should be a less costly way to access real time data.

Mr. Boling explained the difficulties of analyzing data in real time. The challenge with volatile organic compounds (VOC) and metals was the low level analysis of what human health impacts might be in the long term.

Council President Batey asked for comments about water quality including groundwater and Johnson Creek.

Ms. DeConcini replied that the City of Portland administered the PCC permit program and acted as DEQ's agent. She provided a document showing the environmental intersects that included water quality; however, she would prefer that Portland responded to Milwaukie directly.

Mayor Gamba suggested inviting the Bureau of Environmental Services (BES) to the May 19 study session on water quality.

Councilor Power asked how local governments could advocate for DEQ so it could do its job more effectively, and she noted the reduced staffing level.

Mr. Boling discussed the statewide lab that did all air, water, and land quality and the monitoring equipment that was moved around the state. He talked about staffing levels with employees being deployed to the highest priority locations.

Ms. DeConcini added that the regulatory overhaul would help identify staffing needs. She appreciated the City's involvement.

Councilor Power suggested that if people wanted to push for more funding they should express their support as budgets were considered at the legislative level.

Mayor Gamba invited representatives from PCC to provide their comments.

Aaron Johnson, General Manager, PCC Structurals' Large Parts Campus on Johnson Creek Blvd and **Jay Khetani**, Vice President of Communications. Mr. Johnson read his comments into the record and would then invite questions. PCC employed 2,800 people in the Portland region and took its obligation to operate safely and responsibly very seriously. PCC made flight critical parts for every aircraft engine in the sky today, and the company knew exactly what metals are used to achieve the necessary performance characteristics.

Air quality has been on everyone's minds in the past couple of weeks. **Mr. Johnson** assured the City Council and the audience that PCC understood the importance of a neighborhood that was a safe environment to live, work, and raise a family. He briefly addressed some of the concerns that had been raised. PCC did not use arsenic or cadmium in its metals and predominantly used low toxicity nickel alloys. PCC used elemental chromium in its metals, and an extremely small percentage of the chromium converts to hexavalent chromium when high heat was applied. PCC Structurals has extensive air emissions control systems including hexavalent chromium. The scheduled system improvements would increase the capture rate.

Mr. Johnson said PCC was in full compliance with its permits and was audited by the Oregon DEQ. PCC invested years in analysis and engineering studies to ensure that the controls employed the best technology available. $17 million had been invested on additional improvements between 2014 and 2016, although the existing controls were highly effective. PCC would submit a request to DEQ to reduce the maximum permitted emission for the upcoming permit renewal. The investments also included $4.2 million for a stormwater facility to capture and treat all rain water at the Johnson Creek facility. He added that the industrial wastewater was not routed to Johnson Creek.

Mr. Johnson reported that PCC had established a website and posted relevant documents containing the most current information. A public community meeting was scheduled for May 25 to provide information and respond to questions.

Councilor Churchill asked about the indoor air quality sampling and if Mr. Johnson was willing to share that information with DEQ.

Mr. Johnson replied that PCC hired a third party industrial hygienist, but he was not prepared at this time to share that data. That information was shared with Oregon Occupational Safety and Health Administration (OSHA), so he felt he could probably share it with DEQ.

Mayor Gamba asked Mr. Johnson to discuss the new devices for air emissions and stormwater.

Mr. Johnson said the first project which had been completed was the addition of high efficiency particulate air (HEPA) filters on the exhaust of the baghouse to remove small dust particles. A baghouse captures and removes dust from the air using fabric filters which removes about 99% of the dust. Cyclone prefilters were installed which used baghouse. PCC upgraded its stormwater filtration system to improve the current process of removing contaminants before the runoff reached the City of Portland's stormwater system and Johnson Creek. Virtually all organics would be captured. There were springs and a pond at a higher elevation, and a lift system would be installed that would divert the water around the PCC property and go directly into the Portland system.

Councilor Power understood this stormwater investment would capture virtually all of the pollutants before going into the Portland system. She asked which pollutants were not being captured currently.

Mr. Johnson replied that from discontinued practices there were polychlorinated biphenyl (PCB) and chlorinated solvents. There was testing and the stormwater system went through extensive cleaning. The discontinued practices left some things behind that could migrate into the stormwater system. He and Mr. Khetani discussed runoff filtration systems. Mr. Johnson said all evidence indicated the threat was low, but conditions would improve with the stormwater system.

Councilor Churchill asked Mr. Johnson if he would be willing to talk to DEQ and share how manufacturing cycles had changed over time.

Mr. Johnson said he would include exact timelines. **Mr. Khetani** wanted to clarify that PCC would have discretion to change practices during the monitoring process to be sensitive to customer needs.

Councilor Power discussed the wastewater treatment plant as a major odor source and a long time source of frustration for those living near it. She commented on the success of the Kellogg Good Neighbor Committee (KGNC) and asked if PCC had considered doing something that.

Mr. Khetani replied that PCC had historically been an organization focused on its work and had not engaged with the media and the community. Clearly community concerns were making PCC think about taking actions to be more transparent and engaging the community. He did not feel that PCC was prepared to make a contractual commitment at this time but encouraged residents to attend the May 25 community meeting to begin the dialogue.

CONSENT AGENDA

It was moved by Council President Batey and seconded by Councilor Power to approve the consent agenda as presented.

A. City Council Meeting Minutes:

1. March 29, 2016, Study Session; and
2. April 5, 2016, Work Session.

Motion passed with the following vote: Councilors Parks, Power, Churchill, and Batey and Mayor Gamba voting "aye." [5:0]

AUDIENCE PARTICIPATION

Mayor Gamba reviewed the procedure for audience participation.

Mr. Nieman reported that City Council received comments on solarization, but no staff response was necessary.

Meg VanBuren, South Portland Air Quality, read a statement regarding PCC's citizen engagement. The community was pleased that the company was communicating with residents and expected ongoing communication regarding any proposed solutions. The community wanted complete information on any previous emissions and controls. The community expected PCC to install world class pollution controls that used the best available technology. The community looked forward to a dialogue with PCC about emergency prevention and response. She discussed major incidents that had occurred at the large parts campus including the May 2011 release of a toxic cloud of gas that resulted in a hazardous material incident. PCC attributed the incident to a PGE power failure, but it did not appear steps were taken to install backup generators. It was expected that PCC would take community concerns seriously and respond promptly. She expected third party verification of any solutions and hoped PCC would invest the resources to establish and maintain a neighborhood advisory committee to facilitate communication and increase transparency.

Jacob Sherman, South Portland Air Quality, addressed some of the issues that DEQ had raised with regards to the human health risk permitting and pointed out that DEQ could have taken these steps years ago. Some people felt this had more to do with cultural issues than funding issues. With regard to the Oregon benchmark and looking for more than one excess cancer risk, there was 2014 data available that showed PCC was named one of the top 20 toxic air polluters in the country. There were 90 excess cancer risks in 1 million. The same questions could be asked about McClure Industries which received hundreds of complaints from the community about air quality odors prior to its permit renewal in 2010. He would encourage continued community advocacy.

Mr. Johnson said there were backup generators on site but could not speak directly to the power outage event at this time.

Daniel Newberry, Executive Director, Johnson Creek Watershed Council, a community based, nonprofit organization that did stream restoration. In the past couple of weeks, his organization had been contacted by DEQ and Portland BES about water quality issues. DEQ commissioned a study in 2014 that looked at several sources of pollution in the sediment in the vicinity of PCC that showed a pattern of polychlorinated biphenyl (PCB) and several heavy metal contaminants. He was glad to hear that PCC was doing some onsite mitigation, and he recommended redoing that study after recent storm events to determine if pollutants were still coming out. He also encouraged DEQ to investigate Milwaukie's drinking water supply. Mr. Newberry asked PCC when the PCB process changed.

Mr. Johnson replied that PCC stopped using the electrical switch gear that the PCBs came from in the early 1990's, and there was significant cleanup on the remedial sites.

Charles Snyder, Milwaukie resident, referred to the letter from PCC Structurals and suggested that PCC was concerned that there was some risk to the company's profits. His family wanted a safe place to live, and he felt PCC should be held to the highest standards. PCC employees and executives should be comfortable living next door to the facility. He, too, would like investigations of the water supply. He did not trust corporations to take into account the environment or the public good and hoped there would be some way to move from the focus on profits.

Julie Reardon, Brentwood Darlington District, asked about the letter that went out to residents and hexavalent chromium emission figures. She thanked everyone in the community for their involvement and taking time to fight for change and accountability.

As a society, the country had strayed too far from meeting the basic needs of humanity and putting people on the frontlines of toxic exposure. The community was here to challenge the status quo. She hoped the City Council would invest its political power to affect change. Instead of looking at profit margins, one should preserve people's health and safety as the most valuable assets.

Victor Hungerford, Ardenwald resident, said his family was growing its own food, but he was concerned about the quality of the air. He understood PCC was a significant employer in the area. As a father and someone who wanted to live the rest of his life in this area, he wanted to know that it was safe. Change could happen, and it was good to know that PCC was willing to open up to the community. He urged setting an example for children and not simply accepting the status quo.

Anne Trudeau, South Portland Air Quality, did not live near PCC, but there were people she cared for who did. In 2002, her mother who was an environmental activist passed away. She had given Ms. Trudeau a copy of *Living Downstream* written by Sandra Steingraber. There has been a steady stream of lies and distortions from PCC and our regulatory agencies. Those living around PCC had undergone continuous assault. PCC talked about installing stormwater controls but neglected to mention this was not a voluntary action. PCC was licensed as a foundry that processed arsenic and cadmium, and she planned to speak with DEQ to get that information. She understood this was a self-reported list.

Ms. DeConcini said she would look at the hazardous air pollutant that PCC used in its license which was enforceable. It would be an important validation component of the current monitoring.

Mr. Johnson added that PCC did do not use arsenic and cadmium in the metals. It would be in the recipe for the type of alloy provided by the customer. All material safety data sheets (MSDS) were reviewed, and arsenic and cadmium were not listed as a component of any recipe. Arsenic and cadmium were found in the Portland area, and if found in the baghouses, the levels would be very low. The PCBs were legacy.

Steve Meyer, Portland resident, asked about the use of hydrochloric acid and asked if PCC was self-insured. There were other plants in the region, and he asked why they were only focusing on the main Portland plant.

Ms. DeConcini said DEQ was focusing on this plant because of the moss study and hot spots identified for nickel and arsenic.

Mr. Meyer discussed other PCC locations and contamination flowing into Johnson Creek. He noted a number of former employees who had become ill.

Mayor Gamba recessed the regular session at 7:56 p.m. and reconvened the regular session at 8:00 p.m.

Albert Zayha, Portland resident, said PCC had facilities in California and other areas with stricter air quality requirements. The company could upgrade its Oregon facilities to meet similar requirements and still maintain its profits. He noted a conflict between what has been reported by DEQ and PCC and asked who could be trusted. The moss had spoken, but the monitors were in another location.

Mr. Boling explained when DEQ did metals monitoring the instrument provided a number of metals at the same time and provided results on a suite of metals in the sampling plan. He discussed the moss maps which used interpolation of where the samples were collected. DEQ placed its monitors to determine what was happening directly around PCC. DEQ was collaborating with the U.S. Forest Service and working diligently to transfer knowledge and understand where there may be potential issues.

Debra Taevs, Portland resident, said her husband, an industrial engineer, understood PCC was installing HEPA filters. He was concerned that the size of the particles being filtered would likely be too small to be caught by the filters. She and others were interested in the specifications of the equipment being installed the names of the

manufacturers to have a better understanding of those pieces of equipment. She also expressed concern about monitoring respiratory irritants like hydrochloric and nitric acids and cobalt. She asked if the monitoring devices detected those kinds of things.

Mr. Boling said the monitors did detect cobalt but did not address the acids.

Ms. Taevs said she and others were interested in learning how those other things were controlled. PCC continued to show up on the list of top air polluters for the entire country surrounded on all sides by homes, so she felt PCC should have ongoing monitoring.

Heather Sparks, Milwaukie resident, could smell a horrible, toxic plastic odor at least three or four times a week. She did not feel her daughter could play outside and was concerned about growing her own vegetables. She was also very concerned about the Milwaukie water supply because of the toxins going into Johnson Creek, and she asked if there had been any discussion of using the Bull Run water supply.

Joan McClellan, Portland resident, understood that all airplanes used PCC parts and expressed some concern about the company's being a security risk. Concerned residents were organizing a forum at a local church prior to the PCC event. She was concerned about pollution and her family's health and livelihood. She was also involved with the community forum Police and Citizens Working Together to Improve Relationships on April 24.

Joel Iboa, Beyond Toxics located in Eugene, said loopholes in regulations had allowed many manufacturers in residential areas to release heavy metals. Many concerned citizens would like to shutdown these facilities. Recent efforts by PCC and other polluters in the face of scrutiny were merely a Band-Aid. He believed the State should have a comprehensive air permitting program with stack emission tests at the site, fence line, and community monitoring. Currently, facilities were awarded permits with certain benchmarks; however, DEQ did not currently regulate cumulative air impacts. He urged everyone to consider the burden of toxic waste.

A. Declare a Housing Emergency – Ordinance and Resolution

Ms. Flores provided the staff report in which the City Council was requested to adopt an Emergency Ordinance authorizing the City Council to declare a housing emergency and adopt a Resolution declaring a housing emergency. She discussed housing related issues in the City of Milwaukie that were outlined in the staff report, and she provided relevant home sale and rental data.

Mr. Watts said the first action would be to grant the City Council the legislative authority to declare the emergency, and the second would be to adopt the Resolution. He discussed the Ordinance related to no cause evictions and how it differed from the regulations adopted by the City of Portland.

Misty Collard, Milwaukie resident, said she worked with low income families to find affordable housing. This region had the lowest vacancy level in the nation, and people are being asked to move from their units. She urged the Milwaukie City Council adopt the legislation. Wages and Social Security were not commensurate with the increasing rents, and renters were not given sufficient time to find other suitable units. She was concerned about the ability of communities who adopted this type of legislation to enforce. Portland currently charged the equivalent of three months' rent for violations of the 90-day termination requirement, which she believed was administered through Code Enforcement. Ms. Collard also encouraged support of programs that assisted first time homebuyers.

Patty Jay, Steen Court resident, said she received a 60-day notice of a no cause eviction. She had always paid her rent on time, and she and her sons had been good tenants. As a veteran she was eligible for the Rapid Rehousing Program. She hoped to be a catalyst for change because she did not want to leave Milwaukie or Clackamas County.

Councilor Power supported the actions because she herself found it difficult to find a home in her own community which she saw as a red flag. She felt adding the time restrictions would be very helpful to families and reduce stress levels.

Mayor Gamba said this was a small step to address affordable housing and encouraged that Milwaukie advocate at the State level and work with entities that could increase the housing stock in the City.

Council President Batey supported the requested actions but felt the City Council needed to have a discussion about the length Resolutions generally which tended to have a lot more "whereas" clauses than are really needed. She was also concerned about Resolutions that made "findings" for which there was no supporting documentation providing substantiation. She encouraged her fellow Councilors and staff to provide such substantiation and also to try to keep Resolutions concise. She encouraged staff and fellow Councilors to substantiate the language of proposed Ordinances.

It was moved by Councilor Parks and seconded by Councilor Power to approve the first and second readings by title only and adoption of the ordinance authorizing the City Council to declare a housing emergency under specified circumstances, defining duration and City Council powers during a housing emergency and declaring an emergency. Motion passed with the following vote: Councilors Parks, Power, Churchill, and Batey and Mayor Gamba voting "aye." [5:0]

Mr. Nieman read the Ordinance two times by title only.

Ms. DuVal polled the Council with Councilors Parks, Power, Churchill, and Batey and Mayor Gamba voting "aye." [5:0]

> **ORDINANCE No. 2117:**
>
> **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY COUNCIL TO DECLARE A HOUSING EMERGENCY UNDER SPECIFIED CIRCUMSTANCES, DEFINING DURATION AND CITY COUNCIL POWERS DURING A HOUSING EMERGENCY AND DECLARING AN EMERGENCY.**

It was moved by Councilor Power and seconded by Councilor Parks to approve the resolution declaring a housing emergency pursuant to Ordinance No. 2117. Motion passed with the following vote: Councilors Parks, Power, Churchill, and Batey and Mayor Gamba voting "aye." [5:0]

> **RESOLUTION No. 46-2016:**
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> **A RESOULTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DECLARING A HOUSING EMERGENCY PURSUANT TO ORDINANCE NO. 2117**

D. Establishing a New Milwaukie Municipal Code (MMC) Chapter 5.60 Relating to No Cause Eviction – Ordinance

Ms. Flores provided the staff report in which the City Council was requested to adopt an emergency Ordinance to create MMC Chapter 5.60 which would establish a minimum time period of 90 days for no cause evictions of residential tenants. She read excerpts from Oregon Revised Statutes (ORS) Chapter 90, the Residential Landlord and Tenant Act, and provided statistics on local housing needs. The notice period was not increased in the case of for cause evictions

The group discussed appropriate terminology, and **Mr. Watts** advised that would not be a problem. **Council President Batey** discussed her amendments that clarified language in two sections of the proposed Ordinance.

It was moved by Council President Batey and seconded by Councilor Parks to approve the first and second readings by title only and adoption of the ordinance relating to renter protections, establishing new code chapter 5.60 and declaring an emergency with two minor amendments in sections 1 and 2. Motion passed with the following vote: Councilors Parks, Power, Churchill, and Batey and Mayor Gamba voting "aye." [5:0]

Mr. Nieman read the Ordinance two times by title only with the amendments.

Ms. DuVal polled the Council with Councilors Parks, Power, Churchill, and Batey and Mayor Gamba voting "aye." [5:0]

> **ORDINANCE No. 2118:**
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> **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, RELATING TO RENTER PROTECTIONS, ESTABLISHING NEW CODE CHAPTER 5.60 AND DECLARING AN EMERGENCY.**

PUBLIC HEARING

A. Code Amendments for Short-Term Rentals, Vacation Rentals, Bed and Breakfasts, and Related Changes – Ordinance

Mayor Gamba called the public hearing on the legislative Zoning Ordinance amendment initiated by the City of Milwaukie to order at 9:07 p.m.

The purpose of the hearing was to consider an Ordinance to adopt proposed amendments to the Zoning Ordinance to allow and regulate short-terms rentals, vacation rentals, bed and breakfasts, and related changes associated with commercial lodging uses.

This was a legislative decision by the City Council and was based on the following standards: the statewide planning goals; applicable federal or state laws or rules; any applicable plans and rules adopted by Metro; applicable Comprehensive Plan policies; and applicable provisions of implementing ordinances.

Mayor Gamba reviewed the order of business in the conduct of the hearing. The City Council decision was the final decision of the City. All testimony and evidence was directed toward the applicable substantive criteria. Failure to address a criterion or raise any issue with sufficient detail precluded an appeal based on that criterion or issue. Any party with standing could appeal the decision of the City Council to the State Land Use Board of Appeals (LUBA) according to the rules adopted by that Board. Persons with standing are those who submitted written comments or testified and signed the City Council Attendance sign-up sheet.

No members of the City Council declared a potential or actual conflict of interest as defined in ORS §244. No member of the audience challenged any Council member's ability to participate in the decision.

Staff Presentation: **Mr. Egner** provided the staff report in which the City Council was requested to approve application ZA-2015-003 and Findings of Approval. He reviewed the proposed regulations which were developed through a series of workshops and the Planning Commission recommendation. Part of the proposed regulations addressed short term rentals that included Airbnbs where a property owner lived in the house on a permanent basis for at least 270 days per year. The proposal was to allow this type of rental in all zones where a residential use was allowed and treated as an accessory use to a residential unit. The Planning Commission recommended that at any given time

they could be rented to two different parties when hosted. These would be treated and regulated like a home occupation. The proposal allowed the use of a guest house or an accessory dwelling unit (ADU) on the property. The owner would be required to register as a business with the City to ensure that all building and fire code requirements were met.

Mr. Egner reviewed the vacation rental regulations when the owner was absent for more than 95 days per year. These would be rented to a single party and were a conditional use in a residential zone and the Downtown Mixed Use (DMU) zone and would require a hearing before the Planning Commission. The proposal would permit vacation rentals in the General Mixed Use (GMU), Neighborhood Mixed Use (NMU), Commercial (G-C), and Limited Commercial (C-L) zones. The rationale was that hotels and motels were allowed in those zones. Bed and Breakfast was the other type of rental in which three or more parties may rent rooms in the facility. They would be allowed as a conditional use in low, medium, and high density zones and permitted in commercial and mixed use zones.

Mr. Egner described the proposed changes to hotel and motel regulations. In addition to being prohibited in low and medium density residential zones, they would also be prohibited in R-1 and R-2 zones. They would be a conditional use in R-1-B and C-L zones. Hotels and motels would be permitted in mixed use and G-C zones.

Mr. Egner reviewed the new home occupation standards for short term rentals. An owner/operator has to live on the property for no less than 270 days per year. A short term rental can be occupied by no more than two rental parties at a given time. For a duplex property, only one unit at a time can be used as a short term rental. Building and fire code requirements must be met, and the owner must have obtained a business registration with the City of Milwaukie.

Mr. Egner reviewed the key Planning Commission issues. There was testimony from housing advocates concerned about affordable housing and compliance with statewide Planning Goal #10 who later submitted correspondence stating that the supplemental findings addressed their issues with Goal #10 and affordable housing. Parking was discussed at the Planning Commission, and members felt it could be addressed through the home occupation or conditional use processes. There had also been discussion of how many parties could occupy a short term rental and the number of rooms that could be rented in hosted situations.

Council President Batey noted that the issue of taxation had been discussed in work session.

Mr. Egner replied that issue would be worked out with the Finance Director and addressed separately. The 270 days of owner occupancy did not need to be consecutive, and he commented that it could be difficult to document and enforce.

Correspondence: Louise Dix and Jennifer Bragar, Fair Housing Council of Oregon and Housing Land Advocates, 1221 SW Yamhill Street, Portland, OR 97205. They stated that staff seemed to have thoroughly addressed their concerns related to Goal 10 obligations.

Mayor Gamba reviewed the conduct of the hearing.

Testimony in Support:

Cid Blase, Island Station resident, had a B&B in her home and received a notice about a year ago that she was out of compliance. She attended the meetings and spoke before the Planning Commission regarding the required parking space which was eventually removed. She thought the Planning Commission was thoughtful, and she supported the recommendation. She urged that the checklist being developed be clear and succinct. She thought short term rentals could help people purchase homes in Milwaukie.

Mr. Watts made several clarifying remarks related to the State's transient lodging tax.

Ms. Blase commented on Airbnb taxes.

James Knight, Historic Milwaukie resident, had testified at the Planning Commission and sent emails to the Milwaukie City Council. He supported most of the amendments but asked why there were restrictions on the amount of time one had to be living in his or her home. He would prefer the number of days lower and noted that Portland only required that it be the primary residence. The City of Portland established a tax because it was pushed by hotel lobby. He recommended that the business fee not be too high. He discussed the need for an inspector and expressed concerns with code enforcement and felt he was being targeted.

Neutral Testimony: None.

Testimony in Opposition: None.

Staff Response: **Mr. Egner** said the reason for the limit on the number of days was to ensure that it was an accessory use to the primary residence and not a commercial enterprise independent of the house. He addressed the fire life safety issue that assured that the building was safe. By authorizing this he felt the City had some responsibility. He would check into the Portland question about the number of days the homeowner had to occupy the home.

Council President Batey recommended given the hour that the hearing be continued.

It was moved by Council President Batey that the hearing on File #ZA-2015-003 be continued to the date certain of May 17, 2016, and to keep the public testimony open. Motion died for lack of a second.

Councilor Power was prepared to adopt the Planning Commission's recommendation, and **Councilor Churchill** agreed.

Close Public Hearing:

It was moved by Councilor Power and seconded by Councilor Churchill to close the public hearing. Motion passed with the following vote: Councilors Parks, Power, Churchill, and Batey and Mayor Gamba voting "aye." [5:0]

Council Discussion:

Council President Batey saw a lot of tension between this package and emergency housing regulation just adopted. She believed approving short term rentals was an opening for taking more housing off the market. She thought 95 days was long, but she was willing to go with the Planning Commission's recommendation. Allowing for ADUs to be used as rentals took them out of the housing equation when the City Council supported more middle housing. The allowance of permitted short term rentals in the mixed use areas would also take housing out of the equation, and she gave the example of units on the Murphy site that could be turned into year round vacation rentals. She felt taxes should be addressed at the time these regulations were adopted and requested more information on the County taxes. She supported the general idea of allowing some short-term rentals, but thought the expansion to ADUs and to the newly-rezoned Central Milwaukie areas were allowing for too much housing to be taken off the housing market. She had some anxiety about the two parties because it would increase the intensity of use but was alright with the idea that it could be handled through code enforcement and business licensing. She thought there were too many loopholes in the code amendment which she felt ran counter to the Council's decision on emergency housing in the preceding discussion this evening.

Councilor Parks had not heard of a big groundswell of those who would like to rent out their houses or rooms. She was not seriously concerned that the amendments would replace long term available housing stock.

Council President Batey said there were many studies showing that Airbnb has reduced housing in areas like The Pearl. She was concerned about condos in the South Downtown that would be very appealing to rent. It was not only about availability but also about driving up costs.

Decision by Council:

It was moved by Councilor Churchill and seconded by Councilor Power to approve the first and second readings by title only and adoption of the ordinance amending Title 19 Zoning to allow and regulate short-term rentals, vacation rentals, and bed and breakfasts, and make related changes associated with commercial lodging uses (File #ZA-2015-003).

Mayor Gamba addressed Council President Batey's concerns about buildings that could be all rented out.

Mr. Egner explained in the Downtown that there could be an individual who occupied a condo or some other type of housing unit who could rent out a bedroom or vacate the unit for a month and rent it out. If the individual wanted to make it available for a vacation rental, then the individual would have to go through the conditional use process. In the Central Milwaukie commercial districts the vacation rentals were permitted outright.

Mayor Gamba asked if there was a way to amend the language so that only a certain number of units could be vacation rentals.

Mr. Egner replied that could be done.

Motion passed with the following vote: Councilors Parks, Power, and Churchill and Mayor Gamba voting "aye" and Council President Batey voting "no." [4:1]

Mr. Nieman read the Ordinance one time by title only.

Mayor Gamba announced that since the vote was not unanimous, the second reading and adoption would be scheduled for the May 3, 2016, regular session.

Mayor Gamba recessed the regular session at 9:36 p.m. and reconvened it at 9:48 p.m.

OTHER BUSINESS

E. Adoption of Supplemental Budget – Resolution

Ms. Camors provided the staff report in which the City Council was requested to adopt the Resolution adjusting the 2015 – 2016 biennium budget by adopting the supplemental budget and revising appropriations. Significant conditions included funding the Sustainability Director position in the City Manager's Office, the emergency temporary repair of the Kellogg Creek Bridge, and legal costs related to code enforcement. Staff was not requesting additional authority but rather shifting funds.

It was moved by Council President Batey and seconded by Councilor Parks to approve the resolution adjusting the budget for the 2015-2016 Biennium by adopting this Supplemental Budget and revising appropriations. Motion passed with the following vote: Councilors Parks, Power, Churchill, and Batey and Mayor Gamba voting "aye." [5:0]

> **RESOLUTION No. 47-2016:**
>
> **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADJUSTING THE BUDGET FOR THE 2015-2016 BIENNIUM BY ADOPTING THIS SUPPLEMENTAL BUDGET AND REVISING APPROPRIATIONS.**

E. Adoption of Solar Goals for the City of Milwaukie – Resolution

Ms. Fuchs provided the staff report in which the City Council was requested to adopt a Resolution setting a goal to triple the amount of solar energy produced in the City of Milwaukie by 2021 and to authorize staff to promote and facilitate a residential solar program for interested citizens modeled after the "Solarize" format. She described the benefits of the program and the process. Optional items of the "solarize" program were the ability to charge a small fee to defray program administration and project management. Another option was to include weatherization for those who did not wish or could not afford to go solar. She briefly discussed the option of buying into community solar. The final option was to include an apprenticeship program for chosen installation vendors to help create jobs in the community.

Charlie Fisher, Environment Oregon, supported the Resolution to help get clean energy on the grid and to help cities take action to promote clean energy and reduce carbon emissions.

Terry Tomei, Elemental Energy, believed in solar and encouraged the City Council to adopt the proposed Resolution. He saw many homeowners who wanted to go solar and needed more support through a program like this to make it happen.

Robert Sandberg, Light Source Energy, noted that in his Mt. Tabor Neighborhood many people had installed solar. Solarize helped make installation more affordable for homeowners. He was currently working on a proposal for a Milwaukie non-profit building at King Road and Linwood Avenue.

Council President Batey suggested that Mr. Sandberg contact Northwest Housing.

Meghan Barrier, Oregon Solar Energy Industries Association (OSEIA), said this was a great way to raise awareness of renewable energy and encouraged the City Council to adopt the Resolution. She was an experienced solar project manager and offered her support.

Virginia Maxam, Milwaukie resident, spoke in support of the program. She was impressed with the City Council and its integrity, intelligence, and thoughtfulness on a variety of issues addressed at this meeting. The Clean Energy Bill passed in March, and cities across Oregon were considering the "solarize" program.

Crista Whittington, Milwaukie resident, supported solar and this program for the reasons already stated.

James Knight, Milwaukie resident, spoke in support for the adoption of the Resolution and wanted to be well informed about the program and how to participate.

Craig Ernst, Milwaukie resident, said he, Ms. Barrier, and others wanted to be a resource to the program. Milwaukie had an opportunity to become known statewide for its solar program and becoming a solarized community.

It was moved by Council President Batey and seconded by Councilor Parks to approve the resolution authorizing the establishment of a "Solarize" program and setting solar energy goals.

Councilor Churchill said he would support the "solarize" program and acknowledged citizen concerns about the cost and the feeling that it was more important to repair City streets.

Motion passed with the following vote: Councilors Parks, Power, Churchill, and Batey and Mayor Gamba voting "aye." [5:0]

RESOLUTION No. 48-2016:

A RESOULTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE ESTABLISHMENT OF A "SOLARIZE" PROGRAM AND SETTING SOLAR ENERGY GOALS.

F. Neonicotinoid Insecticides – Resolution

Mr. Nieman provided the staff report in which the City Council was requested to adopt a Resolution supporting the elimination of the use of neonicotinoid pesticides in Milwaukie that were toxic to honey bees and other pollinators. Park and Recreation Board (PARB) Chair Lisa Gunion-Rinker had provided a list of local nurseries that did not use neonicotinoids or other similar insecticides. He noted that the North Clackamas Parks and Recreation District (NCPRD) sourced product from eleven neonicotinoid-free nurseries. He discussed the management plan and other agencies involved.

Mayor Gamba said this action would be more far reaching after discussions with NCPRD and the North Clackamas School District (NCSD 12). The Oregon Department of Transportation (ODOT) and the Oregon Liquor Control Commission (OLCC) were not contacted. The group discussed those County agencies involved. Mayor Gamba offered to reach out to those who had not been contacted.

Sharon Selvaggio, Northwest Center for Alternatives to Pesticides, commended the City of Milwaukie for proposing this Resolution. Neonicotinoids harm bees and other wildlife and are known for large, dramatic die offs, but there are also sub lethal impacts. She urged the City Council to adopt the Resolution.

Denise Baker, Milwaukie resident, commended the City Council on all of the issues it considered at this meeting including the proposed ban on neonicotinoids which were harmful to humans as well. She provided links regarding the dangers of chemicals including glyphosates. She referred to an Oregon Occupational Safety and Health Administration (OSHA) regulation stating that warning signs should be placed after the application of chemical fertilizers and herbicide that included glyphosates.

Council President Batey pointed out that while the Parks and School districts had apparently been consulted and concurred with the policy, no one had consulted with other governmental agencies covered by the language, including OLCC and ODOT campuses in the North Industrial area.

It was moved by Councilor Churchill and seconded by Councilor Parks to approve the resolution to eliminate the use of neonicotinoid pesticides which are toxic to honey bees and other pollinators. Motion passed with the following vote: Councilors Parks, Power, and Churchill and Mayor Gamba voting "aye" and Council President Batey voting "no." [4:1]

> **RESOLUTION NO. 49-2016:**
>
> **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO ELIMINATE THE USE OF NEONICOTINOID PESTICIDES WHICH ARE TOXIC TO HONEY BEES AND OTHER POLLINATORS.**

G. Approve Expedited Annexation of the Property Located at 9404 SE Stanley Ave – Ordinance

Mr. Egner provided the staff report in which the City Council was requested to approve the expedited annexation for the property located at 9404 SE Stanley Avenue.

