

WORK SESSION

**MILWAUKIE CITY COUNCIL
WORK SESSION**

JUNE 21, 2011

MILWAUKIE CITY HALL

Conference Room
10722 SE Main Street

WORK SESSION – 5:00 p.m.

A light dinner will be served

Discussion Items:

	<u>Time</u>	<u>Topic</u>	<u>Presenter</u>	<u>Page #</u>
1.	5:00 p.m.	City Manager's Report	Bill Monahan	
2.	5:30 p.m.	Commercial Core Enhancement Program	Kenny Asher/Katie Mangle	1
3.	5:45 p.m.	Metropolitan Area Communications Commission (MACC) Services Discussion	JoAnn Herrigel	
4.	6:15 p.m.	Monthly Neighborhood District Association Dialogue		
5.	6:45 p.m.	Adjourn		

Information

Executive Session: The Milwaukie City Council may meet in executive session pursuant to ORS 192.660(2). 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.

Public Notice

- The Council may vote in work session on non-legislative issues.
- The time listed for each discussion item is approximate. The actual time at which each item is considered may change due to the length of time devoted to the one previous to it.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.
- The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities (ADA). If you need special accommodations, please call 503.786.7502 or email ocr@ci.milwaukie.or.us at least 48 hours prior to the meeting.



To: Mayor and City Council

Through: Bill Monahan, City Manager

From: Kenneth Asher, Community Development and Public Works Director
Katie Mangle, Planning Director

Subject: Commercial Core Enhancement Program – Direction on the CET Grant

Date: June 6 for June 21, 2011 Work Session

ACTION REQUESTED

Direct staff to launch the Commercial Core Enhancement Program (CCEP) by taking the following actions:

- A. Refine the CCEP scope of work and present to Council in August 2011
- B. Begin negotiations with Metro on an intergovernmental agreement for a Construction Excise Tax (CET) grant to fund the CCEP.
- C. Reconcile differences (if any) between the council-approved scope of work (August 2011) and the grant-approved scope of work (January 2010) and execute the IGA with Metro for the reconciled scope of work.

If item C above cannot be accomplished, staff will report the nature of the impasse to Council and seek further direction. The January 2010 grant-approved scope of work is summarized as Attachment 1.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

March 29, 2011 - During a study session, staff presented Council with the proposed ensemble of projects that are envisioned to comprise the "Commercial Core Enhancement Program".

January 20, 2010 - Council directed staff to request grant funds from Metro's Construction Excise Tax planning grant program to support urban renewal and related planning efforts (Resolution 06-2010).

BACKGROUND

The City has several community development efforts pending, all of which seek to address the need to strengthen the core commercial areas of Milwaukie (downtown, the Highway 224/Marketplace vicinity, and other neighborhood nodes). These efforts include the South Downtown planning effort, the CET grant from Metro, and interest on the part of Council and neighborhoods to lower the barrier of entry and property improvement costs for new or expanding businesses in town. The City's economic and community development goals require a clear and coordinated effort to succeed in this area. The Commercial Core Enhancement Program is envisioned to provide this coordination.

At its March 29, 2011 study session, Council and staff discussed the interconnectedness of issues related to Milwaukie's commercial environment, and the challenges and opportunities waiting to be addressed. Staff offered that an integrated approach would include public involvement at many levels; the engagement of community members and property owners; and professional inputs from designers, zoning code experts, developers and real estate economists which when all mixed together, would result in new plans, codes and projects that could actually be completed and supported by the community. Council agreed that a multi-pronged effort would be needed and expressed support for staff continuing to develop the Commercial Core Enhancement Program.

Council has also discussed, on multiple occasions, the need for the City to address challenges posed by the Public Area Requirement policies for downtown. Effectively addressing this and other challenges will require a holistic examination of the City's streetscape and design standards, incentives, regulations, and vision. This is exactly the type of work the Metro CET grant was intended to fund, and what the Commercial Core Enhancement Program was conceived to address.

