

REGULAR SESSION

AGENDA

MILWAUKIE CITY COUNCIL February 3, 2009

MILWAUKIE CITY HALL
10722 SE Main Street

2047th MEETING

REGULAR SESSION – 7:00 p.m.

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| 1. CALL TO ORDER
Pledge of Allegiance | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | 1 |
| A. Proclamation Declaring February 14, 2009 Oregon's Sesquicentennial (Mayor Ferguson) | 2 |
| B. Kellogg-for-Coho Initiative Project Update (Alex Campbell) | 3 |
| 3. CONSENT AGENDA <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> | |
| A. City Council Work Session Minutes October 21, 2008 | 21 |
| B. City Council Regular Session Minutes December 16, 2008 | 29 |
| C. Authorize Signing of Qwest Settlement – Resolution | 35 |
| D. Appoint Gabriel Storm to Budget Committee – Resolution | 47 |
| E. Appoint Mysty Dionne to Citizens Utility Advisory Board – Resolution | 48 |
| F. Appoint Sarah J. Knaup to Design and Landmarks Committee – Resolution | 49 |
| 4. AUDIENCE PARTICIPATION <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. **None Scheduled**
- 6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)* **50**
 - A. **Business Recycling Requirement – Ordinance (JoAnn Herrigel)** **51**
 - B. **Contract Award for Engineering Services for the Dual Interest Area Wastewater Collection System – Resolution (Gary Parkin)** **78**
 - C. **Planning Commission Appointment (Mayor Ferguson)**
 - D. **Regional Committee Assignments (Mayor Ferguson)**
 - E. **Council Reports**

7. INFORMATION

8. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council may meet in executive session immediately following adjournment 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.
- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

2.

PROCLAMATIONS,
COMMENDATIONS,
SPECIAL REPORTS,
AND AWARDS

Proclamation

Declaring February 14, 2009 Oregon's sesquicentennial
(150th birthday)

WHEREAS, Oregon is rich in Native American culture and tradition that long preceded Oregon's admission to the Union and the arrival of trappers and settlers from the United States and other countries; and

WHEREAS, Oregon was admitted to the Union on February 14, 1859; and

WHEREAS, Oregonians will commemorate Oregon's sesquicentennial on February 14, 2009; and

WHEREAS, since joining the Union, Oregon has attracted and provided inspiration to generations of dreamers and innovators whose creative ideas have included pioneering laws such as the initiative and referendum, worker protections such as the eight-hour work day, women's suffrage, direct popular election of United States Senators, the bottle bill and public ownership of ocean beaches; and

WHEREAS, creative Oregonians have also launched great business and technological innovations, from the oscilloscope to the world's fastest computer chip to the waffle sole; and

WHEREAS, Oregonians prize their glorious natural environment and lead the way toward sustainable practices, both economic and environmental; and

WHEREAS, Oregonians have always looked to the future, even as they commemorate Oregon's past; now, therefore,

NOW, THEREFORE, I, Jeremy Ferguson, Mayor of the City of Milwaukie, Oregon, do hereby declare February 14, 2009 Oregon's sesquicentennial.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Seal of the City of Milwaukie, Oregon, this 3rd day of February, 2009.

Jeremy Ferguson, Mayor

ATTEST:

Pat DuVal, City Recorder



To: Mayor and City Council

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

From: Alex Campbell, Resource and Economic Development Specialist
JoAnn Herrigel, Community Services Director
Nicole West, Community Development Coordinator

Subject: Kellogg-for-Coho Initiative

Date: January 16 for February 3, 2009 Work Session

Action Requested

None. Update is for information purposes. City Council guidance is sought, in particular, on key community partners to involve.

History of Prior Actions and Discussions

June 2006 Council approved, by Resolution (No. 27-2006), an application for Regional Flexible Funds ("MTIP") to pay for planning and design under a City of Milwaukie-led effort to remove the Kellogg Lake dam and restore fish passage.

February 2002 Council authorized City Manager to commit to City participation in a U.S. Army Corps of Engineers-led study on dam removal feasibility.

September 2000 Council adopted, by Ordinance, the "Milwaukie Downtown and Riverfront Land Use Framework Plan" as part of the Comprehensive Plan. The restoration of Kellogg Creek is listed as an element of the "Amenities and Open Space Framework" (pp. 20-21).

Background

Project Goals

The primary goal of the project is to remove the “box culvert” beneath McLoughlin Boulevard and restore the natural hydraulic function of Kellogg creek. This would eliminate the key fish passage barrier for the entire Kellogg/Mt. Scott Creek watershed.