It was moved by Councilor Power and seconded by Councilor Churchill to approve the first and second readings by title only and adoption of the ordinance annexing a tract of land identified as Tax Lot 1S2E30AD05200 and located at 9404 SE Stanley Avenue into the City Limits of the City of Milwaukie (File #ZA-2016-001). Motion passed with the following vote: Councilors Parks, Power, Churchill, and Batey and Mayor Gamba voting "aye." [5:0]

Mr. Nieman read the Ordinance two times by title only.

Ms. DuVal polled the Council with Councilors Parks, Power, Churchill, and Batey and Mayor Gamba voting "aye." [5:0]

ORDINANCE No. 2119:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ANNEXING A TRACT OF LAND IDENTIFIED AS TAX LOT 1S2E30AD05200 AND LOCATED AT 9404 SE STANLEY AVENUE INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE (FILE #A-2016-001).

H. Council Reports

Mayor Gamba announced upcoming community events including the Milwaukie Earth Day Volunteer Event and Arbor Day Celebration; the Milwaukie Film Series 2016 and 5th Watershed Film Event; Prescription Drug Take Back and Document Shredding; the Urban Renewal Open House; and a number of non-profit Plant Sales around town on May 7.

Council President Batey announced the opening day of the Milwaukie Sunday Farmers Market and the first First Friday of 2016.

ADJOURNMENT

It was moved by Councilor Churchill and seconded by Councilor Parks to adjourn the regular session. Motion passed with the following vote: Councilors Parks, Power, Churchill, and Batey and Mayor Gamba voting "aye." [5:0]

Mayor Gamba adjourned the regular session at 10:58 p.m.

Respectfully submitted,

_____

Pat DuVal, Recorder

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WORK SESSION
JUNE 7, 2016
City Hall Conference Room

Mayor Gamba called the Work Session to order at 4:15 p.m.

Council Present: Council President Lisa Batey and Councilors Scott Churchill, Wilda Parks, and Karin Power

Staff Present: City Manager Bill Monahan, City Attorney Dan Olsen, City Recorder Pat DuVal, Assistant to the City Manager Mitch Nieman, Information Technology (IT) Manager Brandon Gill, Finance Director Casey Camors, Right-of-Way (ROW) and Contract Coordinator Reba Crocker, Public Works Director Gary Parkin, and Stormwater/Streets Supervisor Kenny Hill.

City Manager's Report

Ms. Camors introduced Mr. Gill as the City's new IT Manager.

Mr. Monahan provided an update on the City Manager recruitment schedule, discussed opportunities for the interview cycle, and suggested possible meeting times. He discussed Cost of Living Adjustment (COLA) and deferred compensation considerations for non-represented and confidential employees.

It was Council consensus that the non-represented and confidential employee COLA and deferred compensation adjustments would be considered at the June 21, 2016, Regular Session.

It was Council consensus that staff should move forward with the Construction Manager/General Contractor (CM/CG) process for the Library Expansion Project.

Solid Waste Rates

Ms. Crocker introduced Rick Winterhalter, Clackamas County Senior Sustainability Analyst, Dean Kemper with Waste Management, and Dave White with Oregon Refuse and Recycling Association. She discussed proposed solid waste increases of 5 – 10 cents per month and recommended container increases.

Mayor Gamba noted drop boxes were still being subsidized by residential commercial users to get to the 10% rate of return. He asked why it could not be 10% equally across the board.

Mr. Winterhalter noted the need to look at the bottom line to determine if adjustments needed to be made. He wanted to look at keeping the disposal unit whole and not to get too far behind. He disagreed with it being characterized as a subsidy.

Councilor Power noted the sub-numbers were not consistent for the costs of drop box disposal versus residential disposal.

Mr. Winterhalter said he would still look to ask for an increase for residential and commercial uses. He explained that use of drop boxes were standard practice for commercial users and that the thought was to have a per box fee for the special waste category, so other incidental fees could stay the same. He discussed expenses related to drop boxes.

Council President Batey agreed with Mayor Gamba on the drop box matter.

Mr. Winterhalter said the desire was to try to minimize the increase and noted there may be another bump in that type of service.

Councilor Churchill wanted to look at the fee structure fiscal model.

Mayor Gamba reiterated that he believed residential users had been carrying the load for drop boxes and to some degree commercial users. He expressed support for reducing residential rates.

Councilor Power asked if there was a point where boosting the fee would dis-incentivize people from going through the disposal process. **Mr. Winterhalter** did not believe that would happen. **Councilor Power** noted recycling was becoming a loss, mostly from commercial. She asked how Council could prioritize doing the right thing so people could move toward a more sustainable decision.

The group discussed the residential and commercial recycling.

Councilor Power asked about residential composting and if a program that diverted 30% of solid waste could be sustained. **Mr. Winterhalter** discussed expenses.

The group discussed composting and yard debris.

Mr. Winterhalter and **Ms. Crocker** reported that they would return to Council with updated rates of return at the June 21, 2016, Regular Session.

Emergency Management

Mr. Parkin described the Cascadia Rising exercise and reviewed the Declaration of Emergency procedure. He commented on the Beacon program and discussed the Emergency Operations Plan (EOP) that was adopted in 2012.

Jurisdictional Transfer of 99E Frontage Road between SE Milport Road and SE Ochoco Street

Mr. Hill discussed the jurisdiction and maintenance of Frontage Road and the nearby detention pond. He reported that staff was requesting that Council authorize the City Manager to sign a memorandum of understanding (MOU) transferring jurisdiction to the City once the street and signage was brought up to standards. He noted that complaints from business owners along Frontage Rd included potholes, and he discussed the importance for the road for truck traffic. He also discussed the possibility of controlling parking. He explained that the Oregon Department of Justice (DOJ) had requested more time to review the MOU before it was signed. He added that 1 ramp would be addressed because of damage and some soft spots in the roadway.

Mr. Hill noted that all of the City's requests had been accepted and that the Oregon Department of Transportation (ODOT) was looking to complete this transfer before starting their McLoughlin Boulevard project. He explained that the advantage for the City was to have a street that it controlled, a better plan for similar streets, and to help create a better image of the City and its condition for the next 15 years.

Mr. Parkin confirmed Frontage Road was a City street and discussed capital improvements to be made.

The group discussed the benefits of the jurisdictional transfer.

Urban Growth Management Agreement (UGMA) Update

Mr. Nieman reviewed changes to the UGMA map including Elk Rock Island and certain residential areas in Portland. He discussed dual interest areas (DIAs), urban services,

and the decision to make all areas outside of DIA A into DIA B. He noted these changes were pending a review from Clackamas County.

Mr. Olsen explained the statewide mandate to get urban areas into cities, but noted it was more difficult to require people to annex to a city. He explained a statute dating from the 1950s that stated cities may exercise subdivision and partition jurisdiction over any area within 6 miles of their boundary, unless other agreements were adopted. He explained that the current UGMA proposed that the City had jurisdiction over land divisions and subdivisions in the entire area, and as a condition, if a property was contiguous to the city, property owners would be required to annex; if not contiguous, they would be required to sign a consent to annexation document stating that should they become contiguous they would annex. He also discussed the possibility of the City deciding to do a cherry stem on a county or local access road and discussed the path moving forward. He noted the possibility of pushback on the proposed UGMA changes.

Mr. Nieman added that the boundary would likely not get a lot of push back and reported that the City of Portland seemed amenable to the UGMA changes. He discussed the feasibility of annexing the Clackamas Community College (CCC) Harmony Campus.

The group discussed the map's border, and **Mr. Nieman** confirmed he would report back to Council with additional information.

Mr. Olsen noted this would set the boundary for a period of 20 years but elements could be amended during that time. He discussed road the issue of jurisdiction provisions and septic systems.

Mayor Gamba adjourned the Work Session at 5:45 p.m.

Respectfully submitted,

_____

Amy Aschenbrenner, Administrative Specialist II

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WORK SESSION
JUNE 21, 2016
City Hall Conference Room

Mayor Gamba called the Work Session to order at 4:15 p.m.

Council Present: Council President Lisa Batey and Councilors Scott Churchill, Wilda Parks, and Karin Power

Staff Present: City Manager Bill Monahan, City Attorney Dan Olsen, City Recorder Pat DuVal, Assistant to the City Manager Mitch Nieman, and Engineering Director Chuck Eaton

City Manager's Report

Mr. Monahan asked about the dates of the July and August Study Sessions. It was Council consensus to discuss the dates at the July 5 Work Session.

Mr. Monahan discussed the City Manager recruitment process. The June 23 Study Session would begin at 5:30 p.m. to discuss the process with Waldron HR.

Percent for Art

Mr. Nieman introduced artMOB member Denise Emmerling-Baker. He explained the reasoning behind why the draft ordinance did not include the private dedication piece as it had before. However, he had learned that the City of Portland did try to work with private development through incentives, such as floor area ratios. The draft ordinance for review was similar to what other Oregon cities had in place.

Ms. Emmerling-Baker noted that the City of Happy Valley had a seed fund from the construction of its city hall for art. She did not want to delay the process and discussed the opportunity to have the ordinance cover both private and public development at some time.

Mr. Nieman discussed the percentage to the developer. No one was doing the private piece in Oregon, but there was nothing in state statute that did not allow it. **Councilor Power** commented on exaction. **Mr. Nieman** discussed the $50,000 cap.

Ms. Emmerling-Baker noted the public's enthusiasm for more public art.

Councilor Parks understood art would be purchased on behalf of City of Milwaukie and vested in the City of Milwaukie. She asked about programmatic funding. **Mr. Nieman** noted the new draft did not include programmatic funding.

Councilor Power asked for a City Attorney opinion on the risks and possibilities of the private development piece. The group discussed exploring the private option.

The group discussed exclusions. **Mayor Gamba** discussed the construction of public housing and how it might apply to a public / private project.

The group concurred on the boilerplate version and to continue research.

Bike / Pedestrian Accessibility Program

Mr. Eaton and Angel Falconer, Chair of the Public Safety Advisory Committee (PSAC), introduced the key concepts of the proposed program. **Mr. Eaton** presented the bicycle

priority corridor map which included the Safe Routes to School elements and explained the Priority 1 and Priority 2 distinctions.

Mr. Eaton noted SE 29th was designated as a greenway but was not included in this plan. **Ms. Falconer** explained the neighborhood and PSAC identified 32nd Avenue as the preferred route.

Ms. Falconer and **Mr. Eaton** further discussed the map and the connections between and within the City's neighborhoods. **Mr. Eaton** reported that Existing Condition surveys had been done on identified corridors, and he hoped to complete surveys on all City streets by the end of the summer.

Mr. Eaton explained the dot exercise, and City Council participated. **Mr. Eaton** noted that people were generally most supportive of new infrastructure where there was currently none. The group discussed the ranking of the Monroe Street Greenway.

Mr. Eaton explained the $37.5 million figure for the Capital Improvement Plan, that was broken down by Priority 1, Priority 2, and the greenways and trails. **Mr. Eaton** and **Mayor Gamba** discussed matching fund amounts.

Mr. Eaton explained funding options and described the possibilities of fully or partially funding the projects.

Councilor Churchill wanted to fund the Americans with Disabilities Act (ADA) required elements.

Councilor Power wanted to start with the federal requirements and then continue to tackle Priority 1, in order to not kick the can down the road.

Council President Batey said to go for the $15.5 million for Priority 1 and Priority 2.

The group discussed the use of Street Surface Maintenance Program (SSMP) funds.

Mr. Eaton summarized the City would have a 3 to 4 tier long range vision, starting with the baseline ADA improvements and then adding on Safe Routes to School and other projects. He explained next steps included the continuation of mapping the City, PSAC's recommendation of the final plan, and the Citizens Utility Advisory Board (CUAB)'s recommendation on funding scenarios. Mr. Eaton would return with a proposed plan and program during the July 19 Regular Session.

Mr. Monahan provided updates on the June 21 Regular Session agenda. He noted that North Clackamas School District Superintendent Matt Utterback had cancelled. The group agreed Mr. Monahan would present on the consideration of the management and confidential employee compensation. He also noted the Solid Waste Rates discussion may be in flux. In addition, the City Council would meet as the Milwaukie Redevelopment Commission meeting following the adjournment of the Regular Session.

Mayor Gamba adjourned the Work Session at 5:41 p.m.

Respectfully submitted,

_____

Amy Aschenbrenner, Administrative Specialist II

MILWAUKIE CITY COUNCIL
STAFF REPORT

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Solid Waste Rate Adoption**

From: Reba Crocker, Rights of Way Contract Coordinator

Date: July 5, 2016

ACTION REQUESTED
Adopt solid waste rates for fiscal year 2017.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

2004-2013
Council approved a solid waste rate increase.

June 2014
Council and Staff discussed current solid waste rate structure and concluded that no rate increase was necessary to sustain the system.

June 2015
Council approved a solid waste rate increase.

June 2016
Council and Staff discussed proposed rates increases. Staff received direction to move forward with rates that equalize ROR across service types.

BACKGROUND
The City Council annually reviews and adopts solid waste rates charged by the City's four haulers. The process is as follows:

- The City's franchise solid waste haulers submit financial information to the City identifying revenues and expenses for the previous year relating to the provision of garbage, recycling and yard debris collection services, on or around March 15.
- The City, through an Intergovernmental agreement with Clackamas County, consolidates the information to create a composite.
- Costs are adjusted to eliminate amounts that may be allowable for tax purposes, but that aren't allowed for rate determination.
- The composite is used to evaluate the financial health of the system as a whole which is based on the "rate of return" (ROR) projected for the following year.
- The projected ROR is reviewed and rate changes are considered to ensure it remains within an acceptable range. Chapter 13.24 of the City municipal code states that rates shall be adequate to provide a ROR equal to 10% of the composite gross revenue and further states that a rate of return within the range of 8% to 12% is sufficient to reflect the level of business risk assumed by the haulers, allow investment in equipment, and to ensure quality collection services.

- Staff discusses ROR with the solid waste haulers and County staff to identify and recommend rates to the City Council.
- City Council discusses the recommendations and adopts solid waste rates.

This year's analysis recognized a slight increase in the cost of garbage disposal and known increases in contractual labor. While other upward pressures on expenses exist, past increases have allowed the system to finally move into the middle of the targeted range of returns. A minimal increase is being proposed for commercial and drop box to keep the composite within the range with no increase to residential rates.

The Metro Council has adopted a small increase to the cost of disposal of $1.27 per ton effective July 1, 2016. Other notable expenses are rising, but at a lower percentage compared to recent years. Disposal and labor represent almost 50% of the costs to provide service and Staff believes it is important to stay current with providing revenues necessary to cover expenses.

Staff recommends creating a special class of service for special wastes delivered outside the Metro region. This level of service differs significantly from the predominant service levels contemplated when establishing the drop box fees. This fee will apply to asbestos contractors and others with special wastes required to be disposed of in an appropriately permitted landfill. The proposed fee represents an increase from the standard customer collection fee for 10, 20, and 30 cubic yard drop boxes.

Special waste delivered outside the Metro region	**Current**	**Proposed**	**Proposed Increase**
10/20 yard Drop Boxes	$119.00	$161.00	*$42.00*
30 yard Drop Boxes	$136.00	$178.00	*$42.00*

After reviewing the production records submitted by the franchisees, making agreed upon adjustments, and applying known increases for disposal of garbage, it was determined that collection fee adjustments are appropriate.

In addition, Curbside Bulky Waste event costs are estimated for this year and are included in the analysis. This may impact the ROR in residential rates, possibly causing a rate increase next year.

Following is a description of the fee changes proposed by Staff:

- Rates effective August 1, 2016.
- No increase for residential can and cart service.
- Increase commercial container service by $.39 per cubic yard serviced. This reflects the adjustments to labor and garbage disposal costs as mentioned above.
- Create a special class of service for special waste required to be disposed of outside the Metro region. Increase the 10, 20, and 30 yard drop boxes by $42.00.

CONCURRENCE
The solid waste haulers support the proposed rate increases.

FISCAL IMPACTS
The proposed rate increase will result in a slight increase in solid waste franchise fee revenue for the City.

WORK LOAD IMPACTS
Adjusting the solid waste rate structure will require rate updates by the haulers within the City.

ALTERNATIVES
Defer rate increases until 2017, potentially resulting in much larger rate increases for all service levels and having an adverse effect on the current solid waste service.

ATTACHMENTS
1. Solid Waste Rate Resolution
2. Uniform Solid Waste and Recycling Rates
3. Rate of Return Composite

Attachment 1

CITY OF MILWAUKIE
"Dogwood City of the West"

Resolution No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, INCREASING RESIDENTIAL, COMMERCIAL, DROP BOX SERVICE RATES TO REFLECT INCREASES IN METRO TIP FEE AND LABOR RELATED COST INCREASES, AND CREATING A SPECIAL CLASS OF SERVICE TO ADDRESS THE COST OF SPECIAL HANDLING REQUIREMENTS EFFECTIVE AUGUST 1, 2016.

WHEREAS, Section 13.24 of the Milwaukie Municipal Code provides that the City Council may set rates and implement rate changes; and

WHEREAS, some rate projections for calendar year 2016, without a rate adjustment, are below the 8%-12% range prescribed by the City Code; and

WHEREAS, effective July 1, 2016, Metro's Transfer Station tip fee will increase by $1.27 per ton; and

WHEREAS, the proposed rates are comparable to local jurisdictions in the Metro area and reflect a graduated increase across service levels; and

WHEREAS, some offered services incur disproportional costs and the creation of a special class of service will require the users of the service to cover the additional costs of the service.

Now, Therefore, be it Resolved that the rates for garbage and recycling, herein attached as "Uniform Solid Waste and Recycling Rates" are effective on August 1, 2016.

Introduced and adopted by the City Council on _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

City of Milwaukie
Uniform Solid Waste Rates
Rates as of August 1, 2016

Uniform Monthly Residential Rates

		New Monthly Rate
20 Gallon Can (Mini-Can):		
1 Can/Cart (1 time/week)	$	26.00

Weekly collection includes recycling and yard debris service.

32 Gallon Can/Cart:		
1 Can/Cart (1 time/week)	$	29.90
2 Cans/Cart (1 time/week)	$	59.80
Each Addt'l Can/Cart	$	29.90
Extra Can of Garbage (occasional)*	$	6.05
Extra Can of Yard Debris (occasional)	$	2.60
Court Apartments (1 time/week/recycling only)	$	25.40

** This rate is for the first extra can collected, each additional at the stop is $3.00. Maximum weight for a 20 or 32 gal. can/cart is 60 lbs.*

Weekly collection includes recycling and yard debris service. Recycling carts and bins and yard debris carts must be placed at the curb. Additional stops per week are charged at 100% of the first stop per week rate.

Roller Carts:		
60 Gallon Cart (1 time/week)	$	39.40
90 Gallon Cart (1 time/week)	$	46.35
Extra Can of Yard Debris (occasional)	$	2.60

Weekly collection includes recycling and yard debris service. Recycling bins and yard debris carts must be placed at the curb. Additional stops per week are charged at 125% of the first stop per week rate. A deposit of $30.00 may be charged when cart is placed. Refunds will be made after return of cart or after five years (whichever comes first). A $10.00 redelivery charge may be charged for redelivery within one year, regardless of reason. Maximum weight for 60 gal. cart is 100 lbs and for 90 gal cart is 120 lbs.

Monthly and OnCall Service:		
Monthly	$	12.85
On Call	$	13.60

*Monthly service includes recycling but **not yard debris service**. Monthly and on call customers must subscribe for one year in advance for yard debris service. On call customers must provide hauler with 24 hours notice.*

Uniform Monthly Commercial Rates

		New Monthly Rate
32 Gallon Can/Cart:		
One Can/Cart (1 time/week)	$	26.05
Two Cans/Cart (1 time/week)	$	52.10
Each Addt'l Can/Cart	$	21.85
Extra Can (occasional)	$	5.00

Additional stops per week are charged at 100% of the first stop per week rate.

Roller Carts:		
60 Gallon Cart (1 time/week)	$	37.50
90 Gallon Cart (1 time/week)	$	40.55

Additional stops per week are charged at 125% of the first stop per week rate. A deposit of $30.00 may be charged when cart is placed. Refunds will be made after return of cart or after five years (whichever comes first). A $10.00 redelivery charge may be charged for redelivery within one year.

Compacted Containers:

2.2 times the loose container rate

Containers weighing in excess of 500 lbs per cubic yard will be charged this rate plus disposal for the excess weight.

Compactors furnished by the customers shall be compatible with the equipment of the collector. If the collector agrees to furnish the compactor, the collector may charge a reasonable rental rate based on the value of the compactor and the cost of repair and maintenance.

Uniform Drop Box Rates

		New Monthly Rate	
Loose Material:			
10/20 Yards	$	119.00	*
30 Yards	$	136.00	*
40 Yards	$	153.00	*

** Plus disposal costs*

An additional $40.00 per drop box may be charged for one-stop service (plus disposal costs). Deposits of no more than $500.00 may be charged for each drop box.

Compacted Material:			
Under 25 Cubic Yards	$	135.00	*
25-34 Cubic Yards	$	169.00	*
34 + Cubic Yards	$	196.00	*

** Plus disposal costs*

Rental rate for permanent boxes hauled at least weekly is $50.00 per month. Rental rate for occasional boxes after 48 hours on location is $6.30 per day or $63.00 a month, whichever is less, if less than one load per week is hauled. Monthly Equipment Fee of $20.00 for Lidded/Specialty Drop Boxes. Mileage charge of $4.70 per mile (over 18 miles round-trip from shop or Metro South). Deadhead round trip for boxes that cannot be exchanged: $25.00.

Special Wastes delivered to an appropriately permitted Landfill			
10/20 Yards	$	161.00	*
30 Yards	$	178.00	*

** Plus disposal, monthly rental, mileage and monthly specialty drop box fees.*

Uniform Rates for Miscellaneous Services
Commercial and Residential

Hourly Fee:		**New Rate**	
Truck + 1 person	$	73.00	
Truck + 2 people	$	105.00	
Other Miscellaneous:			
Furniture and Recyclable Appliance Pick-Up	$	5.45 to $ 29.15	*
Tire Pick-Up (Off Rim)	$	2.00	**
Tire Pick-Up (On Rim)	$	5.50	**
Over 18 Inches	Special Handling Rate		

**Plus $30.00 freon removal charge.*
*** Plus disposal.*

Clean-up containers:	
First Collection	33% of regular container rate, plus $16.60 handling charge
Each Add'tl Collection	33% of regular container rate

Rent of container after 5 working days (M-F) with no collection:	
1 - 2 Yards	$ 2.10 per day
3 Yards	$ 3.10 per day
4 Yards	$ 4.10 per day

Rent not to exceed $20.00 per container in a 30-day period.

Non-Customer Services

Non-customer includes a regular customer with a less than weekly service frequency.

		New Monthly Rate
Recycling Only:		
Weekly curbside collection of recyclables	$	4.70
Yard Debris Subscription Service Annual rate must be paid in full in advance of service		
60 Gallon Cart	$	5.70
Extra Can of Yard Debris	$	2.60
Permanent Second Can	$	3.85

Monthly rates are for weekly service.
This service is provided only within the Urban Growth Boundary.
The subscriber is required to pay for one year of service in advance.

ANY OTHER TYPE OF SERVICE:
If due to changes in technology or needs of residents and business people of Milwaukie, additional or other types of services are needed, the charge for the service shall not be discriminatory, shall be reasonable by being commensurate with the fees above, and shall not exceed the fees most generally applicable in the Portland Metropolitan area.

Commercial Container Fees

Stops/ Week	Size in Cubic Yards					
	1	*Addt'l*	**1 1/3**	*Addt'l*	**1.5**	*Addt'l*
1	$95.68	*$81.24*	$118.23	*$100.07*	$125.55	*$107.40*
2	$183.63	*$156.40*	$228.74	*$195.01*	$243.35	*$207.36*
3	$271.58	*$230.12*	$339.22	*$288.93*	$361.17	*$307.86*
4	$359.53	*$306.72*	$449.72	*$383.47*	$478.96	*$407.58*
5	$447.48	*$380.43*	$560.23	*$477.41*	$596.77	*$510.94*
6	$535.43	*$456.21*	$670.73	*$570.65*	$714.57	*$610.06*

Stops/ Week	Size in Cubic Yards					
	2	*Addt'l*	**3**	*Addt'l*	**4**	*Addt'l*
1	$158.75	*$135.65*	$215.11	*$184.17*	$273.64	*$236.10*
2	$309.76	*$265.49*	$417.78	*$358.45*	$534.85	*$461.07*
3	$460.78	*$394.53*	$620.45	*$533.36*	$796.06	*$685.20*
4	$611.79	*$521.22*	$823.12	*$710.33*	$1,057.27	*$906.73*
5	$762.82	*$655.30*	$1,025.80	*$883.65*	$1,318.47	*$1,134.82*
6	$913.83	*$782.57*	$1,228.46	*$1,053.68*	$1,579.68	*$1,359.22*

Stops/ Week	Size in Cubic Yards					
	5	*Addt'l*	**6**	*Addt'l*	**8**	*Addt'l*
1	$329.83	*$305.08*	$378.96	*$350.49*	$465.44	*$432.43*
2	$646.05	*$597.26*	$744.30	*$689.49*	$917.27	*$851.92*
3	$962.27	*$887.28*	$1,109.63	*$1,022.20*	$1,369.09	*$1,271.61*
4	$1,278.47	*$1,178.98*	$1,474.97	*$1,361.43*	$1,820.92	*$1,689.31*
5	$1,594.70	*$1,473.63*	$1,840.32	*$1,700.28*	$2,272.75	*$2,100.03*
6	$1,910.91	*$1,770.86*	$2,205.66	*$2,032.94*	$2,724.58	*$2,523.70*

Collector shall furnish the container. Overweight charge for containers over 300 lbs. per cubic yard determined through mutual agreement between hauler and customer. Container cleaning, if required more than twice in 12 months, will be charged the actual cost of cleaning.

Bio-Medical Services Fees

Number of units	Tub Rates per Gallon 20/21	Tub Rates per Gallon 35/48
1	$81.45	$83.25
2	$61.85	$63.50
3	$54.30	$56.00
4	$49.35	$51.00
5	$46.35	$48.00
6	$44.35	$46.00
7	$41.85	$43.50
8	$40.40	$42.00
9	$37.35	$39.00
10	$35.85	$37.50
11	$34.75	$36.50
12	$33.25	$35.00
13	$32.75	$34.50
14	$32.00	$33.75
15	$31.25	$33.00
16	$26.30	$28.00
17	$26.30	$28.00
18	$26.30	$28.00
19	$26.30	$28.00
20	$26.30	$28.00
60	$17.90	$18.75
75	$17.45	$18.05
90	$12.80	$13.10

City of Milwaukie Composite
Return on Revenues
2016 Projected

	Can / Cart Service		Container Service		Drop Box Service		Total	
Collection & Service Revenues	**2,297,187**		**1,181,323**		**886,584**		**4,365,094**	
Rate Increase (Tip Fee Pass-Through / SpecWaste)			***3,569***		***33,768***		***37,337***	
Direct Costs of Operations	**1,713,945**	**% of rev**	**920,116**	**% of rev**	**826,155**	**% of rev**	**3,406,417**	**% of rev**
Disposal Expense	493,524	21%	442,790	37%	387,994	44%	1,324,308	30%
Labor Expense	650,357	28%	271,973	23%	313,775	35%	1,236,105	28%
Truck Expense	347,696	15%	101,094	9%	75,513	9%	524,303	12%
Equipment Expense	51,702	2%	48,881	4%	19,302	2%	119,885	3%
Franchise Fees	102,918	4%	49,594	4%	23,028	3%	175,540	4%
Other Direct Expense	13,949	1%	5,784	0%	6,543	1%	26,276	1%
Community Cleanup ($0.68 per cust per month)	**53,799**							
Indirect Costs of Operations	**353,935**		**149,213**		**38,540**		**541,688**	
Management Expense	87,173	4%	32,708	3%	9,441	1%	129,322	3%
Administrative Expense	94,880	4%	39,291	3%	11,962	1%	146,133	3%
Other Overhead Expenses	171,882	7%	77,214	7%	17,137	2%	266,233	6%
Total Cost	2,067,880		1,069,329		864,695		3,948,105	
Less Unallowable Costs	2,008		1,264		338		3,610	
Allowable Costs	2,065,872		1,068,065		864,357		3,944,495	
Franchise Income	231,315		116,827		55,995		457,936	
Return on revenues	**10.07%**		**9.89%**		**6.32%**		**10.49%**	
Carts / Yards / Drop Box Pulls	6,880		76,427		2,088			

Prepared by Bell Associates

MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 3. C.**
Meeting Date: **July 5, 2016**

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Intergovernmental Agreement (IGA) with State of Oregon for backup recovery services**

From: Brandon Gill, Information Technology Manager

Date: June 22, 2016

ACTION REQUESTED

Authorize the City Manager to sign an open ended Intergovernmental Agreement (IGA) with State of Oregon for backup recovery services.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

2013 - City of Milwaukie replaced the old data backup software (Backup Exec) with CommVault at a cost of $47,000 (including software and hardware). The original contract included two extension terms, the last of which was extended only after completion of a request for quote process, now set to expire in July of 2016.

BACKGROUND

The backup software contract with CommVault is approaching expiration. The software is 3 years old and the hardware system itself is approximately 6 years old. When identifying options for renewal, staff was made aware of the State of Oregon backup recovery service from the same software vendor (CommVault). Based on discussions with State of Oregon backup recovery services staff, it became clear the best fiscal choice is State of Oregon backup recovery service. Some of the items determined as beneficial to City of Milwaukie are as follows:

- Reduction of hardware and software purchases and associated annual maintenance costs.
- State of Oregon has a team of staff dedicated to data backup recovery.
- Elimination of a contract for offsite tape storage.
- Increases knowledge and support during a disaster scenario due to State of Oregon's ability to assist with recovery efforts.

Yearly estimated cost for State of Oregon is $8,700. If backup recovery services were to stay at City of Milwaukie, the yearly estimated cost is $12,000 for software licenses and $13,000 for hardware replacement for a total cost of $25,000 per year. By moving to the State of Oregon backup recovery services, City of Milwaukie will save $11,300 in the first year and $3,300 every following year.

CONCURRENCE

The City Attorney has reviewed and approved the IGA.

FISCAL IMPACTS

$13,700 for the first year includes the $8,700 yearly fee and $5,000 initial setup fee. Estimated ongoing cost will be $8,700 per year.

WORK LOAD IMPACTS

During the initial setup staff will have to install the new backup client on each server. The install may require a reboot. Staff will schedule installs and reboots after hours to minimize work impact.

ALTERNATIVES

Keep backup recovery services at the City of Milwaukie and replace aging backup hardware.

ATTACHMENTS

1. Resolution
2. IGA for Backup Recovery Services

Attachment 1

CITY OF MILWAUKIE
"Dogwood City of the West"

Resolution No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH STATE OF OREGON FOR DATA BACKUP RECOVERY SERVICES

WHEREAS, the City of Milwaukie uses data backup recovery to ensure continuity of business when data failure occurs; and

WHEREAS, current onsite backup recovery services require upgrades and maintenance at a high cost; and

WHEREAS, the City wishes to utilize State of Oregon data backup recovery services in lieu of replacement as a cost savings; and

Now, Therefore, be it Resolved that the City Manager is authorized to execute an Intergovernmental Agreement for data backup recovery services with State of Oregon for the City of Milwaukie.

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

Agreement No. **DASPS-107212-16**

This Intergovernmental Agreement (IGA) is between the State of Oregon acting by and through its Department of Administrative Services, Enterprise Technology Services("Agency") and City of Milwaukie("Local Government"), each a "Party" and, together, the "Parties".

SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110.

SECTION 2: PURPOSE

The purpose of this Agreement is to facilitate the exchange of resources and services between Agency and Local Government.

Local Government has shown a desire for enterprise level backup and recovery services for their information systems environment. Local Government has decided it is in its best interest to have Agency provide these services. This agreement covers the procurement, delivery, and upkeep of the backup services.

