

# REGULAR SESSION

**REVISED**

## **AGENDA**

### **MILWAUKIE CITY COUNCIL NOVEMBER 17, 2009**

**MILWAUKIE CITY HALL**  
10722 SE Main Street

**2066<sup>th</sup> MEETING**

#### **REGULAR SESSION – 7:00 p.m.**

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|---|---------------|
| <b>1. CALL TO ORDER</b><br>Pledge of Allegiance   |               |
| <b>2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS</b>   |               |
| <b>A. Milwaukie High School Student of the Month Noah Green</b><br>Presenter: Mark Pinder, Principal  |               |
| <b>3. CONSENT AGENDA</b> <i>(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)</i>   | <b>1</b>      |
| <b>A. Minutes of the September 15, 2009 Regular City Council Meeting</b>  | <b>2</b>      |
| <b>B. Amendment of Inter-Governmental Agreement with ODOT Covering ODOT Contribution to Logus Road Improvement Project – Resolution</b>   | <b>11</b>     |
| <b>C. Inter-Governmental Agreement with TriMet Regarding the Jackson Street Improvement Project – Resolution</b>  | <b>19</b>     |
| <b>D. Appointment of Kay Bower to the Ledding Library Board – Resolution</b>  | <b>33</b>     |
| <b>E. Nomination of Beth Kelland as the City of Milwaukie Representative to the Clackamas County Service District #1 RiverHealth Advisory Board – Resolution</b>  | <b>34</b>     |
| <b>4. AUDIENCE PARTICIPATION</b> <i>(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)</i> |               |

- 5. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*
  - A. **Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 & 19.321.3 – Ordinance**  
Staff: Mike Swanson, City Manager
  
- 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.)* 35
  - A. **Waste Water Treatment Capacity Advisory Committee By-Laws – Resolution** 36  
Presenters: Mike Swanson, City Manager, and Bill Monahan, City Attorney
  - B. **Proposed Sunnybrook Extension**  
Presenter: Mayor Ferguson
  - C. **Council Reports**

7. **INFORMATION**

8. **ADJOURNMENT**

**Public Information**

- **Executive Session:** The Milwaukie City Council will meet in executive session immediately following adjournment pursuant to ORS 192.660 (2)(h) to consult with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.
- All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities (ADA). If you need special accommodations, please call 503.786.7502 or email [ocr@ci.milwaukie.or.us](mailto:ocr@ci.milwaukie.or.us) at least 48 hours prior to the meeting.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

3.

# CONSENT AGENDA

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
SEPTEMBER 15, 2009**

**CALL TO ORDER**

**Mayor Ferguson** called the 2062<sup>nd</sup> meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Mayor Jeremy Ferguson, Council President Greg Chaimov, and Councilors Deborah Barnes, Joe Loomis, and Susan Stone

Staff present: City Manager Mike Swanson, City Attorney Tim Ramis, Community Services Director JoAnn Herrigel, Assistant Planner Li Alligood, Associate Planner Ryan Marquardt, Planning Director Katie Mangle, Senior Planner Susan Shanks, Resource/ Economic Development Specialist Alex Campbell, and Civil Engineer Brad Albert

**PLEDGE OF ALLEGIANCE**

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

**A. Council Discussion of 3-Creek Area**

**Mayor Ferguson** stated the City Council had already ruled on its position on the County's road proposal. The nature of this discussion had to do with the work crews in the 3-Creeks Natural Area.

**Councilor Barnes** said the City Council had made a decision on the County's request to remove old growth trees to construct a road and then learned the County was going to allow PGE to take out more trees. Her other concern was that a County department had decided to extricate volunteers who had been working at the site for 10 years. The 3-Creeks area runs directly into the City's Kellogg-for-Coho project. She wanted to make sure the County understood Milwaukie did not want a road through that area, did not want discussions going on with other entities on actions that would impact Milwaukie, and did not appreciate having volunteers being told to cease and desist. She asked why Clackamas County would take this stance. She requested that a letter be written expressing the City's position that the Harmony Road project not go through as proposed with a copy to Metro, that the Tsunami Crew be allowed back into that area, and that no more discussions take place without the City's knowledge with utilities that impact that area.

**Mayor Ferguson** commented on the letter from Mr. Zinzer to Mr. Runyard. A stakeholder meeting would be scheduled, and Mayor Ferguson's goal was to get the Tsunami Crew back into the 3-Creeks area. He discussed volunteer guidelines.

**Councilor Loomis** suggested Mr. Zinzer be asked to explain the letter.

**Dan Zinzer**, Clackamas County Business and Community Services Director, explained this property had been transferred from the development agency to the County. He was surprised to find there were no plans, waivers of liability, or a record of who had worked in the area. The situation subsequently came to the attention of the Risk Management Division. This was not a permanent stoppage but rather a request that the Tsunami Crew talk with the County about the master plan and liability coverage.

**James Thompson**, Portland, Tsunami volunteer and Friends of Trees. He voiced support for Councilor Barnes's comments and was ready and willing to work with the City of Milwaukie to accomplish restoration of big fish to Kellogg Creek. Hopefully, this was only a bureaucratic mix-up, and he would be willing to sign the necessary forms.

**Dick Shook**, Friends of Kellogg and Mt. Scott Watershed, North Clackamas Parks District Advisory Board, and Tsunami Crew. He stated he was not speaking as a member of the District Advisory Board. He lived downstream from the 3-Creeks Area, so what happened up there impacted others. The work was important, and they only wanted to take care of the shrubs and trees they planted. The planting season was short, so he hoped the problems could be solved quickly and without animosity. He hoped they would not have to spend a lot of time on administrative duties, and one member had been tracking the group's time for Water Environment Services (WES). He was certainly willing to sign any necessary forms. As far as he knew there were no master plans for County Commissioners' approval although there have been a number of proposals.

**Susan Shawn** spoke as a member of Urban Green, an environmental group that put a tree canopy protection ordinance on the table for Clackamas County. She was deeply concerned about the habitat left at 3-Creeks. She commented on Mr. Zinzer's saying a master plan was necessary and the many Clackamas Community College Campus meetings she attended. The PGE easement had never been mentioned at any of the meetings, and she was not aware that was happening. She knew Chair Peterson was committed to transparency in government, but this did not indicate transparency in the County and particularly the Parks District. She recommended the Council look into why the easement had never been shown on a map or come up in discussions. It would impact the canopy and as a result the fish and wildlife.

**Chris Runyard**, Tsunami Crew, thought the dust up would be over eventually and that the volunteers would be able to continue their work. The watershed and work done by the City on its Kellogg for Coho project were very important. What happens at 3-Creeks comes down to Milwaukie. The Tsunami Crew started in 2001 on a Friends of Trees project that was contracted by WES and Bob Storr. At no point did he liaison with the Parks District. This was a group of volunteer restorationists lead by professionals following the original plan. Most of the work was in the riparian area, and he hoped to get back into the area quickly to remove the weeds and garbage. The Crew was doing good basic volunteer work with 12,570 hours logged in last 8 years. Once the squabbling was over he hoped for full protection for the 3-Creeks, the big oak habit, and the wetlands.

**Eric Shawn**, North Clackamas Urban Watersheds Council, saw this particular event as a case study for assessing how effectively the County was in implementing the Board sustainability resolution. It committed the County to following the natural step principles when implementing policy. Principle 3 was avoiding environmental degradation.

**Pat Russell**, Clackamas, North Clackamas Citizens Association which was the County's recognized community planning organization (CPO) for the area west of I-205 and south of Harmony to the Oatfield Ridge. He supported Councilor Barnes's advocacy, but did want to raise the issue of an agency's saying it owned a certain piece of land. He had never seen any deeds that indicated a transfer. He asked the County Commissioners to consider a unified vision for the entire campus. Things had gotten off to a good start, but there was no longer a process. What he felt people were witnessing resulted from the lack of a unified effort or agreed upon plan. He suggested a stewardship effort to solve some of these problems and address management of public areas. He had identified 22 issues the most important of which had to do with the fish.

If the Kellogg for Coho initiative did take off there will be fish in this watershed. He spoke on behalf of the CPO, and the members were aware of the issues.

**Mr. Shook** thanked the City Council for putting in the 4-way stop at 21<sup>st</sup> Avenue and Harrison Street in front of the Library.

**Mayor Ferguson** discussed the letter prepared by the City to the County Commissioners stating the importance of its involvement in the planning process for that area. In the upcoming meetings with the stakeholders he hoped to have a letter reiterating Milwaukie's beliefs in what had been outlined previously and that the City wanted an active role in planning for this area.

**Councilor Barnes** agreed and noted since there appeared to be no master plan perhaps Milwaukie could have a representative in those master plan discussions. She felt decisions had occurred that were now off the table.