Secondary goals of the project, to be achieved to the extent they are financially feasible and do not conflict with the primary goal, include:

a. Improved bike and pedestrian mobility, both north-south and east-west. The existing bridge has below-standard sidewalks and no bike lanes. Improved east-west mobility would be provided by an under-crossing, allowing a grade-separated multi-use crossing of OR-99-E, between downtown Milwaukie and Riverfront Park.

b. Community development / economic development. Restored Kellogg Creek area would provide an aesthetic and recreational amenity to downtown Milwaukie, particularly the south downtown Milwaukie area, including the planned LRT station area.

Project History

- 2001 the firm Montgomery Watson Harza published “A Watershed Assessment of Kellogg and Mt. Scott Creeks” (a.k.a. the “Harza” study). The study was sponsored by WES and was guided by an inter-agency advisory team. The assessment concluded “any attempt to restore the watershed’s value to anadromous fish must begin” with the Kellogg Lake dam.
- In 2002, the U.S. Army Corps of Engineers (USACE) initiated a feasibility study of dam removal under “Section 206.”
- In 2006, USACE turned over key findings of the study to City of Milwaukie staff and informed City that project is unlikely to move forward to design under Section 206 due to funding limitations.
- In early 2007, City was awarded an “MTIP” grant of \$1.055 million in federal transportation funding to plan and design a project to improve fish passage and restore the habitat of the existing lakebed, and, ideally, improve bike and pedestrian mobility. Funds were programmed for Federal Fiscal Year 2010.

Recent Developments

1. Community Outreach/Stakeholder Involvement

Several meetings of neighbors and interested individuals were held during the course of the USACE study. In 2006, as the City took the lead on the project, a new round of outreach began, including a work session discussion with City Council, one-on-one

meetings with neighbors, and a public meeting. In addition, the City organized a site visit to a restored wetland (on Johnson Creek) and a small dam removal project in an upper part of the Kellogg/Mt. Scott watershed. Kellogg Lake neighbors and other interested residents were able to visit a restored natural area to help them visualize what a restored riparian area would look like.

In September 2008, the City held a large public meeting at Milwaukie Presbyterian Church on Lake Road. Attendees included numerous neighbors; Milwaukie Presbyterian Church members working on lakeside restoration; representatives of local environmental groups (Johnson Creek Watershed Council, Friends of North Clackamas Parks, the Tsunami Group, and Friends of Mt. Scott and Kellogg Creeks); and agency representatives (including Clackamas County, ODOT, USACE, and TriMet). The meeting was very positive and each participant (approximately 50 people attended) was invited to address the group. Support for dam removal and restoration of the stream was unanimous among the 40+ individuals who elected to speak. (Meeting notes are attached. See attachment 4.) Others that have stated support for the project in recent years include Congressman Earl Blumenauer; Rep. Carolyn Tomei; Miramonte Lodge, the apartment complex along the south shore; the Chair of the Historic Milwaukie Neighborhood Association; and the Audubon Society of Portland.

Because of the magnitude of the project, and the importance of developing broad-based support, staff have been working to establish a Technical Advisory Committee and a Kellogg/Mt Scott Creek Watershed Council. A brainstorming session is scheduled for January 21, 2009 regarding a possible Watershed Council. The first TAC meeting is being planned for March.

One of the suggestions made at the September 2008 meeting was an oral history project. Because the dam at 99-E was built in the late 1800s, the lake it creates has become an integral part of the City's history. Current and former property owners near Kellogg Lake, as well people of all ages throughout the City, have fished, boated, skated, bird-watched and played near and in that lake for over a century. An important part of the community outreach on the Kellogg Lake project will be an attempt to capture the rich history of the Lake and the experiences of those in the community who have enjoyed it.

Staff has begun to design an oral history process which will involve both research of existing information on the lake and interviews with various people in the City regarding their experience of Kellogg Lake. Interviews will begin in February. A draft report is expected by the summer.

2. Public Education

This project adds value to the community through environmental education. The prominent urban location provides a tremendous opportunity for many people to understand the working conditions necessary to support salmon habitat in an urban setting. Staff recently met with Phil Merchant of Milwaukie High to give a project update. (Mr. Marchant teaches an “Ecology of the NW” curriculum and regularly uses the Kellogg site as outdoor classroom.) Staff will continue to work with Mr. Marchant to explore ways to involve his students in the Kellogg-for-Coho Initiative.

Other groups with which staff has been coordinating include the Friends of Mt. Scott and Kellogg Creeks, the Johnson Creek Watershed Council, the Friends of North Clackamas Parks, and the Tsunami Crew.