SECTION 3: EFFECTIVE DATE AND DURATION

This Agreement is effective on the date of the last signature and remains in effect in until terminated pursuant to Section 16.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 Agency's Authorized Representative is:

Tony Black: Strategic Tech Officer for DAS OSCIO ETS
530 Airport Rd, Salem, OR 97301
503-378-3570: *Office*
Tony.Black@oregon.gov

4.2 Local Government's Authorized Representative is:

Brandon Gill: IT Manager for City of Milwaukie
3200 SE Harrison Street, Milwaukie, OR 97222
503-786-7404: *Office*
GillB@milwaukieoregon.gov

4.3 A Party may designate a new Authorized Representative by written notice to the other Party.

SECTION 5: RESPONSIBILITIES OF EACH PARTY

5.1 Agency shall perform the work set forth on Exhibit A, attached hereto and incorporated herein by this reference.

5.2 Local Government shall pay Agency as described in Section 6.

SECTION 6: COMPENSATION AND PAYMENT TERMS

Payment by Local Government will be made to Agency upon submission of a satisfactory invoice for all applicable work and deliverables to Local Government's satisfaction per the DAS ETS Service Agreement ("SA") of the attached Exhibit A.

Local Government will remit payment within 30 days of receiving an invoice from Agency. Invoices will be sent on a monthly basis.

SECTION 7: REPRESENTATIONS AND WARRANTIES

Agency represents and warrants to Local Government that:

7.1 Agency is a government entity duly organized and validly existing. Agency has the power and authority to enter into and perform this Agreement;

7.2 The making and performance by Agency of this Agreement (a) have been duly authorized by Agency, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative Local Government or any provision of Agency's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Agency is party or by which Agency may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Agency of this Agreement, other than those that have already been obtained;

7.3 This Agreement has been duly executed and delivered by Agency and constitutes a legal, valid and binding obligation of Agency enforceable in accordance with its terms;

7.4 Agency has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and Agency will apply that skill and knowledge with care and diligence to perform its

obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession; and

7.5 Agency shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement.

The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by Agency.

SECTION 8: GOVERNING LAW, CONSENT TO JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Local Government or any other Local Government or department of the State of Oregon, or both, and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. AGENCY, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

SECTION 9: OWNERSHIP OF WORK PRODUCT

9.1 As used in this Section 9 and elsewhere in this Agreement, the following terms have the meanings set forth below:

9.1.1 "**Agency Intellectual Property**" means any intellectual property owned by Agency and developed independently from the work under this Agreement.

9.1.2 "**Third Party Intellectual Property**" means any intellectual property owned by parties other than Agency or Local Government.

9.1.3 "**Work Product**" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item that Agency is required to deliver to Local Government under this Agreement, and all intellectual property rights therein.

9.2 All Work Product created by Agency under this Agreement, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of Local Government. Local Government and Agency agree that any Work Product that is an original work of authorship created by Agency under this Agreement is a "work made for hire" of which Local Government is the author within the meaning of the United States Copyright Act. If for any

reason the original Work Product created by Agency under this Agreement is not "work made for hire," Agency hereby irrevocably assigns to Local Government any and all of its rights, title, and interest in all original Work Product created by Agency under this Agreement, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Local Government's reasonable request, Agency shall execute such further documents and instruments necessary to fully vest such rights in Local Government. Agency forever waives any and all rights relating to Work Product created by Agency under this Agreement, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

If the Work Product created by Agency under this Agreement is a derivative work based on Agency Intellectual Property, or is a compilation that includes Agency Intellectual Property, Agency hereby grants to Local Government an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Agency Intellectual Property employed in the Work Product, and to authorize others to do the same on Local Government's behalf.

If the Work Product created by Agency under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Agency shall secure on Local Government's behalf and in the name of Local Government an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing element of the Third party Intellectual Property employed in the Work Product, and to authorize others to do the same on Local Government's behalf.

9.3 If Work Product is Agency Intellectual Property, Agency hereby grants to Local Government an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Agency Intellectual Property, and to authorize others to do the same on Local Government's behalf.

9.4 If Work Product is Third Party Intellectual Property, Agency shall secure on Local Government's behalf and in the name of Local Government an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on Local Government's behalf.

9.5 If state or federal law requires that Local Government or Agency grant to the United States a license to any intellectual property in the Work Product, or if state or federal law requires that Local Government or the United States own the intellectual property in the Work Product, then Agency shall execute such further documents and instruments as Local Government may reasonably request in order to make any such grant or to assign ownership in such intellectual property to the United States or Local Government.

SECTION 10: CONTRIBUTION

10.1 If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section 10 with respect to the Third Party Claim.

10.2 With respect to a Third Party Claim for which Local Government is jointly liable with Agency (or would be if joined in the Third Party Claim), Local Government shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of Local Government on the one hand and of Agency on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Local Government on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Local Government's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the Local Government had sole liability in the proceeding.

10.3 With respect to a Third Party Claim for which Agency is jointly liable with Local Government (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Local Government in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of Local Government on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of Local Government on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

SECTION 11: AGENCY DEFAULT

Agency will be in default under this Agreement upon the occurrence of any of the following events:

11.1 Agency fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;

11.2 Any representation, warranty or statement made by Agency in this Agreement or in any documents or reports relied upon by Local Government to measure the delivery of services, the expenditure of funds or the performance by Agency is untrue in any material respect when made;

11.3 Agency (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or

11.4 A proceeding or case is commenced, without the application or consent of Agency, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Agency, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Agency or of all or any substantial part of its assets, or (c) similar relief in respect to Agency under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Agency is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

SECTION 12: LOCAL GOVERNMENT DEFAULT

Local Government will be in default under this Agreement if Local Government fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

SECTION 13: REMEDIES

13.1 In the event Agency is in default under Section 11, Local Government may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 16, (b)

reducing or withholding payment for work or Work Product that Agency has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Agency to perform, at Agency's expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 14 of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and Local Government may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

13.2 In the event Local Government is in default under Section 12 and whether or not Agency elects to exercise its right to terminate this Agreement under Section 16.3.3, or in the event Local Government terminates this Agreement under Sections 16.2.1, 16.2.2, 16.2.3, or 16.2.5, Agency's sole monetary remedy will be (a) for work compensable at a stated rate, a claim for unpaid invoices for work completed and accepted by Local Government, for work completed and accepted by Local Government within any limits set forth in this Agreement but not yet invoiced, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less any claims Local Government has against Agency, and (b) for deliverable-based work, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed on the deliverable and accepted by Local Government, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less previous amounts paid for the deliverable and any claims that Local Government has against Agency. In no event will Local Government be liable to Agency for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Agency exceed the amount due to Agency under this Section 13.2, Agency shall promptly pay any excess to Local Government.

SECTION 14: RECOVERY OF OVERPAYMENTS

If payments to Agency under this Agreement, or any other agreement between Local Government and Agency, exceed the amount to which Agency is entitled, Local Government may, after notifying Agency in writing, withhold from payments due Agency under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

SECTION 15: LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 10, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL , OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

SECTION 16: TERMINATION

16.1 This Agreement may be terminated at any time by mutual written consent of the Parties.

16.2 Local Government may terminate this Agreement as follows:

16.2.1 Upon a 30 day advanced written notice to Agency;

16.2.2 Immediately upon written notice to Agency, if Local Government fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Local Government's reasonable administrative discretion, to perform its obligations under this Agreement;

16.2.3 Immediately upon written notice to Agency, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Local Government's performance under this Agreement is prohibited or Local Government is prohibited from paying for such performance from the planned funding source;

16.2.4 Immediately upon written notice to Agency, if Agency is in default under this agreement and such default remains uncured 15 days after written notice thereof to Agency; or

16.2.5 As otherwise expressly provided in this Agreement.

16.3 Agency may terminate this Agreement as follows:

16.3.1 Immediately upon written notice to Local Government, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;

16.3.2 Immediately upon written notice to Local Government, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited or Agency is prohibited from paying for such performance from the planned funding source;

16.3.3 Immediately upon written notice to Local Government, if Local Government is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Local Government; or

16.3.4 As otherwise expressly provided in this Agreement.

16.4 Upon receiving a notice of termination of this Agreement, Agency will immediately cease all activities under this Agreement, unless Local Government expressly directs otherwise in such notice. Upon termination, Agency will deliver to Local Government all documents, information, works-in-progress, Work Product and other property that are or would be deliverables under the Agreement. And upon Local Government's reasonable request,

Agency will surrender all documents, research or objects or other tangible things needed to complete the work that was to have been performed by Agency under this Agreement.

SECTION 17: INSURANCE

Agency shall maintain insurance as set forth in Exhibit B, attached hereto and incorporated herein by this reference.

SECTION 18: NONAPPROPRIATION

Local Government's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Local Government receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Local Government, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of Local Government.

SECTION 19: AMENDMENTS

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.

SECTION 20: NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section 20. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

SECTION 21: SURVIVAL

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 8, 9, 10, 14, 15 and 21 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

SECTION 22: SEVERABILITY

The Parties 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 will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

SECTION 23: COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

SECTION 24: COMPLIANCE WITH LAW

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

SECTION 25: INDEPENDENT CONTRACTORS

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that Local Government is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

SECTION 26: INTENDED BENEFICIARIES

Local Government and Agency are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

SECTION 27: FORCE MAJEURE

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Local Government may terminate this Agreement upon written notice to Agency after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 28: ASSIGNMENT AND SUCESSORS IN INTEREST

Agency may not assign or transfer its interest in this Agreement without the prior written consent of Local Government and any attempt by Agency to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Local Government's consent to Agency's assignment or transfer of its interest in this Agreement will not relieve Agency of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

SECTION 29: SUBCONTRACTS

Agency shall not, without Local Government's prior written consent, enter into any subcontracts for any of the work required of Agency under this Agreement. Local Government's consent to any subcontract will not relieve Agency of any of its duties or obligations under this Agreement.

SECTION 30: TIME IS OF THE ESSENCE

Time is of the essence in Agency's performance of its obligations under this Agreement.

SECTION 31: MERGER, WAIVER

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SECTION 32: RECORDS MAINTENANCE AND ACCESS

Agency shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Agency shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Agency, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Agency's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Agency, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Agency acknowledges and agrees that Local Government and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make

excerpts and transcripts. Agency shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, Agency shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

SECTION 33: HEADINGS

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

SECTION 34: ADDITIONAL REQUIREMENTS

Agency shall comply with the additional requirements set forth in Exhibit C, attached hereto and incorporated herein by this reference.

SECTION 35: AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, attached Exhibit A (the Statement of Work), Exhibit B (Insurance), and Exhibit C (Additional Requirements).

SECTION 36: SIGNATURES

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

STATE OF OREGON acting by and through its DAS OSCIO ETS

_____ _____

Tony Black Date

City of Milwaukie

_____ _____

William Monahan, City Manager Date

EXHIBIT A

STATEMENT OF WORK

The work will be performed in accordance with our attached Service Agreement known as "City of Milwaukie B&R SA".

EXHIBIT B

INSURANCE

[No required insurance]

EXHIBIT C

ADDITIONAL REQUIREMENTS

[No additional requirements]

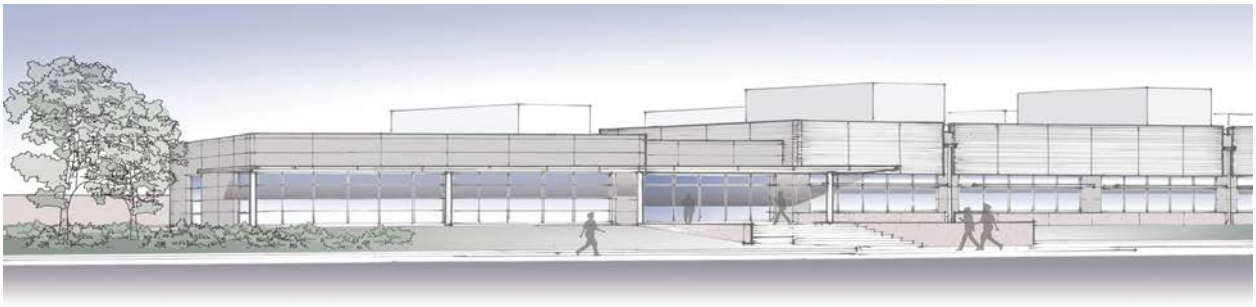
Exhibit A

Enterprise Technology Services

SERVICE AGREEMENT

City of Milwaukie
Backup and Recovery

RS50



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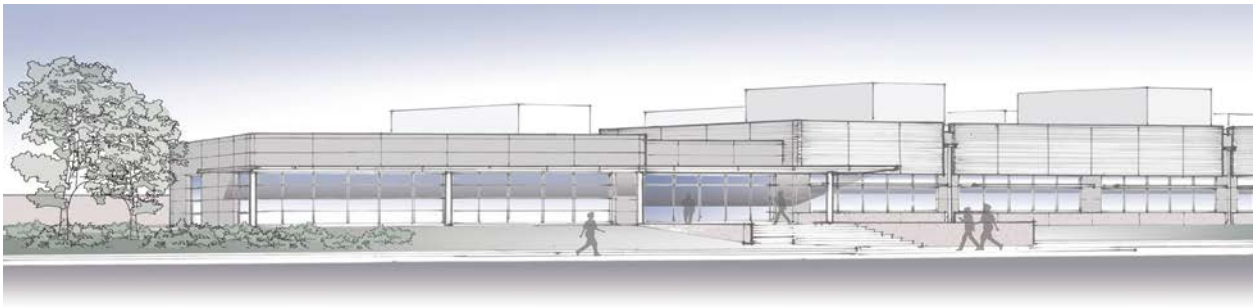

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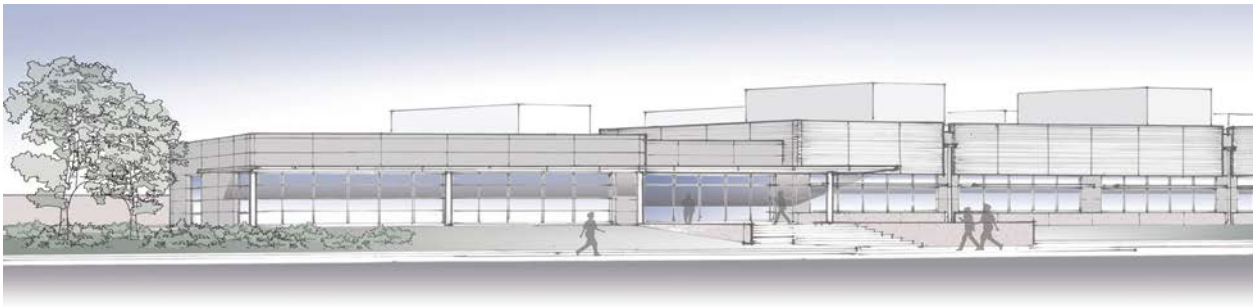

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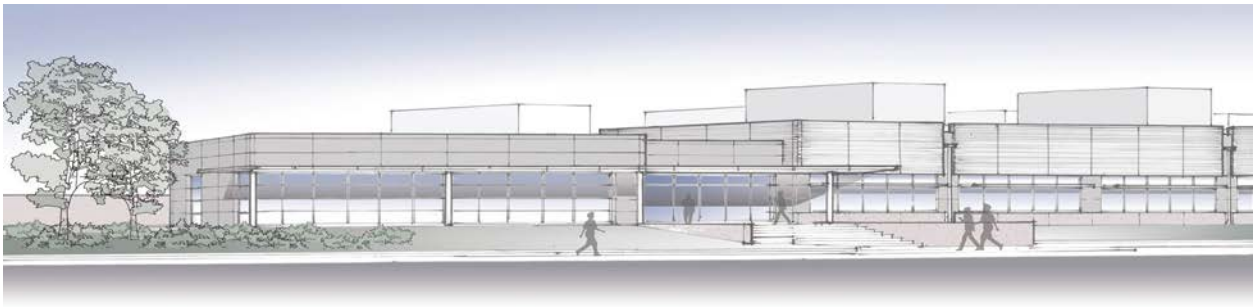

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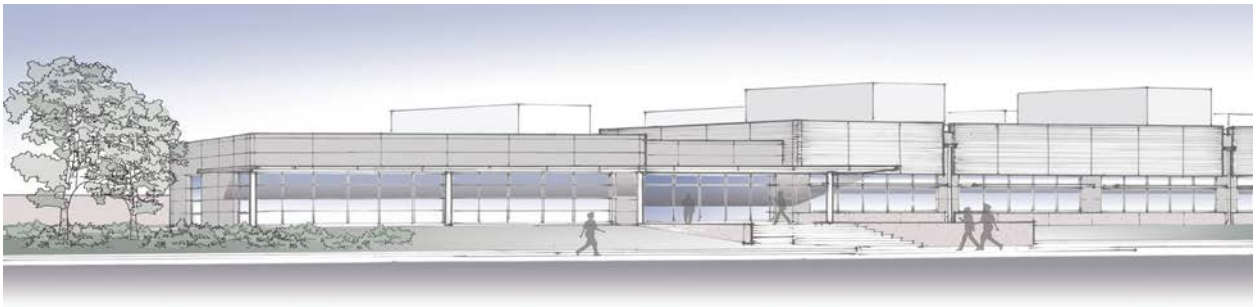


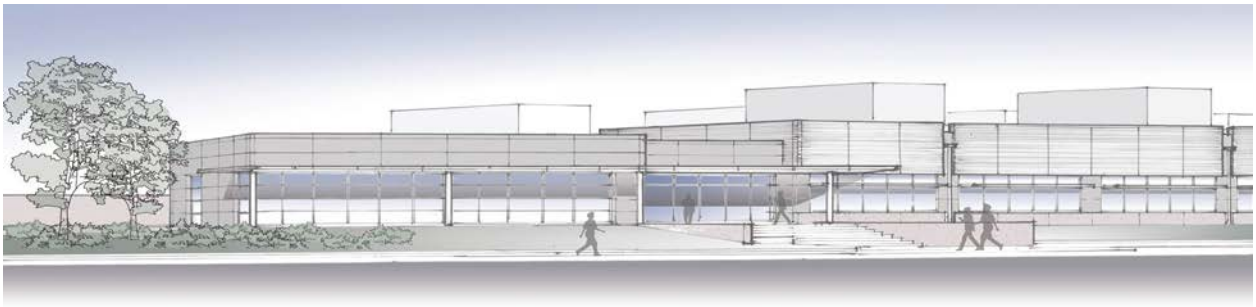
1 Introduction

The purpose of the Service Level Agreement (SLA) is to document the expectations and responsibilities of the Enterprise Technology Services (ETS) and **City of Milwaukie** hereafter referred to as "client". This document identifies service levels provided by ETS. The document is not meant to be static, but a working document that reflects the continuous change in services, process, and expectations between the Enterprise Technology Services and its clients. The ETS will support all systems within its scope. These Service Agreements are to set expectations for services supported within the ETS standard configurations, and non-standard systems will be supported with best effort available.

1.1 ***Associated Documents***

As additional documentation is reviewed and approved by the ETS advisory committees, it is released and available at http://www.oregon.gov/DAS/OSCIO.

- Service Catalog – Services referred to in this document are defined in detail in the Enterprise Technology Services Catalog.
- Rate Sheet: This document shows our current rates for our services.
- Scope Matrix – Roles and Responsibilities for services provided by the Enterprise Technology Services and by the Agency clients are documented in the approved Scope Matrix.
- Scope Inclusion/Exclusion Process – The process to include new services in or exclude systems from the ETS scope.
- ETS Technical Standards – Standards for hardware and software supported by the ETS.
- ETS Process Documentations – Process and procedures for services provided are documented in the ETS library and are available upon request. Processes in use and under development include:
    - Change Management
    - Incident and Problem Management
    - Release Management
    - Asset Management
    - Request Fulfillment
    - Service Level Management
    - Account Management
    - Procurement and Financial Assessments



- Capacity Management
- Security and Physical Access Management

1.2 *Service Period (Start, End, Review)*

This agreement is in effect from the date of signing of the Interagency Agreement (IAA) and the IAA may be canceled, modified or replaced by either party upon 30 days written notice. Services may be added or deactivated through by submitted a service ticket.

_____Tony Black, ETS Administrator
Enterprise Technology Services
_____Date

_____ William Monahan, City Manager
City of Milwaukie
_____Date

2 Common Service Levels

This section describes the common service levels for all services provided by the ETS. Service specific additions and or exceptions are described for each service in the sections following.

2.1 *Service Description*

In this section of each service below there will be a brief description from the Service Catalog of what the service is.

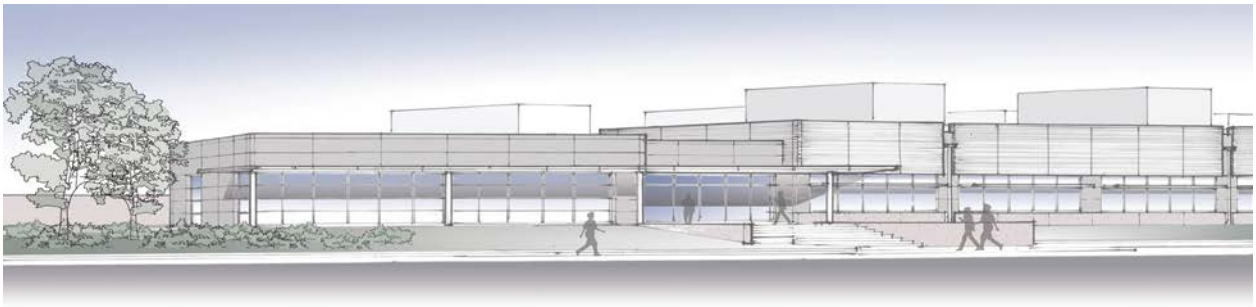
2.1.1 ETS Standard

In this section of each service below there will be a description of the standard configuration that is subject to all of the service levels for that service. Systems not within the standards will be supported on a “Best Effort” basis.

2.1.2 Scheduled Maintenance

2.1.2.1 Standard Maintenance Window

If scheduled maintenance is required, the ETS will use the standard maintenance window. This window will only be used when needed. Use of this window will be governed by the ETS change management process. Emergency changes required to restore services can be made outside of the maintenance window.



2.1.2.2 Patching

Patching descriptions and schedules are specific to each service, so details are provided below.

2.1.2.3 Change Management

Information regarding scheduled changes will be available through the ETS Support System (S3) web site: https://www.oregonSDC.org/

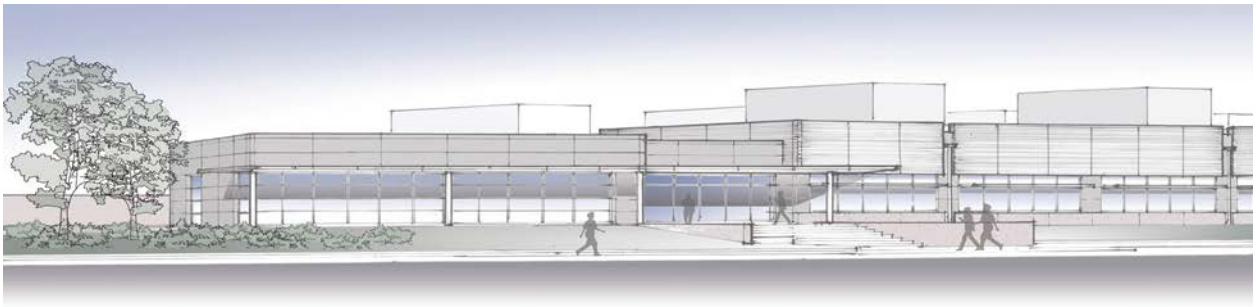
- Clients will be allowed at least **2** business days to provide questions, concerns or comments on scheduled changes so that adjustments to those changes may be made.
- All high risk / high impact changes will provide at least **10** business days notification prior to change execution

In order for the ETS to better coordinate activities in production environments, clients are asked to schedule application maintenance with potential impact to the ETS outside the ETS maintenance windows, and notify the ETS prior to changes to application in agency production environments. The ETS requests to be notified at least three business days prior to any planned application maintenance in production environments. If the client requires planned application maintenance during an ETS maintenance window, they must send a request to the ETS Change Manager at least **9** business days prior to the requested date. This will allow the ETS to assess the impact to the scheduled changes and possibly reschedule certain changes.

2.1.3 Service Disruption

2.1.3.1 Monitoring

If the ETS monitoring system notifies that a system is unavailable, the ETS will respond to the Service Disruption without action from the client. The client will be informed about outages through the ETS Service Disruption procedures. The basic monitoring reports up/down status for the device.



2.1.3.2 Communications / Time to Respond

Staff will acknowledge client requests and provides initial contact to gather requirements within the following response times:

- Severity 1 – **90%** within 15 minutes *
- Severity 2 – **90%** within 30 minutes.
- Severity 3 – **95%** within 1 day.
- Severity 4 – **95%** within 2 days.

Service Disruption – Refer to standards for Incident Management for more information on service disruption handling.

2.1.3.3 Time to Restore

The ETS will restore services within the target resolution times set in the Incident Management Severity Level Response chart at the following rates:

- Severity 1 – **70%** within 2 hours.*
- Severity 2 – **75%** within 4 hours.
- Severity 3 – **90%** within 2 days.
- Severity 4 – **95%** within 5 days.

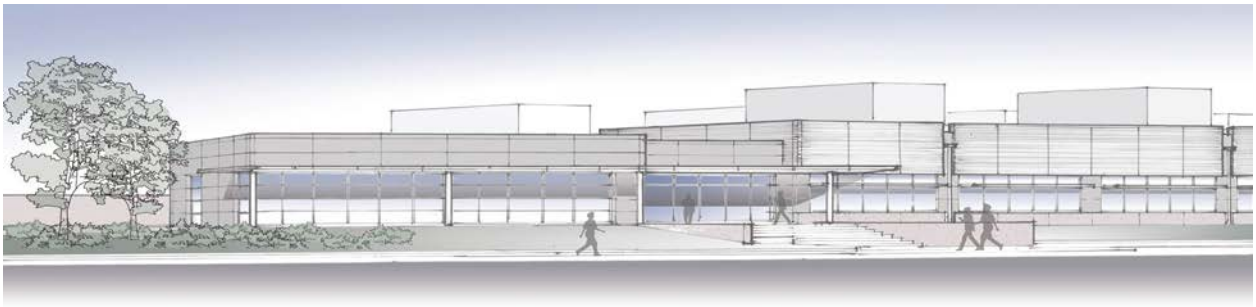
2.1.3.4 Escalations

Service disruptions will escalate to the next higher severity as the target resolution time for the current severity level is exceeded or is expected to exceed resolution time.

*Refer to Incident Management standards for more information on service disruption handling including target response times and target resolution times.

2.1.4 Security

The ETS provides protection of agency resources at all levels of data classification. Firewalls are implemented and managed, as necessary, to provide separation and restriction between devices. When requested encryption can be provided to securely transmit data. Intrusion detection is implemented at key points in the network to alert on and restrict malicious traffic.



2.1.4.1 Intrusion Detection

The ETS provides Network Intrusion Detection that examines traffic as it passes defined points on the network to see if it matches “signatures” of known malicious activity. This applies to network intrusion detection only, and does not include host intrusion detection. Host intrusion detection is not currently provided, but may be provided in the future.

2.1.4.2 Security Incident Response

The ETS will notify ESO and agency security personnel of intrusion incidents and suspicious activities in accordance with the ETS and agency Security Incident Response Plan. The agency must designate who will receive these types of notifications.

2.1.4.3 Privileged Access

Privileged access to ETS systems is limited. The ETS will manage privileged access to systems granting access to only those whose job duties require it. Clients are not given privileged access without special authorization. If methods other than using privileged access will accomplish an action, those other methods must be used unless the burden of time or other resources required clearly justifies granting privileged access. The privileged access process can be found on the ETS Support System (S3) web site: https://www.oregonSDC.org/

2.1.5 Availability

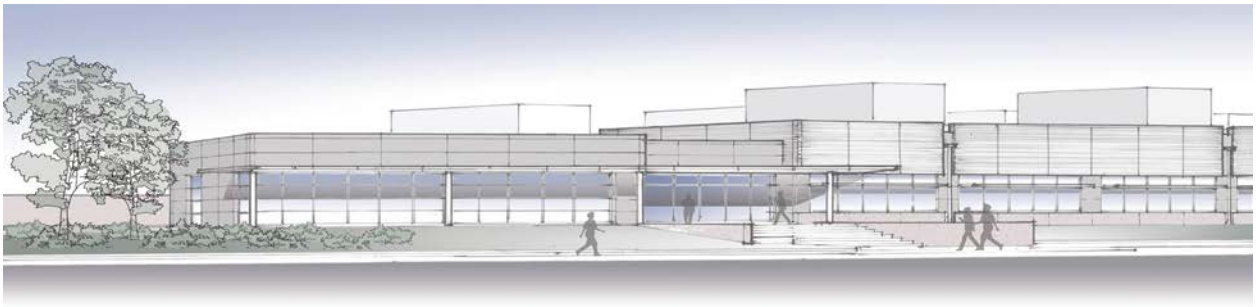
Availability is calculated monthly in the following manner:

Availability% = (Total Service Hours – Down Time) / (Total Service Hours)

Down Time will be calculated from the ETS Request Tracker (RT) system as a sum of all of the downtime recorded for each service disruption.

2.1.6 Request Fulfillment

ETS Engineering requests for new environments or major upgrades are fulfilled in priority order. The ETS allows the client to prioritize engineering requests. Clients set priorities for ETS Engineering Requests through their ETS Account Manager. Frequent changes to engineering priorities can reduce the ETS‟s ability to deliver these requests on time, so major reprioritization should occur no more frequently than once per



month. Minor changes due to the completion of prioritized requests can be addressed at any time.

Once the ETS and the client agree on the requirements and the ETS determines the solution design for the request, the ETS will provide the client an expected delivery date (Due Date). If the requirements and/or the solution design changes, then the Expected Delivery Date may change. The client will be notified prior to any change to the Expected Delivery Date. The ETS will deliver **90%** of the requests within a **20%** variance of the Expected Delivery Date. (e.g. If the Expected Delivery Date is **30** days from the request submit date, then the ETS will deliver the request within **6** days of the Expected Delivery Date.)

ETS Standard Work requests are fulfilled in order of receipt. Most requests are completed within one week depending on the nature of each request and the volume of requests to the ETS.

2.1.6.1 Communication

Staff will acknowledge client requests and provides initial contact to gather requirements within the following response times:

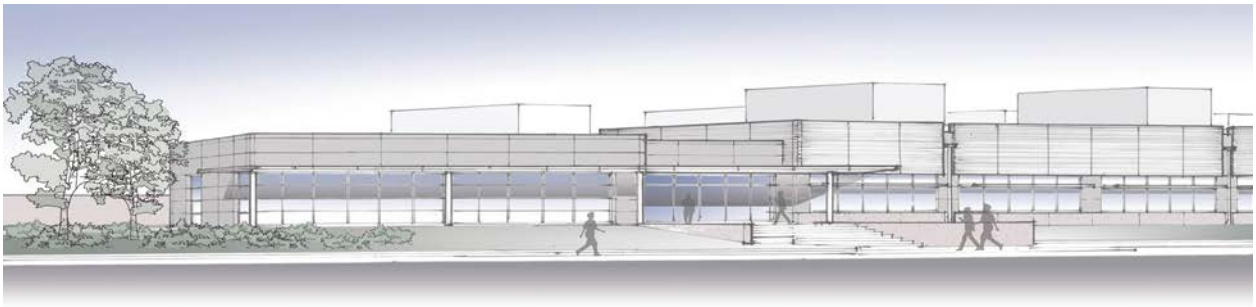
- Standard Work – **90%** within 3 business days
- Engineering Required – **90%** within 3 business days

2.1.7 Service Continuity

Continuity ensures that in the case of a catastrophic failure, the service can be restored within an agreed upon period. Disaster Recovery services can be added to this service at an additional cost.

In the case of a catastrophic issue in which a hardware failure requires replacement, additional time may be required to procure replacement hardware and/or repurpose and reload hardware within the ETS. The incident management process will be used for communications in this event.

The ETS will provide best effort to restore systems to service that are end-of-life or do not conform to the ETS Standards in the event of a catastrophic failure.



2.1.8 Reporting

The ETS will make the Service Level Measurements available to the client at the end of each month. Quarterly Service Level reports will be made available that show the Service Level Measurements across the entire ETS and Annual reports will be made available during the annual review of the Service Level Agreement.

2.1.9 Remedies

The ETS will review the service levels for all services. If the ETS does not meet a service level for a particular month, then the Service Level Manager will analyze the root cause within 30 days and determine if a Service Improvement Plan is required. The initial analysis will be made available to the affected client(s) and included in an annual report. Service Improvement Plans will be provided to the client(s) upon completion within 90 days after analysis.

3 Backup and Restore Services

Backups can be defined as creating a copy of data for purposes of reproducing the original in case the original is lost, erased, damaged, or changed in error. The copy may be an exact duplicate of the original, or it may be some other structure that allows the original to be recreated by restoration software

This SLA sets the expectations on the availability of the systems and software used to backup and restore agency data from systems supported by the ETS. It does not include any guarantee on the quality of the data backed up or on the integrity of the files from those backup. The ETS will ensure that the systems and software used to backup and restore data are functioning properly, but the agency is responsible for testing that the data backed up can be restored.