**Councilor Chaimov** concurred.

**Councilor Stone** agreed. She felt the City needed to reiterate its message supporting the 3-Creeks area and the work going on there to keep the riparian environments intact. How do we help get the Crew back in there as soon as possible to get the fall work done?

**Mayor Ferguson** asked if the October 15 meeting could be scheduled sooner to discuss at least some of the issues.

**Mr. Zinzer** did not know how the October 15 meeting came about, but he would like to meet with Mr. Runyard tomorrow to discuss the forms that needed to be signed. He did not expect a lengthy work plan from the Crew.

**Mr. Runyard** and **Mr. Zinzer** would meet and report back to Mayor Ferguson. The group briefly discussed the draft master plan and opposition to the road.

## **B. Constitution Week Proclamation**

**Mayor Ferguson** read a proclamation naming the week of September 17 – 23 as *Constitution Week*.

## **CONSENT AGENDA**

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the consent agenda as presented:

- A. Resolution No. 56-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of Contract for On-Call Construction Inspection Services in the Amount of \$60,000 per Year for Two Budget Years
- B. OLCC Application for Ohana Hawaiian Café, 10608 SE Main Street, change of Ownership

Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting “aye.” [5:0]

## **AUDIENCE PARTICIPATION**

None.

## **PUBLIC HEARING**

### **A. Annexation File No. A-09-01**

**Applicant Paul Norr, Attorney at Law**  
**Owner: Anson Baker, Trustee**  
**Address: 5885 SE Harmony Road**  
**Legal Description: 1S2E31D01600**

**Mayor Ferguson** called the public hearing on the annexation petition to order at 7:39 p.m. The request was considered by the Planning Commission at its August 25, 2009 public hearing, and the Planning Commission recommended approval of the application. This was a de novo hearing, and all persons wishing to speak on the proposal were recognized.

**City Attorney Ramis** reviewed the purpose and procedure of the hearing.

**Mayor Ferguson** reviewed the conduct of the hearing.

**City Attorney Ramis** asked if any member of the City Council had visited the site. **Councilor Chaimov** had visited the site but did not wish to put anything on the record at this point.

**City Attorney Ramis** asked if any member of the City Council wished to announce any ex-parte contacts or any actual or potential conflicts of interest. There were none. No members of the audience made any challenges to any Council member's impartiality or ability to participate in this decision. There were no objections to the Council's jurisdiction to consider the matter.

Staff introduction: **Ms. Alligood** indicated on a map the location of the site which was in the far southeast corner of the City surrounded by the City of Milwaukie on three sides. It was in a Metro Title 4 employment area. The County zoning was light industrial, and the City designation was BI, business industrial. The parcel was approximately .5 acres and contained one vacant single-family residence surrounded by industrial uses. The proposal was to annex the property, amend the City's land use and zoning maps to reflect the annexation, apply the Comprehensive Plan land use designation of industrial, apply the zoning designation of business industrial, and withdraw from Clackamas County service providers. Annexation was required because the applicant proposes to renovate the existing building and relocate an office there. The renovation and expansion would increase City water and sewer services making annexation a requirement. Staff found that the annexation complied with all relevant State, Metro, County, City, and agency regulations. It was found appropriate to apply BI zoning as it had been applied to 5 other properties in the area. The BI zone allowed light industrial uses as well as related office uses. The traffic study submitted by the applicant indicated no traffic increases by this action. Staff recommended approval of the application and findings. She noted this action would complete public area improvements from International Way to the edge of the City along Harmony Road as properties redeveloped.

Correspondence: None.

Applicant's testimony: **Paul Norr** and **Mitch Gilbert**, project architect, discussed the annexation and expressed appreciation to the City's professional staff. The goal was to redevelop the property, so the applicant needed City services particularly sanitary sewer and water. The automatic designation was to M-Industrial, and this change zone his property the same as adjacent properties. He suggested this was not an appropriate site for heavier manufacturing, and this use would blend in with surrounding uses. The

traffic analysis was accepted during City review and would be looked at in more detail during design review.

Testimony in support of the application: None.

Testimony in opposition of the application: None.

Neutral testimony: None.

Questions from City Council: **Councilor Stone** noted the proposal was to relocate Transportation Resources Group and asked where it was currently located.

**Mr. Norr** replied it was currently in the City of Milwaukie, and the intent of the relocation was to increase the number of employees. This company was a transportation broker for heavy freight, so it was rare for people to come to the site. Most of the communication was done electronically. The company would share a driveway with the property to the east. The only deliveries to the site would likely be office supplies and things of that nature.

Staff recommendation: **Ms. Alligood** recommended approval of the application and findings. The business was currently located in a suite on Mallard Way in the BI zone.

Council questions of staff: None.

Closure of the public hearing: **It was moved by Councilor Chaimov and seconded by Councilor Stone to close the public testimony portion of the hearing. Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting ‘aye.’[5:0].**

**Mayor Ferguson** closed the public hearing at 7:57 p.m.

Council discussion: None.

Council decision: **It was moved by Councilor Chaimov and seconded by Councilor Stone for the first and second readings by title only and adoption of the ordinance approving the application and findings in support of annexing a tract of land identified as 5885 SE Harmony Road into the City limits of the City of Milwaukie and withdrawing the tract from the territory of Clackamas River Water, Clackamas County Service District for Enhanced Law Enforcement, and Clackamas County Service District No. 5 for street lights (File #A-09-01). Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting “aye.” [5:0]**

**Mr. Swanson** read the ordinance two times by title only.

**Ms. DuVal** polled the Council: **Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting “aye.” [5:0]**

**ORDINANCE NO. 2006:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ANNEXING A TRACT OF LAND IDENTIFIED AS 5885 SE HARMONY ROAD INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING THE TRACT FROM THE TERRITORY OF CLACKAMAS RIVER WATER, CLACKAMAS COUNTY SERVICE DISTRICT FOR ENHANCED LAW ENFORCEMENT, AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 FOR STREET LIGHTS (FILE #A-09-01)**

**City Attorney Ramis** read the Land Use Board of Appeals (LUBA) information.

**B. Expedited Annexation Petition, File No. A-09-02**

**Applicant: David Mealey**

**Address: 5111 SE Lake Road**

**Legal Description: 2S 2E 06BA 00100**

**City Attorney Ramis** described the expedited annexation process and went through the declarations.

**Councilors Barnes** and **Chaimov** had visited the site, but there was nothing of note to put on the record. No ex parte contacts or actual or potential conflicts of interest were announced.

There were no challenges to the any Council member's impartiality or ability to participate in the discussion. There were no objections to the Council's jurisdiction to consider the matter.

**Mr. Marquardt** provided the staff report and pointed out the subject property on the map. The site contained a main dwelling, a detached accessory dwelling, garage, barn, and windmill. The surrounding land use was primarily single-family residential to the south and business industrial (BI) uses to the north across Hwy 224. Zoning for the site was County R-10. The proposal was for an expedited annexation which procedurally was not a hearing before the Planning Commission but rather a City Council decision. The zoning would be based on the current County zoning, and City land use and zoning maps would be amended to add this property and apply low density residential zone R-10. The proposal would also withdraw from Clackamas County Service providers. This was a voluntary request by the contract property owner of the site, and no further development was indicated. Any zone change or major changes on the site would require a land use application. The primary reason for the application had to do with the City's home occupation standards that allowed a chiropractic office as an outright use. Mr. Marquardt discussed types of home occupations, applicable standards, and compliance. In this case urban services were not the primary reason for the application. This site was connected to Clackamas County Service District #1 (CCSD1) which had a line in Lake Road. Milwaukie did not have a line extending that far south in Lake Road and was not able to serve this site. There was an intergovernmental agreement with Clackamas River Water (CRW) that would continue service to the site from a Lake Road line. He reviewed the annexation regulations. The annexation proposal complied with State, Metro, County, and City regulations. Notification was made to interested parties 20 days prior to this meeting. No comments were received from necessary parties protesting the annexation. Two comments were received from interested persons. One was from Pat Russell and was included in the staff report. It championed the notion of the City and County being proactive as development occurred in that area. The second letter was from the owner of the adjacent property, Ms. Bohlman, who expressed concerns with the home occupation. Staff would respond to Ms. Bohlman, but the home occupation did not affect this annexation. The Lake Road Neighborhood Association did not comment on the application; however, Mr. Mealey did attend an Association meeting and got positive feedback on his proposal. Staff recommended approval of the application with findings, and he reviewed the options before City Council.

**Councilor Stone** noted Ms. Bohlman was concerned about increased traffic and asked what kind of analysis had been done and what was anticipated.