3. Project Planning Phase

City staff is working to begin utilizing the MTIP award in early 2009 for a planning phase of work. Key elements of the planning phase will include selecting the best approach for improving fish passage, conceptual design of the restoration plan, and completion of a project “Prospectus.” A prospectus is a level of project definition that ODOT requires before a project can move into preliminary engineering (PE). It includes a clear definition of the project, a detailed cost estimate, and a detailed checklist of potential permitting and environmental issues to be resolved. Staff believes that the timely completion of a prospectus could be critical to ensure that the project is included in the Portland to Milwaukie Light Rail project environmental mitigation plan.

This phase of work will cost approximately \$350,000, to be funded by the MTIP grant and the City’s local match. Staff will be seeking a 2008-09 budget amendment to allow expenditure of approximately \$35,000 on this project once the grant agreement is ready for Council approval.

4. Project Finance

The first key outcome from the planning phase described above will be establishing a credible cost estimate for the entire project. The total project cost could be \$10 million or more. Key factors that will drive total project costs include whether the OR-99E bridge must be replaced and whether contaminated sediments may be capped and remain on-site or must be moved off-site. Regardless of these determinations, the total project cost is far beyond City resources. Therefore, the project will only happen if the City can leverage its resources with contributions from numerous federal, state, and regional funding sources.

Staff completed a grant application in December 2008 for \$45,000 to fund additional detailed design of the fish passage at the mouth of the future creek. The application was made to American Rivers/NOAA Community-Based Restoration Program. A decision on the grant is expected this spring.

City staff have been developing a database of grant and other external funding opportunities, including sources for fish passage projects, transportation projects, economic development projects, water quality improvement projects, stormwater mitigation projects, and brownfield restoration projects. Staff is including mitigation banking opportunities, grant opportunities, and direct agency contributions in its review of possible financing sources. Staff met with a representative from Congressman Earl Blumenauer's office in November of 2008. Rep. Blumenauer's staff offered their support in helping identify federal funding opportunities.

Concurrence

Community Development staff are working very closely with the Community Services Director on both public-/stakeholder- outreach and overall project design and management. City engineering staff have been providing technical support.

Fiscal Impact

No action requested. City Council action to provide local match for the planning phase will be required later this spring.

Work Load Impacts

The City has hired a temporary half-time staff person, Nicole West, who is devoting all of her time to this project. (Salary is being paid out of Community Development temporary staff budget.) She is carrying out environmental research, finance research, and leading the oral history project work. The Resource and Economic Development Specialist, the Community Services Director, and the Community Development and Public Works Director are all devoting time to the project, within existing work plans. The planning phase of work will require significant oversight from these same staff positions. Community Services staff will work with the CD Coordinator to develop the list of interviewees and conduct oral history interviews. Community Services staff will also be involved in the facilitation of the discussion of the formation of a Kellogg/Mt Scott creek watershed council as well as on-going public outreach and education regarding the MTIP-funded study.

Alternatives

City Council could elect to halt work on this project. However, staff does not believe any other agency is likely to carry it forward.

City Council may wish to alter or adjust the key project goals as stated above.

Council may wish to direct staff to adjust work efforts to emphasize particular activities during the next six month period.

Attachments

1. Project summary
2. Existing culvert
3. Project timeline
4. September 2008 Public Meeting notes



Kellogg-for-Coho Initiative

The City of Milwaukie is leading a broad-based effort to restore Kellogg Creek for native Coho salmon and other threatened fish species. Located in downtown Milwaukie, the project will replace the Kellogg Lake Bridge and remove the Kellogg Lake dam, opening 7 miles of riparian habitat in the Kellogg/Mt. Scott Creek watershed while supporting bicycle and pedestrian travel and revitalizing the city’s South Downtown area. The initiative will demonstrate how community development in the 21st century can improve urban places for both fish and people.

Key Project Benefits

- **Habitat Restoration:** Create critically needed rearing habitat for Coho and Spring Chinook salmon.
- **Fish Passage:** Open 7 miles of upstream habitat for several threatened fish species.
- **Downtown Revitalization:** Restore a natural area adjacent to a developing, transit-oriented downtown district.
- **Decrease Automobile Impacts:** Removal of the dam will allow construction of a new bridge to support bike and pedestrian options in the immediate vicinity of the creek.
- **Education:** The restored Kellogg Creek will be a place to learn how 21st century cities can remake their urban and natural environments to support both environmental and economic agendas. The creek and the downtown will be remade together, offering lessons for practitioners across disciplines.