3.1.1 ETS Standard

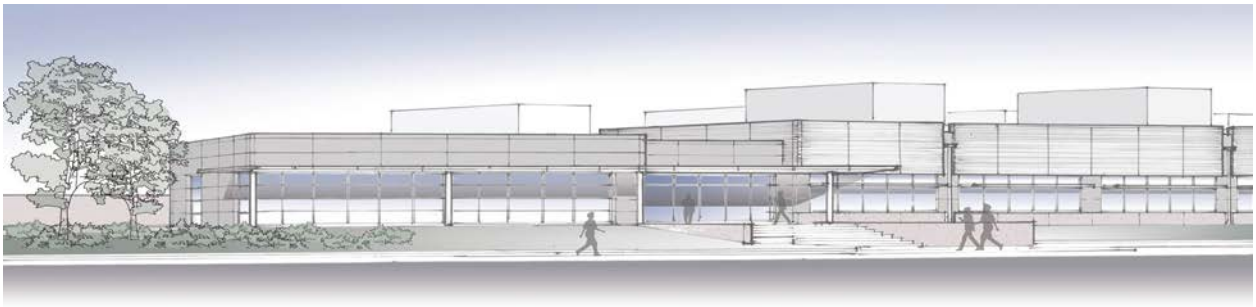
The ETS has the following standards for backup and restoration of agency data:

Distributed Systems use Commvault Simpana 10.

3.1.2 Scheduled Maintenance

3.1.2.1 Standard Maintenance Window

If maintenance is required, the ETS will use the standard maintenance window. This window will only be used when needed. Use of this window will be governed by the ETS change management process.



For the Commvault server(s):

Thursday 3PM – 7PM,

For the ATL and VTS:

Thursday 3PM – 7PM

3.1.2.2 Patching

Patching is as needed. All patching is scheduled through the Change Management process, but exceptions to the normal schedule can be requested. Emergency critical patches will follow the Urgent or Emergency Change Management process.

3.1.2.3 Privileged Access

Due to the shared nature of the environments that host these applications, the ETS cannot grant privileged system access to these environments.

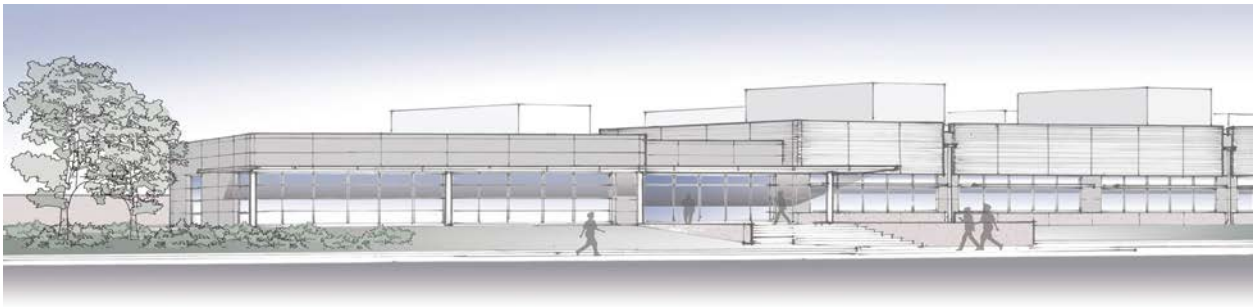
3.1.3 Service Disruption

Refer to the common section above.

3.1.4 Security

The ETS is herein authorized to be the representative of City of Milwaukie in stewardship of all City of Milwaukie electronic data backed up onto the systems that the ETS maintains. City of Milwaukie retains direct control of all data backed up onto these systems. Employees of the ETS are not allowed to disclose any City of Milwaukie information without the express written permission of authorized City of Milwaukie staff. All requests for access to City of Milwaukie information or audits of this data must be routed to authorized City of Milwaukie staff for review and approval. Any ETS employee who discloses City of Milwaukie information without the express written consent of City of Milwaukie staff must be subject to disciplinary action, up to and including termination.

The ETS must place appropriate security measures in place to protect the integrity of City of Milwaukie data. Only staff whose job duties require direct access to City of Milwaukie data can be allowed rights to this data. City of Milwaukie retains the right to audit these measures to ensure they meet requirements. City of Milwaukie remains the sole owner of all data backed up on ETS systems.



3.1.5 Availability

Service Hours for restorations are 24 x 7 x 365 excluding scheduled maintenance.

*Restore Systems will be available **99.9%** each month.*

Service Hours for Backup Systems are:

For CommVault 6p.m. – 7a.m. excluding scheduled maintenance

*Backup Systems will be available **99.9%** each month.*

3.1.6 Request Fulfillment

Most backup and restore services for new clients can be delivered in 30 days. Some environments may take more or less time depending on complexity. Modifications to the agencies existing services are usually classified as ETS Standard Work.

Most agencies have the ability to restore files, but requests for the ETS to restore files are ETS Standard Work.

3.1.7 Service Continuity

For backup systems within the ETS standard, the system will be restored within 96 hours.

3.1.8 Reporting

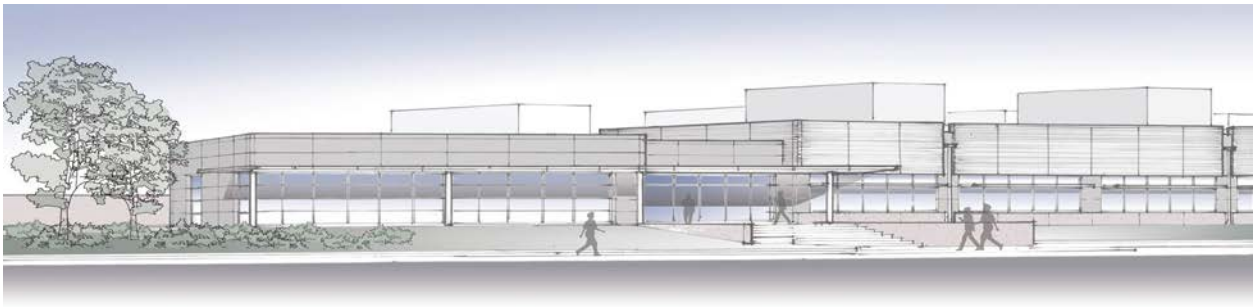
Refer to the common section above.

3.1.9 Remedies

Refer to the common section above.

Backup and Recovery Revision History

Date	Author	Description of change
12/11/2015	Joseph King	Initial Draft for internal review
12/14/2015	Brian Swick	Technical Review
12/18/2015	Joseph King	Final AM Draft for internal review
05/13/2016	Jaden Hurtienne	Fixed broken hyperlinks



4 State Mall Area Network

The ETS currently offers network connection services in certain locations on the state mall area in Salem. The mall area network is a high speed loop around selected state office buildings that provides high speed and redundant connections to the state network.

4.1.1 ETS Standard

ETS Network Standards are detailed in the ETS Architecture document. Hardware that does not conform to these standards will be supported in a reduced capacity.

4.1.2 Scheduled Maintenance

Refer to the common section above.

4.1.2.1 Standard Maintenance Window

Sunday 4 a.m. - 6 a.m.

4.1.2.2 Patching

The ETS will perform software updates based upon vendor recommendation regarding Security Vulnerabilities, Network Enhancements and to repair software abnormalities.

4.1.3 Service Disruption

4.1.4 Security

Due to the shared nature of the network environment, the ETS cannot usually grant privileged access to network devices.

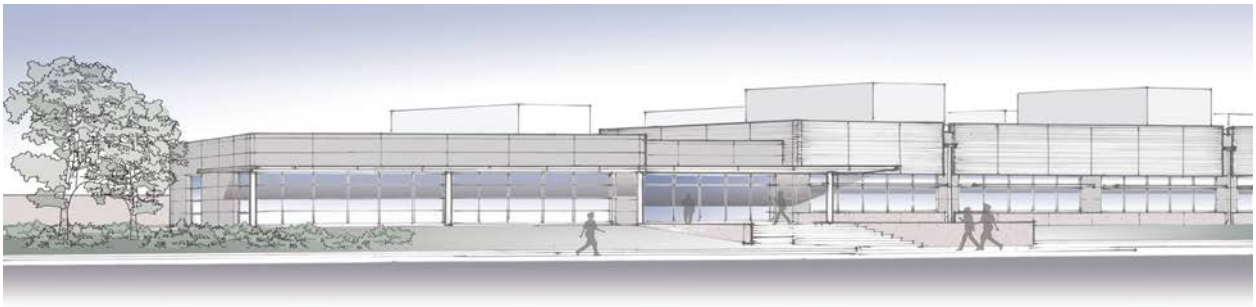
4.1.5 Availability

*Mall Area Network Services will be available **99.9%** each month.*

Service Hours are 24 x 7 x 365 excluding scheduled maintenance.

4.1.6 Request Fulfillment

Most Mall Area Network services can be delivered in thirty days. Some environments may take more or less time depending on equipment availability.



4.1.7 Service Continuity

For systems within the ETS standard, the system will be restored within a maximum of two business days.

4.1.8 Reporting

Refer to the common section above.

4.1.9 Remedies

Refer to the common section above.

5 Appendix

5.1 *Definitions*

5.1.1 Agency Production Environments

Those systems that host software which are used by the agency business sections to accomplish the agency mission. These systems are not those used by the Information Systems or Information Technology sections for development or testing of software.

5.1.2 Automated Call Distributor

A computerized phone system that responds to the caller with a voice menu and connects the call to the appropriate agent. It can also distribute calls equally to agents. ACDs are the heart of call centers, or contact centers, which are widely used in the telephone sales and service departments of all organizations.

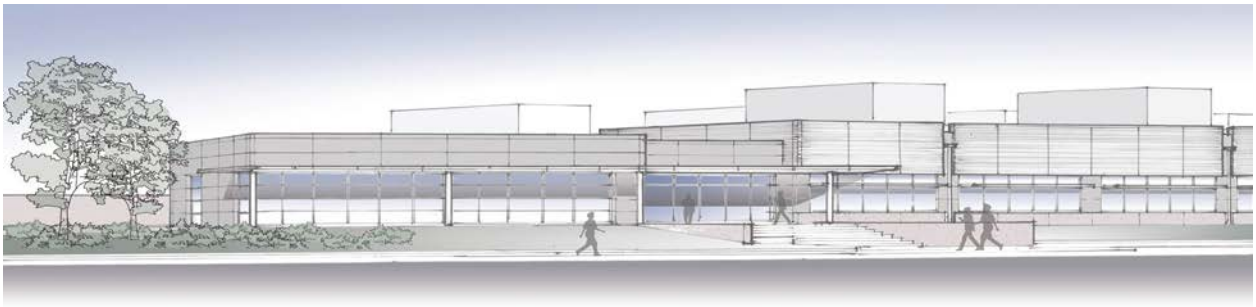
5.1.3 Availability:

Ability of a component or service to perform its required function at a stated instant or over a stated period of time. It is usually expressed as the availability ratio, i.e. the proportion of time that the service is actually available for use by the Clients within the agreed service hours. In the Service Level Agreement the availability percentages are derived using the following formula:

[(THS – DT) / THS] X 100 = Service or Component Availability (%)

THS = Total Hours of Service

DT = Actual downtime during agreed service time



5.1.4 Best Effort

Best effort support defines ETS support levels for non-standard software and hardware. There are no service guarantees for non-standard hardware and software. In general the ETS will provide professional services to the extent possible. Best Effort however assumes that the level of support offered for these systems is something less than what is guaranteed for standard systems.

5.1.5 Catastrophic Failure:

A catastrophic failure is a sudden and total failure of some system from which recovery is impossible.

5.1.6 Change Management:

The ETS Change Management process provides communication and control over the addition, modification or removal of hardware and software that could have an effect on IT services. The change management process includes both an ETS internal and client-inclusive review of change requests. For client agencies that have their own internal change management process, the ETS Change Manager will work with the agency Change Manager to integrate processes to meet both ETS and client needs.

5.1.7 Custom Call Routing (CCR) Tree

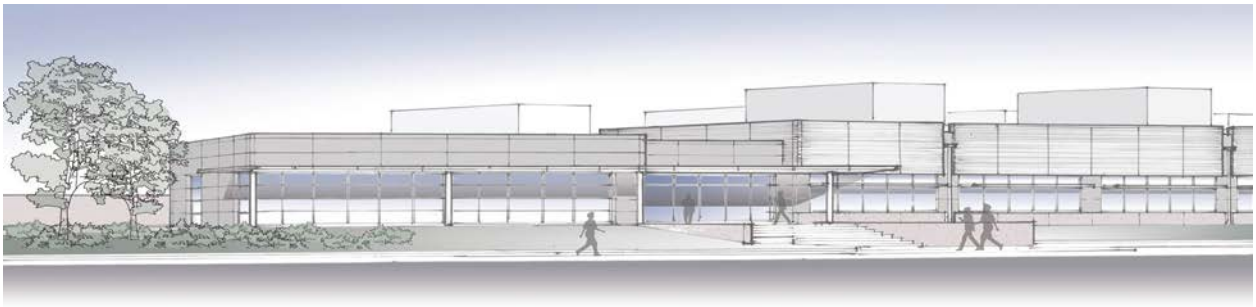
A Custom Call Routing (CCR) Tree contains paths that callers select using their touch-tone phones. They are prompted by a series of recordings. Once a selection is made, they are routed to messages, transferred to extensions or departments, or directed to sub menus for more specific information.

5.1.8 Client:

In the ETS Service Level Agreement, the term “Client” refers to state agencies or other public organizations that request and acquire services provided by the ETS.

5.1.9 Delivery Date:

The date that the service is available for the client to use. This is typically at the end of the Solutions Release phase of the ETS Engineering workflow.



5.1.10 Down Time (DT):

The amount of time between when the ETS was notified that a service became unavailable, and when service was restored. Notification can come from either the ETS monitoring system, or the client. Down Time excludes planned maintenance and service disruptions caused by factors beyond the ETS control (remote power outages, application changes applied by the client, etc.)

5.1.11 Expected Delivery Date:

The date that the service is expected to be delivered. Clients are provided an Expected Delivery Date once the requirements are determined and the solution design developed. This typically occurs at the end of the Plan Development phase of the ETS Engineering workflow.

5.1.12 Forward Busy (FWD-BSY)

Incoming calls go directly to voice mail if line is busy.

5.1.13 Forward No Answer (FWD-NA)

Incoming calls go to voice mail after 3 or 4 rings

5.1.14 Hands Free (HF) Answer

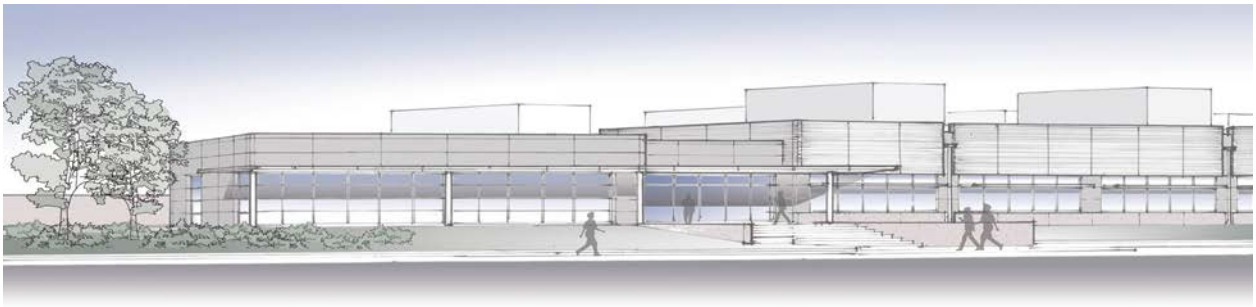
The ability to answer calls without picking up the handset.

5.1.15 Hours of Service:

The number of hours per day and the number and which days of the week that support will be provided for a given Service Level. (E.g. 24x7, 12x5, etc.)

5.1.16 Interactive Voice Response (IVR)

An automated telephone information system that speaks to the caller with a combination of fixed voice menus and data extracted from databases in real time. The caller responds by pressing digits on the telephone or speaking words or short phrases. Applications include bank-by-phone, flight-scheduling information and automated order entry and tracking.



5.1.17 Internet Protocol Contact Center (IPCC)

A Cisco product to provide Automated Call Distribution (ACD) and other enhanced features for voice over internet protocol (VOIP).

5.1.18 Key System (Voice)

An in-house telephone system that is not centrally connected to a PBX. Also known as a "key system," each telephone has buttons for outside lines that can be dialed directly without having to "dial 9."

5.1.19 Lightweight Directory Access Protocol (LDAP)

The Lightweight Directory Access Protocol, or LDAP, is an application protocol for querying and modifying directory services running over TCP/IP.

5.1.20 Private Branch eXchange (PBX)

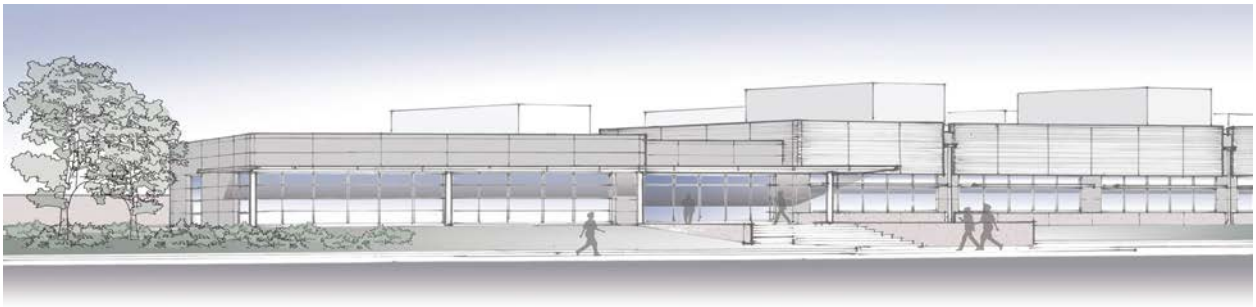
An in-house telephone switching system that interconnects telephone extensions to each other as well as to the outside telephone network (PSTN). A PBX enables a single-line telephone set to gain access to one of a group of pooled (shared) trunks by dialing an 8 or 9 prefix. PBXs also include functions such as least cost routing for outside calls, call forwarding, conference calling and call accounting. Modern PBXs use all-digital methods for switching, but may support both analog and digital telephones and telephone lines.

5.1.21 Privileged Access:

Access that allows an individual access to ETS computer, network, or security resources when that access provides the capability to alter the properties, behavior or control of the information system or network. Privileged access is typically granted to system administrators, network administrators or other such employees whose job duties require such access.

5.1.22 Public Switched Telephone Network (PSTN)

The worldwide voice telephone network. Also called the "plain old telephone system" (POTS) and originally analog only, the heart of most telephone networks today is digital. However, the lines from the home and office to the digital loop carrier (DLC) junction box in the neighborhood typically remain analog. At that point, analog signals are converted to digital.



5.1.23 Service:

The deliverables of the IT organization as perceived by the Clients. Contains one or more IT systems working together to enable a business process.

5.1.24 ETS Engineering Request

New, modified, or enhanced services or support that requires consulting, exploration of options, client submission of requirements, agreement by ETS (and client of ETS) for those requirements, funding approval, and appropriate change management. If a request is one of an agencies top eight priorities, it is processed as an Engineering Work Required request regardless of its duration or change management impact.

5.1.25 ETS Standard Work

Work that has been proven possible to complete in 0 - 6 hours that has received standing approval through change management, or work that does not need to go through the change management process.

5.1.26 Service Disruption:

Any event which is not part of the standard operation of a service and which causes, or may cause, an interruption to, or a reduction in, the quality of that service.

5.1.27 Severity Level:

An assessment of the degree of impact a Service Disruption has on the end-user that is used to prioritize response to reported outages.

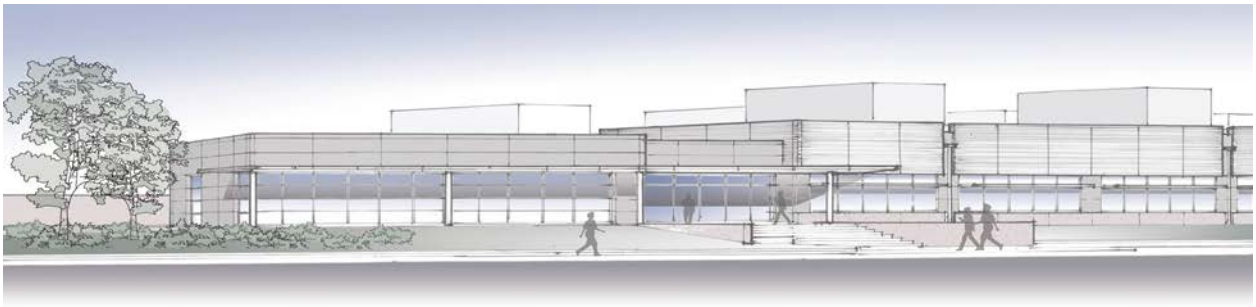
(See http://www.oregon.gov/DAS/ETS/docs/Service_Catalog.pdf Appendix A for details)

5.1.28 Service Level:

The agreed upon level of quality for a service. (E.g. Availability, Time to Respond, Time to Restore, etc.)

5.1.29 Service Level Measurement:

The measurement of the service level that describes the quality of the service for a period of time. (E.g. the Wide-Area Network (WAN) availability for July, 2008 was 99.98%)



5.1.30 Simple Mail Transport Protocol (SMTP)

The standard Internet protocol for transferring electronic mail messages.

5.1.31 Time to Respond:

The amount of time available for a response to an incident from the appropriate ETS support personnel. This is the time for triage on the Incident to begin at a minimum.

5.1.32 Time to Restore:

The amount of time that is taken to return a given service to normal levels of performance from the onset of an Incident to the point where adequate checks have taken place to ensure that the service has been restored..

5.1.33 Total Hours of Service (THS):

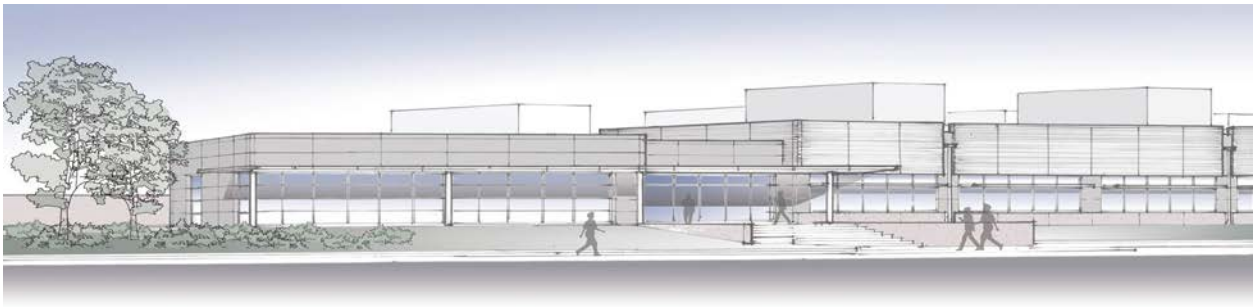
The total number of hours within a given period that a service was expected to be available. (E.g. For the month of January for a 24x7 service with 3hrs of maintenance window: 31x24 – 3 = 741 hrs.)

5.1.34 Untrusted Network:

Any network where physical and/or logical access are not subject to monitoring, administration and supervision of the ETS.

Appendix Revision History

Date	Author	Description of change
12/11/2015	Joseph King	Initial Draft
12/14/2015	Brian Swick	Technical Review
12/18/2015	Joseph King	Final AM Draft for internal review



5.2 ***City of Milwaukie***

5.2.1 Client Requirements

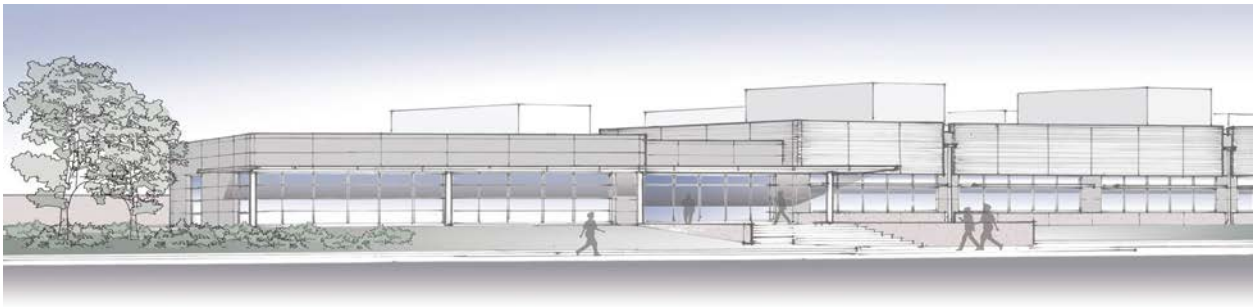
1. Backup for approximately 10 TB of Primary Data.
2. Backup for roughly 42 client machines.
4. Storage of mix of retentions between 28 days, 90 days, and 1 year.
5. Retain about 1.2TB of data for 1 years, with the rest split evenly between 28 days and 90 days.
6. Data stored at a secondary location (offsite) for DR protection.
8. City of Milwaukie staff will have the ability to execute restores.
9. 24x7x365 availability of CommVault web interface by authorized CITY OF MILWAUKIE staff to monitor CITY OF MILWAUKIE backups
10. Connectivity to be established through fiber optics already in place. The rate includes 50Mbps primary network connection, but CITY OF MILWAUKIE will be upgrading shortly to a 200Mbps connection.
11. The Window during which backups will occur is 6-pm – 6-am
12. The standard ETS maintenance window is every Thursday 3pm –7pm during which CITY OF MILWAUKIE understands access to Commvault will be unavailable.
13. Security: ETS staff will not use or share CITY OF MILWAUKIE data for any purpose besides backup administration purpose.

5.2.2 Enterprise Technology Services Technical Requirements for backup clients

1. Servers being backup up will need a minimum of 2GB of free disk space for the Commvault backup agent to be installed.
2. 7GB free disk space is recommended for client installs

5.2.3 Process

1. Obtaining Offsite data for restore
3. Commvault Client



a. The Commvault client is a web based application and can be accessed from as many PC's as need.

b. ETS can provide authentication to Commvault via Active Directory for clients integrated into the ETS Network that is managed by the clients. For clients who do not have integrated Active Directories, Commvault can be managed via local user accounts in the Commvault system. The ETS limits 10 user accounts per client for locally managed accounts.

4. Commvault Roles

a. The ETS provides three types of Commvault Roles for clients.

i. Client Backup Administrator Role has control to execute restores in original location of restore files, restore files to a new location and run reports.

ii. Client Backup DBA Role has control to execute restores of data bases

iii. Client Help Desk Backup Role has the ability to run reports and restore files to their original location.

5. Backup Schedule is managed by the ETS and will adjust the backup times provided by the client during the normal backup window which is 6pm to 6am.

5.2.4 Pricing

Rates for ETS services available at: Rate Sheet

Effective July 1st, 2015

2015-17 Enterprise Technology Services

Item	Billable Unit per Month	Rate	General Service Description
IT Support Services			
Distributed Systems			
Appliance Hosting Services	Per Physical Appliance	$66.17	Appliance Hosting Services: Ongoing oversight of the operation of non-standard physical assets owned by others including coordination of subcontract for services such as specialized space, network connectivity, operator services, and Technologist services. Virtual appliances will be assessed CPU, RAM and Storage only. Distributed Services Systems represents the Windows/Linux computer processing servers. The systems can be standalone or in a shared environment. The distributed server rates for local and remote environments and by physical and virtual servers have been blended into one server instance rate. The definition of remote is any server under ETS's responsibility that is physically not in ETS managed Data Center floor space. -If the host (a server running VMWare) is local, then the charges for the host's dedicated operating system go to overhead, while the customer gets billed for the virtual operating system (guest), virtual CPUs, virtual RAM and storage. -If the host (a server running VMWare) is remote, then the charges for the host's CPU and RAM, go to the customer, along with a charge for each virtual operating system (guest) and allocated storage.
Server Instance	Server Instance	$270.99	
System CPU Resource Allocation	Server Core	$36.86	
System Memory Resource Allocation	GB Server Memory	$13.89	
Server Load Balancing Services	Per Server, Load Balancing	$60.50	
Server Clustering Services	Per Server	$38.50	
Midrange			
Virtual Operating System Service, iSeries	iSeries Instance	$2,194.57	Midrange Systems are systems that run in the UNIX ("AIX") or IBM System i ("iSeries") environment. Rates in Midrange Systems include those for hosted computing as well as for specific services including managed database environments, web application servers, and SFTP services. "UNIX/iSeries Resource per Month" is the rate for CPU or RAM. One resource unit is 0.1 CPU or 4 GB of RAM. These can be charged in fractional units. For instance: 2 GB of RAM is ½ unit. Example: .1 CPU + 4 GB RAM = 2 units
Virtual Operating System Service, UNIX	UNIX Instance	$704.70	
System Utilization, iSeries	iSeries Resource Unit	$621.80	
System Utilization, UNIX	UNIX Resource Unit	$288.29	
DBMS Service, DB2 on UNIX	DB2 Resource Unit	$845.74	
DBMS Service, Oracle on UNIX	Oracle Resource Unit	$1,460.80	
Application Server Service, WebSphere, ColdFusion on UNIX	MB transferred, WebSphere, ColdFusion on UNIX	$0.13	
Application Server Service, WebLogic on UNIX	MB Transferred WebLogic on UNIX	$0.22	
Secure File Transfer Service, UNIX	Allocated SFT GB	$7.19	
Mainframe			
Batch Processing	CPU Minute	$28.68	The Mainframe system collects computer processing data every time a user logs into the computer, executes a job, runs reports, or does queries with online files. Usage information is assigned to an agency based on where the usage information resides, application name, or user name. The unit of measure for mainframe computing is the Computer Processing Unit (CPU) minute, usage data is reported daily.
CICS Processing	CPU Minute	$37.19	
DB2 Processing	CPU Minute	$65.73	
TSO Processing	CPU Minute	$28.68	
zVM Guest Instance (Not a current service offering)	zVM Guest Instance	$1,910.41	
Disaster Recovery Test Environment	Per Day	$4,344.69	
Data Storage			
Enterprise Storage	Allocated Enterprise Storage GB	$0.02	Tier 1, 2, & 3 storage has been blended into one Enterprise Storage rate due to increased usage of auto-tiering to manage the environment. NAS (File Server Service) will be billed at the Enterprise Storage rate.
Local Attached Storage	Allocated Local Attached Storage GB	$0.17	

Effective July 1st, 2015

2015-17 Enterprise Technology Services			
Item	**Billable Unit per Month**	**Rate**	**General Service Description**
Mainframe Storage	Allocated Mainframe Storage GB	$0.35	
Backup Services	Backup GB	$0.02	
NAS Services	TBD	TBD	
Disaster Recovery			
Disaster Recovery Pass Through		TBD	Enterprise Technology Services (ETS) uses a statewide price agreement for disaster recovery services. ETS worked with agencies to identify what services the agency requires. ETS coverage will be included in ETS administrative overhead and will include the ETS core charges, network connectivity charge and one (1) FTE. Agency specific charges will be charged back to the agency on a monthly pass through basis.
Co-Location			
Data Center Floor Space (Not a current service offering)	Square Foot, Data Center	$6.19	
Production Services			
Application Monitoring	Coverage Unit	$11.77	Production Services maintains a 24x7x365 physical presence at the State Data Center. Units are updated once a biennium unless a significant change occurs.
Security			
End User VPN Service	VPN bundle per 25	$154.66	Network Encryption unit counts are measured at .5 per managed end, per device, per month.
Network Encryption Service	Per Managed End Point, 2pts=1 unit	$438.86	
Desktop Services			
Workstation Service	Per Computing Workstation	$246.54	Operational management of the customer's desktops, laptops, tablets, peripheral equipment (i.e. printers), and workplace tools such as email. Standard desktop software includes Microsoft Access, Excel, Outlook, PowerPoint, Publisher, Word, Visio, and Project. Management of the customer's internal network (Local Area Network) that allows sharing of resources such as data, files, printers and applications. Definition of Computing Workstation: A traditional PC or Laptop computer that is supported via ETS TAM Technology Support Center's (TSC) workstation management system, or other types of devices such as Mac's and Linux systems that are supported manually by the TSC. Location of the device is irrelevant (it could be at a person's desk, in conference room, in a shared area, or for use for remote access from the home). Mail Hub: Centralized Directory for Published Accounts.
File & Print Services	Per Computing Workstation	$122.57	
Email and Calendaring - Enterprise	Per Mailbox	$2.95	
Mail Hub Service	Email Address per user	$0.54	
E-Government			
E-Gov E-commerce Contract Management	Number of E-Gov E-commerce Transactions	$0.03	
E-Gov Intranet Contract Management	Number of Intranet Sites Hosted, E-Gov	$229.63	
E-Gov Website Contract Management	Number of Hosted Website Pages & Files	$3.36	
E-Gov Hosted Applications Contract Management	Number of Hosted Applications	$44.78	
Silversky - Hosted E-mail Contract Management	Number of Email Accounts	$0.17	
Silversky - Hosted Intranet Contract Management	Number of Intranet Sites Hosted, SilverSky	$43.21	
LAN/WAN Services			
LAN/WLAN Services	Per 12 Port Switch or 8 Port Wireless Access Point	$101.92	Local Area Network (LAN) charges are based on the number of switches or wireless access points (WLAN) serving the agency. LAN services include the purchase, administration and management of the Local Area Networking switching. This provides network connectivity between the point of demarcation at the agency site to desktops, printers and other computing devices. This service does not include cabling. Redundant Network Load Balancing is provided for each host connected on the backend.
Network Load Balancing	Per Server, Network	$593.40	
Special Fiberstrand (Not a current service offering)	Per Strand	$638.83	

Effective July 1st, 2015

2015-17 Enterprise Technology Services			
Item	**Billable Unit per Month**	**Rate**	**General Service Description**
Computer Lab			
Computer Lab, Half Day	Computer Lab - Half Day	$189.62	A charge of $100 will be added to the Computer Lab Rates for special installs.
Computer Lab, Full Day	Computer Lab - Full Day	$328.49	
Voice Services			
Voice Support, ETS - 1st Year	Voice Handset	$25.43	Handset, Phone Service First Year
Voice Support, ETS - 2nd Year		TBD	Handset, Phone Service Second Year
Provisioning Charge on Pass-Through Costs			
Charges on Pass-Through Costs		Dollar-for-dollar plus 5% Provisioning fee for Network Services	Network Pass-Through. Network connectivity charges, includes transport costs, taxes, interlata charges, installation and domain registrations. These are charged by the telecommunications vendors and passed on to the customer. A five (5) percent charge is added on to cover the managing network telecommunications service contracts, attorney general fees associated with these contracts, and personal services to provision the services. Voice Pass-Through Charges: This rate is passed through dollar-for-dollar by the vendor on services ordered by the agency. Expenses include long distance, calling cards, TSOs, 800 numbers, repair tickets, and directory listings.
IT Professional Services			
Billable Hours			
Base/Generalist	Per Hour	$108.00	Please see ETS Rate Methodology Document.
Application Service and TSC	Per Hour	$140.00	
Specialized	Per Hour	$148.00	
Assessment			
Costs			
Administrative Support Costs			
Technical Professional Training			
Services			
System Monitoring			
Data Center Floor Space			
Data Center Floor Space, Montana			
Warehousing			
Wireless PTP Services			
Consumer Wireless			
State Network Access			
Basic Firewall Configurations			

MILWAUKIE CITY COUNCIL
STAFF REPORT

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **TriMet Property Triangle Site**

From: Alma Flores, Community Development Director

Date: June 28, 2016

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

Regular Session Agenda Item No.	6

Other Business

MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 6. A.**
Meeting Date: **July 5, 2016**

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Library Services Expansion Task Force**

From: Katie Newell, Library Director

Date: June 22, 2016

ACTION REQUESTED
Dissolution of the Library Services Expansion Task Force

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

- Library Expansion Task Force (LETF) created by City Council March 15, 2011.
- LETF recommended a 35,000 sq ft expansion/renovation to City Council August 6, 2013; project tabled until better financial climate.
- LETF reconvened, February 4, 2015.
- LETF name changed to Library Services Expansion Task Force (LSETF), R52-2015, on May 19, 2015.
- LSETF made recommendation to City Council to hire Patinkin Research and ProspectPDX to poll voters to determine advisability of going out to bond for a library expansion/renovation and when to do so, August 19, 2015.
- Consultants Ben Patinkin (Patinkin Research) and Mike Selvaggio (ProspectPDX) met with City Council at their Study Session on January 21, 2016, to discuss the support for going to bond in May 2016 for a library expansion/renovation project.
- Troy Ainsworth of FFA Architecture + Interiors (FFA), Library Director Katie Newell, and LSETF Chair Scott Barbur met with Council on February 2, 2016, to recommend going out to bond for $9.2 million and answer questions concerning cost estimates.
- Council voted unanimously on February 16, 2016, to go out for a bond measure in the amount of $9.2 million for the upgrade to the Ledding Library.
- Bond Measure 3-477 asking '*Shall Milwaukie be authorized to issue up to $9.2 million of General Obligation Bonds for library repairs, improvements and updated technology?*' was passed by the voters of Milwaukie on May 17, 2016.