**Mr. Marquardt** replied an analysis had not been done because the use was allowed outright in residential zones.

**Mr. Albert** added a traffic analysis was not required since there was no zone change.

**Mr. Mealey** noted initial attempts in thinking about rezoning were cumbersome. The business would be open about 3-½ days a week and generate about 20 trips per day.

**Mayor Ferguson** noted the neighbor claimed the fence was higher than allowed and asked Mr. Mealey if there would be a problem in complying with City standards.

**Mr. Mealey** responded the fence was less than 6 feet high. Traffic would be diverted in front of his house to the side of the property. He wanted to be sensitive to Ms. Bohlman's concerns but did not believe there would be any problems. He indicated the fence on the aerial photograph.

**It was moved by Councilor Chaimov and seconded by Councilor Stone for the first and second readings with the amendments and adoption of the ordinance annexing a tract of land identified as 5111 SE Lake Road into the City limits of the City of Milwaukie and withdrawing the tract from the territory of Clackamas County Service District for Enhanced Law Enforcement and Clackamas County Service District No. 5 for Street Lights (File #A09-02). Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting "aye." [5:0]**

**Mr. Swanson** read the ordinance two times by title only

**Ms. DuVal** polled the City Council: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting "aye."

**ORDINANCE NO. 2007:**

**AN ORDINANCE OF THE CITY OF MILWAUKIE ANNEXING A TRACT OF LAND IDENTIFIED AS 5111 SE LAKE ROAD INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING FROM THE TERRITORY OF ENHANCED LAW ENFORCEMENT AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 FOR STREET LIGHTS (FILE #A-09-02)**

**C. Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 and 19.321.3**

**Mr. Swanson** reviewed the history of the proposed amendment.

**It was moved by Councilor Chaimov and seconded by Councilor Stone to continue the public hearing to the October 20, 2009 regular City Council meeting. Motion passed unanimously with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting "aye." [5:0]**

**OTHER BUSINESS**

**A. NE Sewer Extension Project Loan Agreement**

**Mr. Campbell** provided the staff report in which the City Council was requested to approve a resolution authorizing the City Manager to sign an updated Clean Water State Revolving Fund (CWSRF) Loan Agreement. This had to do with the extension of sewer service into the area known as Dual Interest Area A also known as the NE Sewer Extension Project. The City Council approved the loan agreement in December 2008 and a contract for engineering services with Century West in February 2009. A portion of American Reinvestment and Recovery Act (ARRA or stimulus) was allocated through the Environmental Protection Agency (EPA) to support CWSRF loans. In Oregon, DEQ elected to use these ARRA funds to forgive 50% of the loans issued this year and eliminate interest on the loans themselves. DEQ encouraged Milwaukie to apply for this somewhat different loan program. Half of the loan, \$2 million, will be forgiven when the

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**DRAFT MINUTES**

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project was completed, and the remainder would be paid back over the next 20 years at 0% interest. Staff anticipated offering any customer wishing to connect within 2 years of the project a 10-year payment plan at no interest.

**It was moved by Councilor Barnes and seconded by Councilor Chaimov to adopt the resolution authorizing the City Manager to sign an updated Clean Water State Revolving Fund Loan Agreement for the NE Sewer Extension project. Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting “aye.” [5:0]**

**RESOLUTION NO. 57-2009:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE STATE OF OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY CLEAN WATER STATE REVOLVING FUND LOAN AGREEMENT NO. R06655 AND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT.**

**B. Right-of-way Annexation in the NE Sewer Extension Project Area**

**Ms. Shanks** provided an update on the project and the proposed action that would initiate the annexation petition on behalf of the City. She discussed the construction schedule in that area and noted the right-of-way annexation would not change the service in the area. Property annexation would occur as residents connected to the sewer line. Chief Jordan indicated calls for police services would be referred to the Sheriff unless there was an emergency until properties were annexed. Right-of-way annexation would result in islanding some properties in this area, and she briefly noted the 25% perimeter rule. Language was included in the proposed resolution and subsequent ordinance that the City could not annex properties as a result of the right-of-way annexation. That message would be conveyed to the neighborhood. She commented that some time in the future staff would talk with City Council about properties in that area which were already receiving sewer services from Milwaukie and when they might be annexed. Those properties, however, were kept off the table for now. The action before City Council at this meeting was the first in the 2-step right-of-way annexation process as there were no property owners.

**Councilor Chaimov** suggested deferring annexation of those properties already receiving City services until such time as there were happy customers in Dual Interest Area A.

**Ms. Shanks** said staff was looking at seeking voluntary annexation and hoping to create positive forward motion.

**Councilor Stone** commented on the intent of annexing the right-of-way only to allow more expeditious annexation in the future. She cautioned that government ought not to seem heavy handed and forcing people to do things they did not wish to do. She felt the draft letter sounded overbearing.

**Ms. Shanks** appreciated the comments and noted 20 – 25 of the 300 properties were currently being served by the City. Annexation would not occur until such time as sewer service was needed or wanted.

**It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt the resolution initiating annexation of portions of rights-of-way in the NE Sewer Extension Project area. Motion passed unanimously with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting “aye.” [5:0]**

**RESOLUTION NO. 58-2009:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, INITIATING ANNEXATION OF PORTIONS OF RIGHTS-OF-WAY IN THE NE SEWER EXTENSION PROJECT AREA WHICH IS BOUNDED ON THE NORTH BY SE WESTFORK AVENUE, ON THE EAST BY SE LINWOOD AVENUE, ON THE SOUTH BY SE KING ROAD, ON THE WEST BY THE CURRENT CITY BOUNDARY, AND ON THE NORTHWEST BY SE 55<sup>TH</sup> AVENUE AND AS DEPICTED IN THE ATTACHED EXHIBIT**

**C. Council Reports**

**Councilor Barnes** would attend the wastewater meeting Thursday and would take any City Council comments forward.

**Mayor Ferguson** noted the opening of the Ohana Hawaiian Café and Spring Coffee House Deli. He attended the opening of the Green Line. He announced upcoming meetings including the community garden planning group, the joint Planning Commission and Riverfront Board meeting, and the monthly light rail meeting where the Lake Road station would be discussed.

**ADJOURNMENT**

**It was moved by Councilor Chaimov and seconded by Councilor Stone to adjourn the meeting. Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting “aye.” [5:0]**

**Mayor Ferguson** adjourned the regular session at 8:47 p.m.

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Pat DuVal, Recorder



**To:** Mayor and City Council

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

**From:** Alex Campbell, Resource and Economic Development Specialist

**Subject:** Amendment of Inter-Governmental Agreement with ODOT Covering  
ODOT Contribution to Logus Road Improvement Project

**Date:** November 2, 2009 for November 17<sup>th</sup> Regular Session

### **Action Requested**

Authorize execution of Amendment No. 1 to the Intergovernmental Agreement (IGA) with ODOT for Walkway/Bikeway grant fund contributions to the Logus Road Improvement Project.

### **History of Prior Actions and Discussions**

**October 2009** – Council approved a budget Resolution authorizing project expenditures.

**August 2008** – Council approved a Resolution authorizing commencement of Right of Way acquisition.

**July 2008** – Council approved an amendment to the IGA with ODOT for contracted appraisal services to expand and extend those services.

**April 2008** – Council approved a budget amendment and a contract with Harper Houf Peterson Rhigellis for project design.

**February 2008** – Council approved an IGA with ODOT for contracted appraisal services and an IGA with Clackamas County to allow expenditure of CDBG funds on the project.

**March 2007** – Council approved an IGA with ODOT to accept a Bike/Ped program grant for the project and to initiate project expenditures.

### **Background**

At ODOT inspection of the completed project, ODOT staff requested City pave gravel driveway approaches fronting the project area. Paving gravel driveways back 15 feet from the roadway is preferred ODOT practice under the state bike/ped plan. This practice exists primarily because gravel spill-over into the roadway can be a hazard to bicyclists and gravel on the sidewalk can be a trip hazard to pedestrians. Paving the lower section of gravel driveways, the “approach,” can minimize this problem.

Project had not originally included paving gravel driveways approaches due to cost. ODOT had reviewed plans at an earlier stage and had not made requested any change. City staff responded to the ODOT request by noting the state bike/ped plan is not a binding requirement, that ODOT had not made this request at the plan review stage, and noted that excess project funds were not available to address this request. ODOT staff offered to increase total grant reimbursement \$35,000 to make such paving possible.

A letter was mailed to property owners on Logus in late October making them aware of the possibility of grant funds to pave gravel approaches. The majority of property owners have expressed interest. Any driveway paving will be at the property owner’s request. The City can pave past 15 feet where appropriate, e.g. if the entire length of the driveway is only 20 feet, the City can pave the entire driveway using these grant funds.