Kellogg Lake dam under 99E in downtown Milwaukie

Public, Private and Nonprofit Partners

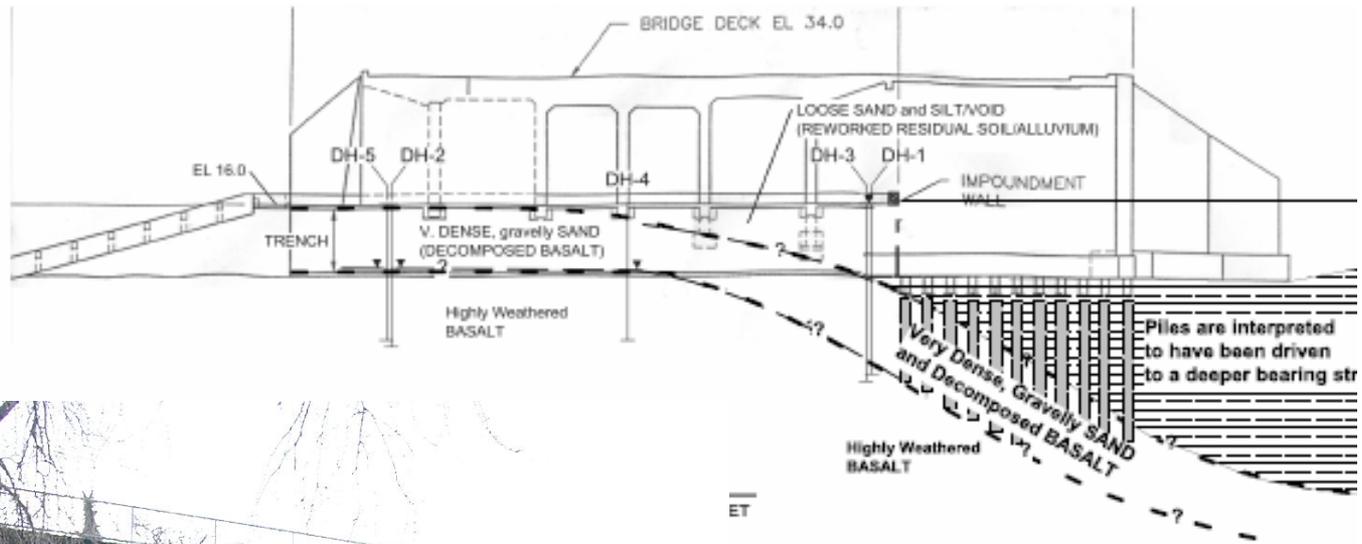
- Federal partners have committed \$1.2 million in funds, for a new bridge design and to study biological and transportation benefits. The City of Milwaukie has already committed more than \$100,000 toward the effort.
- Property owners, local governments and environmental organizations are supportive and organizing around the initiative.
- Additional nonprofit and foundation partners are being sought.

Proposed Funding Plan		Projected Project Needs	
<i>Planning & Design (2008-2011)</i>			
2003-06 Army Corps Funds (spent)	\$200,000	Environmental Benefits Analysis (complete)	
2009 Foundation Support	\$100,000	Feasibility & Concept Development	\$200,000
2010 MTIP Grant (Approved)	\$1,175,000	Plans & Specs	\$300,000
2010 Watershed Enhancement	\$225,000	Environmental Compliance	\$200,000
		Final Design	\$800,000
<i>Construction (2011-2012)</i>			
2011 Federal Trans. Authorization	\$3,400,000	Bridge Replacement Construction	\$7,000,000
2011 US F&W/NOAA/ODFW	\$600,000	Habitat Restoration, Mitigation	\$1,500,000
2012 NOAA Open Rivers Initiative	\$1,000,000		
2012 BPA Mitigation Program	\$3,500,000		
2012 Light Rail Mitigation	tbd*		
Total:	\$10,000,000	Total:	\$10,000,000

*Light rail mitigation contribution to decrease amounts planned from other sources.



ATTACHMENT 2



	Q1 2009	Q2 2009	Q3 2009	Q4 2009	Q1-2 2010	Q3-4 2010	Q1-2 2011	Q3-4 2011	Q1-2 2012	Q3-4 2012	2013	2014
Planning Phases												
Contracting	■											
Approach Selection		■										
Transportation		■	■									
Prospectus Complete			■									
PE												
Sediment Planning				■								
Restoration Planning				■	■							
Pre-Permitting Activities				■	■							
50%+ DESIGN				■	■	■						
NEPA												
EA						■	■					
PERMITTING												
SLOPES/Permit Review							■	■				
Final Design & Construction												
Final Design								■	■			
ROW/RR negotiation										■		
Bridge/In-water construction											■	■
Restoration construction											■	■
On-Going												
Monitoring & Assessment												
Public Education												

■ possible elements

ATTACHMENT 4

**Notes from 9/9/08 Kellogg For Coho Initiative Meeting
Milwaukie Presbyterian Church
2146 SE Lake Road
7:00-9:00 pm**

Kenny Asher, Community Development and Public Works Director for the City of Milwaukie, opened the meeting. Discussed: purpose of meeting, objective of project, issues surrounding the project, individual and agency interests.