BACKGROUND
At its February 1, 2011 Work Session meeting, City Council met with the Ledding Library Board and discussed the space needs of the library as well as the process necessary to evaluate options for enlarging the Library. The availability of $1 million of capital funds from the Library District of Clackamas County in 2012 requires the City undertake an analysis of how to use the funds and develop a plan to address space needs. The Council and Board discussion focused on the benefits of creating a task force to stimulate a broad based discussion of the community need for library facilities, the options available and the process needed to pursue locations and funding.

At its March 15, 2011 meeting, the Milwaukie City Council authorized the creation of the Library Expansion Task Force (LETF) to look into the issues surrounding the expansion of the Ledding Library. The first meeting of LETF was June 23, 2011, with representatives from City Council, Library Board, Library Foundation, Planning Commission, Budget Commission, Neighborhoods, Business, and Library staff. Scott Churchill, representing Neighborhood-West, was elected Chair.

LETF developed a preliminary design program that supported the need of an expansion. A progress report was presented to Council on October 16, 2012, with the recommendation that the task force be authorized to hire an outside consultant to complete an unbiased needs assessment/programming plan for the Ledding Library. Council agreed that the task force could move forward with this.

At the February 26, 2013 Work Session, LETF updated Council on the search for a firm to conduct the needs assessment/programming plan and recommended hiring the firm FFA to do this. Council directed staff to move forward with hiring FFA.

LETF met June 13, 2013, to review the preliminary findings of FFA. The majority of the task force favored the direction the report was going; their next meeting was scheduled for July 11, 2013, to discuss the final report and vote on their recommendation to Council.

Troy Ainsworth and Karl Refi, both of FFA, presented the finalized needs assessment for Council's review at the July 2, 2013 Work Session. The report reviewed the results of the public survey, staff interviews and public meetings, as well as diagrams illustrating the possibility of expanding the Library to a size up to 35,000 sq. ft. at its current site. This final report had not yet been presented to the LETF at the time of the 7/2 Work Session; however, LETF met July 11, 2013, and voted to recommend to Council an expansion of the Ledding Library up to 35,000 sq. ft. at its current site.

This recommendation was made to Council on August 6, 2013. At that time, Council decided to focus on passing a bond measure to pay off the Light Rail debt and LETF went on hiatus.

At the September 16, 2014 work session, Council approved updating the roster and reconvening LETF to move forward with an expansion plan of the Ledding Library. The task force resumed their meetings on February 4, 2015, electing Scott Barbur, representing the Planning Commission, as the Chair.

At its May 19, 2015 meeting, City Council approved the resolution to revise the name of the task force to the Library Services Expansion Task Force (LSETF) to emphasize the intent of the task force to encompass not just an expansion of the library building, but of library services to the community.

LSETF met with FFA to review a conceptual drawing/cost estimate of a smaller expansion, August 24, 2015. It made the recommendation to Council to hire a consultant to determine the support for going to bond in May 2016 for a library expansion/renovation project. After receiving the recommendation to move forward with a bond measure from consultant Patinkin Research, City Council unanimously voted on February 16, 2016, to go out for a $9.2 million bond measure to upgrade the Ledding Library.

The task force was created with the duties and responsibilities to:

a) Develop a scope of work to evaluate options to either expand the Ledding Library or to pursue additional library facilities within the City that deliver services in association with the Ledding Library
b) Evaluate the impact of assuming responsibility for delivering services to the unincorporated areas of Clackamas County
c) Cost out the options and present preliminary estimates to the City Council for direction
d) Follow Council direction and obtain necessary consultant services to develop detailed plans to present to Council of the alternative funding options.

The task force has successfully completed its duties with the passing of the bond measure on May 17, 2016.

The following people have served on the task force since it was formed five years ago:

Nancy Avery
Scott Barbur
Lisa Batey
Fred Bruderlin
Greg Chaimov
Scott Churchill
Jerry Connelly
Mark Docken
Ryan Healy
Tom Hogan
Paul Klein
Melissa Perkins
Karin Power
Sara Proctor
Christie Schaeffer
Kathi Schroeder
Jon Stoll
Arianna Van Bergen
Ed Zumwalt

Staff: Bill Monahan
Katie Newell
Joe Sandfort
Grady Wheeler
Nancy Wittig

Library Board members Krista Downs, Erin Lee, Karol Miller, Jason Price, Anna Van Tyne attended meetings as advisors.

CONCURRENCE
The Library Director concurs that the Library Services Expansion Task Force dissolve with a heart-felt thank you to all the task force members that have served on this committee.

FISCAL IMPACTS
No fiscal impacts

WORK LOAD IMPACTS
No work load impacts

ATTACHMENTS
1. Resolution

Attachment 1

CITY OF MILWAUKIE
"Dogwood City of the West"

Resolution No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DISSOLVING THE LIBRARY SERVICES EXPANSION TASK FORCE (LSETF).

WHEREAS, the Library Expansion Task Force (LETF) was created by the City Council on March 15, 2011, with the adoption of Resolution 35-2011; and

WHEREAS, the LETF was charged with assisting the Ledding Library Board and City Council by developing a scope of work to evaluate options to either expand the Ledding Library or to pursue additional library facilities within the City that deliver services in association with the Ledding Library, to evaluate the impact of assuming responsibility for delivering services to the unincorporated areas of Clackamas County, to cost out the options and present preliminary estimates to the City Council for direction, and to follow Council direction and obtain necessary consultant services to develop detailed plans to present to Council of the alternative funding options; and

WHEREAS, the LETF was renamed the Library Services Expansion Task Force (LSETF) by the City Council with the adoption of Resolution 52-2015; and

WHEREAS, the LSETF has successfully completed its duties with the passing of the Library Bond measure on May 17, 2016.

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that the LSETF is hereby dissolved and sincere appreciation is conveyed to the volunteers and staff who served on the LSETF.

Introduced and adopted by the City Council on **July 5, 2016**.

This resolution is effective on **July 5, 2016**.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 6. B.**
Meeting Date: **July 5, 2016**

To: Mayor and City Council

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

Subject: **Visioning Advisory Committee Appointments**

From: David Levitan, Senior Planner
Denny Egner, Planning Director

Date: June 27, for July 5, 2016, Regular Session

ACTION REQUESTED
Review Steering Committee recommendations for the Visioning Advisory Committee (VAC) and appoint members.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS
June 23, 2016: The Council heard an update on the status of the Visioning Advisory Committee recruitment process.

May 20, 2016: Recruitment efforts were deployed. Online and print applications were made available to the public with a closing date of June 17.

May 3, 2016: The Council heard an update on the status of the Community Vision and Action Plan, including staff's proposal for a Visioning Advisory Committee.

BACKGROUND
At the May 3 City Council meeting, staff provided Council with an update on the Community Vision and Action Plan. The primary topic of discussion at the meeting was the Visioning Advisory Committee (VAC). The Council emphasized the importance of attracting a committee that is broadly representative of the entire Milwaukie community without being entirely prescriptive in regards to representation from existing boards/commissions or individual neighborhoods. Council felt that the VAC should be made up of approximately 12 to 15 members and should have a Council liaison.

In response to input from Council at the May 3 meeting, staff from Community Development and the City Manager's Office developed an application which aimed to attract a diverse group of individuals that represent a variety of different neighborhoods, interests and perspectives in the Milwaukie community. The application was advertised via the City's website, social media accounts, the June edition of The Pilot, the May 22 Farmer's Market booth, and emails to the NDA and Boards and Commissions email lists. The closing date for VAC applications was June 17, and 52 people applied.

DISCUSSION

At the June 23 City Council study session, staff gave a brief update on the VAC recruitment process. The 52 applications that were received by June 17 included:

- 44 City residents;
- At least 3 applicants from each of the city's 7 residential neighborhoods;
- 6 local business owners;
- 5 local employees; and
- 2 high school students

Staff asked the Council for volunteers to serve on the VAC and the Steering Committee. Mayor Gamba volunteered to serve as the VAC Chair, while Councilor Parks volunteered to serve on the Steering Committee. Councilor Batey was also interested in serving on the Steering Committee, if her schedule permitted.

Following the June 23 study session, Mayor Gamba and members of the Steering Committee (City staff and Councilor Parks) reviewed the 52 applications and met during the week of June 27 to develop a list of recommended members to be appointed by the City Council at its July 5 regular session. The list of recommended members is currently being finalized and will be submitted under separate cover. The Council has been provided with a packet of all 52 applications and will have the opportunity to recommend additional members during the July 5 meeting.

Questions for Council Consideration

Staff is seeking Council direction on the following questions:

1. Does the Council agree with the Steering Committee's recommendations for VAC membership?
2. Do councilors wish to appoint anyone not included on the list of recommended members?
3. Are there any stakeholders that the Council feels aren't adequately represented on the list of recommended members? If so, should staff continue recruitment efforts?

CONCURRENCE

No other departments have reviewed this report.

FISCAL IMPACTS

N/A

WORK LOAD IMPACTS

N/A

ATTACHMENTS

1. *Packet of 52 VAC Applications (to be submitted under separate cover)*
2. *Summary Spreadsheet of 52 VAC Applicants (to be submitted under separate cover)*
3. *Steering Committee Recommended Members (to be submitted under separate cover)*

MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 6. C.**
Meeting Date: **July 5, 2016**

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Meek Street Storm System Engineering Services Agreement**

From: Charles Eaton, Engineering Director

Date: June 24, 2016

ACTION REQUESTED
Authorize the City Manager to execute a contract with AKS Engineering for design, right-of-way, geotechnical and construction management services for the Meek Street Storm System.

BACKGROUND
The 2014 Stormwater Master Plan identified the Meek Street storm project as the second highest priority within the adopted capital improvement plan (Attachment 1). The City solicited qualifications from qualified engineering firms to submit proposals in February 2016. The City received 5 proposals and the selection committee selected two proposals for interviews in March 2016. The selection committee held interviews and selected one consultant as the most qualified based on the written materials and the interview evaluations. Staff requested compensation requirements from the firm selected and staff has negotiated a fair and reasonable compensation level for the final scope of services identified in Attachment 2, Exhibit A.

Staff is recommending award of the Meek Street Engineering Services Agreement to AKS Engineering for a not to exceed amount of $612,570.

FISCAL IMPACTS
Project is funded within the FY 16-18 budget

WORK LOAD IMPACTS
Project was schedule during this time period, no additional impacts anticipated.

ALTERNATIVES
1. Reject the proposal and proceed to the next most qualified consultant.
2. Reject all proposals

ATTACHMENTS
1. Resolution
2. Meek Street CIP fact Sheet
3. Engineering Services Agreement

Attachment 1

CITY OF MILWAUKIE
"Dogwood City of the West"

Resolution No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR ENGINEERING SERVICES FOR THE MEEK STREET STORM SYSTEM.

WHEREAS, the stormwater master plan identified the Meek Street system as a priority project to improve the City's storm water infrastructure; and

WHEREAS, The engineering services for the design and construction management services are best contracted out for the identified project; and

WHEREAS, a formal competitive request for proposal process following Chapter 70 of the City's Public Contracting Rules was conducted; and

WHEREAS, AKS Engineering and Forestry LLC is recommended as the most qualified firm for the project; and

Now, Therefore, be it Resolved that the City of Milwaukie authorizes the City Manager to execute a contract for engineering services in the amount not to exceed $612,570 with AKS Engineering and Forestry, LLC.

Introduced and adopted by the City Council on _____.

This resolution is effective on _____.

Mark Gamba, Mayor

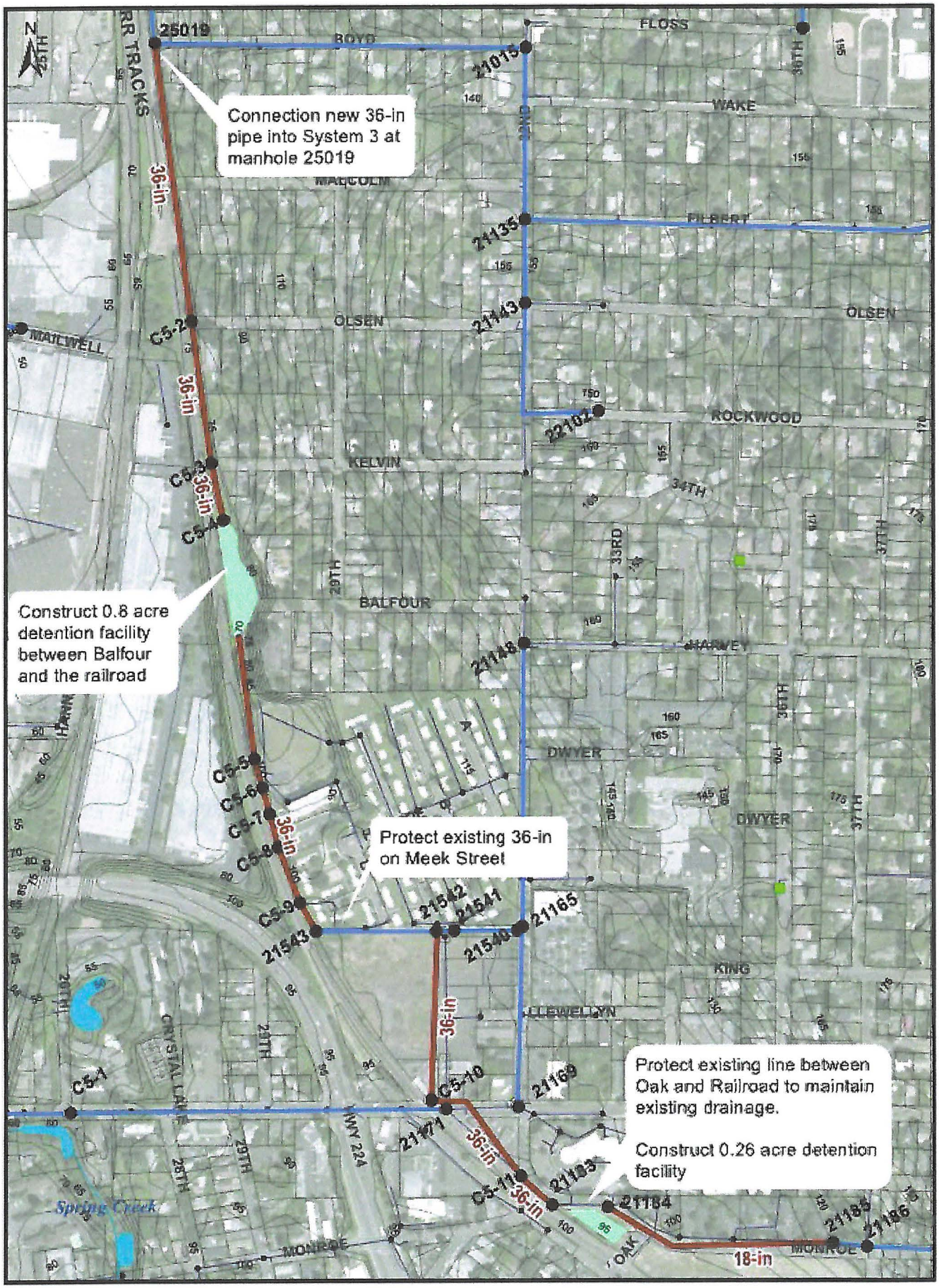
ATTEST:

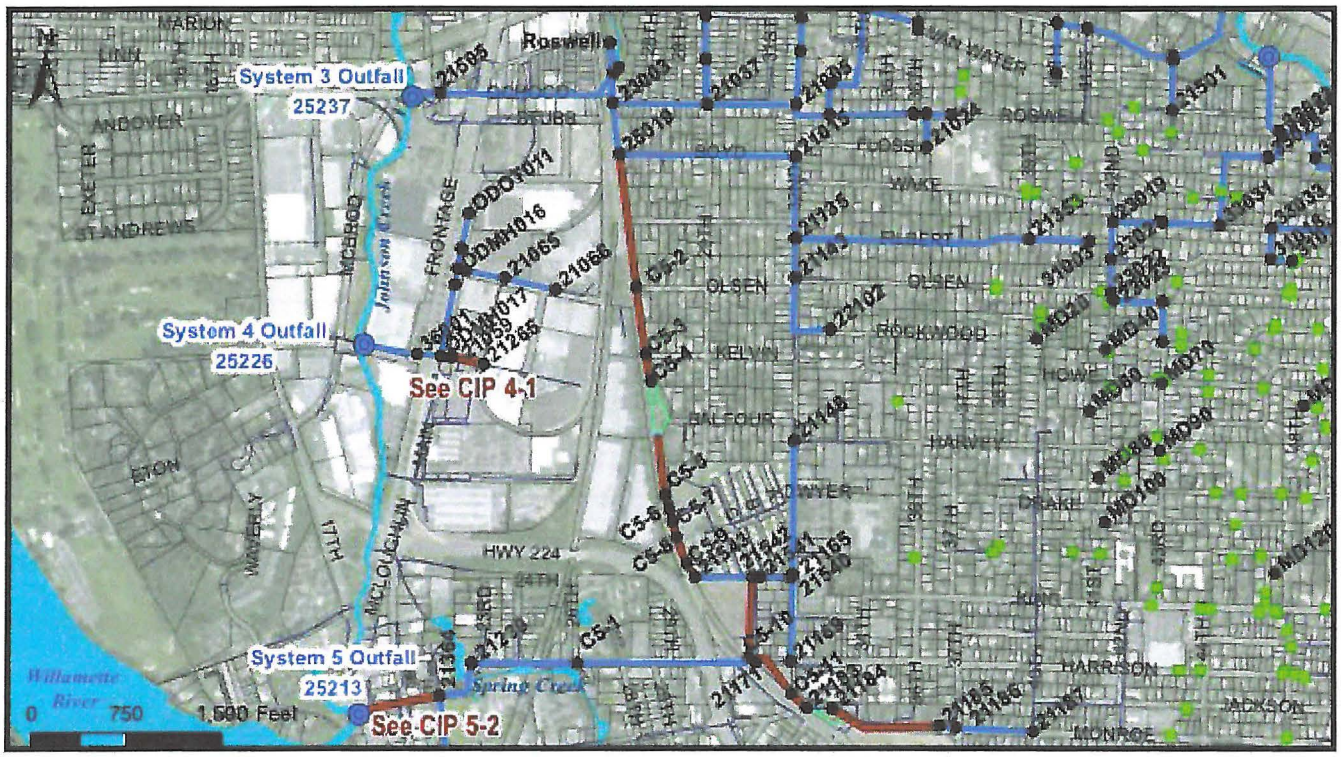
APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Attachment 2
Priority Ranking No. 4





Project Name	Meek Street
Project ID	5-1
Modeled System No.	5
Associated Subbasins	JCC94, JCC93, JCC92, JCC91, JCA60, JCA52, JCA51, JCA50, JCA41
Associated Modeled Pipes/Conduits	Multiple
Objective(s) Addressed	Flood Control – Pipe Capacity Deficiency

Project Description

System wide flooding is predicted during the existing and future 10 and 25-year events. CIP 5-1 addresses the majority of the flooding via the Meek Street bypass, which re-routes flows from subbasins JCA41, JCA50, JCA51, JCA52 and JCA60 away from the Harrison Street system to the north.

A similar CIP to address flooding in System 5 was proposed in the 2004 plan. Since completion of the 2004 plan, the City completed design for a 36-in pipeline to convey flow from 32nd Ave, along Meek Street and north along the railroad tracks to the west end of Balfour Street. In 2005, the portion of this pipeline along Meek Street, west of 32nd Avenue was constructed. However, the Meek Street pipe system was constructed with inadequate slope to maintain the existing concept per CIP-2 from the 2004 MP. This CIP proposes to incorporate the recently constructed pipeline along Meek Street into the design.

The portion of this CIP along Monroe Street includes replacement of the existing 12-in concrete pipe with 18-in HDPE from manhole 21185 to 21184. This pipe discharges into a new detention facility between Oak and Railroad, which is necessary to maintain use of the recently constructed 36-in pipeline on Meek Street. The detention facility is proposed on tax lot 11E36AB03000, which is currently undeveloped private property.

1,560-ft of new 36-in HDPE pipe is proposed from the discharge of the Oak and Railroad detention facility at 21183 to Meek Street at manhole 21542. Approximately 630-ft of the pipeline is aligned on private property along an existing 12-in pipe owned by the City.

The existing 36-in pipe on Meek Street from manhole 21542 to manhole 21543 will be protected in place. At manhole 21543, 985-ft of new HDPE is proposed per the 2006 Meek Street Storm Improvements Phase II design, completed by Century West Engineering Coorporation. This pipeline is aligned on the east side of the railroad tracks. The new 36-in pipeline will discharge to a detention facility at Balfour, which is sized to utilize the available open space and provide necessary storage to maintain capacity in System 3, downstream of manhole 25019.

From the Balfour detention facility, 1,800-ft of 36-in HDPE is proposed to the connection at manhole 25019. Open channel flow may be an option for this reach, but this CIP was estimating using pipe because information on the available width between the railroad tracks and the toe of the existing slope was unknown.

Estimated Planning Cost (2012 dollars)	
Construction Cost Sub-total (See Appendix X for details)	$1,827,300
Construction Contingency (30%)	$548,200
Sub-total	$2,375,500
Engineering and Permitting (25%)	$593,900
Construction Administration (5%)	$118,800
Capital Project Implementation Cost Total	**$3,088,200**
Existing to Future % Flow Increase	56%

Design Assumptions

- Site acquisition is not included in the cost of this project. The proposed Oak and Railroad detention facility has been sited on private property.
- The City has an existing easement for use of the Balfour site.
- Cost of asphalt surface restoration was removed on pipe unit costs from Meek Street to manhole 25019.
- 1,000 cubic yards of excavation and 1,000 cubic yards of embankment was assumed to estimate earthwork costs for the Balfour facility. Detailed design with survey information should be completed to estimate actual earthwork quantities and evaluate slope stability in this area. The eastern portion of the Balfour facility is located near the toe of a steep slope.
- The vertical datum on the Meek Street Storm Improvements Phase II design, completed in 2006 by Century West Engineering Coorporation does not match NGVD29, which was the datum used for this master plan. Elevations were adjusted relatively to the NGVD29 datum for modeling and reporting purposes.

ENGINEERING SERVICES AGREEMENT WITH THE CITY OF MILWAUKIE, OREGON FOR MEEK STREET PIPE INSTALLATION DESIGN (CIP-2016-Y11)

THIS AGREEMENT, made and entered into this **5th** day of **July, 2016**, by and between the City of Milwaukie, a municipal corporation, hereinafter referred to as the "City," and **AKS Engineering & Forestry, LLC**, whose authorized representative is **John P. Christiansen, PE**, and having a principal being a registered engineer of the State of Oregon, hereinafter referred to as the "Engineer."

RECITALS

WHEREAS, the City's Fiscal Year **2017, 2018 and 2019** budget provides for the design and construction of **Meek Street Pipe Installation (CIP-2016-Y11**); and

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

WHEREAS, the City desires to engage the Engineer to render professional engineering services for the project described in this Agreement, and the Engineer is willing and qualified to perform such services;

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

1. Engineer's Scope of Services

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

2. Effective Date and Duration

This agreement shall become effective upon the date of execution by the City and shall expire, unless otherwise terminated or extended, on completion of the work or **October 31, 2019**, whichever comes first. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. Engineer's Fee

A. Basic Fee

1) As compensation for Basic Services as described in Exhibit A of this Agreement, and for services required in the fulfillment of Paragraph 1, the Engineer shall be paid on an hourly rate based upon the "Schedule of Rates" in Exhibit A of this agreement, which shall constitute full and complete payment for said services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement. The Basic Fee shall not exceed the amount of **Six Hundred Twelve Thousand Five Hundred Seventy** dollars (**$612,570.00**) without prior written authorization.

2) The parties hereto do expressly agree that the Basic Fee is based upon the Scope of Services provided in Exhibit A and is not necessarily related to the estimated construction cost of the Project. In the event that the actual construction cost differs

from the estimated construction cost, the Engineer's compensation will not be adjusted unless the Scope of Services changes and is authorized and accepted by the City.

B. Payment Schedule for Basic Fee

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

C. Payment for Special Services

Only when directed in writing by the City, and signed by both parties as an addendum to this Agreement, the Engineer shall furnish or acquire for the City the professional and technical services based on the hourly rate schedule as described in Exhibit A of this contract for minor project additions and/or alterations.

D. Certified Cost Records

The Engineer shall furnish certified cost records for all billings pertaining to other than lump sum fees to substantiate all charges. For such purposes, the books of account of the Engineer shall be subject to audit by the City. The Engineer shall complete work and cost records for all billings in accordance with generally accepted accounting principles.

E. Contract Identification

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

F. Payment – General

1) Engineer shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

2) Engineer shall pay employees at least time and a half pay for all overtime worked in excess of 40 hours in any one week except for individuals under the contract who are excluded under ORS 653.010 to 653.261 or under 29 USC sections 201 to 209 from receiving overtime.

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

4) The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

5) Engineer shall make payments promptly, as due, to all persons supplying services or materials for work covered under this contract. Engineer shall not permit any lien or claim to be filed or prosecuted against the City on any account of any service or materials furnished.

6) If Engineer fails, neglects or refuses to make prompt payment of any claim for labor, materials, or services furnished to Engineer, sub-consultant or subcontractor by any person as such claim becomes due, City may pay such claim and charge the amount of

the payment against funds due or to become due to the Engineer. The payment of the claim in this manner shall not relieve Engineer or its surety from obligation with respect to any unpaid claims.

4. Ownership of Plans and Documents: Records

A. The field notes, design notes, and original drawings of the construction plans, as instruments of service, are and shall remain, the property of the Engineer; however, the City shall be furnished, at no additional cost, one set of previously approved reproducible drawings, on 3 mil minimum thickness mylar as well as diskette in "DWG" or "DXF" format, of the original drawings of the work. The City shall have unlimited authority to use the materials received from the Engineer in any way the City deems necessary. Any use, re-use or alteration of any materials other than as contemplated by the applicable Scope of Services shall be at the City's sole risk, unless written permission has been received from Engineer prior to any such use.

B. The City shall make copies, for the use of and without cost to the Engineer, of all of its maps, records, laboratory tests, or other data pertinent to the work to be performed by the Engineer pursuant to this Agreement, and also make available any other maps, records, or other materials available to the City from any other public agency or body.

C. The Engineer shall furnish to the City, copies of all maps, records, field notes, and soil tests which were developed in the course of work for the City and for which compensation has been received by the Engineer at no additional expense to the City except as provided elsewhere in this Agreement.

5. Assignment/Delegation

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

6. Engineer is Independent Contractor

A. The City's project director, or designee, shall be responsible for determining whether Engineer's work product is satisfactory and consistent with this agreement, but Engineer is not subject to the direction and control of the City. Engineer shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Section 3 of this Agreement.

B. Engineer is an independent contractor and not an employee of City. Engineer acknowledges Engineer's status as an independent contractor and acknowledges that Engineer is not an employee of the City for purposes of workers compensation law, public employee benefits law, or any other law. All persons retained by Engineer to provide services under this contract are employees of Engineer and not of City. Engineer acknowledges that it is not entitled to benefits of any kind to which a City employee is entitled and that it shall be solely responsible for workers compensation coverage for its employees and all other payments and taxes required by law. Furthermore, in the event that Engineer is found by a court of law or an administrative agency to be an employee of the City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Engineer under the terms of the agreement, to the full extent of any benefits or other remuneration Engineer receives (from City or third party) as a result of said finding and to the full extent of any

payments that City is required to make (to Engineer or to a third party) as a result of said finding.

C. The undersigned Engineer hereby represents that no employee of the City or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from the Engineer, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

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

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

F. Engineer certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.

G. Engineer is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7.

Indemnity

A. The City has relied upon the professional ability and training of the Engineer as a material inducement to enter into this Agreement. Engineer represents to the City that the work under this contract will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of the engineering profession under similar conditions and circumstances as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Engineer's work by the City shall not operate as a waiver or release. Acceptance of documents by City does not relieve Engineer of any responsibility for negligent or wrongful design deficiencies, errors, or omissions.