Engineering staff will carry out the project, which will be bid by the City under City contracting rules.

### **Concurrence**

Finance Director was consulted on how best to budget for additional funds. Engineering Director was consulted on allocation of staff resources. Engineering staff were consulted on how best to contract paving and identify which driveways should be paved.

### **Fiscal Impact**

Because grant repayment is being carried over from a previous fiscal year's expenses, there will be some small inter-fund borrowing cost to budget this expenditure.

### **Work Load Impacts**

Engineering staff will be able to accommodate this work within existing workloads.

### **Alternatives**

Refusal of this amendment would not put original grant funds in jeopardy. However, staff feels that the additional staff work necessary to carry out these activities are clearly in the interest of Milwaukie residents.

### **Attachments**

1. Resolution
2. IGA Amendment

ATTACHMENT 1

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN AMENDMENT NUMBER 01 TO THE LOGUS ROAD WALKWAY/BIKEWAY PROJECT AGREEMENT.**

**WHEREAS**, The City has undertaken the Logus Road Improvement Project; and

**WHEREAS**, ODOT Walkway/Bikeway funds have contributed to the project as specified under ODOT Agreement No. 23859; and

**WHEREAS**, ODOT has offered additional funds to pave gravel driveway approaches to Logus Road in the project area; and

**WHEREAS**, City Council believes that this offer will improve the safety of Logus Road and provide a benefit to Logus Road residents; and

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Milwaukie authorizes the Mayor to sign the agreement amendment attached as Exhibit 1.

Introduced and adopted by the City Council on October 6, 2009.

This resolution is effective on October 7, 2009.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

**AMENDMENT NUMBER 01  
WALKWAY/BIKEWAY AGREEMENT  
City of Milwaukie**

The **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "State," and the **City of Milwaukie**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on March 27, 2007. Said Agreement covers the design and construction of sidewalks and streetscaping at SE Logus Road between SE Stanley Avenue and SE 49<sup>th</sup> Avenue.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to extend the termination date. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**TERMS OF AGREEMENT, Paragraph 2, page 2, which reads:**

2. Agency has determined that the total cost of the Project is estimated to be \$758,700. State shall fund the Project in an amount not to exceed \$445,400. Agency's portion of the Project cost is \$313,000. Agency shall be responsible for any portion of the Project which is not covered by State funding.

**Shall be deleted in its entirety and replaced with the following:**

2. Agency has determined that the total cost of the Project is estimated to be \$793,700, including supplementary paving of gravel driveways within the Project limits to be bid separately for \$35,000. State shall fund the Project in an amount not to exceed \$480,400. Agency's portion of the Project cost is \$313,000. Agency shall be responsible for any portion of the Project which is not covered by State funding.

**TERMS OF AGREEMENT, Paragraph 3, page 1, which reads:**

3. The work is to begin upon execution of this Agreement by all parties and be completed no later than October 31, 2009. This Agreement shall terminate upon completion of construction and final payment, or five calendar years from date of final signature, whichever is sooner, unless extended by a fully executed amendment. Maintenance responsibilities shall survive any termination of this Agreement.

**Shall be deleted in its entirety and replaced with the following:**

3. The term of this Agreement shall begin on the date all required signatures are obtained. Construction shall be completed no later than December 31, 2010. This Agreement shall terminate upon completion of construction and final payment, unless extended by a fully executed amendment. Maintenance responsibilities shall survive any termination of this Agreement.

**AGENCY OBLIGATIONS, Paragraph 10, page 3, which reads:**

10. Agency shall be responsible for all costs not covered by State funding. State funding is limited to \$445,400.

**Shall be deleted in its entirety and replaced with the following:**

10. Agency shall be responsible for all costs not covered by State funding. State funding is limited to \$480,400.

**STATE OBLIGATIONS, Paragraph 2, page 4, which reads:**

2. Upon receipt of notification that the Agency is prepared to proceed with the development of Project, State shall provide to Agency an advance deposit in the sum of \$222,700, such amount being equal to 50 percent of the State's share of the estimated Project costs. Upon completion of Project, inspection and approval by State staff, and receipt from Agency of an itemized statement of the actual total cost of the Project, State shall deposit with Agency a final payment, the sum of \$222,700, such amount being equal to 50 percent of the State's share of the estimated Project costs. When added to the advance deposit, the final deposit will equal the State's share of the originally estimated cost of \$758,700. Should final Project costs exceed the original estimate, extra costs shall be borne by Agency; the maximum amount of State reimbursement is \$445,400. If final Project costs are less than original estimate, State shall deposit with Agency a final payment in an amount which, when added to the advance deposit, would equal the State's proportionate share of the originally estimated costs, based on percentage calculated using State share and local match.

**Shall be deleted in its entirety and replaced with the following:**

2. Upon receipt of notification that the Agency is prepared to proceed with the development of Project, State shall provide to Agency an advance deposit in the sum of \$222,700. Upon completion of Project, inspection and approval by State staff, and receipt from Agency of an itemized statement of the actual total cost of the Project, State shall deposit with Agency a final payment up to \$257,700. The final payment amount will equal 100% of the supplementary driveway paving costs, up to \$35,000 and 58.8% of the remaining Project costs, up to \$222,700. When added to the advance deposit, the final deposit will equal the State's share of the revised estimated cost of \$793,700. Should final Project costs exceed the revised estimate, extra costs shall be borne by Agency; the maximum amount of State reimbursement is \$480,400.

Agency/State  
Agreement No. 23859-01

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

The Oregon Transportation Commission on May 20, 2009, approved Delegation Order No. 3, which authorizes the Director and Deputy Director, Highways to approve and execute all agreements pertaining to OTC approved local grant program agreements for bicycle and pedestrian projects.

On July 7, 2005, the Director and Deputy Director, Highways approved Subdelegation Order No. 4, in which the Director and Deputy Director, Highways delegates authority to the Technical Services Manager/Chief Engineer to OTC approved local grant program agreements for bicycle and pedestrian projects.

Agency/State  
Agreement No. 23859-01

**City of Milwaukie**, by and through its  
elected officials

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM**

By \_\_\_\_\_

City Legal Counsel

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_

Assistant Attorney General

Date \_\_\_\_\_

Agency Contact:  
Alex Campbell  
Resource & Economic Development  
Specialist  
6101 SE Johnson Creek Blvd  
Milwaukie OR 97206  
503-786-7608  
[campbella@ci.milwaukie.or.us](mailto:campbella@ci.milwaukie.or.us)

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**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_

Technical Services Manager / Chief  
Engineer

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

Bicycle/Pedestrian Program Manager

Date \_\_\_\_\_



**To:** Mayor and City Council

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

**From:** Zachary Weigel, Civil Engineer

**Subject:** Inter-Governmental Agreement with TriMet Regarding the Jackson Street Improvement Project.

**Date:** November 2, 2009 for November 17<sup>th</sup> Regular Session

### **Action Requested**

Authorize execution of Intergovernmental Agreement (IGA) with TriMet for collaboration on the Jackson Street Improvement project.

### **History of Prior Actions and Discussions**

**April 2009** – Resolution 20-2009 entering into IGA's with ODOT regarding federal stimulus projects, including the Jackson Street Improvement project.

**March 2009** – Resolution 14-2009 executing a contract to Harper Houf Peterson Righellis Engineering for design of the Jackson Street Improvement project. Award of the design contract enabled the City to secure and use federal stimulus funds to supplement the project.

**October 2008** – Work session discussion of the proposed project, which is to dissolve the existing downtown transit center by consolidating and updating bus shelters on Jackson Street, and eliminating bus shelters and bus layover locations of 21<sup>st</sup> Avenue.

**June 2008** – Resolution 59-2008 adopting the Umbrella Agreement with TriMet, in which TriMet and the City agreed to create improved Bus Stop Shelter Areas in downtown Milwaukie, using the balance of federal grant funds appropriated for transit improvements in Milwaukie (section 5(b)(ii)).

**May 2008** – Work session discussion of the Umbrella Agreement which contained specific language about making downtown bus shelter improvements at or near the existing transit center location.

**December 2007** – Adoption of the updated Transportation System Plan (Ord. #1975) in which downtown transit center improvements including “improvement of bus stops and shelters consistent with level 3 features” were listed as a high priority project (Table 13-3, pg. 13-10) and which states “*the downtown Transit Center needs to be dissolved, by establishing a bus layover facility somewhere outside downtown and improving bus stop facilities ... that will remain downtown*” (page 7-6).