The city applied for the CET Grant in January 2010 and received notice of a \$224,000 award in June 2010. However Metro's CET program was brought to court by the Homebuilders Association of Metropolitan Portland. The case was dismissed at Oregon Circuit Court and is currently on the Oregon Appeals Court docket (appeal No. A146059). Metro has determined that it can still make CET grant awards to jurisdictions willing to share the risk of reimbursement or restitution should Metro lose the case on appeal. The IGA that Metro has developed assesses a 50-50 risk share between Metro and the recipient jurisdictions (see Attachment 2). In Milwaukie's case, that means that Milwaukie could need to repay up to \$112,000. Metro has advised recipient jurisdictions that it is unlikely that the Homebuilders Association will prevail on its appeal. According to Metro (as of June 14), five jurisdictions including Portland, Hillsboro, and Washington County have already signed IGA's with Metro. Two additional jurisdictions are in negotiations. This past March, Metro outlined a process by which IGA's would be negotiated such that risk can be shared and funds released for planning projects awarded under the CET grant program (see Attachment 3).

Staff is seeking information from Metro attorney's on the latest legal developments. Should staff learn anything about the appeals hearing process or arguments, it will share that information with Council as promptly as possible.

With Council's approval, staff will refine the CET grant work scope (which will become the CCEP work program) to meet the multiple objectives outlined during the March 29 study session.

CONCURRENCE

The Finance Department and Legal Departments have reviewed the IGA template that Metro has used with other CET grant recipient jurisdictions and concurs with the terms as generally stated. Council has indicated support for the CCEP concept, although there is not concurrence on the question of whether urban renewal should be further studied. This is one reason why staff recommends returning to Council in August with a refined scope of work. The question of urban renewal and other CCEP elements should be discussed at that time.

FISCAL IMPACT

Revenues from this grant were already included in the General Fund revenues of the Adopted Budget and the corresponding project expense was included on the Non-Departmental budget page. Accordingly, the fiscal impact of receiving this grant and moving forward with this project have already been budgeted for in the fiscal year 2012 Adopted Budget.

In regards to the fiscal impact of any risk exposure to a successful appeal by the Homebuilders Association, we believe this exposure is minimal. Metro has advised recipient jurisdictions that it is unlikely that the Homebuilders Association will prevail. Additionally, Portland, Hillsboro, Washington County and other jurisdictions have already signed IGA's with Metro to share the risk and begin their projects. But with this said, it would be prudent to pledge \$112,000 (representing 50 percent of the grant and the City's total exposure if the appeal is successful) of the General Fund's contingency balance for this risk. The Adopted Budget set aside a total of \$760,000 in General Fund reserve contingency, and with this pledge, this contingency would leave \$648,000 still undesignated for fiscal year 2012.

WORK LOAD IMPACTS

The CCEP is one of the highest priority projects in the Community Development and Planning Departments, and will consume significant staff resources. Approximately 1000 hours of work were estimated under the original grant application, and this estimate could turn out to be low. There are substantial workload impacts associated with the council's decision to pursue the CCEP. Staff will be prepared to discuss workplan considerations at the work session if council so desires.

ALTERNATIVES

Council could elect to delay or deny acceptance of the CET grant until Metro's lawsuit is disposed. In this case, staff would recommend returning to Council in August with a vastly scaled down version of the CCEP that might be accomplished within approved departmental budgets only.

ATTACHMENTS

1. Summary of the CET/CCEP grant-approved scope of work (January 2010)
2. Metro's IGA template
3. IGA Negotiation Process

Jan. 2010 CCEP Workplan (Grant Approved)

- **Develop community plans for the neighborhood commercial streets on Harrison St., 32nd Ave., and 42nd Ave. / King Rd.: Action Plans, code amendments, and potential rezoning.**
- **Create a land use/ transportation plan for Central Milwaukie: Action Plans, code amendments, and potential rezoning.**
- **Adopt the South Downtown Refined Concept Plan.**
- **Refresh the Downtown Plan and fix development policies to facilitate effective implementation of the community's vision for downtown.**
- **Develop an urban renewal plan to clarify where public efforts might stimulate additional desired private development. Would establish an ongoing structure for Milwaukie to discuss, support and capture desired investments in the core commercial areas.**
- **Establish City-wide design standards for commercial properties.**



ATTACHMENT 2

**CONSTRUCTION EXCISE TAX GRANT
INTERGOVERNMENTAL AGREEMENT
Metro – City of _____
_____ Project**

This Construction Excise Tax Grant Intergovernmental Agreement (“CET Grant IGA”) is effective on the last date of signature below, and is entered into by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, located at 600 Northeast Grand Avenue, Portland, OR, 97232-2736 (“Metro”), and the City of _____ (“the City”), located at _____, OR 97____, collectively referred to as “Parties.”