B. Claims for other than Professional Liability. Engineer shall defend, save and hold harmless the City of Milwaukie, its officers, agents, and employees from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, of whatsoever nature, including intentional acts to the extent resulting from or arising out of the activities of Engineer or its subcontractors, sub-consultants, agents or employees under this contract. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

C. Claims for Professional Liability. Engineer shall defend, save and hold harmless the City of Milwaukie, its officers, agents, and employees from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, to the extent arising out of the professional negligent acts, errors or omissions of Engineer or its subcontractors, sub-consultants, agents or employees in performance of professional services under this agreement. Any design work by Engineer that results in a design of a facility that is not readily accessible to and usable by individuals with disabilities shall be considered a professionally negligent act, error or omission.

D. As used in subsections B and C of this section, a claim for professional responsibility is a claim made against the City in which the City's alleged liability results directly from the quality of the professional services provided by Engineer, regardless of the type of claim made against the City. A claim for other than professional responsibility is a claim made against the City in

which the City's alleged liability results from an act or omission by Engineer unrelated to the quality of professional services provided by Engineer.

8. Insurance

Engineer and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover risks arising directly or indirectly out of Engineer's activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is primary insurance with respect to the interests of City and that any other insurance maintained by City is excess and not contributory insurance with the insurance required hereunder.

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

A. Commercial General Liability Insurance

Engineer shall obtain, at Engineer's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract and Product and Completed Operations. Such insurance shall be primary and non-contributory. The following insurance will be carried:

Coverage	Limit
General Aggregate	$3,000,000
Products-Completed Operations Aggregate	3,000,000
Personal & Advertising Injury	3,000,000
Each Occurrence	2,000,000
Fire Damage (Any one fire)	500,000
Medical Expense (Any one person)	5,000

B. Professional Liability

Engineer shall obtain, at Engineer's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent act. Combined single limit per occurrence shall not be less than $2,000,000, or the equivalent. Annual aggregate limit shall not be less than $3,000,000 and filed on a "claims-made" form.

C. Commercial Automobile Insurance

Engineer shall also obtain, at engineer's expense, and keep in effect during the term of the contract Commercial Automobile Liability coverage on an "occurrence" form including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than $2,000,000.

D. Workers' Compensation Insurance

The Engineer, its subcontractors, if any, and all employers providing work, labor or materials under this Contract who are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers that complies with ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than $500,000 each accident.

E. Additional Insured Provision

The Commercial General Liability Insurance Policy and Automobile Policy shall include the City its officers, directors, and employees as additional insureds with respect to this contract. Coverage will be endorsed to provide a per project aggregate.

F. Extended Reporting Coverage

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

G. Notice of Cancellation

There shall be no cancellation, material change, or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The 30 days' notice of cancellation provision shall be physically endorsed on to the policy.

H. Insurance Carrier Rating

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

I. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Engineer shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. A renewal certificate will be sent to the address below ten days prior to coverage expiration.

Certificates of Insurance should read "Insurance certificate pertaining to contract for (Name of project) . The City of Milwaukie, its officers, directors and employees shall be added as additional insureds with respects to this contract. Insured coverage is primary" in the description portion of certificate.

J. Primary Coverage Clarification

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

K. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in general liability.

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

City of Milwaukie
Attn: Finance
10722 SE Main Street
Milwaukie, Oregon 97222

Business Phone: 503-786-7555
Business Fax: 503-653-2444
Email Address: finance@milwaukieoregon.gov

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

The procuring of such required insurance shall not be construed to limit Engineer's liability hereunder. Notwithstanding said insurance, Engineer shall be obligated for the total amount of any damage, injury, or loss to the extent caused by negligence or wrongful acts in the performance of services with this contract.

9. Termination Without Cause

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

10. Termination With Cause

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

1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.

2) If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.

3) If any license or certificate required by law or regulation to be held by Engineer, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

4) If Engineer becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Engineer, if a receiver or trustee is appointed for Engineer, or if there is an assignment for the benefit of creditors of Engineer.

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

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

1) If Engineer fails to provide services called for by this agreement within the time specified herein or any extension thereof, or

2) If Engineer fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten days or such other period as City may authorize.

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

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

11. Non-Waiver

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

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

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

City	**Contractor**
City of Milwaukie	Company: **AKS Engineering & Forestry, LLC**
Attn: Accounts Payable	Attn: John P. Christiansen, PE
10722 SE Main Street Milwaukie, Oregon 97222	Address: 12965 SW Herman Rd, Suite 100 Tualatin, OR 97062
Phone: 503-786-7523	Phone: (503) 563-6151
Fax: 503-786-7528	Fax: (503) 563-6152
Email Address: finance@milwaukieoregon.gov	Email Address: johnc@aks-eng.com

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

13. Merger

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

14. Force Majeure

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

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

15. Non-Discrimination

Engineer agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statues, rules, and regulations. Engineer also shall comply with the Americans with Disabilities Act of 1990, as amended, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

16. Errors

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

17. Extra (Changes) Work

Only the **City's Project Manager, Geoff Nettleton** may authorize extra (and/or change) work. Failure of Engineer to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Engineer thereafter shall be entitled to no compensation whatsoever for the performance of such work.

18. Governing Law

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

19. Compliance With Applicable Law

Engineer shall comply with all applicable federal, state, local laws and ordinances, including but not limited to ORS 279B.020, 279B.220, 279B.225, 279B.230, and 279B.235, which are incorporated herein. If Engineer is a foreign contractor as defined in ORS 279A.120, Engineer shall comply with that section and the City must satisfy itself that the requirements of ORS 279A.120 have been complied with by Engineer before City issues final payment under this agreement. Engineer shall not provide or offer to provide any appreciable pecuniary or material benefit to any officer or employee of City in connection with this Agreement in violation of ORS chapter 244...

20. Conflict Between Terms

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

21. Access to Records

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

22. Audit

Engineer shall maintain records to help assure conformance with the terms and conditions of this Agreement, and to help assure adequate performance and accurate expenditures within the contract period. Engineer agrees to permit City, the State of Oregon, the federal government, or their duly

authorized representatives to audit all records pertaining to this Agreement to help assure the accurate expenditure of funds.

23. Severability

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

24. Complete Agreement

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

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly

authorized undersigned officer and Engineer has executed this Agreement on the date hereinabove first written.

CITY OF MILWAUKIE

_____

Signature

_____

Print Name & Title

_____

Date

ENGINEER

_____

Signature

John P. Christiansen - Member

Print Name & Title

6/27/16

Date

Exhibit A

Scope of Work

1.1 Introduction

The City of Milwaukie (City) is seeking high quality and responsible services from qualified and experienced consulting engineering firms to provide surveying and engineering design and consultation services for approximately 6,350 LF of stormwater pipe at a competitive price.

1.2 Term of Service

The contract resulting from this Request for Proposals (RFP) shall be for a period not to exceed 5 years, commencing from the date of the fully executed contract.

1.3 Project Understanding

System wide flooding is predicted during the existing and future 10- and 25-year storm events. This project addresses the majority of the flooding via the Meek Street bypass, which reroutes water away from the Harrison Street system to the north.

The City previously completed design for a 36-inch pipeline to convey flow from 32nd Ave, along Meek Street, and north along the railroad tracks to the west end of Balfour Street. In 2005, a portion of this pipeline along Meek Street and west of 32nd Avenue was constructed. However, the Meek Street pipe system was constructed with inadequate slope to maintain the existing concept. This Project proposes to incorporate the recently constructed pipeline along Meek Street into the design.

The selected consultant may utilize the City's 2014 Stormwater Master Plan prepared by Brown and Caldwell as a basis for design. The consultant shall verify all alignments, pipe sizes, utility conflicts, and runoff from contributing basins in finalizing the design. Subbasin boundaries defined in the master plan can be assumed to be accurate and utilized as a basis for the analysis. The analysis shall include runoff calculations from all areas contributory to the proposed system. The consultant shall notify City if runoff from areas not identified in the master plan affect the design of the proposed system. The proposed system is generally described below.

The portion of this project along Monroe Street will include replacement of the existing 12-inch concrete pipe with HDPE. This pipe will discharge into a new detention facility between Oak Street and Railroad Avenue, which is necessary to maintain use of the recently constructed 36-inch pipeline on Meek Street. The detention facility is proposed on Tax Lot 11E36AB03000, which is currently undeveloped private property.

Approximately 1,560 feet of new HDPE pipe is proposed from the discharge of the Oak Street and Railroad Avenue detention facility to Meek Street. Approximately 630 feet of the pipeline will be aligned on private property along an existing 12-inch pipe owned by the City.

The existing 36-inch pipe on Meek Street will be protected in place. A new pipeline will be installed at the westerly manhole and discharge to a detention facility at Balfour Street, which will be sized to utilize the available open space and provide necessary storage to maintain capacity in the system downstream of the manhole located on the westerly end of Boyd Street.

From the Balfour Street detention facility, 1,800 feet of HDPE is proposed to the connection at the manhole located at the westerly end of Boyd Street. Open channel flow may be an option for this reach, but must be further evaluated once the survey is received. This project assumes pipe will be required because information on the available width between the railroad tracks and the toe of the existing slope is unknown.

The outfall from Boyd Street into an existing ditch that runs along the easterly side of the railroad tracks

from Boyd Street to an existing ditch inlet just west of the end of Roswell Street will also need to be evaluated.

Detailed design documents, including a design report, construction plans, and opinions of probable costs, shall be completed utilizing the 2014 Stormwater Master Plan as a guide only. The selected consultant shall perform a detailed survey as the basis of the design. The selected engineer should calculate earthwork quantities and evaluate slope stability, as necessary, utilizing a Geotechnical Engineer registered in the State of Oregon. The eastern portion of the Balfour Street facility is located near the toe of a steep slope.

1.4 Scope of Services

Task 1 – Project Management

A. Project Administration

Consultant shall provide a Project Administration Plan to direct, coordinate, and monitor the activities of the project with respect to budget, schedule, and contractual obligations. The Project Administration Plan shall be updated on a biweekly basis and submitted to the City.

B. Coordination Meetings

Consultant shall provide a minimum of biweekly conference calls and/or meetings between the Consultant and City personnel to review project progress, discuss project challenges and findings, and review early study results. Consultant shall provide a meeting agenda minimum of 1 day prior to coordination meetings. Consultant shall ensure that the City personnel and Consultant team members maintain a shared understanding regarding study direction, objectives, and deliverables. Coordination meetings shall end with the issuance of the 100% design package.

C. Quality Assurance and Quality Control Review

Consultant shall conduct internal Quality Assurance and Quality Control meetings and follow-up with technical experts as necessary during the course of the project.

Task 2 – Data Gathering and Alignment Validation

A. Kickoff Meeting and Project Overview

Consultant shall initiate the project kickoff meeting. Consultant shall prepare an agenda for the kickoff meeting, invite necessary attendees, collect data, and discuss the schedule of the project.

B. Conduct Interviews

Consultant shall conduct interviews with City personnel familiar with the existing stormwater system operation and the City's 2014 Stormwater Master Plan to collect information necessary for the project. The interview will be structured in a group setting and will include City stakeholders as directed by the City.

C. Alignment Validation

Consultant shall complete the following:

C.1 Review the City's 2014 Stormwater Master Plan to verify stormwater runoff rates contributory to the proposed system.

C.2 Review record as-built drawings provided by the City, if available.

C.3 Prepare a preliminary stormwater analysis for sizing of all infrastructure associated with the proposed system.

C.4 Prepare a GIS base map based on City-provided utility and tax lot information and LiDAR contours.

C.5. Complete a GPS survey of existing site features and infrastructure critical to the development of

the design concept as determined by the Project Engineer (excludes work within UPRR right-of-way).

C.6 Develop a plan and profile of the entire proposed system including preliminary grading of the stormwater facilities.

C.7 Complete a geotechnical investigation including the following:

- Literature search and review of geologic maps, geotechnical reports in Shannon & Wilson files, files provided by the City (if available), LiDAR, and aerial photos.
- Site reconnaissance and utility locates; obtain County permits to do exploration on County properties.
- Explorations:
  - One mud-rotary boring to 40 feet below ground surface (bgs) through the pavement at the end of SE Balfour Street using a vibrating wire piezometer installation for measuring groundwater and a steel flush mount monument cover to investigate mapped landslide.
  - One mud-rotary boring to 20 feet bgs in the grass area behind the senior living high-rise on Tax Lot 100 (Map 1 1E 25CD) owned by Clackamas County to investigate mapped quarry.
  - One hand-auger boring to a depth of 15 feet bgs on the slope below the dead-end of Balfour Street within City right-of-way to investigate mapped landslide.
- Laboratory testing consisting of natural moisture content testing, in-place unit weight testing, and Atterberg Limits Testing.
- Preliminary engineering evaluation.
- Preliminary Geotechnical Design Technical Memorandum Letter (draft and final).

C.8 Complete a Hazardous Materials Corridor Assessment (HMCA) for areas affected by the project, including the following:

- The HMCA will identify potential sources of contamination that could impact the project. The HMCA will review the records listed below and make conclusions based on the data. Consultant's work conducted for the HMCA must be performed within the project API (Area of Potential Impact) and according to generally accepted environmental procedures as outlined in the Hazardous Waste Guide for Project Development by the American Association of State Highway and Transportation Officials (AASHTO) Special Committee on Environment, Archaeology and Historic Preservation and ODOT's HazMat Program Procedures Guidebook (March 2010).
- Consultant shall prepare a HMCA report summarizing the information obtained through the following tasks:
  - Physical Setting Sources. The physical setting sources must include (when available) a current U.S. Geological Survey (USGS) 7.5-minute topographic map and geologic, hydrologic, and soil information.
  - Historical Research. The resource (or combination of resources) selected will, if possible, provide historic information regarding land use for at least the past 50 years and include one or more of the following resources: Sanborn Fire Insurance Maps, historical aerial photographs, reverse City directories, historic property ownership/occupancy records, or building permits.
  - Environmental Database Search. Review previous environmental reports and available federal and State environmental records for hazardous waste generators, documented leaking or permitted underground storage tanks (USTs), sites with known or suspected releases, landfill sites, and Superfund sites using government web-based databases or using a commercial database search report. Consultant shall use the search radii set forth in ASTM Standard E1527-13 for these database searches.

- Site Reconnaissance. Conduct a visual reconnaissance from public rights-of-way and other areas accessible to the general public; consultant is not allowed to enter private property or contact the property owners without a permit of entry supplied, signed, and approved by the City.
- HMCA Report. Prepare a Draft HMCA report summarizing the information obtained through the scope of services defined above. The HMCA report must include a description of field observations, information from State and federal environmental databases, historic land use, a scaled map showing the locations of all identified potential sources of contamination, copies of historic data, copies of State and federal databases, and any other relevant documentation. It must include opinions and conclusions about the conditions observed in and adjacent to the API. Consultant shall prepare an Initial Site Assessment Checklist according to AASHTO and ODOT guidelines, provide photographs documenting project corridor observations, and include recommendations for additional studies or investigations if appropriate. The report must include conclusions that identify specific sources of contamination that could impact the project or the proposed construction work. The final report must be developed based on the City's review comments.

C.9 Prepare a programming-level appraisal for Tax Lot 3000 (Map 1 1E 36AB), Tax Lot 100 (Map 1 1E 25CD), and the portion of UPRR right-of-way affected by the Balfour Street stormwater facility. Notify the City of any additional properties requiring temporary construction or permanent easements.

C.10 Coordinate and participate in up to two concept design meetings with UPRR. Prepare any necessary exhibits and documents required to effectively communicate the preliminary design to UPRR.

C.11 Perform a natural resource assessment of the project area to identify any waters of the State that may be affected by the project, including a field delineation of natural resources. Prepare a technical memorandum of the findings and permitting procedure if natural resources are found within the project limits and are anticipated to be affected. Assuming the validation of the proposed alignment, these findings will be incorporated into the design documents within Task 4.

C.12 Prepare a Preliminary Engineer's Construction Cost Estimate for the project utilizing an engineer's estimate of preliminary quantities in accordance with scoping requirements established by the City.

C.13 Prepare a technical memorandum summarizing the findings of the Alignment Validation Study and final recommendations regarding project phasing.

Task 2 Assumptions

Civil Engineering:

- The stormwater analysis will extend from the inlet at the Roswell Street stormwater facility to the intersection of SE 37th Avenue and SE Monroe Street and be inclusive of all areas tributary to the project. Existing and future pipe sizes and slopes will be based on the master plan model, with the exception of the project alignment where the pipelines and ponds will be sized to convey the design storm.
- A fatal flaw in the CIP 5-1 concept is defined as follows:
  a. The alignment cannot be constructed due to limitations of permitting through UPRR (i.e. UPRR will not allow the pipeline and stormwater facilities to be constructed in the UPRR ROW).
  b. Downstream deficiencies are found in the Roswell Street stormwater facility that cannot be addressed by attenuating stormwater within the proposed stormwater infrastructure.
  c. Hazardous materials are found within project limits to the extent that mitigation would become cost prohibitive.

- If a fatal flaw is discovered during Task 2, the following course of action will be taken:
    a. Identify the fatal flaw and notify the City.
    b. Renegotiate the professional services contract to include:
        - An alternatives analysis for modifying the CIP 5-1 concept to alleviate the downstream deficiency or modified alignment.
        - Design services including design development, construction documents, and construction phase services for the recommended system improvements as determined through the alternative analysis.
- It is assumed that the Balfour Street facility will be sized to attenuate stormwater to the extent that the system downstream of Boyd Street can convey the design storm from the proposed system.
- The stormwater analysis will be completed for the 2-, 5-, 10-, 25-, 50-, and 100-year storm events. The 100-year storm event will be the basis of design.
- The Preliminary Engineer's Construction Cost Estimate will be based on the engineer's experience with construction projects of a similar nature, and Oregon Department of Transportation Average Bid Prices.
- The Preliminary Engineer's Construction Cost Estimate will include a 30% contingency.

Geotechnical:

- A bond will not be required to perform explorations on City property.
- Consultant shall not enter private property or contact the property owners or occupants without a permit of entry.
- Consultant will prepare applications for applicable City permits. City will pay City permit fees.
- Consultant shall be responsible for traffic control as necessary to execute the geotechnical investigation.
- Landslide mitigation design will not be required.

HMCA:

- The project corridor can be treated as a single property.
- The HMCA will not include sampling of soil, water, air, or other media; laboratory analysis of any material; inspection for asbestos, lead-based paint, or other hazardous building materials; evaluation for the presence of radon gas; or a chain of title.

Task 3 – Design Survey

A. Topographic Survey

Consultant shall commence the topographic survey as soon as possible after Task 2 is completed. The scope of work to be performed by the selected consultant(s) may include, but are not limited to, typical survey services as described below:

- Contact Utility Notification Center of Oregon at least 48 hours prior to any surveying activities. All existing underground utilities within the proposed survey area shall be clearly marked.
- Coordinate with property owners to arrange access to private property, including land owned by UPRR,
- The survey shall reference the NAD 83 horizontal datum and NAVD 88 vertical datum in U.S. feet for the relative zone in the appropriate State Plane coordinate system. If applicable, provide any combined scale factor and origin used to convert coordinates from grid to ground.
- Record the location and description of all primary horizontal and vertical control benchmarks and provide a monument record for each one found or set.
- Horizontal and vertical data shall be taken at all pavement edges and pads (asphalt, concrete, gravel, etc.), concrete pavement joints, pavement markings (color and width), breaklines, curbs (back, face and pan), utility lines (communications, electrical, gas, sanitary sewer, storm sewer, water, etc.), hand holes, inlet/outlet structures, hydrants, junction boxes, lights, manholes, meters, navigational

aids, vaults, fence (height and type), poles/posts (height and type), reflectors, signs, drainage ditches and channels, grade breaks, walls, specific site features, etc. A sufficient number of points shall be taken along all horizontal curves to describe approximate radii. Provide structure rim or grate elevations, inverts, and pipe sizes. Points shall be taken on a 25-foot by 25-foot (25' x 25') grid on pavements and open terrain areas. Hardscape points shall be accurate to within four-hundredths of a foot (0.04') and terrain points within one-tenth of a foot (0.10').

- Provide recorded information (e.g. property lines, rights-of-way, easements, underground utility sizes).
- Provide any field sketches and/or notes in PDF format (.pdf), if applicable.
- Provide photos (.jpg format) of field conditions, as requested.
- Develop legal descriptions.
- Other survey work as determined by consultant to provide a completed project design.

B. Survey Deliverables

Survey data shall be in the English system of measurement. Sheets shall be setup to print full size on ANSI D (22"x34") in landscape. The survey deliverables shall include an electronic survey base map that is compatible with AutoCAD 2013 software as described below:

- An ASCII file containing all survey points in comma delimited, number, northing, easting, elevation, and description format (PNEZD).
- AutoCAD release 2013 drawing format (.dwg) or previously released version.
- Surface entity of existing ground topography with all associated points, feature lines, 3D breaklines, etc. used in creating the surface. If the surface was created using AutoCAD Land Development Desktop, provide all points, breaklines, and generated Triangulated Irregular Network (.tin) files.
- XML file (.xml) with all alignments, points, surfaces, etc.
- Layer naming convention shall follow the National CAD Standards (NCS).
- Entities shall be separated onto specific layers. Do NOT group dissimilar items together.
- All entities shall be drawn in model view at a scale of 1:1.
- The layer properties of all entities shall be set to BYLAYER.
- Block symbols shall be to scale.

<u>Task 4 – Design Development</u>

A. Stormwater Mainline Design

Consultant shall design the stormwater mainline replacement based on best engineering practices and principles. Consultant shall design the grade, depth, and alignment of the stormwater mainline and other appurtenances as deemed necessary by the Design Engineer. Consultant shall analyze the adequacy of the downstream stormwater system with regard to this stormwater mainline and any other factors that may affect the efficient operation of the proposed stormwater mainline. Consultant shall make recommendations for any required improvements that may be affected by the design of this project. Consultant shall design proposed alignment to minimize right-of-way acquisition costs. Once the alignment has been designed and validated, consultant shall inform City of property to be acquired. The project is intended to be split into two construction phases. Phase 1 will construct a portion of the system from the downstream connection point near Boyd Street to the existing manhole located at the westerly end of Meek Street. Phase 2 will continue construction from the connection point within Meek Street to the upstream connection located within Monroe Street. The selected consultant will design and produce 30% design plans for both phases.

B. 30% Construction Plans

The Consultant's standard plan set template shall be utilized for creating the 30% plan set for this

project. Sheets in the plan set shall include, but are not limited to, plan and profile views along the alignment of the stormwater mainline, proposed temporary and permanent easements, construction access, long-term access for stormwater facilities, necessary details to show connection to the existing stormwater mainline, open discharge location, detention facilities, retaining walls (if required), trees, fences, and structures to be removed/relocated by the project.

C. UPRR Encroachment Permit

Consultant shall coordinate the design of the project with UPRR and submit the 30% plans to UPRR, following approval of the plans by the City, to begin the process of obtaining a Pipeline Encroachment Permit. Consultant shall notify the City of associated review and permit fees that may be charged by UPRR.

D. Geotechnical Investigation

Consultant shall perform a geotechnical investigation including the following:

- Obtain railroad right-of-way permit for geotechnical exploration.
- Perform site reconnaissance and utility locates.
- Conduct explorations, including:
  - Clear drilling explorations sites of blackberries and low brush with an excavator and perform up to four test pits in railroad rights-of-way to a depths of 10 feet each for trench exploration to observe gravel and cobble size.
  - Conduct seven hollow-stem auger (HSA) borings in City and railroad rights-of-way to a depths of 15 feet each and install three vibrating wire piezometers in three of the borings with steel flush mount monument covers to monitor groundwater levels for trench explorations.
  - Conduct one mud-rotary or hollow-stem auger borings in railroad rights-of-way to a depth of 30 feet to investigate toe of mapped landslide.
  - Perform one infiltration test at each of the stormwater facilities following the Portland Stormwater Design manual.
  - Clear drill rig access and excavate several shallow test pits with backhoe/small excavator to clear for additional coarse-grain material classification and trench constructability evaluations over the course of one day.
- Subcontract a railroad flagger and coordinate all railroad borings with railroad operations.
- Perform laboratory testing consisting of natural moisture content testing, in-place unit weight testing, material finer than No. 200 sieve testing, sieve with hydrometer testing, and Atterberg Limits Testing.
- Perform analytical testing of IDW (not including test pit excavations) and describe costs contained in Task 4.E.
- Perform engineering evaluation, including:
  - Slope stability analysis at mapped landslide.
  - Excavation and shoring evaluation.
  - Assessment of groundwater control.
  - Assessment of subgrade preparation, pipe bedding, and trench backfill.
- Prepare Geotechnical Data Report (draft and final).
- Prepare Geotechnical Design Report (draft and final).

E. Hazardous Material Site Assessment (HMSA)

1. Level I HMSA

Consultant shall prepare two Phase I Environmental Site Assessments (ESAs) in accordance with the U.S. Environmental Protection Agency's (EPA's) All Appropriate Inquiries (AAI) and

American Society for Testing and Materials (ASTM) Standard E 1527-13 procedures: one for Tax Lot 3000 and one for Tax Lot 100/UPRR right-of-way affected by the Balfour Street stormwater facility. The Phase 1 ESAs will be completed after coordination meetings have occurred with UPRR and concurrently with the development of the 30% design.

Consultant shall prepare each Phase I ESA report summarizing the information obtained through the following tasks:

- **Physical Setting Sources.** Sources will be reviewed to obtain information about the site. The physical setting sources will include a current U.S. Geological Survey (USGS) 7.5-minute topographic map, geologic/hydrologic maps and reports, and soil maps.
- **Historical Use Records.** Historical use information records will be reviewed with regard to previous land use or other activities that could have led to the presence of hazardous or dangerous materials, including petroleum products, in the environment of the site. Potential sources of information include aerial photographs; topographic maps; current and previous owners; abutters; historical societies; libraries; County Assessor records; Milwaukie City directories; Metskers, Sanborn, and Kroll maps; and files of federal, State, and local environmental agencies. The actual sources available for a given study will vary and may include other sources, as well as any or all of the above. The sources used will be referenced in the report along with the name of the person contacted, where appropriate. For a complete review of historical information, consultant will obtain a 50-year Chain of Title Report with an ownership cover sheet from a title insurance company. Consultant will evaluate it as part of the Phase I ESA and incorporate the information into the final report.
- **Agency Records Review.** The purpose of a records review is to obtain and review records that will help identify RECs in connection with the property. Standard federal, State, and Tribal databases will be reviewed for the site and nearby properties within the ASTM-recommended search distances.

  Federal agency lists to be reviewed will include:
  - National Priorities List (NPL)
  - Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) sites
  - Resource Conservation and Recovery Act (RCRA) treatment, storage, and disposal (TSD) facilities
  - RCRA Corrective Actions (CORRACTS) for TSD facilities
  - RCRA generators
  - Emergency Response Notification System (ERNS) sites

  State and Tribal lists to be reviewed will include:
  - Environmental Cleanup Sites Inventory (ECSI)
  - Confirmed Release List (CRL) sites
  - Voluntary Cleanup Program (VCP) list
  - Landfill and/or solid waste disposal sites
  - Underground Storage Tank Facilities (UST)
  - Leaking underground storage tank (LUST) lists

  The NPL, RCRA TSD facilities with CORRACTS and the Hazardous Sites lists will be reviewed for sites within a one-mile radius of the site. The CERCLIS, RCRA TSD facilities without CORRACTS, ECSI, CRL, VCP, State landfill/solid waste disposal sites, and the LUST lists will be reviewed for sites within a half-mile radius of the site. All other lists will be reviewed for the site and adjoining properties.

- **Site Reconnaissance.** Consultant shall conduct a site reconnaissance of the immediate vicinity of the site to look for RECs on the site and to evaluate the potential for adverse environmental impacts from adjacent land uses. RECs may include, but are not limited to, solid waste disposal, drains, sumps, USTs, aboveground storage tanks (ASTs), drums, spills, stains, and hazardous materials. Consultant shall also look for stressed vegetation, fill, and other indicators of potential contamination. City shall make the initial contact with owners/occupants and provide the right-of-entry and contact information to consultant. Arrangements will be made, as required, for access to the property so that the potential impact of such areas can be included in the assessment.
- **Interviews.** Consultant shall conduct interviews with available and appropriate owners, other possible knowledgeable parties, and local government officials to obtain information indicating RECs in connection with the property.
- **Report.** Consultant shall prepare draft reports for both properties that will include a brief site history, a summary of the findings, an evaluation of on-site conditions, and the consultant's opinion and conclusions about the conditions observed at the properties. The report and opinion will be based solely on the services described. The consultant shall deliver the draft report for review. The consultant will address comments and/or questions in the final report.

2. Level II HMSA

Consultant shall conduct a Level 2 Environmental Site Assessment (ESA) for the project. These activities will be performed to address potential recognized environmental conditions (RECs) identified in a previous HMCA conducted for the project. The Level 2 ESA will be performed in general accordance with ASTME1903-11 *Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process*, professional standard of care, and, where applicable, procedures described in the Oregon Department of Environmental Quality (DEQ) and U.S. Environmental Protection Agency (EPA) guidance documents. The Level 2 ESAs will be completed after coordination meetings have occurred with UPRR and concurrently with the development of the 30% design.

In association with the geotechnical investigation described in Section 4.D, consultant shall perform a Level 2 ESA to characterize subsurface conditions for the project corridor. The Level 2 investigation will be conducted using hollow-stem auger (HSA) borings and hand augering sampling equipment and will include up to six pipeline assessment locations by HSA and up to four pipeline assessment locations by hand augering. Six of the seven geotechnical borings (HSAs to depth of 15 feet) described in Section 4.D will be used during environmental assessment activities.

Consultant shall conduct all site characterization activities and shall select equipment capable of completing the soil sampling. Pre-sampling activities (i.e. preparation of a site-specific Health and Safety Plan and utility locates) will be conducted. Soils will be field screened for odor, stain, and sheen. Soil sampling will include:

- Six pipeline assessment locations advanced to a depth of 15 feet below ground surface (bgs) by HSA. Samples will be collected in 5-foot increments through the boring depth.
- Four pipeline assessment locations hand augered to a depth of 2 feet bgs to evaluate the potential presence of contaminants associated with railroad operations.
- Grab groundwater sampling will include:
  - Six pipeline assessment locations advanced by HSA.
- Level 2 investigation activities will be performed in general accordance with ASTM D 4700-

91, Standard Guide for Soil Sampling within the Vadose Zone; ASTM D 6051-91(2006), Standard Guide for Composite Sampling and Field Subsampling for Environmental Waste Management Activities; ASTM D 4220-95, Standard Practices for Preserving and Transporting Soil Samples; ASTM D 4823-95, Standard Guide for Core Sampling Submerged, Unconsolidated Sediments; U.S. Environmental Protection Agency (EPA) Field Sampling Guidance Document #1215; and Oregon Department of Environmental Quality (DEQ) guidance documents. Investigation activities will include the following:

- Samples will be collected into pre-cleaned containers provided by an analytical laboratory and placed into a secure, chilled, storage container.
- Samples will be submitted for laboratory analysis of identified contaminants of concern (COCs).
- Samples will be maintained under chain-of-custody protocols.
- Sampled material will be described using the Unified Soil Classification System.

Field notes must include sampling logs, field observations, and sample chain-of-custody forms.

Collected soil and grab groundwater samples will be submitted to a National Laboratory Accreditation Program (NLAP) laboratory for chemical analysis.

Soil and groundwater samples collected, as well as each drum of investigation-derived waste from both geotechnical and environmental investigations, will be analyzed for the following:

- Qualification of the presence and nature of petroleum hydrocarbons using the Northwest Total Petroleum Hydrocarbons (NWTPH)-HCID Method for hydrocarbon identification, with follow-up quantification, if necessary, for:
  - Gasoline-range hydrocarbons using the NWTPH-Gx Method
  - Diesel- and oil-range hydrocarbons using the NWTPH-Dx Method
  - Volatile organic contaminants (VOCs) using EPA Method 8260B
  - Polycyclic aromatic hydrocarbons (PAHs) using EPA Method 8270D-SIM
  - Polychlorinated biphenyls (PCBs) using EPA Method 8082
- The eight heavy metals regulated as hazardous wastes under the Resource Conservation and Recovery Act (RCRA) (arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver) using EPA Methods 6020/200.8. Soil samples that contain total metals concentrations that exceed their respective trigger levels will have a Toxicity Characteristic Leaching Procedure (TCLP) follow-up analysis by EPA Method 1311.