**April 2007** – Work session update to Council on discussions with the Historic Milwaukie Neighborhood and North Industrial businesses regarding possible layover sites to replace those in use (on-street) at the downtown transit center. The discussion (and related staff report) emphasized the need to retain bus service downtown, and the desire to upgrade TriMet’s facilities, in part by relocating the layover function out of the downtown core.

**December 2006** – Work session discussion to establish the desirability of bus service downtown and the need to “dissolve” the existing transit center. Staff presented four options for moving the layovers out of their current on-street locations.

## **Background**

One of the most highly rated goals identified in the City’s Transportation System Plan is the dissolution of the downtown transit center and concentration of downtown bus operations. In June 2008, Milwaukie entered into an Umbrella Agreement with TriMet to facilitate transit improvements in Milwaukie from 2008 to 2018. This agreement included a project that would dissolve the existing transit center by consolidating downtown bus operations and providing two high quality bus shelter areas with related amenities.

In October 2008, Council approved a project to install two new, high capacity bus shelters on Jackson Street, eliminate other bus stops and bus layover locations within the existing transit center area, and build full street improvements on Jackson Street, fulfilling the requirement of the Umbrella Agreement to dissolve the existing transit center. Design of Jackson Street Improvement project was awarded to Harper Houf Peterson Righellis (HHPR) in March of 2009. The project consists of full width street improvements on both sides of Jackson Street between Main Street and 21<sup>st</sup> Avenue, including wide sidewalks, new concrete roadway, curb extensions with storm water treatment, street furniture, bicycle facilities, underground overhead utilities, and two high capacity bus shelters.

In April 2009, two City of Milwaukie projects were selected for Federal Highway Administration / American Recovery and Reinvestment Act (FHWA ARRA or “stimulus”)

funding. The two projects selected were the Jackson Street Improvements and Linwood Resurfacing. The initial cost for the Jackson Street Improvement project was estimated at \$1.26 million, of which \$725,000 being provided by ARRA funds. The initial cost of the Linwood Resurfacing project was estimated at \$580,000 with \$208,000 provided by ARRA funds.

As the design of Jackson Street Improvement project has progressed, the cost estimate for the project has been updated accordingly. The total cost for the Jackson Street Improvement project is now estimated to be \$1.47 million. The City's required contribution increased by \$208,000.

During the same time (summer 2009), the design of the Linwood Resurfacing project was progressing. Like the Jackson Street Improvement project, estimated project costs had increased due to federal regulations attached to the ARRA funds. The City's contribution to the Linwood Resurfacing project had increased to where more than 75% of the ARRA funds were needed just to meet federal regulations because of the ARRA funding. These increased costs, combined with the additional staff time necessary to manage a federally funded project, made for an inefficient use of the ARRA funds for the Linwood Resurfacing project. As a result, the Linwood Resurfacing ARRA funding was transferred to the Jackson Street project. The Linwood Resurfacing project will still be constructed using Milwaukie Street Surface Maintenance funds, thereby eliminating the costly federal regulations associated with the ARRA funds.

Currently, the City's required contribution to the Jackson Street Improvement project is \$973,000, with \$933,000 provided by ARRA funds. The remaining \$40,000 of the City's contribution has already been appropriated (See Resolution No. 14-2009). TriMet's contribution amounts to \$497,000, which includes \$295,000.00 for the high capacity bus shelters and \$202,000 for transit related street improvements.

Under the Jackson Street Improvement IGA with Tri-Met, the City will be responsible for design and construction of the public street improvements on Jackson Street, excluding the high capacity bus shelters and attachments. The City will administer the ARRA grant, manage the design and construction of the Jackson Street public improvements, prepare the plans and specifications, and maintain the project record. TriMet's responsibilities include consolidating and streamlining bus operations and layover facility functions in downtown Milwaukie, adjusting the transit schedule and bus stop locations to accommodate construction of the project, and providing engineering design, installation services, and continuing maintenance for the high capacity bus shelters and attachments.

Also, the IGA limits the number of bus layover parking spaces in downtown Milwaukie to five spaces once the Jackson Street project is complete. Of those five spaces, three will be located along the block of 21<sup>st</sup> Avenue south of Harrison Street. The other two spaces will be located on Jackson Street constructed as part of the Jackson Street project. The IGA also requires TriMet to phase out use of the designation "transit center" for the major bus stop locations in Downtown Milwaukie.

As part of the Jackson Street Improvement project, TriMet will provide 1.5% of the transit project budget for TriMet's Art Program, approximately \$7,455. These funds are to be applied towards Milwaukie's Sculpture Garden project in front of City Hall, behind the new north bus shelter on Jackson Street.

Final construction plans for the Jackson Street Improvement is scheduled for submission to Oregon Department of Transportation (ODOT) on November 20, 2009. ODOT will bid the project on February 4, 2010. Construction is expected to begin in May 2010 and will take up to five months to complete, finishing up late September 2010.

### **Concurrence**

TriMet has reviewed the IGA and concurs. Engineering, Community Development, Community Services, and Public Works Operations departments of the City all concur as well. The City Attorney has reviewed this action and concurs with its legality.

### **Fiscal Impact**

The Jackson Street Improvement project includes expenditure of \$40,000 of City funds, which were appropriated during the 2008-09 budget year. These included \$10,000 from the Community Development budget, \$10,000 from the Engineering Department, and \$20,000 from the General Fund Contingency.

In the event construction costs for the Jackson Street Improvement project exceed ten percent of the \$1.47 million estimate, the City and TriMet agree to discuss and negotiate payment and contribution prior to obligating additional funds.

### **Work Load Impacts**

The Jackson Street Improvement project can be accommodated within existing workloads. Community Development, Planning, and Engineering staff have been and will continue to coordinate the design effort with TriMet and HHPR. Community Services staff will coordinate downtown parking issues and public information.

### **Alternatives**

Council may make minor revisions to the IGA and approve as amended. Council may direct staff to make major revisions to the IGA and present the amended IGA for consideration at the next Council Meeting. Council may reject the IGA, which would result in the termination of the Jackson Street Improvement project.

### **Attachments**

1. Resolution
2. IGA for Jackson Street Improvement project

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH TRIMET FOR COLLABORATION ON THE JACKSON STREET IMPROVEMENT PROJECT.**

**WHEREAS**, the Jackson Street Improvement project addresses one of the highest ranked projects identified in City's Transportation System Plan by consolidating downtown bus operations and providing a high quality bus shelter area with related amenities; and

**WHEREAS**, the City will provide funding in the amount of \$973,000 towards the design and construction of public street improvements for the Jackson Street Improvement project; and

**WHEREAS**, the Federal Highway Administration / American Recovery and Reinvestment Act (FHWA ARRA) will provide \$933,000 toward the City's portion of funding for the Jackson Street Improvement project, which must be obligated by December 31, 2009 and spent by the end of September 2010; and

**WHEREAS**, Congress enacted ARRA to stimulate job growth in the construction industry and the Jackson Street Improvement project will employ a number of consulting engineers and contractors in the design and construction of the project; and

**WHEREAS**, TriMet will provide funding in the amount of \$497,000 toward the design and construction of the high capacity bus shelters and related transit improvements; and

**WHEREAS**, the City and TriMet will work collaboratively on the design and construction of the Jackson Street Improvement project; and

**WHEREAS**, the number of bus layover parking in downtown Milwaukie will be limited to five spaces, three on the block of 21<sup>st</sup> Avenue south of Harrison Street and two on Jackson Street constructed as part of the Jackson Street Improvement project; and

**WHEREAS**, TrMet will phase out use of the designation "transit center" for this location in Downtown Milwaukie;

**NOW, THEREFORE, BE IT RESOLVED** that the Council authorizes the City Manager to sign an Intergovernmental Agreement for the Jackson Street Improvement project.

Introduced and adopted by the City Council on November 17, 2009.

This resolution is effective immediately.

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Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

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Pat DuVal, City Recorder

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City Attorney

Document5 (Last revised 09/18/07)

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN TRIMET AND THE CITY OF MILWAUKIE  
FOR COST SHARE OF ON-STREET PUBLIC WORKS IMPROVEMENTS ON  
JACKSON STREET**

This intergovernmental agreement (“Agreement”), dated \_\_\_\_\_, 2009, is made and entered into by and between the City of Milwaukie (“Milwaukie” or “City”) and the Tri-County Metropolitan Transportation District of Oregon (“TriMet”) (collectively, the “Parties”).