WHEREAS, Metro has established a Construction Excise Tax (“CET”), Metro Code Chapter 7.04, which imposes an excise tax throughout the Metro regional jurisdiction to fund regional and local planning that is required to make land ready for development after inclusion in the Urban Growth Boundary; and

WHEREAS, the CET is collected by local jurisdictions when issuing building permits, which the local jurisdictions then remit to Metro pursuant to Construction Excise Tax Intergovernmental Agreements to Collect and Remit Tax (“CET Collection IGAs”) entered into separately between Metro and the local collecting jurisdictions; and

WHEREAS, the Metro CET is the subject of a legal challenge filed in Oregon (“HBA Lawsuit”); Metro prevailed in the Oregon Circuit Court action *Homebuilders Association of Metropolitan Portland, Eastview Development Inc., and Matrix Development Corp. dba Legend Homes v Metro*, Case No. 0908-11067 and the plaintiffs’ lawsuit against Metro was dismissed; however plaintiffs have appealed that dismissal to the Court of Appeals, Appeal No. A146059, which appeal is currently pending; and

WHEREAS, the City has submitted a CET Grant Request (“Grant Request”) to Metro for ____ Hundred Thousand Dollars (\$____) for the _____ Project (“Project”), and the parties wish to set forth the funding amounts, timing, procedures and conditions for receiving grant funding from the CET fund for the Project.

NOW THEREFORE, the Parties hereto agree as follows:

1. Metro Grant Award. Metro shall provide CET grant funding to the City for the Project as described in the City’s CET Grant Request, attached hereto as Exhibit B and incorporated herein (“Grant Request”), in the amounts and at the milestone and deliverable dates as set forth in Exhibit A attached hereto and incorporated herein (“Deliverables Schedule”), subject to the terms and conditions in this Agreement.
2. City Responsibilities. The City shall perform the Project described in the Grant Request and as specified in this Agreement and in Exhibit A, subject to the terms and conditions specified in this Agreement. The City shall obtain all applicable permits and licenses from local, state or federal agencies or governing bodies related to the Project, and the City shall use the CET funds it receives under this Agreement only for the purposes specified in the Grant Request and to achieve the deliverables and/or milestones set forth in Exhibit A.
3. Payment Procedures. Within 30 days after the completion of each deliverable/milestone as set forth in Exhibit A, the City shall submit to Metro an invoice describing in detail its expenditures as may be needed to satisfy fiscal requirements. Within 30 days of receiving the City’s invoice and supporting documents, and subject to the terms and conditions in this Agreement, Metro shall reimburse the City for its eligible expenditures for the applicable deliverable as set forth in Exhibit A. Metro shall send CET payments to:

The City of _____
Attention: _____

4. Funding Provisions.

(a) CET Funds. Metro's funding commitment set forth in this Agreement shall be fulfilled solely through the programming of CET funds; no other funds or revenues of Metro shall be used to satisfy or pay any CET Grant funding commitments. The parties recognize and agree that if the CET is ever held to be unenforceable or invalid, or if a court orders that CET funds may no longer be collected or disbursed, that this Agreement shall terminate as of the effective date of that court order, and that Metro shall not be liable in any way for funding any further CET grant amounts beyond those already disbursed to the City as of the effective date of the court order. In such case the City shall not be liable to Metro for completing any further Project deliverables as of the date of the court order.