Consultant shall prepare a Level 2 Environmental Data Report and a Summary of Project Site Contaminants. The Data Report shall include a summary of field activities, an evaluation of analytical results, and conclusions regarding human health and safety and disposal considerations. The Summary of Project Site Contaminants shall include a brief summary of identified construction areas impacted by contaminated media as well as human health and safety and disposal considerations.

F. Land Use Planning

Consultant shall complete the following to support a Type II development review for the creation of a parcel within an existing railroad right-of-way:

- Prepare for and attend a pre-application conference with City of Milwaukie staff as follows:
  - Complete the City's Pre-Application Appointment Worksheet
  - Prepare a preliminary site plan
  - Prepare a written narrative describing the application and a detail list of questions and issues to discuss at the conference

    - Coordinate with the client for the City pre-application conference fee and submit the pre-application conference package to the City
    - Prepare for, attend, and participate at the pre-application conference.
- Prepare a Type II Land Use Application for a partition as follows:
    - Complete the City Land Use Application Form
    - Complete the City Preliminary Plat Checklist
    - Complete the City Submittal Requirement Checklist
    - Prepare a detailed written narrative addressing the applicable City approval criteria from the Land Division Ordinance
    - Prepare an preliminary existing conditions plan (based on survey work performed)
    - Prepare a preliminary partition plat
    - Prepare a preliminary stormwater report, if determined necessary by the City
- Upon completion of the above tasks, the application materials will be compile and organized and a draft copy of the application package will be prepared. A copy of the draft copy of the application will be sent to the Client, and owner/applicant signatures (on the City Land Use Application Form) and a check for the City application fee will be requested. Upon receipt of any Client comments, the signed City Land Use Application Form and City application fee, copies of the application will be made and the application will be submitted to the City of Milwaukie Planning Department for review and processing.
- AKS will coordinate with City Planning Department staff for the application's completeness determination.
- After the City's public notice and comment period has passed copies of any comments received by the City will be obtained and provided to the Client for Consideration.
- A draft copy of the City's Notice of Decision and Staff Report will be requested. If provided by City, this document will be reviewed and a copy will be provided to the Client for consideration.
- The draft Notice of Decision and Staff Report (if provided) or the final Notice of Decision will be reviewed with the Client.

G. Platting

Consultant shall prepare a final partition plat for recording with the Clackamas County Surveyor.

- Prepare a final partition plat in accordance with ORS 92, the requirements of the Clackamas County Surveyor, and the City of Milwaukie
- Submit and process a Final Plat Application (Type I Procedure) to the City of Milwaukie
    - Complete the City Land Use Application Form
    - Complete the City Final Plat Checklist
    - Provide documentation demonstrating how the conditions of approval from the preliminary plat have been met
    - Provide a copy of the property's title report and other title related information (obtained from the Client)
- Submit the Final Partition Plat with the Clackamas County Surveyor
- Make reasonable changes to the final plat as requested by the County, City, or other Agency with Jurisdiction

H. Property Acquisition

Consultant shall provide the management and support necessary to acquire rights-of-way or easements as required by the design of the stormwater mainline and/or detention facilities. The consultant's negotiator(s) must possess a current Oregon Real Estate license, be familiar with federal and/or State acquisition requirements, have the ability to effectively negotiate settlements, understand partial

acquisition appraisals and legal title, interpret right-of-way plans, and possess effective communication skills. Property acquisition services are limited to Tax Lot 3000 (Map 1 1E 36AB), Tax Lot 100 (Map 1 1E 25CD), and the portion of UPRR right-of-way affected by the Balfour Street stormwater facility.

I. Arborist Report

Consultant shall complete an arborist's evaluation of all trees greater than 6 inches diameter at breast height (DBH) that are anticipated to be affected by the project. Prepare an arborist's report noting the size, type, and health of each tree and recommendations for tree removal. Trees scheduled for removal will be marked in accordance with the requirements of Municipal Code Section 16.32.020.

J. Potholing Recommendations

Consultant shall identify on the 30% plans locations where underground utility potholing is recommended. The Consultant will sub-contract with an excavation contractor to execute excavation of potholing. Consultant shall provide surveying services to tie underground utilities exposed through potholing.

K. 30% Design Deliverables

Consultant shall provide to the City all engineering calculations and documents produced during the design of the project and all supplementary information. Information should be presented in an orderly manner and should be provided in both digital and paper formats.

L. City Review of Design

The City shall be allowed time to review the proposed design (plan and profile view) with respect to stormwater mainline alignment, depth and grade, and conflicts with existing and future utilities. The City shall be allowed a four-week period to complete a review of the 30% design.

Task 4 Assumptions

General

- The City seeks to obtain a perpetual exclusive easement from UPRR for the Balfour Street detention facility. Consultant will pursue a perpetual exclusive easement with UPRR however if UPRR will not grant the easement, the services outlined in Tasks 4F, 4G, and 4H will be required to create a fee simple parcel to be transferred from UPRR to the City. If the perpetual exclusive easement is acceptable to UPRR portions of the scope outlined in Tasks 4F, 4G, and 4H, and the associated consulting fees, will be utilized to execute the easement.

Land Use Planning

- The creation of a parcel in the UPRR right-of-way will be completed as a single-parcel partition and processed as a Type II application.
- Type II review provides for administrative review of an application by the Planning Director and includes notice to nearby property owners to allow for public comment prior to the decision. The process does not include a public hearing.
- The review authority for Type II applications shall be the Planning Director.
- Variances are not necessary

Geotechnical:

- A bond will not be required to perform explorations on City property.
- Consultant shall not enter private property or contact the property owners or occupants without a permit of entry.
- Consultant will prepare applications for applicable City permits. City will pay City permit fees.
- Consultant shall be responsible for traffic control as necessary to execute the geotechnical investigation.

- Railroad will charge a single permit fee for the entire site and not an individual permit fee for each exploration site.
- A railroad flagger will only be needed for two days.
- Landslide mitigation design will not be required

HMCA:

- Consultant shall not enter private property or contact the property owners or occupants without a permit of entry.
- Up to six HSA borings and four hand augering locations will be investigated.
- HSA boring depths will not exceed 15 feet bgs.
- Ten percent of the initial analytical results will require follow-up analyses.
- Analytical turnaround time of 10 working days is sufficient.
- Nonhazardous disposal of up to 12 drums of investigation-derived waste.

Task 5 – Construction Documents

A. Construction Documents

Consultant shall draft the bid construction documents on behalf of the City. The consultant's standard plan set template shall be utilized for creating the bid plan set for this project. Sheets in the plan set shall include, but are not limited to, plan and profile views along the alignment of the stormwater mainline, landscape plan for stormwater facilities, proposed easements, demolition, tree removal, constriction access, City standard details (to be provided by the City), general construction notes (to be provided by the City), erosion control plan and notes, necessary details to show connection to the existing stormwater mainline, open discharge location, detention facilities, retaining walls (if required), and all appurtenance connections.

Construction documents shall be assembled with consideration for the anticipated phasing of construction.

B. City Review of Design

The City shall be allowed time to review the proposed design (plan and profile view) with respect to stormwater mainline alignment, depth and grade, and conflicts with existing and future utilities. The City shall be allowed a four-week period to complete a review of the 60% design and a six-week period to review the 90% design.

C. UPRR Pipeline Encroachment Permit

Consultant shall coordinate with UPRR and obtain a Pipeline Encroachment Permit.

D. Natural Resource Permitting

Consultant shall prepare and submit a wetland fill permit and obtain approval from the Oregon Division of State Lands. This task is anticipated to include a wetland delineation and submittal for concurrence as well as an alternatives analysis.

E. Design Deliverables

1. Design Documents

Consultant shall provide to the City all engineering calculations and documents produced during the design of the project and all supplementary information. Information should be presented in an orderly manner and should be provided in both digital and paper formats.

2. Bid Document Preparation

Consultant will prepare and assemble construction bidding documents, including specifications

for the subject work. Consultant shall provide to the City an electronic bid plan set in both PDF and DWG format (that is compatible with the AutoCAD 2013 format). The consultant shall also provide to the City two ANSI D (22"x34") paper copies in landscape format for the final bid plan set.

3. Engineer's Construction Cost Estimate
Consultant shall prepare a Final Engineer's Construction Cost Estimate for the project.

Task 5 Assumptions
Engineering

- One set of construction plans and contract documents will be issued for the project, including both phases of work. A phase delineation will be provided on the plans. A bid schedule and special specifications, as applicable, will be prepared for each phase of work

Task 6 – Construction Phase Services – Phase 1

A. Bid Support and Contractor Notification – Phase 1
Consultant will assist the City with responses to questions or RFIs regarding the bid documents. Consultant will prepare a written evaluation of the bidder submittal. If requested by the City, consultant will notify the selected contractor. Consultant will attend a pre-construction conference prior to commencement of work at the site.

B. Construction Survey – Phase 1
Consultant will provide on-site construction surveying and staking services as necessary. This shall include, but not be limited to:

- Any surveying or layout work required to establish grades, inverts, elevations, road layouts, etc.
- Provide any field sketches and/or notes in PDF format (.pdf), if applicable.
- Provide photos (.jpg format) of field conditions, as requested.
- Provide record as-built drawings, as requested.
- Provide monument installation or relocation, as necessary
- Other survey work as determined by consultant to provide a completed project design.
- Prepare and submit a pre-construction survey to Clackamas County.
- Prepare and submit a post-construction survey to Clackamas County, including resetting of monuments disturbed by construction.

C. Construction Observation
Consultant will provide on-site construction observation services during the construction phase, as requested by the City. Consultant will make visits at intervals as directed by the Project Manager in order to observe the progress of the work. Such visits and observations by consultant are not intended to be exhaustive or to extend to every aspect of contractor's work in progress.

Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the work based on consultant's exercise of professional judgment. Based on information obtained during such visits and such observations, consultant will evaluate whether contractor's work is generally proceeding in accordance with the contract documents, and consultant will keep the Project Manager informed of the general progress of the work.

Consultant shall not supervise, direct, or have control over contractor's work during such visits or as a result of such observations of contractor's work in progress, nor shall consultant have authority over or responsibility for the means, methods, techniques, equipment choice and usage,

sequences, schedules, or procedures of construction selected by contractor; for safety precautions and programs incident to contractor's work; nor for any failure of contractor to comply with laws and regulations applicable to contractor's furnishing and performing the work.

Consultant will respond to reasonable and appropriate requests for information and issue necessary clarifications and interpretations of the contract documents to the City as appropriate to the orderly completion of contractor's work. Any orders authorizing variations from the contract documents will be made by the City.

If contractor's work will not produce a completed project that conforms generally to contract documents, consultant will bring this to the attention of the Project Manager. Consultant shall not have the authority or responsibility to stop the work of any contractor.

D. As-Builts

Consultant shall as-built survey all structure rim and pipe invert elevations and prepare as-built plans.

E. Final Notice of Acceptability of the Work

Consultant will conduct a final site visit to determine if the completed work of contractor is generally in accordance with the contract documents and final punch list so that consultant may recommend, in writing, final payment to contractor. Accompanying the recommendation for final payment, consultant shall also provide a notice that the work is generally in accordance with the contract documents to the best of consultant's knowledge, information, and belief based on the extent of its services and information provided to consultant upon which it is entitled to rely.

General Assumptions

- Tasks will be executed sequentially as outlined above to minimize costs to the City should a fatal flaw be found in the CIP 5-1 concept.
- Construction related permit fees are excluded from this scope of work and fee.
- The CIP 5-1 concept will be evaluated for feasibility in Task 2. Tasks 3, 4, 5, and 6 assume the pipeline and ponds will align with the CIP 5-1 concept as outlined in the 2014 Stormwater Master Plan.
- Properties and easements can be acquired from existing property owners.
- Boundary resolution does not include encroachment resolution.
- Title research will be completed by the consultant.
- Utilities within the UPRR right-of-way will be located by utility owners.
- Task 7 assumes a four-month duration for construction of Phase 1.
- Construction phase services for Phase 2 are not included within this scope of work.
- Construction Traffic Control Plan will be the responsibility of the contractor.
- Tax Lot 3000, Map 1 1E 36AB is a legal lot of record and can be conveyed in fee simple title to the City of Milwaukie.
- Phase 1 of the project extends from the Roswell Street stormwater facility to the northerly line of Tax Lot 100 (Map 1 1E 25CD). Phase 2 of the project extends from said point to the intersection of SE 37th Avenue and SE Monroe Street.

MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 6. D.**
Meeting Date: **July 5, 2016**

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Adopt Art in Public Places Ordinance**

From: Mitch Nieman, Asst. to City Manager

Date: July 5, 2016

ACTION REQUESTED

Adopt proposed Art in Public Places Ordinance adding Sections 20.06.010 through 20.06.080 to Chapter 20 of the Milwaukie Municipal Code (MMC).

HISTORY OF PRIOR ACTIONS AND DISCUSSION

June 23, 2016: Staff sent an e-mail to Council to explain the City of Portland's "Floor Area Ratio (FAR) Program," which if administered by way of a public art ordinance in Milwaukie, would need to be done with an amendment to the city's development code through the land use process.

June 21, 2016: Members of the Arts Committee met with City Council to present a draft Art in Public Places ordinance that focused exclusively on integrating art into public capital and development projects. Also, the City of Portland's FAR program was discussed.

April 19, 2016: Members of the Arts Committee met with City Council to present their annual strategic plan and introduce a concept Art in Public Places ordinance. The concept ordinance attached a dedication requirement to private and public development.

BACKGROUND

The Arts Committee identified the need for Council to adopt a public art ordinance to provide a sustainable funding stream to foster and create public art in Milwaukie.

The Committee solicited input from community development staff and the city attorney to develop the subject ordinance, which is modeled after similar ordinances that exist in Oregon.

DISCUSSION

On June 21, 2016, staff informed Council that the city attorney couldn't find a public art ordinance in the State of Oregon which attached a dedication requirement to private development. Additionally, staff shared the Emeryville, CA, ordinance with Council—which has a private dedication requirement—in the event Council wanted staff to prepare an ordinance like that for adoption in Milwaukie.

Council asked staff to have the city attorney prepare a memo to research case law in Oregon (or California) where a private dedication was challenged, and to explain any risks or implications of adopting an ordinance—in Oregon—that attaches a dedication requirement to private development. Development of the memo is underway and will be delivered to Council under separate cover.

Staff posted a request for information in the League of Oregon Cities' city manager listserv asking if other cities have considered adopting an ordinance that attaches a dedication requirement to private development and their reason for not doing it. Staff will apprise Council on relative feedback.

Council might also consider whether the new ordinance, if adopted, should apply to the Ledding Library project. Funds for the project, approved in the May election, are very limited.

FISCAL IMPACTS

There is no cost to the City to adopt an art in public places ordinance. Milwaukie is one of the only few cities in the Portland Metropolitan Area that does not have a public art ordinance.

ALTERNATIVES

1. Adopt proposed Art in Public Places Ordinance
2. Do not adopt proposed Art in Public Places Ordinance and direct staff to bring forward a different ordinance that attaches a dedication requirement to private development

ATTACHMENTS

1. Art in Public Places draft ordinance
2. E-mail explaining FAR program
3. Attorney Memo (under separate cover)

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 20.06 ADOPTING AN ART IN PUBLIC PLACES PROGRAM.

WHEREAS, Artistic and cultural resources are essential to the quality of life of a community. Art in Public Places contributes to the economic vitality of a region by improving the quality of the built environment and fostering a positive community identity; and

WHEREAS, Historically, artists have helped shape great civic projects, from federal monuments to community development projects of local government agencies and special districts; and

WHEREAS, Art in Public Places for the City of Milwaukie integrates art into public capital improvement projects and development projects, which enhances Milwaukie's visual environment for those who live here now and for generations to come; and

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

Section 1. The Milwaukie Municipal Code is amended by adding a new Chapter 20.06 Art in Public Places 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

Exhibit A

Sections:

20.06.010 Title.
20.06.020 Purpose.
20.06.030 Definitions.
20.06.040 Dedication of 1.5% to Art in Public Places.
20.06.050 Art in Public Places Fund.
20.06.060 Siting of Art in Public Places Artwork.
20.06.070 Program Guidelines.
20.06.080 Ownership.

20.06.010 Title.

This Chapter shall be known as the "Art in Public Places" program of the City of Milwaukie.

20.06.020 Purpose.

Artistic and cultural resources are essential to the quality of life of a community. Art in Public Places contributes to the economic vitality of a region by improving the quality of the built environment and fostering a positive community identity. Historically, artists have helped shape great civic projects, from federal monuments to community development projects of local government agencies and special districts. Art in Public Places for the City of Milwaukie integrates art into public capital improvement projects and development projects, which enhances Milwaukie's visual environment for those who live here now and for generations to come.

20.06.030 Definitions.

"Art in Public Places" means the program established by this ordinance to set aside a percentage of the total cost of City projects for Art in Public Places Artwork.

"Art in Public Places Fund" means a City fund or account into which all moneys derived pursuant to this Chapter shall be deposited. Monetary contributions for Art in Public Places shall also be deposited into the Art in Public Places Fund. Funds within the Art in Public Places Fund shall be solely be utilized for the purposes outline in this Chapter.

"Artwork" means all forms of original works of art accessible to the public and/or public employees including:

A. Painting of all media, including both portable and permanently fixed works, such as murals;

B. Sculpture which may be in the round, bas-relief, high-relief, mobile, fountain, kinetic, electronic and others, in any material or combination of materials;

C. Other visual media including, but not limited to, prints, drawings, stained glass, calligraphy, glass works, mosaics, photography, film, clay, fiber/textiles, wood, metals, plastics or other materials or combination of materials, or crafts or artifacts.

D. Works of a wide range of materials, disciplines and media which are of specific duration, including performance events, and which are documented for public accessibility after the life of the piece has ended.

E. Art works that possess functional as well as aesthetic qualities.

"City Project" means any capital or development project in an amount over $50,000 paid for wholly or in part by the City of Milwaukie to construct, rehabilitate, remodel or purchase for a public use any building, decorative or commemorative structure, park, parking facility or any portion thereof within the limits of the City of Milwaukie. "City project" does not include street, pathway or utility construction; emergency work; minor alterations; ordinary repair or maintenance necessary to preserve a facility; or service facilities not normally visited by the public, such as maintenance sheds or storage buildings.

"Deaccessioning" means relinquishing title to a work of Art in Public Places.

"Eligible Funds" means a source of funds for projects from which art is not precluded as an object of expenditure.

"Selection Committee" means the committee established by City Staff and the Milwaukie Arts Committee for each project. The Selection Committee is solely responsible for artist selection, review of design, execution, placement and acceptance of Art in Public Places Artwork, and shall communicate such progress to City Council.

"Total Cost" means the entire amount of the City's contribution toward the construction or purchase of a City project. "Total cost" does not include costs for design and engineering, administration, fees and permits, building demolition, relocation of tenants, contingency funds, change order costs, environmental testing or indirect costs, such as interest during construction, advertising and legal fees. When a City project involves the purchase of real property, costs attributable to land acquisition are not included in total cost, while costs attributable to improvements on the real property that are acquired for public use are included in the total cost.

20.06.040 Dedication of 1.5% to Art in Public Places.

A. Dedication: One and one half percent (1.5%) of the Total Cost of a qualifying City Project shall be set aside for the acquisition of Art in Public Places Artwork. Artwork shall be sited in accordance with Section 20.06.060.

B. Restricted funds: If funding for a particular City Project is subject to legal restrictions that preclude Art in Public Places as an object for expenditure, the portion of the City Project that is funded with the restricted funds shall be exempt from the requirements of this Chapter.

C. Phased projects: As a general rule, where a City Project will be constructed in phases, the 1.5% dedication shall be applied to the estimated total cost of each phase of the Project at the time that funds for the phase are appropriated and encumbered. Nothing in this section prevents the Council from deciding to set aside all or part of the entire dedication from the funds of a particular phase, however, as the Council deems appropriate. In determining when to set aside the funds for a phased project, the City shall encourage an overall public are plan for phased work to ensure that art is not located on a piecemeal basis.

20.06.050 Art in Public Places Fund.

There is hereby created a special City fund or account called the Art in Public Places Fund into which the monetary contributions for Art in Public Places shall be deposited.

A. 1.5% of the total cost of City Projects shall be dedicated to Art in Public Places. Such funds shall be deposited into the Art in Public Places Fund at the time that budgeted funds are encumbered for the construction or purchase price of the City Project.

1. 1% of the total cost of City Projects shall be used for costs associated with the acquisition of Art in Public Places Artwork including, but not limited to, the design, purchase and siting of Artwork.

2. 0.5% of the total cost of City Projects shall be used for costs associated with administration of the Art in Public Places Program, including, but not limited to, costs of selection, conservation and maintenance of the collection, community education, deaccessioning and registration of Art in Public Places Artwork.

B. Monetary contributions shall be deposited in separate accounts within the Art in Public Places Fund if separate accounting is deemed appropriate by the City Manager or is required by law.

C. Monetary contributions made other than through the Art in Public Places Program shall be deposited in the Art in Public Places Fund and may be dedicated to or earmarked for a specific program or piece of Artwork, subject to acceptance by the City Council.

D. Disbursements from the Art in Public Places Fund shall be made only after authorization of the City Manager or the Manager’s designee, and shall be made according to this Chapter and any guidelines adopted hereunder.

20.06.060 Siting of Art in Public Places Artwork.

Art in Public Places Artwork selected pursuant to this Chapter may be sited in, on or about any City Project or other property owned, leased or rented by or to the City of Milwaukie. Art in Public Places Artwork may be attached or detached within or about such property, and may be either temporary or permanent.

20.06.070 Program Guidelines.

The City Council shall adopt guidelines for administration of the Percent for Art Program. Such guidelines shall:

A. Provide for the appointment of representatives to the Selection Committee. The Selection Committee's membership shall include a Project architect, engineer, or project manager of given City Project; constituent representative (i.e., user of the facility being built or renovated); two representatives of the Milwaukie Arts Committee; two professional artists; one Community Development Department representative; one Neighborhood District Association representative from the respective neighborhood; one member of City Council.

B. Provide for a method or methods of selecting and contracting with artists for the design, execution and siting of Art in Public Places Artwork.

C. Determine the dedication and disbursement process for the Art in Public Places Fund.

D. Clarify the responsibility for maintenance of Art in Public Places Artwork, including any extraordinary operations or maintenance costs associated with Art in Public Places Artwork, prior to selection.

E. Facilitate the preservation of art objects, ethnic and cultural arts and crafts, and artifacts.

F. Provide a process to deaccession Artwork.

G. Set forth any other matter appropriate to the administration of this Chapter.

H. Provide for annual reporting to City Council and the Milwaukie Arts Committee on the Art in Public Places Program progress.

20.06.080 Ownership.

All Art in Public Places Artwork acquired pursuant to this Chapter shall be acquired in the name of the City of Milwaukie, and title shall vest in the City of Milwaukie.

Nieman, Mitchell

From: Nieman, Mitchell
Sent: Thursday, June 23, 2016 11:35 AM
To: _City Council
Subject: Art in Public Places

Council-

As a follow-up to your discussion on Tuesday, here's a description from RACC which may be helpful for you to better understand the Floor Area Ratio Program (FAR): https://racc.org/wp-content/uploads/2016/01/Floor-Area-Ratio-Bonus.pdf

As I mentioned in my presentation, if you decide to incentivize development with land use allowances, like the floor-area ratio mentioned in the above article, that needs to be done with an amendment to our development code through the land use process. It can be cross referenced in the art in public places section if necessary, but as a land use regulation, it really needs to go in the development code. Not a huge issue, but something to consider.

Above link references Portland's Central City Plan, Section 33.702.060.4. Portland is in the process of updating this plan and I found a study the City did last year about the density bonus and entitlement transfers: https://www.portlandoregon.gov/bps/article/535198. If you look at page 81 of the document, it looks like the public art bonus has only been used twice since 2005.

Where do we go from here?

I'll have the draft (Oregon standard) ordinance ready for first read on July 5.

Meanwhile, I plan to check in with Portland to get their thoughts on how the FAR program has worked, or if they have any suggestions for improvement. Also, I'm having the city attorney prep a memo to opine on potential risks associated with adopting a California model (private dedication) ordinance. Last, I will attempt to contact our neighbor cities to inquire as to why they did not choose the California model.

Thanks for working with artMOB to keep this initiative moving.

Mitch Nieman
Assistant to City Manager

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MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 6. E.**
Meeting Date: **July 5, 2016**

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **2017 League of Oregon Cities Legislative Priorities**

From: Mitch Nieman, Asst. to City Manager

Date: July 5, 2016

ACTION REQUESTED
Select four legislative priorities for 2017. They do not need to be prioritized.

BACKGROUND
For the past three months, eight policy committees have been working to identify and propose specific actions as part of the League's effort to develop a pro-active legislative agenda for the 2017 session. They have identified 29 legislative objectives as set forth in the attached ballot and legislative recommendation materials. These objectives span a variety of issues and differ in the potential resources required to seek their achievement.

DISCUSSION
Each city is being asked to review recommendations of the League's policy committees and provide input to the Board of Directors as it prepares to adopt the League's 2017 legislative agenda. The city manager asked staff to select legislation that is most aligned with departmental objectives and write a brief analysis to back up their selection for consideration by Council.

The League wants Council to select four priorities for the League to focus on in the 2017 session. This will ensure League efforts are focused where they are most needed. The deadline for response is July 22, 2016. After receiving the City's ballot, the League Board of Directors will review selections of all member cities—along with recommendations of the policy committees—to determine the League's 2017 legislative agenda.

FISCAL IMPACTS
There is no cost to the City to select four legislative priorities for 2017. This service is included in the City's annual membership to the League, which costs approximately $14,000.

ALTERNATIVES
1. Select four priorities
2. Defer to July 19 and direct staff to provide additional information to facilitate a decision

ATTACHMENTS
1. Ballot and legislative recommendation materials
2. Staff input

INSTRUCTIONS

1. Each city should submit one form that reflects the consensus opinion of its city council on the **top four** legislative priorities for 2017.

2. Simply place an **X** in the space to the left of the city's top four legislative proposals (last pages of the packet).

3. The top four do not need to be prioritized.

4. Return by **July 22nd** via mail, fax or e-mail to:

   Paul Aljets
   League of Oregon Cities
   1201 Court St. NE, Suite 200
   Salem, OR 97301
   Fax – (503) 399-4863
   paljets@orcities.org

Thank you for your participation.

City of: _____

*Please mark **4** boxes with an **X** that reflect the top 4 issues that your city recommends be the priorities for the League's 2017 legislative agenda.*

Legislation

Community Development	
A. Needed Housing Assistance Program	☐
B. Natural Hazard Land Use Reform	☐
C. DOGAMI Disaster Mapping	☐
D. Floodplain Technical Assistance	☐
Energy	
E. Green Energy Technology Requirement	☐
F. Funding Public Energy Projects	☐
G. Updates to Oregon Energy Code	☐
Finance and Taxation	
H. Property Tax Reform - Market Value / Local Control	☐
I. Property Tax Reform - Fairness and Equity	☐
J. Local Lodging Tax	☐
K. Nonprofit Property Tax Exemption	☐
L. Marijuana and Vaping Taxes	☐
General Government	
M. Restore Recreational Immunity	☐
N. Increase Local Liquor Fees	☐
O. Marijuana Legalization Implementation	☐
P. Mental Health Investments	☐
Q. Qualification Based Selection	☐
Human Resources	
R. Subsidy for Retiree Health Insurance Repeal	☐
S. PERS Reform	☐
T. Arbitration Reform	☐
U. Veterans Preference Clarifications	☐
Telecommunications	
V. Rights of Way	☐
W. Franchise Fees	☐
X. 9-1-1 Emergency Communications	☐
Y. Technology Funding	☐
Transportation	
Z. Transportation Funding and Policy Package	☐
Water/Wastewater	
AA. Funding Water System Resilience	☐
BB. Enhanced Prescription Drug Take-Back	☐
CC. Water Supply Development Fund	☐

Community Development

Legislation	Background
A. <u>Needed Housing Assistance Program</u> **Create state grants and technical assistance to cities working to develop housing development programs directed at new or innovative mans of providing housing solutions for low-income or senior populations.**	Cities are looking for new ways to serve the needs of a variety of people needing housing options and putting more resources toward housing projects. However, there is a need for state resources and assistance in implementing these programs. Funds that cities could access could be used to assist in land purchases for leasing for long-term low income housing, incentives for creating single story housing for seniors, tiny housing development, and planned developments that serve a range of incomes. Technical assistance to other cities should help a city determine what programs or planning options are available tools to help cities reach the goals set in the comprehensive plan.
B. <u>Natural Hazard Land Use Reform</u> **Create process for communities to move the UGB from an identified hazard area to resource lands and planning for replacing significant urban areas lost after a natural disaster.**	As science has better located some hazards areas and as regulations impact the expected development of other areas, cities need to find ways to respond more efficiently to address long-term planning for development. This requires a simplification of the process for changing the location of development, including adding new areas to the UGB, to account for lost development capacity. There also needs to be a streamlined process for a city to identify areas of new development should a disaster remove a large portion of the buildable land supply if a disaster should strike.
C. <u>DOGAMI Disaster Mapping</u> **Increase funding for DOGAMI to complete comprehensive disaster mapping of cities, including landslide and floodplain risk identification, and natural hazard related evacuation planning for additional potential risks such as tsunami or wildfire inundation.**	The Oregon Department of Geology and Mineral Industries (DOGAMI) provides a number of technical resources to cities to identify hazards that could impact development. The department is also an integral partner in creating plans for the emergency response for many disasters that could occur in the state. Increasing funds for comprehensive maps will help with long-term planning for hazard mitigation, resilience, and survival.
D. <u>Floodplain Technical Assistance</u> **Provide DLCD funding for technical assistance to cities implementing required changes to floodplain development management practices from FEMA.**	Because of the recent release of the Biological Opinion from the National Oceanic and Atmospheric Administration Fisheries Service related to the National Flood Insurance Program's potential to impact endangered species, there is a need for cities to receive significant assistance in implementing any changes required by the Federal Emergency Management Agency. As the federal process moves forward, the state must provide resources to help cities update comprehensive plans and development codes. This issue will have a number of impacts and assistance in the form of model codes, staff resources, grants, and other expertise will be necessary for cities trying to implement any changes or additional work.

Energy

Legislation	Background
E. <u>Changes to 1.5 Percent Green Energy Technology Requirement</u> **Advance legislation to statutorily modify the existing "1.5 percent green energy technology for public buildings" requirement to allow for alternative investment options such as offsite solar or community solar projects.**	Oregon statute currently requires public contracting agencies to invest 1.5% of the total contract price for new construction or major renovation of certain public buildings on solar or geothermal technology. The requirement allows for offsite technology, but only if the energy is directly transmitted back to the public building site and is more cost-effective than onsite installation. Removing the requirement that an offsite project be directly connected to the public building project could result in increased flexibility for local governments to invest in solar projects that are more cost-effective and provide for increased solar energy generation. In addition, the League will work to allow 1.5 percent funds to be invested in alternative projects that provide a greater economic or social return on investment. As an example, a city could use the funds on a community solar project to benefit low-income residents rather than being required to invest in solar generation at the site of the public building project.
F. <u>Funding for Public Energy Projects</u> **Support enhanced incentives for public energy projects including grants for technical assistance, feasibility studies and resource recovery projects for energy and fuel generation.**	There are programs that exist in Oregon for the purpose of incentivizing energy projects including renewable energy generation, alternative fuel vehicles, and energy efficiency. Programs such as the Business Energy Tax Credit (BETC), which was discontinued in 2014, and the State Energy Loan Program have been important tools for incentivizing energy projects for local governments. However, as a result of scrutiny over the administration of these incentives including private loan defaults, these programs are either no longer available, such is the case with the BETC program, or are at risk of being discontinued. It is critical for municipalities to have ongoing access to incentive opportunities as energy projects can be difficult to pencil-out and even more difficult for smaller communities to finance. The state of Oregon should take into consideration that loans for public energy projects, including cities, are lower-risk and should not be penalized in light of recent scrutiny. In addition, investments in these projects often result in environmental, social and economic benefits including long-term savings for taxpayers and reductions in greenhouse gas emissions. The League will work to enhance funding, including grants for technical assistance and feasibility studies for communities that currently do not have access to resources. The League will also advocate for incentives for energy and fuel generation projects. Examples of projects that warrant funding incentives include methane capture for fuel or energy generation, investments in community solar projects, renewable energy generation, and energy efficiency improvements.