**RECITALS**

1. City and TriMet have developed a plan to address one of the highest ranked projects identified in the City’s Transportation System Plan: dissolving the downtown transit center, concentrating bus operations, and improving bus stops on Jackson Street between Main Street and 21<sup>st</sup> Avenue. SE Jackson Street is part of the Milwaukie street system and under the jurisdiction of the City. TriMet operates bus service along SE Jackson Street and the efficient movement of passengers is a priority.
2. City Council has approved an on-street public works project to install two (2) new, high capacity bus shelters on Jackson Street, eliminate other bus stops and bus layover locations in the existing transit center area, and build full street improvements on Jackson Street (“Project”). Full street improvements include a reconstructed roadway and sidewalks, curb extensions at all four (4) corners, ornamental lighting on both sides of the street, street furniture, bicycle facilities, and underground utilities on the south side of the street, as shown in Exhibit 1, which is attached hereto and incorporated in its entirety by this reference.
3. Total project cost is estimated to be \$1.47 million and is funded with federal stimulus funds, federal transit grant funds, City funds, and TriMet funds. The City’s contribution, which includes Federal Highway Administration/American Recovery and Reinvestment Act (FHWA ARRA or “stimulus” funds), is \$973,000. TriMet’s contribution is \$497,000.
4. The Parties desire to work collaboratively on the design and construction of the Project. To that end, on July 17, 2008, the Parties entered into a Memorandum of Understanding (“MOU”) to facilitate the transit improvement work in Milwaukie from 2008-2018. Specifically, the Parties agreed to enter into a separate, binding agreement to create and fund the improved bus operations and shelter areas in downtown Milwaukie.
5. The Parties are authorized to enter into this Agreement pursuant to the provisions of ORS Chapter 190.

**NOW, therefore**, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## **I. PARTY RESPONSIBILITIES**

### **A. City Responsibilities:**

1. City shall be responsible for administering the American Recovery and Reinvestment Act grant (“ARRA grant”) in the amount of \$933,000, and City funds in the amount of \$40,000, both of which are to help fund the Project. The City recognizes that the Project is subject to the fast-paced schedule requirements of the ARRA, which mandates that the Project go to bid by March 2010 and construction begins in Spring 2010.
2. City shall designate appropriate staff to the Project to carry out the City’s responsibilities. This includes, but is not limited to, appropriate permitting staff.
3. City’s Office of Public Works shall take responsibility for project management, design, right-of-way, public outreach, citizen involvement activities, engineering, permitting, utility coordination, and project construction.
4. City shall be responsible for the preparation of Project plans and specifications. ODOT will advertise and award a construction contract to the lowest responsible and responsive bidder, per ODOT policy and practice for projects which include FHWA ARRA funds.
5. City shall work with TriMet to guide the City Design and Landmarks Committee in the selection of a preferred bus shelter design. The City Engineer shall exercise his authority in approving the final selection and placement of the preferred bus shelter type in the public right-of-way.
6. City shall facilitate the processing of required permits and provide inspection services of civil and electrical work to ensure facilities are constructed to City standards.
7. In the event project costs are expected to exceed ten percent (10%) of the \$1.47 million estimate, City and TriMet agree to discuss and negotiate payment and contribution prior to obligating such additional funds.
8. City shall bear responsibility for all reasonably foreseeable cost increases caused by City’s failure to timely perform its obligations under this Agreement.
9. City shall maintain detailed and accurate records of all City funds expended and all City work performed with regard to this Agreement, and upon TriMet’s request, make such records available to TriMet for inspection.
10. City shall be responsible for all design, permitting and construction associated with the public art aspect of the Project, and will work with TriMet to ensure that construction of the anticipated sculpture garden is coordinated with installation of the bus shelters.

**B. TriMet Responsibilities:**

1. TriMet shall work with the City in administering the Federal Transit Administration grant appropriation (totaling \$454,504), which has been assigned to TriMet in support of the two enhanced bus stop treatments. TriMet shall provide to the City an additional \$42,496 for a total contribution to the Project of \$497,000.
2. TriMet shall set aside one and a half percent (1.5%) of the transit project funds under TriMet's Art Program (total \$7,455) to expend for the Project. City and TriMet shall jointly administer these funds. TriMet understands that the City intends to apply these funds to a Sculpture Garden project adjacent to the Project, which will benefit both transit patrons and other downtown Milwaukie pedestrians.
3. In consultation with the City, TriMet will consolidate and streamline bus operations and layover facility functions to support the Project. TriMet agrees to limit bus layover parking in downtown Milwaukie, after completion of the Project, to no more than five (5) layover/parking spaces; those five parking spaces will be the existing three (3) layover parking spaces on 21<sup>st</sup> Avenue, in the block immediately south of Harrison Street, and the two (2) new layover spaces to be constructed on Jackson Street as part of this Project.
4. TriMet shall prepare and communicate to the City an integrated schedule of anticipated transit enhancements and operational changes to support the multiple construction phases of the Project. This may include operational re-routes with temporary bus stops and temporary layover locations.
5. TriMet shall conduct preliminary design and investigation of the Project during the conceptual and preliminary design phases to ensure that the selected bus stop sites and roadway geometry are feasible and fully comply with safe bus operations.
6. TriMet shall work with City staff to coordinate all citizen involvement activities during the shelter selection phase of the Project. The chosen shelter type and shelter environment will include design elements that contribute to a high-quality built environment and will be designed to comply with TriMet's Bus Stop Amenities Development Criteria and Bus Stop Classification Guidelines as applicable to a transfer location with 4,800 weekly boardings. TriMet will work together with the City in the selection of amenities within the shelter and its immediate environment.
7. TriMet shall provide engineering design and installation services for the bus shelter procurement portion of the Project. TriMet shall consult with City during the search for available shelters, design refinement of preferred shelters, and site locations. TriMet shall provide City with the opportunity to make recommendations and changes, and shall incorporate into the plans and specifications all recommendations and changes upon which the City and TriMet mutually agree. TriMet shall obtain City's approval of final shelter design fabrication contract documents prior to bidding.
8. TriMet shall ensure the contractor(s) guarantees the workmanship of the procured shelter for a period of two (2) years, and further guarantees the maintenance of any civil work performed outside of the City's on-street portion of the Project.

9. TriMet shall apply for and obtain all necessary permits prior to installation of the shelters and transit street furnishings.
10. TriMet shall bear responsibility for all reasonably foreseeable cost increases caused by TriMet's failure to timely perform its obligations under this Agreement.
11. TriMet shall maintain all bus stop improvements that are not part of the City's streetscape Project. This responsibility includes but is not limited to:
  - All bus stop shelters and attachments, including timely treatment of graffiti and repair necessitated by vandalism;
  - All bus stop signs and customer information displays;
  - Street furniture related to the bus stop and approved by TriMet, including benches, customer displays, and trash containers. TriMet shall be responsible for arranging timely servicing of trash containers installed at the bus stops.
12. TriMet shall provide to City follow up monitoring and evaluation documenting the success of project improvements.
13. TriMet shall phase out use of the designation "transit center" for the Jackson Street/Milwaukie Center major bus stop as soon as is reasonably practicable in all TriMet publications and communications.

## **II. BUDGET MANAGEMENT**

1. The City's contribution to the Project is limited to \$973,000, which includes up to \$933,000 in ARRA grant funds. The City will provide \$40,000 in additional grant funds, or the balance required to bring the total City and Federal combined contribution to \$973,000. These funds are to be expended for designing and constructing the on-street portions of the Project.
2. TriMet's contribution to the Project is limited to \$497,000, which includes up to \$454,504 in Federal grant funds. TriMet will provide \$42,496 in additional grant funds, or the balance required to bring the total TriMet and Federal combined contribution to \$497,000. These funds are to be expended for the transit portions of the Project, including on-street elements. TriMet has programmed \$295,000 for procurement, fabrication, and installation of the two high capacity shelters. TriMet has programmed \$139,625 for reimbursement to the City for construction costs associated with the transit on-street improvements that support TriMet operations. Remaining funds totaling \$62,375 has been programmed for design and engineering services and art program contribution.
3. Upon completion of the transit on-street improvement projects tasks, City shall invoice TriMet for labor and material costs for a fixed-price lump sum of \$139,625. This invoice shall be submitted to TriMet's Finance Department as follows:

TriMet Finance Department  
Attn: Accounts Payable  
4012 SE 17th Avenue  
Portland, OR 97202

### III. GENERAL PROVISIONS

1. Relationship of Parties. Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
2. Termination.
  - A. Unless terminated sooner by a method set forth in this Agreement, the Agreement shall terminate thirty (30) days after the conclusion of substantial completion of construction the Project. The Agreement may be extended by the mutual written consent of both Parties.
  - B. This Agreement may be terminated at any time by the mutual written consent of both Parties.
  - C. Either Party may terminate this Agreement in the event of a material breach by the other Party, but only if the other Party fails to cure the breach within fifteen (15) days' of receipt of written notice specifying the breach.
3. Audits and Inspections. The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
4. No Third Party Beneficiaries. Milwaukie and TriMet are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are expressly described as intended beneficiaries of the terms of this Agreement.
5. Entire Agreement. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either

Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

6. Successors; Assigns. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties. The rights and obligations of each Party under this Agreement may not be assigned in whole or in part without the prior written consent of the other Party.
7. Governing Law; Mediation. This Agreement shall be construed according to the laws of the State of Oregon. TriMet and Milwaukie shall negotiate in good faith to resolve any dispute arising under this Agreement. Should any dispute arise between the parties concerning this agreement that is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any Party commencing litigation. In such an event, the parties to this agreement agree to participate in good faith in a non-binding mediation process. The mediation shall take place in Portland, Oregon. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. The mediator's fees and costs shall be borne equally by the parties. In the event mediation is unsuccessful, the Parties are free to pursue any legal remedies that may be available. Any litigation between Milwaukie and TriMet arising under this Agreement or out of work performed pursuant to this Agreement shall occur, if in the state courts, in the Clackamas County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.
8. Severability; Survivability. If any clause, sentence, or portion of the terms and conditions of this Agreement becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law. All provisions concerning indemnity survive the termination of this Agreement for any cause.
9. Interpretation. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
10. Waiver; Remedies. Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
11. Indemnity. Within the limits of the Oregon Constitution and the Oregon Tort Claims Act each of the Parties shall hold harmless, indemnify, and defend the other and its directors, officers, employees and agents from and against all claims, demands, penalties, and

causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent acts or omissions of the indemnitor, its officers, employees, or agents.

12. Notices. All routine correspondence and communication regarding this Agreement shall be between the following representatives of the Parties:

TriMet:                    Young Park  
                              TriMet Project Planning  
                              710 NE Holladay Street  
                              Portland, OR 97232  
                              Telephone: (503) 962-2138  
                              Fax: (503) 962-2281

With copy to:            TriMet Legal Department  
                              710 NE Holladay Street  
                              Portland, OR 97232  
                              Attn: Britney Colton  
                              Telephone: (503) 962-2470  
                              Fax: (503) 962-2299

City of Milwaukie:      Kenny Asher  
                              Director of Community Development and Public Works  
                              City of Milwaukie  
                              6101 SE Johnson Creek Boulevard  
                              Milwaukie, OR 97206  
                              Telephone: (503) 786-7654  
                              Fax: (503) 774-8236

Either Party may change the foregoing notice address by giving prior written notice thereof to the other Party at its notice address.

Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.

**TRI-COUNTY METROPOLITAN  
TRANSPORTATION DISTRICT  
OF OREGON**

By

\_\_\_\_\_  
Neil McFarlane, Executive Director

Date

\_\_\_\_\_

**CITY OF MILWAUKIE**

By

\_\_\_\_\_  
Jeremy Ferguson, Mayor

Date

\_\_\_\_\_

Date

\_\_\_\_\_

**APPROVED AS FORM**

By

\_\_\_\_\_  
Britney Colton, TriMet Legal  
Department

**APPROVED AS FORM**

By

\_\_\_\_\_  
Milwaukie City Attorney

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING KAY BOWER TO THE MILWAUKIE LEDDING LIBRARY BOARD.**

**WHEREAS**, a vacancy exists on the Milwaukie Ledding Library Board; and

**WHEREAS**, Milwaukie Charter Section 26 provides that, “the mayor, with the consent of the council, shall appoint the various committees provided for under the rules of the council or otherwise and fill all vacancies in committees of the council from that body,” and

**WHEREAS**, Kay Bower possesses the necessary qualifications to serve on the Milwaukie Ledding Library Board.

**Now, therefore, the City of Milwaukie, Oregon resolves as follows:**

SECTION 1: That Kay Bower is appointed to the Milwaukie Ledding Library Board.

SECTION 2: That her term of appointment shall commence November 17, 2009 and shall expire on March 31, 2013.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on November 17, 2009.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, NOMINATING BETH KELLAND AS THE CITY OF MILWAUKIE REPRESENTATIVE TO THE CLACKAMAS COUNTY SERVICE DISTRICT #1 RIVERHEALTH ADVISORY BOARD.**

**WHEREAS**, the RiverHealth Advisory Board advises the Governing Board of Clackamas County Service District #1(CCSD#1)on matters related to District operations and finances; and

**WHEREAS**, the Board provides input and recommendations to CCSD#1 staff and governing body on wastewater and watershed management issues, and

**WHEREAS**, CCSD#1 focuses efforts in these major areas: near term investment in wastewater capital infrastructure, development of watershed priorities, and the construction of sewers in the North Clackamas Revitalization Area, and

**WHEREAS**, the efforts of CCSD#1 are important to the long term needs of the City of Milwaukie, and

**WHEREAS**, the Board and City of Milwaukie are eager to work collaboratively on improved stewardship of the Kellogg Treatment Plant and actively working toward projects of particular interest to Milwaukie, namely making the Plant a good neighbor to those who live and work near the Plant; and

**WHEREAS**, the City of Milwaukie has been invited to nominate a citizen to participate in these stated efforts; and

**WHEREAS**, the Milwaukie City Council feels it appropriate, as the City is the District’s largest wholesale customer, to appoint a member of the Milwaukie Citizens Utility Advisory Board to provide insights to the RiverHealth Advisory Board; and

**WHEREAS**, the Milwaukie City Council finds that Citizens Utility Advisory Board member Beth Kelland is qualified to serve as the City’s representative on the RiverHealth Advisory Board.

**NOW, THEREFORE, BE IT RESOLVED** that the Milwaukie City Council nominates Beth Kelland as the City of Milwaukie’s representative to the Clackamas County Service District #1 RiverHealth Advisory Board.

Introduced and adopted by the City Council on November 17, 2009.

This resolution is effective immediately upon adoption.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

6.  
OTHER BUSINESS



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Bill Monahan, City Attorney's Office

Subject: Waste Water Treatment Capacity Advisory Committee

Date: November 16, 2009 for the November 17, 2009 Regular Session

### **Action Requested**

Pass a resolution confirming the City Council's endorsement of the need and concept of a regional wastewater solution and approving the Waste Water Treatment Capacity Advisory Committee Bylaws as recommended on November 5, 2009 by the regional waste water partnership group.

### **History of Prior Actions and Discussions**

**October 20, 2009** – Council voted to endorse the need and concept of a regional wastewater solution but declined to vote on the draft Bylaws until a complete version is available. It was moved by Councilor Barnes and seconded by Councilor Chaimov that the City of Milwaukie endorses the need and concept of a regional wastewater solution in Clackamas County and that the City of Milwaukie looks forward to reviewing the final and completed version of the Bylaws of the proposed partnership agreement. Motion passed unanimously.

**October 6, 2009:** Council discussed the draft Bylaws of the Committee during work session. Representatives of WES provided information on the status of discussions leading up to the latest draft of the Bylaws.

**From the Spring of 2008 and throughout 2009:** Councilor Deborah Barnes represented the city in one to two meetings per month at Community Partnership meetings involving Milwaukie, Gladstone, West Linn, Damascus, Oregon City, Happy Valley, Clackamas County, and CCSD#1. Councilor Barnes regularly reported to the Council the direction that the committee was headed and the expected outcomes.

## **Background**

Since 2008, Clackamas County facilitated a discussion by representatives of the cities that are served by the Tri City Treatment Plant and the Kellogg Creek Treatment Plant. The purpose of the task force was to develop the elements of a community partnership agreement. After many months of meetings and consideration of several drafts of what was originally a “Collective Partnership Agreement for Wastewater Treatment Infrastructure,” the task force developed the proposed Bylaws of the Waste Water Treatment Capacity Advisory Committee.

As noted in October, the Bylaws call for each participant to appoint one representative and one alternate to the committee. The general duties of each member are to make recommendations and request actions consistent with: 1) cost effective operations of the county service districts, 2) the requirements of ORS Chapter 451, and 3) each district’s obligation to pay for the costs associated with the growth of its service needs.

Through Councilor Barnes, the City raised concerns about the draft Bylaws. Up until the final Community Partnership meeting held on November 5, the Bylaws did not provide sufficient detail on general duties and the amendment process. In addition, issues raised by the City had not been fully considered.

The draft Bylaws attached to this memorandum reflect the discussion held at the Community Partnership meeting of November 5 and incorporate the suggestions made at that meeting by Councilor Barnes.

## **Concurrence**

City Manager Swanson concurs that the draft Bylaws are ready for adoption by the City Council.

## **Fiscal Impact**

Acceptance of the Bylaws does not have a fiscal impact. The Committee is advisory only. Any recommendations of the Committee will require Board of County Commission action before any Committee recommendations have effect.