(b) Risk Sharing/Limitation of Liability. The parties hereby agree that if a court orders that CET funds collected prior to the effective date of the court order must also be reimbursed or that restitution payments must be made, then the City shall repay Metro ____ Per Cent (____%) of any CET Grant payments Metro has made to the City prior to the court's order. Therefore the City's maximum liability under this Section 4(b) is ____ Hundred Thousand Dollars (\$____), which is ____% of the total CET Grant Award amount.

(c) Waiver. The parties hereby waive and release one another for and from any and all claims, liabilities, or damages of any kind relating to this Agreement or the CET in excess of the liability limitations set forth herein.

5. Project Records. The City shall maintain all records and documentation relating to the expenditure of CET Grant funds disbursed by Metro under this Agreement. The City shall provide Metro with such information and documentation as Metro requires for implementation of the CET grant process. The City shall establish and maintain books, records, documents, and other evidence in accordance with generally accepted accounting principles, in sufficient detail to permit Metro or its auditor to verify how the CET Grant funds were expended. Metro and its auditor shall have access to the books, documents, papers and records of the City that are directly related to this Agreement, the CET grant moneys provided hereunder, or the Project for the purpose of making audits and examinations.

6. Audits, Inspections and Retention of Records. Metro and its representatives shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all City records with respect to all matters covered by this Agreement and Exhibit A. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls and other matters covered by this Agreement. All documents, papers, time sheets, accounting records, and other materials pertaining to costs incurred in connection with the project shall be retained by the City and all of their contractors for three years from the date of completion of the project, or expiration of the Agreement, whichever is later, to facilitate any audits or inspection.

8. Term. This Agreement shall be effective on the date it is executed by both parties, and shall be in effect until all deliverables/milestones have been achieved, all required documentation has been delivered, and all payments have been made as set forth in Exhibit A, unless terminated earlier pursuant to this Agreement.

9. Amendment. This CET Grant IGA may be amended only by mutual written agreement of the Parties.
10. Other Agreements. This CET Grant IGA does not affect or alter any other agreements between Metro and the City.
11. Authority. City and Metro each warrant and represent that each has the full power and authority to enter into and perform this Agreement in accordance with its terms; that all requisite action has been taken by City and Metro to authorize the execution of this Agreement; and that the person signing this Agreement has full power and authority to sign for the City or Metro, respectively.

Metro

The City of _____

By: _____
Michael Jordan

By: _____

Title: Metro Chief Operating Officer

Title: _____

Date: _____

Date: _____

Attachments:

Exhibit A – Deliverables Schedule

Exhibit A
CET Grant IGA
 _____ **Project**
Deliverables Schedule

Milestones* / Deliverables	Due Date	Grant Amount
1. Execution of CET Grant IGA	IGA Execution date (“X Date”)	\$_____[25%]
2. _____	X date + 8 months	\$_____[25%]
3. _____	X date + 16 months	\$_____[25%]
4. _____	X date + 24 months	\$_____[25%]
TOTAL CET GRANT AMOUNT		\$_____[100%]

*If the Grant contained any Funding Conditions, Grantee shall demonstrate satisfaction with those conditions at the applicable milestone or deliverable due dates.

ATTACHMENT 3

IGA NEGOTIATION PROCESS METRO'S CET COMMUNITY PLANNING AND DEVELOPMENT (CPD) GRANT March 1, 2011

1. Metro attorney/project manager sends draft IGA to the local government for review and comments on the "whereas and risk sharing" section
2. Local government attorney returns the draft IGA to Metro attorney with comments
3. Metro attorney reviews and approves/rejects the risk sharing proportions proposed by the local government based on direction from Metro COO
4. If local government comments on the IGA were approved, Metro and local governments project managers goes on to complete Exhibit A (and other exhibits) to the IGA
5. If Metro COO rejected local government's proposed risk sharing, Metro attorney sends the draft IGA back to the local government attorney to reconsider their proposed risk sharing, and we are back to step #3 above
6. When Metro and local government project managers comes to an agreement on the content of the exhibits, the completed IGA is ready for signatures
7. Local government project manager consults with her/his governing body for signature authorization
8. Two copies of the IGA are signed by the local government
9. Local government project manager sends the signed two copies to Metro project manager
10. Metro COO signs the two copies of the IGA and the project manager sends one copy to the local government.