Energy (Continued)

Legislation	Background
G. <u>Require Updates to Oregon Energy Code</u> **Require the Oregon Building Codes Division (BCD) to engage in more frequent review of the state's energy code to reduce greenhouse gas reductions and ensure that Oregonians can more affordably and efficiently heat their homes and businesses.**	Oregon's statewide energy code for commercial and residential buildings is an important tool for achieving greenhouse gas reductions through decreased energy consumption while helping to ensure that Oregonians are able to more efficiently and affordably heat their homes and businesses. Federal law requires each state to certify that their state energy code is equivalent to federal model energy codes. While Oregon was once a leader in energy code adoption and implementation, the state is now in a position of falling behind the federal code. This is due, in large part, to a decision made by the Oregon Building Codes Division in 2013 which changed the code cycle from a three-year update to a six-year update. Major code changes, including adoption of national codes, will now occur every six years with minor changes occurring every three years. This change will impact Oregon's ability to keep pace with federal standards and new technologies in energy efficiency. The League will work to support efforts to align new construction building codes with the state's climate goal timelines. In addition, the League will support efforts to establish a periodic review schedule to ensure that Oregon more frequently updates the state energy code in order to reflect federal code requirements. Also, the League will encourage the state to set specific targets for increased energy efficiency in residential and commercial building construction with specific goals for increasing energy efficiency standards for affordable housing projects and increasing use of net-zero and passive house building requirements. Finally, the League will work to require BCD to make regular reports back to the legislature to update on energy code implementation and goals.

Finance and Tax

Legislation	Background
H. <u>Property Tax Reform – Market Value / Local Control</u> **A legislative constitutional referral to reform the property tax system:** **a) to achieve equity, transitions to a market based property tax valuation system; and** **b) to restore choice, allows local voters to adopt tax levies and establish tax rates outside of current constitutional limits in their taxing jurisdictions.**	Property taxes are regulated largely by Measure 5 (1990) and Measure 50 (1997), as provided in the Oregon Constitution. Measure 50 established a new method for assessing property, discounting the assessment at 10 percent of the real market value and calling this assessed value. Assessed value is capped at an annual growth limit of 3 percent. As a state total, due to the limits and market changes, the gap between real market value and assessed value has now grown to nearly 25 percent over the past 20 years. This gap varies widely on a property by property basis, creating considerable property tax inequities for properties that sell for similar prices in a city. In short, Oregon property taxes have become disassociated from real market value and the result is considerable inequity. For FY 2014-15, 60 percent of cities, 97 percent of counties, and 89 percent of school districts had some compression. This means that the Measure 5 caps of $5 per $1000 for education and $10 per $1000 for general government on real market value have been exceeded in most taxing jurisdictions. The caps are over 25 years old and were set low as voters were anticipating a sales tax to be coupled with it. Voters can no longer vote for the services they desire due to these caps. With looming PERS costs increases, paying for services with the present restrictions will become very difficult in some cities.
I. <u>Property Tax Reform – Fairness and Equity</u> **A bill that pursues statutory modifications to the existing property tax system that enhances the fairness and adequacy of the current system.**	There are some adjustments to the property tax process and calculations that can be done statutorily. These include altering the changed property ratio statute and the statutory discount given to property owners who pay their taxes by November 15th. New property is added to the tax rolls using a county-wide ratio (assessed value to real market value) for determining the discount to apply to the real market value and that could be changed statutorily to a city-wide ratio in taxing districts who elect the change.

Legislation	Background
J. <u>Local Lodging Tax</u> **A lodging tax bill, the outcome of which, would:** **a) Provide jurisdictions greater flexibility to spend local lodging tax revenue to plan for and provide services and infrastructure related to tourism;** **b) Reduce or eliminate the required reimbursement charge that a lodging tax collector is allowed to retain for filing a local lodging tax return; and** **c) Improve efficiency and collection of local lodging taxes in cooperation with the state.**	State law restricts how local lodging tax revenues may be expended. Post 2003, any new taxes or any tax increase requires a 70 percent revenue dedication to tourism promotion or tourism-related facilities. In addition, state statute provides that cities may not lower the actual percentage of lodging tax revenues that were dedicated to tourism prior to 2003. This means that cities have varied percentages of restricted local lodging taxes revenues. These numbers are arbitrary as they were set based on circumstances in 2003 that have often greatly changed. In addition, the legislative history shows that the legislature intended to provide some revenue flexibility and provide that certain infrastructure (roads, sewer lines, etc.) would qualify as tourism-related but the statutes need revision and clarification. State law requires local governments to provide a 5 percent collector reimbursement charge if they impose a new lodging tax or tax increase after January 1, 2001. This is a deduction from the taxes that would otherwise be due. The state also provides a 5 percent collector reimbursement charge for state lodging taxes. In addition, local governments that had a reimbursement charge, must continue it. Thus, cities have very different reimbursement requirements—some are at zero, others are at 5 percent, and some are in between. When coupled with the state deduction, the deduction seems too generous. The Oregon Department of Revenue now collects state lodging taxes throughout the state and could collect and enforce local lodging taxes at the same time if given statutory authority. Local governments could then enter into voluntary agreements with the state to delegate the collection. This option could make collection much more efficient and cost-effective for some local governments. In addition, cities continue to struggle with collections and auditing, particularly from online companies and private home rentals (through Airbnb, etc.) and this area of the law could be improved.

Finance and Tax (Continued)

Legislation	Background
K. <u>Nonprofit Property Tax Exemption</u> **Clarify and reform the statutory property tax exemption provided to nonprofit entities to address cost-benefit concerns for the continued full exemption in light of cost of city services provided to nonprofits and the changing services and business models of some nonprofit entity types.**	Nonprofit organizations that are charitable, literary, benevolent or scientific are provided a property tax exemption that will cost more than $194 million in the 2015-17 biennium. In addition, exemptions for the property of nonprofit religious organizations costs more than $113 million for the biennium. For many cities, much of the city is exempt from property taxes due to the public property exemption and these nonprofit exemptions. This includes hospitals, nursing homes, etc. The Legislature has formed a work group to look at the nonprofit property tax exemption issue as the nature and number of nonprofits is changing and the administration of the exemption has become complex for county tax assessors. Nonprofit entities require significant services, including transportation, water, sewer, police, fire, etc. Thus, the legislature is looking at property taxes more as a service tax and considering how the full exemption could be adjusted to have nonprofits pay for their fair share of costs of services or otherwise meet a benefit test for continuing an exemption.
L. <u>Marijuana and Vaping Taxes</u> **Defend against restrictions and preemptions regarding local marijuana and vaping taxes and advocate for appropriate state shared revenue levels and distribution formulas for state marijuana taxes and potential vaping taxes.**	There are no revenue use restrictions on local marijuana taxes, but the local marijuana tax rate is capped at 3 percent. There are no restrictions on local governments imposing a vaping tax. The state has not imposed a tax on vaping products to date but is considering a tax. Often when the state imposes a tax (for example, cigarette or liquor), the state preempts local governments from also imposing a tax. 10 percent of state marijuana taxes will be distributed to cities after state administrative costs. Distributions will be made per capita for revenues received prior to July 1, 2017. After July 1, they will be distributed based on the number of the various marijuana licenses issued in a city. Cities that prohibit establishments for recreational marijuana producers, processors, wholesalers or retailers will receive no state shared revenue. Likewise, cities that prohibit a medical marijuana grow site or facility will receive no state shared revenue.

General Government

Legislation	Background
M. <u>Restore Recreational Immunity</u> **Cities should enjoy protection from unreasonable litigation when offering recreational opportunities to the public.**	ORS 105.682 grants that a land owner is not liable for any personal injury, death or property damage that arises out of the use of their land for recreational purposes as long as no fee is charged in order to access that property. This statute allows cities to operate parks and trails without fear of lawsuit. However, in the recently decided Oregon Supreme Court case, *Johnson v Gibson,* It was held that even though the landowner may be immune from liability, their employees are not. As a result, two employees of the City of Portland were found liable for injuries sustained by a jogger in a park, employees who are indemnified by their employer. The practical effect of this ruling is that the immunity previously enjoyed by cities that allowed for robust park development have been eroded to the point of being non-existent. This priority directs LOC staff to seek to amend the ORS 105.682 to restore that immunity.
N. <u>Increase Local Liquor Fees</u> **Cities play an important role in the review and investigation of liquor license applicants and should be able to recoup costs associated with that role.**	ORS 471.166 allows cities to adopt fees that are "reasonable and necessary to pay expenses" associated the review and investigation of liquor license applicants. However, the same statute limits the amounts of those fees to between $25 and $100 depending on the license or approval being sought by the applicant. This priority is to pursue changes to this statue that allow cities to recoup the actual costs associated with performing their role in the liquor licensing process and allowing for periodic increases.

General Government (Continued)

Legislation	Background
O. <u>Continue Marijuana Legalization Implementation</u> **Allow for civil enforcement of marijuana laws.** **Ensure equitable distribution of marijuana shared revenues.** **Eliminate limitations on shared revenue use.**	One of the promises made by marijuana legalization advocates is that illicit sales and production of marijuana would shift into a legalized and regulated market. This has occurred to a large extent but many producers and retailers continue to seek the financial benefits or participation in the marijuana industry while avoiding the inconvenience of its regulatory framework. This priority seeks legislation that gives the Oregon Liquor Control Commission (OLCC) the same civil and administrative authority to prevent unlicensed sales and production of marijuana as it has in regards to liquor. Beginning in 2017, state shared revenue from marijuana will be distributed to cities based in the number of OLCC licensed commercial marijuana entities exist in their jurisdiction. This priority is to alter that arrangement so that is it distributed on a per capita basis to ensure equitable distribution among cities that are incurring costs. Measure 91 required that money distributed by the state to cities be used exclusively for costs associated with marijuana legalization. Tracking a dollar though a city's general fund and determining if a service was related to marijuana is inefficient if not impossible, and is not imposed for the receipt of liquor revenue. This priority is to advocate for legislation that removes this burden.
P. <u>Protect Mental Health Investments Made in 2015</u> **Oregon made significant and strategic investments in protecting and caring for the mentally ill in 2015 that should be maintained.**	The Legislature increased access to mental health care and expanded existing, proven programs designed to de-escalate police contacts with the mentally ill. Those programs could be vulnerable in a difficult budget environment made challenging by increased PERS rates. This priority is defensive in nature and seeks to preserve investments that are improving the lives of mentally ill Oregonians.
Q. <u>Remove Qualification Based Selection Mandate</u> **Cities should be allowed to consider cost when making initial contract award decisions when hiring architects and engineers.**	Cities are currently required to use a procurement method that prevents the consideration of cost when contracting with architects and engineers for public improvements. Instead, cities must base their initial selection for these services based solely on qualifications and can only negotiate the price after an initial selection is made. This mandate is not a cost effective means for procuring services and is poor stewardship of the public's dollars. This priority is to seek the removal of this mandate.

Human Resources

Legislation	Background
R. <u>Repeal Requirement to Subsidize Retiree Health Insurance</u> **Public employers should not subsidize the health insurance of former employees when reasonable, cost competitive options exist.**	ORS 243.303 mandates that local governments provide retirees with access to health insurance and requires that they be placed in the same risk pool as active employees. As retirees are approximately 2.5 times more expensive to insure than active employees this mandate results in employers and current employees subsidizing the health insurance costs of former employees. This subsidization, according the Government Accounting Standards Board, must be shown on an audit as long term liability, thus creating an inaccurate perception of a city's financial condition. Further, this requirement could be described as anachronistic as individuals are now able to purchase health insurance under the Affordable Care Act. This priority is to eliminate ORS 243.303 from Oregon's laws.
S. <u>PERS Reform</u> **PERS benefits should be adjusted where legally allowable and investments should be maximized to ensure a sustainable and adequate pension system.**	The PERS unfunded liability stands at $22 billion and employer rates are anticipated to approach 30 percent of payroll in the coming biennium. Rates are expected to remain at that level for the next twenty years. This is not sustainable. This priority is to seek any equitable changes to benefits that will reduce employer rates while not pursuing options that are legally tenuous or counterproductive. Additionally, changes are to be sought to the investment portfolio that will maximize returns through improved risk management and efficiencies.

Human Resources (Continued)

Legislation	Background
T. <u>Arbitration Changes</u> **Public employers should have greater influence over the disciplining of their employees.**	Currently under the Public Employee Collective Bargaining Act, contested employee discipline matters must be submitted to an outside arbitrator for adjudication. Decisions by arbitrators are binding unless the conduct was a violation of public policy as defined by the state, there was serious criminal conduct or an egregious inappropriate use of force. This priority is to seek the following changes to the statue: • Arbitrator decisions should also comply with local policies; • Decisions should comply with policies related to any inappropriate use of force a; • Arbitrator decisions should recognize all criminal misconduct related to employment not just "serious"; • Employer disciplinary decisions as it regards employees who are supervisors as defined by the EEOC and BOLI should be given more weight.
U. <u>Veterans Preference Clarifications</u> **Requirements that veterans be given preference in public sector hiring should be clear and unambiguous for the benefit of veterans and employers.**	The State of Oregon requires and the League agrees that honorably discharged veterans deserve special consideration in public sector hiring. However, statutes describing how this is to be accomplished are unclear and ambiguous. Vague statutes do not serve the interests of employers or veterans. This priority seeks a clear definition of "preference" in the statute, ensure that recently separated veterans receive the consideration necessary for them to successfully enter the workforce and establishes clarity as to when the preference is to be applied.

Telecommunications, Cable & Broadband

Legislation	Background
V. <u>Rights of Way</u> **Oppose legislation that preempts local authority to manage public rights-of-way and receive compensation for their use.**	In its commitment to the protection of Home Rule and local control, the League consistently opposes restrictions on the rights of cities to manage their own affairs. From time to time, in the context of franchise fee and rights-of-way management authority discussions, proposals to restriction to this authority arise. These include a statewide franchise policy and revenue collection system as well as limiting the ability of cities to charge fees of other government entities. This is contrary to local government management authority, the ability to enter into agreements with service providers either by agreement/contract or ordinance and to derive revenues from business fees charged to users of public rights-of-way.
W. <u>Franchise Fees</u> **To ensure market fairness and equity, prepare legislation for possible introduction repealing ORS 221.515 (HB 2455 -7 in 2013, and HB 2172 in 2015) to remove franchise fee rate and revenue restrictions which currently apply to incumbent local exchange carriers but not to competitive local exchange carriers.**	Oregon statute currently contains a discrepancy between how cities collect franchise fees from incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs). ORS 221.515 limits cities collecting franchise fees from ILECs to a maximum of 7 percent of revenues derived from dial-up services, which represents only a portion of ILEC total revenues due to the addition of a broader array of customer services. There is no such rate cap or revenue restriction on CLECs, hence the discrepancy. In the past the League has worked with CLECs to "level the playing field." Repeal of ORS 221.515 would accomplish that.
X. <u>9-1-1 Emergency Communications</u> **Support legislation enhancing the effectiveness of the state's emergency communications system through an increase in the 9-1-1 tax and/or a prohibition of legislative "sweeps" from accounts managed by the Oregon Office of Emergency Management.**	The League worked with other stakeholder groups in 2013 to extend the sunset date on the statewide 9-1-1 emergency communications tax to January 1, 2022 (HB 3317). In 2014, the League also worked to pass legislation including prepaid cellular devices and services under the 9-1-1 tax (HB 4055). As concerns mount with regard to disaster preparedness and recovery and as new upgrades to communications technology becomes available, it is apparent that state and local governments do not have the resources necessary to address challenges or take advantage of opportunities. Additional funding is needed and the practice of periodically sweeping funds out of the state's emergency management account for other uses should cease. It is worthy of note that the practice of "sweeps" disqualifies the state from receiving federal funds for emergency communications. It is unknown how many federal dollars have been foregone as a result of this policy.

Telecommunications, Cable & Broadband (Continued)

Legislation	Background
Y. <u>Technology Funding</u> **Seek additional funding to assist for cities in:** • **Increasing high speed broadband deployment and close the digital divide.** • **Purchasing upgraded emergency management communications equipment.** • **Providing local match money for federal funding programs, such as high speed broadband deployment.**	The deployment of broadband throughout the state of Oregon is critical to economic development, education, health and the ability of citizens to link with their governments. Additional funding, from various sources, including the state and federal government, needs to be allocated for this purpose. The need becomes even more acute when consideration is given to the certainty of a major seismic event. Often federal assistance comes with the requirement of a state or local match which is problematical for cities. A state mechanism for providing matching fund assistance would be helpful to those communities seeking to take control of their broadband destiny.

Transportation

Legislation	Background
Z. <u>Comprehensive, Multi-modal Transportation Funding and Policy Package</u> **The League of Oregon Cities proposes that transportation infrastructure be raised to the same level of importance as other utilities, and be funded at a level capable of maintaining appropriate standards of operation and service. Therefore, the League will help draft and advocate for a comprehensive, inter-modal and statewide transportation funding and policy package that:** **1. Provides a significant increase in resources available for the preservation and maintenance of city streets by:** • **Substantially increasing the state gas tax and licensing and registration fees.** • **Indexing the state gas tax.** • **Continuing efforts to identify and implement alternative funding mechanisms (VMT, tolling, public-private partnerships, etc.).** • **Disaster resilience and seismic upgrades for all transportation modes.** • **The completion of transportation projects begun but not yet completed due to lack of funding or changes in funding criteria.** • **Providing additional funding for voluntary jurisdictional transfer.** • **Funding transportation enhancements such as bike-ped facilities.** • **Increasing funding for the statutory Special City Allotment program while maintaining the 50%-50% ODOT/city split.** • **Repealing the referral requirement (2009 Jobs and Transportation Act) on cities seeking to create/increase local gas tax.** **2. Addresses statewide needs relating to intermodal transportation through:** • **Additional funding for transit operations and capital projects.** • **Additional funding for freight rail capital projects and operations (*Connect*Oregon, short-line rail and transload facilities).**	Maintenance and preservation needs have outpaced the resources available for streets, roads and highways. In its March, 2016 Infrastructure Survey Report the League identifies a $3.7 billion capital need for highway and non-highway transportation projects ($2.6 billion highway / $1.1 billion non-highway). In addition, the report shows, for the 120 cities that participated, an aggregated street budget shortfall for operations and maintenance of approximately $217 million per year. Safety and disaster resilience were cited as major challenges and needs by most cities. Cities also expressed support for a voluntary jurisdictional transfer program (the sensible alignment of highway facilities and management responsibility) provided the availability of adequate funding to facilitate the transfer and to maintain the asset. Given the threat that inadequate funding represents to investments already made in the transportation system, the League will insist on a transportation package that increases and makes more sustainable the ability of all government jurisdictions to preserve and maintain these assets. Notwithstanding its emphasis on the need to preserve and maintain existing streets, the League of Oregon Cities agrees that the state's transportation system and the policy and funding programs that support it must be multimodal and statewide in scope. The League will therefore work to pass legislation in 2017 that addresses funding and policy initiatives relating to all modes (streets, bike/ped, transit, rail, aviation and marine) and in so doing address such issues as: • Connectivity and capacity (especially truck mobility/rail) • Safety for all users across all modes • Resiliency and recovery (seismic retrofit across all modes) • Jobs and economic development • Impact on climate change • Active transportation and public health • Transportation access available on an equitable basis to all Oregonians • Continuing and extending *Connect*Oregon • Ensuring adequate <u>new</u> revenues for program/equipment such as the Oregon Department of Motor Vehicles technology upgrade • Creative solutions to ongoing challenges (dedicated non-roadway fund, increased local authority to fund transit, bike-ped funding, etc.)

• **Additional funding for passenger rail operations, equipment and capital projects (federal matching money and AMTRAK Cascades).** **3. Does not:** • **Preempt local government ability to self-generate transportation revenues for street maintenance and preservation.** • **Change the dedication of State Highway Fund dollars to highway, road and street projects contained in Article 8, Section 3a of the Oregon Constitution.** • **Reduce cities 20% share of the State Highway Fund.** • **Create unfunded mandates requiring cities to undertake specific programs, such as greenhouse gas reduction scenarios.** • **Further complicate the planning and regulatory process that currently governs the project delivery process.**	• Maximizing local benefits of the federal FAST Act in Oregon

Water & Wastewater

Legislation	Background
AA. <u>Funding for Water System Resilience</u> **Secure dedicated funding for water and wastewater system resilience and emergency preparation. This would include additional funds to plan for and upgrade water systems to increase seismic resiliency and funding to better position communities to better prepare for water supply shortages due to drought, climate change or other emergency scenarios.**	In general, Oregon's drinking water and wastewater systems are woefully underprepared for a catastrophic earthquake event. Restoration of water supply following such an event is critical for fire suppression, first aid, and for human health and safety. In 2013, the Oregon Resilience Plan provided estimates for service recovery of water and wastewaters systems in the event of a Cascadia earthquake under current infrastructure conditions. According to the plan, the estimated the timeframe for service recovery in the valley ranges from one to twelve months. For the coast, service recovery is estimated between one to three years. In addition to risks associated with significant natural disaster events, recent drought conditions in Oregon have demonstrated the need for emergency supply planning and coordination with other water users to better address water supply challenges. It is critical that communities are able to acquire alternative and back-up water supplies from multiple sources in order to better prepare for supply shortages or emergency situations, such as natural disasters or supply contamination. The League will work to identify and secure low-interest loans or grants to seismically upgrade drinking water and wastewater system infrastructure and to help ensure that these systems are more resilient and better positioned to respond to water supply shortages resulting from drought, climate change, natural disasters, or other system failures.

Water & Wastewater (Continued)

Legislation	Background
BB. <u>Promote an Enhanced Prescription Drug Take-Back</u> **Advocate for enhanced prescription drug take-back program funding and additional collection locations to reduce contamination of water from unwanted prescription drugs.**	Unused prescription drugs are problematic from both a public health and safety perspective as well as from a water quality perspective. Drug take-back programs help to ensure that unused prescription drugs are properly disposed of which keeps them from being abused, keeps them out of the hands of children, and keeps them from entering Oregon's waterways. Unwanted prescription drugs are often flushed down the toilet and despite wastewater treatment systems, y can end up contaminating lakes, streams and rivers. In 2014, U. S. Drug Enforcement Administration (DEA) expanded the types of locations allowed to accept unwanted medications including retail pharmacies and drug manufacturers. Prior to 2014, drug-take back programs were primarily supported through police department drop boxes. The challenge in expanding prescription drug take-back programs is now focused on the cost of transporting unused drugs from the take-back location to the disposal site and in educating the public about responsible disposal opportunities. The League will work with a variety of stakeholders, including public health advocates, to identify additional funding mechanisms to increase drug take-back collection locations across Oregon. Funding should support the transportation and responsible disposal of unused prescription drugs. Funds should also be dedicated for enhanced education of disposal opportunities and the establishment of convenience standards to ensure that all Oregonians have reasonable access to drug take-back locations.
CC. <u>Increased Funding for Water Supply Development</u> **Support additional water supply funding through the state's Water Supply Development Account.**	According to a survey conducted by the League, Oregon's water and wastewater infrastructure needs for cities alone are estimated to be $9 billion over the next twenty years. In addition, the survey identified 66 percent of respondent cities as being in need of additional water supply storage. The 2015 drought highlighted the need for additional investments in water supply infrastructure, including storage and water delivery system efficiencies. Additional storage project investments are not only critical for adequate drinking water supply, they are an important tool for supplementing streamflows and habitat restoration. The League will work to secure additional funding for existing water supply development programs. This includes support for feasibility grants and for the state's Water Supply Development Account which provides funding for water supply storage, reuse, restoration and conservation projects.

Nieman, Mitchell

From: Flores, Alma
Sent: Thursday, June 16, 2016 8:58 AM
To: Nieman, Mitchell
Cc: Monahan, Bill; Flores, Alma
Subject: RE: 2017 Legislative Agenda

Importance: High

Community Development's Top 4 Legislative Agenda Items (per your request):

Needed Housing Assistance Program: Housing In April 2016, in response to rapidly increasing rents and home sale prices and a historically low vacancy rate, the City of Milwaukie declared a Housing State of Emergency and adopted a 90 Day No Cause Eviction Ordinance. Since that time, the City has been looking for additional financial resources and is considering alternative housing types that can help to increase the supply of affordable housing in Milwaukie. The City recently submitted a letter of interest to Metro for its Equitable Housing Planning and Development Grant program to allow the city to do a feasibility analysis of several sites throughout the city for a cottage cluster development or other equitable housing development type, and is proposing to work with Clackamas County and community partners such as Northwest Housing Alternatives and Providence Milwaukie Hospital on this work. A Housing Assistance Program would be of great benefit to the City by providing additional financial resources and technical assistance to provide affordable housing solutions, and provide a model and best practices for low income and senior housing development that could be replicated across the entire Metro region.

Floodplain Technical Assistance: A functioning floodplain is important for the health of the surrounding ecosystem, as well as for the economic and cultural activities that rely on it. Healthy, functioning floodplains are hugely important for the many values they provide: clean water, flood storage, and abundant fish and wildlife among others. As well as providing key economic opportunities for urban and rural communities, they also help make those communities more resilient to the effects of a changing climate. Floodplain land and adjacent waters combine to form a complex, dynamic physical and biological system found nowhere else. When portions of floodplains are reserved in (or restored to) their natural state, they provide many benefits to both human and natural systems. These benefits range from providing aesthetic pleasure to reducing the number and severity of floods, helping handle storm-water runoff, and minimizing water pollution. Such natural processes cost far less money than it would take to build facilities to correct flood, storm-water, water quality and other community problems.

The City of Milwaukie has several Special Flood Hazard Areas within the city limits. The cost of previous development in floodplains is significant, and cannot be borne by our community alone. Insurance covers only a small part of the financial toll, and thus taxpayers, individuals, and businesses shoulder much of the financial burden of clean up and rebuilding after floods. Those who live far from flood prone areas also pay through taxes that support building and rebuilding in flood risk locations. Federal and state disaster funds often function as a subsidy that reduces financial risk, shielding people, communities and businesses from the true risks and costs of locating in flood-prone areas. An example of the flooding in the Clackamas area is the Johnson Creek Watershed where seven major floods have occurred during the past 35 years. While only 6% of the Portland area 100-year floodplain is associated with Johnson Creek, 78% of the City of Portland's repetitive loss claims come from there. Floods during Feb. '96 on Johnson Creek totaled $4.7 million in damages. Yet this is a significant underestimate of the true costs of flooding. When the full range of impacts to the economic and transportation systems are tallied, the price may even go higher. It is critical to plan for both management and mitigation of these areas reduce the overall impacts to the community. The goals is: To protect life and reduce injuries resulting from natural hazards; to minimize public and private property damages and the disruption of essential services from natural hazards; to increase the resilience of local, regional, and statewide economies; and to minimize the impact of natural hazards while protecting and restoring the environment.

Updates to Oregon Energy Codes: The residential building energy code is developed and administered by the International Code Council (ICC) and the commercial building energy code development processes are administered by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) and the (ICC). These organizations perform periodic revisions through separate established processes, allowing stakeholder participation from industry, the public and governmental entities during the code hearings. Once the revision process is completed, a new edition of the model code is published, which allows for adoption by states and localities. Oregon Building Codes Division's decision to go to a six year code cycle change, has left Oregon homeowners, business owners, building designers and contractors out in the cold and behind the latest developments in energy efficiency. It is important to keep up with the most current energy code to stay on top of the latest edge of technology that the industry has tested and designed. When a building is completed, to go back and upgrade that building at a later date to meet current energy codes, can be very expensive to a homeowner, business owner or government agency. In today's society, energy efficiency and energy conservation is a regular topic to find more efficient ways to conserve energy in our homes and businesses. The result of conserving energy is putting more money back in our pockets and helping our environment, which is an increasingly high topic item today. In addition, the State of Oregon will allow anyone to submit under the new codes an alternative so code officials need to be ready to know the most current national code cycles. Oregon Building Codes Division only offers updated classes when there is a code change and without a code change, code officials would not have the knowledge of the most current national code. Oregon needs to go back to the 3 year code cycle change.

Transportation Funding and Policy Package: The City's current funding situation allows for maintenance of existing transportation infrastructure, but money for improvement projects is very limited. Especially considering the changing landscape of what improvements the City can require with infill development, it is increasingly challenging to fund the more than $80 million in improvement projects listed in the City's Transportation System Plan (TSP). Currently, the City is working to identify funding sources for construction of improvements listed in the Bicycle and Pedestrian Accessibility Plan, Safe Routes to Schools action plans for 4 local schools, and the concept plan for the Monroe Street Neighborhood Greenway (adopted by City Council in December 2015). With the September 2015 opening of the new light rail line into the City, it is even more important to improve the City's transportation network for safe, enhanced connections to transit. We fully support this legislative action.

From: Nieman, Mitchell
Sent: Friday, June 10, 2016 2:40 PM
To: _Department Heads
Subject: 2017 Legislative Agenda

All- per our meeting this morning, I've attached a list of LOC legislative priorities that will help Council set its agenda for the 2017 season.

As Bill requested, we need you to review and select priorities that will (realistically) impact your department in the soon-to -near future. Additionally, we need you to submit a brief paragraph explaining why you feel the priority(s) you selected will have an impact to your department.

After you send me your priority(s) and respective paragraph(s), I will draft a report to Council that will ask them to choose four priorities in total, which will be forwarded to the League for their consideration prior to start of session.

*Community Development Department: please combine all of your priorities into one submission.

Please send me your submissions by noon on Friday, June 17, or earlier.

Thanks,

Mitch Nieman
Assistant to City Manager

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Nieman, Mitchell

From: Fuchs, Clare
Sent: Sunday, June 26, 2016 11:27 PM
To: Monahan, Bill
Cc: Nieman, Mitchell
Subject: RE: 2017 Legislative Agenda

I apologize for getting this in so late. I would be happy to amend the staff report tomorrow night so Mitch does not have to. The four recruitments I have underway right now have been a bear. Here are Fleet, Facilities, Parks, and Sustainability's priorities.

1. Proposal "E" makes a lot of sense to provide jurisdictions with the flexibility to use either off-site or on-site renewable energy the most efficient way possible. For instance, with our new Library it may not have the best solar access. If we were able to use this 1.5% to add to community solar, we could get the most for our energy dollar. This in turn would provide for more renewable energy on the whole if it were not required to be attached to one location. It would also allow governments to place the renewable energy use where it is the most effective or the most needed.

2. Proposal "F" is important and timely for Milwaukie. As the City embarks on community solar, adding electric vehicles, and possibly adding on-site solar in the near future financing tools and rebates are crucial. The City will also be looking at how it can bring in energy retrofits into repair and replacements of our aging building parts. Staff can foresee the following repair and replacements coming up: new windows, new roofs, and new heating and cooling systems. These tools would allow the City to buy more energy efficient equipment that may cost more at first purchase, but save the taxpayers money over the decades. The public sector should not have to internalize the former negative externalities of the private sector in this arena.

3.Proposal "G" is no brainer in my experience. In Arizona the building code at the local government level is updated every year to match the national code. If Arizona and their political climate can keep up, then so can Oregon. We owe it to our citizens to stay at the forefront of the safest, most efficient technology. Oregon should be a leader given our political climate in this sector. There is technology out there right now that would allow homes to become net zero in terms of trash, energy, and water. The City needs to make sure that citizens who want to take advantage of this technology can do so in Milwaukie. Global warming is perhaps the biggest issue facing the earth today. Sea level rise and more dangerous storms are already threatening and destroying sensitive communities around the globe. These communities are some of the poorest in the world. The Portland area and Oregon could itself see drastic expenses along the Willamette River in a little as 5-10 years. The time for change was 25 years ago. It is this generation's responsibility to now take as drastic measures as possible to reverse any more damage while we are still able.

4. Proposal "M" should go without saying. Employees acting in good faith should not sustain a greater threat to litigation than the employer they work for. This has the potential to be a threat not only for all of my divisions, but for the entire City. Can a car owner personally sue an employee that paves over potholes, but not the City? Can a developer sue an Assistant Planner for making an decision in error, but not the City. This has the potential to have a chilling effect on hiring across all government sectors.

Clare L. Fuchs, AICP
Sustainability Director

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From: Nieman, Mitchell
Sent: Friday, June 10, 2016 2:39 PM

To: _Department Heads
Subject: 2017 Legislative Agenda

All- per our meeting this morning, I've attached a list of LOC legislative priorities that will help Council set its agenda for the 2017 season.

As Bill requested, we need you to review and select priorities that will (realistically) impact your department in the soon-to -near future. Additionally, we need you to submit a brief paragraph explaining why you feel the priority(s) you selected will have an impact to your department.

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Please send me your submissions by noon on Friday, June 17, or earlier.

Thanks,

Mitch Nieman
Assistant to City Manager

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