## **Work Load impacts**

Some staff time as well as contribution of time by a citizen representative will be necessary once the Committee is formed.

## **Alternatives**

The alternative is to not participate in the Committee.

## **Attachments**

1. November 5, 2009 draft Waste Water Treatment Capacity Advisory Committee Bylaws
2. A resolution to participate in the Waste Water Treatment Capacity Advisory Committee.

5 November 2009

**Waste Water Treatment Capacity Advisory Committee**

**Bylaws**

The Board of Commissioners of Clackamas County (BCC) in its roles as the governing body of Clackamas County, of Clackamas County Service District No. 1 (CCSD#1), and of the Tri-City Service District (TCSD), desires to form a permanent advisory committee, in addition to the existing service district advisory committees, composed of interested partners regarding the planning, construction, management, and financing of wastewater treatment infrastructure in Clackamas County. This committee shall be the Wastewater Treatment Capacity Advisory Committee (Committee).

**Article 1. Committee Scope and Composition.**

Section 1.1 Purpose. The Committee shall:

- (a) Review, discuss and make recommendations on proposed operational and multi-district capital improvements to the region's wastewater treatment system, programs, and capacity;
- (b) Review and make recommendations regarding expenditures of funds relating to the same; and
- (c) Perform other projects as assigned by the Board, as such may be suggested by the Director of Water Environment Services (WES) or requested by the Committee and approved by the BCC or as otherwise provided for in these bylaws.

Section 1.2 Membership. The following geographical areas and municipal entities shall have representation on the Committee:

- (a) Unincorporated Clackamas County within the boundaries of CCSD#1;
- (b) City of Damascus;
- (c) City of Gladstone;
- (d) City of Happy Valley;
- (e) City of Milwaukie;
- (f) City of Oregon City; and
- (g) City of West Linn.

Section 1.3 Appointment. The governing political body of each city shall appoint one representative and one alternate to the Committee. The BCC shall appoint the representative and

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alternate for the unincorporated areas pursuant to the terms and procedures of the advisory committee policy of Clackamas County.

**Article 2. Term and Responsibilities.**

Section 2.1 Term. The Committee will have an indefinite term or until dissolved by mutual agreement of the Members or by the BCC. A member may withdraw at any time without penalty of any kind.

Section 2.2 Duties and Rights. Each member shall have the following duties and/or rights with respect to treatment obligations:

(a) *General Rights*. Membership has no effect on the existing rights and duties of each service district and each member.

(b) *General Duties*. Each Member agrees that the Committee shall make recommendations and request actions consistent with: 1) cost effective operations of the county service districts, 2) the requirements of ORS Chapter 451, and 3) each District's obligation to pay for the costs associated with growth of its Members' service needs.

(c) *Access to Meetings and Records*. All meetings and records of the Committee shall be held, maintained and/or made available consistent with Oregon Public Meetings Law and Oregon Public Records Law, as applicable.

(d) *Master Planning*. The Committee shall review and make recommendations on regional wastewater treatment system master plans regarding existing and future wastewater treatment capacity.

(e) *Investment Strategy*. The Committee shall review and make recommendations on investments and/or expenditures for land, capital facilities, and equipment as necessary to implement the Master Plans.

(f) *Environmental Compliance*. The Committee shall review and make recommendations about environmental management and permitting where regional interests intersect with existing jurisdictional responsibilities.

(g) *Rate Evaluation*. The Committee shall review and make recommendation to the BCC on wholesale wastewater treatment rates to be assessed to all areas.

(h) *Future Membership*. The Committee shall discuss criteria and make recommendations on the addition and conditions of any future members who apply to the BCC for membership to this agreement or Committee. Consideration for membership in this agreement and Committee shall follow the process and shall meet the minimum criteria as outlined in Article 4.

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*(i) Non Treatment Capital Facilities.* The Committee may make recommendations to the BCC to lend or advance funds for the purposes of construction of non-treatment wastewater capital facilities, i.e. water reuse, biosolids programs, temperature control infrastructure, industrial pretreatment programs, etc. The Committee shall include in its recommendations how the funds are to be secured and the repayment terms including principal, interest, and related expenses.

**Article 3. Decisions and Procedures.**

Section 3.1 Voting. The appointed members to the Committee shall be allocated votes as set forth below:

- (a) The Cities of Gladstone, Oregon City and West Linn shall be awarded 1 and 1/3 votes each.
- (b) The cities of Damascus, Happy Valley, and Milwaukie shall be awarded 1 vote each.
- (c) The unincorporated area of north Clackamas County shall be awarded 1 vote.

Section 3.2 Recommendations to the BCC. The Committee will vote on all Committee recommendations to the BCC. A majority shall be members holding at least 5 eligible votes. The Committee shall by majority vote provide a report to the BCC regarding its recommendations for investments or expenditures for new wastewater treatment assets or recommendations to change wholesale rates regarding wastewater treatment assets or recommendations to amend the Committee Bylaws. Minority reports and recommendations may be sent to the Board at the request of one or more Members.

Section 3.3 Voting Revisions. If the membership of the Committee changes due to the addition of new members or withdrawal of any members the Committee shall, as part of its actions reallocate votes on the Committee in an appropriate manner to recognize the new member or loss of a member to maintain equal voting status for CCSD#1, which includes Milwaukie, and TCSD.

Section 3.4 Meetings. The Committee will meet quarterly, or at the request of the BCC. Additional meetings may be called by the Chair as he/she deems necessary. Members shall elect the Chair of the Committee, and the Chair position shall rotate annually.

Section 3.5 Staffing. WES staff will perform as County staff liaisons to the Committee and provide technical and administrative support.

**Article 4. New Membership. This section does not apply to founding members (See section 1.2) and applies only to those who apply for membership after the formation of the Committee.**

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Section 4.1 Process.

- (a) Prospective new members must submit a written request for admission to the Committee and provide evidence of their ability and willingness to meet the criteria set forth below. The Committee will review this written request for admission and forward a recommendation to the BCC prior to any decision regarding the prospective new member.
- (b) Entities that meet the criteria for membership, as set forth below, may petition for admission on the Committee. The BCC may require additional information from the prospective new member before making a final decision on membership.
- (c) The BCC shall be the sole entity in approving membership to the Committee. The BCC will receive a recommendation from the Committee about the addition of new members prior to any final decisions on membership.

Section 4.2 Criteria. To be approved as a new member by the BCC a prospective new member must:

- (a) Accept, without reservation or conditions, all agreements, by-laws, and procedures governing the wastewater treatment system that are in place at the time of their entry on the Committee;
- (b) Have a minimum of 5,000 ratepayers who obtain wastewater treatment from a County or City service district;
- (c) Agree to and pay an equitable share of the costs of improvements, expansion, or changes of existing and/or new or additional wastewater treatment facilities and related infrastructure; and
- (d) Be required at the discretion of the BCC, and upon recommendation from the Committee, to contribute capital or physical assets as part of their share in the cost of major improvements or expansions of existing and/or new or additional wastewater capacity.

**Article 5. Amendments.**

Section 5.1 Representative Reporting. Each Member representative shall report on any proposed bylaw changes to their respective representative bodies.

Proposed Final Version

5 November 2009

Section 5.2 BCC Amendments. The Committee requests that the BCC, before considering any BCC-initiated amendments to these bylaws, consult with the Committee and allow sufficient time for consultation by the Committee representatives with their respective representative bodies.

# ATTACHMENT 2

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, CONFIRMING ITS ENDORSEMENT OF THE NEED AND CONCEPT OF A REGIONAL WASTE WATER SOLUTION IN CLACKAMAS COUNTY AND APPROVING THE WASTE WATER TREATMENT CAPACITY ADVISORY COMMITTEE BYLAWS.**

**WHEREAS**, on October 20, 2009, the City Council by unanimous vote endorsed the need and concept of a regional waste water solution in Clackamas County; and

**WHEREAS**, the City Council has received and reviewed the Waste Water Treatment Capacity Advisory Committee Bylaws accepted by the community partnership work group on November 5, 2009; and

**WHEREAS**, the November 5, 2009 version of the Bylaws reflect the input of the City and are adequate to initiate the work of the Advisory Committee, and

**WHEREAS**, the City desires to confirm its intent to participate as a member of the Advisory Committee;

**NOW, THEREFORE, BE IT RESOLVED** that the City of Milwaukie authorizes the City Manager to advise the Board of Commissioners of Clackamas County that the City accepts the Proposed Final Version of the Waste Water Treatment Capacity Advisory Committee Bylaws dated November 5, 2009.

Introduced and adopted by the City Council on November 17, 2009

This resolution is effective on November 17, 2009.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat Duval, City Recorder

\_\_\_\_\_  
City Attorney

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