Objectives of Project:

- 1) Establish passage and habitat conditions that enable juvenile salmon to rear and rest in Kellogg Creek
- 2) Design the new passage and Kellogg Creek to support revitalization of Milwaukie's South Downtown, such that people can access, enjoy and learn from the restored natural area and nearby parks

JoAnn Herrigel, Community Services Director for the City of Milwaukie, gave some history of the project in the last 10 years.

1999 Clackamas County Water Environment Services pulled together multi-agency group to talk about issues surrounding Kellogg Creek. Hired HARZA to gather information and write report.

November 2001 – HARZA Report on historical data.

Talked about fish ladder & the dam at 99E as a barrier for fish

Corp of Engineers offered to do a feasibility study with Section 206 funds but needed agency sponsor for project, City of Milwaukie agreed to sponsor January 2002 City Council voted to act as project sponsor.

2004 – Spending of Section 206 money suspended by federal government.

2006 – MTIP grant awarded – \$1.1 million – not available until 2010-11, City now looking for additional funding.

Tonight's meeting is to see if there are interim steps we can take to get us closer to our goal of creating a design for this project.

Kenny asked for show of hands of people involved in project – about half of the people raised their hands.

Chuck Willis – Fisheries Biologist with Corps of Engineers - 4th District

Need to take into account resources already there and what might changes as a result of the actions being taken. What types of change and how much?

Three benefits to project:

1. Removal of dam to create a more natural transition from the Willamette River into the creek and from the creek into the river for fish passage for the variety of fish species.

2. The mouth of Kellogg and Johnson Creek being so close creates an eddy. Removal of dam at Kellogg opens that up to creating a larger upstream sanctuary area for juvenile salmon usage.
3. Restoration of flood plain area upstream from dam creates a more natural flow. Will create opportunity for creation of pools for salmon that will stay wet in summer. Will create a depositional area that has a lot of potential for a rearing area for salmon. Will also help late runs of Coho which are different than other types of Coho in the lower Columbia basin – they are very low in numbers.

Kenny noted that the stream bed would have to be re-built. Asked Chuck to talk about temporary drawdown next summer.

Corps did study of sediments, pesticides and contaminants – PCBs, heavy metals, and DDT.

Would like to siphon the water off.

Drawdown would let them see what is there.

Would need to capture fish in lake. Would work with ODF +W to assure safety of fish.

Individual comments

Mike Sheppard. Lives on lake. Asked how long the drawdown would last. Chuck W responded that they did not know, would need to collect information – his guess was a couple of weeks – less than a month, during summer low period.

Mart Hughes. Resident of the Watershed and is interested in health of the site.

Dan Meads. Lives on lake. Is waiting for change to happen – supports project.

Kathy Buss. Resident. Wants creek to be healthy for future generations. Confluence Foundation that works on environmental projects could be a resource for salvaging fish and the Bass and Catfish group does salvage work.

Dion Sheppard. Resident. Supports restoration of creek and pools. Needs to be environmentally sound. Is concerned that the project gets completed, not just half way done.

Ed Zumwalt. Historic Milwaukie NDA/resident. In favor of project – worries it could drag out for years. Has concerns for people who live on the lake, that they will come out okay in process.

Tonia Burns. North Clackamas Parks & Recreation District. Manages natural resources in city parks for District. Would like to see some help for the entire Mt Scott/Kellogg Creek Watershed – not just the lake/creek.

Rich Watanabe. ODOT and resident of Milwaukie. Excited about project and developing area. Trails will be great addition to the transportation system in the area.

Steve Berliner. Lives on creek upstream. Many people have worked hard to advocate for help on urban streams – need to bring them back. Very enthusiastic about project. Had question about temporary drawdown. What happens to non-native fish?

Chuck W did not know if non-native fish would be released into the Willamette – would need help from ODF+W.

Bob Storer, of Clackamas County WES, noted that ODF+W would probably not let non-natives be put into the Willamette

Mart Hughes said that in other projects the non-native fish have been killed.

Rich Till. Tsunami Crew. Is part of a restoration crew that has worked on this and other creeks. Is excited to be part of a project that will restore the creek. Referenced Oregonian article about Rogue River dam removal and people's fears about change.

Dick Shook. Friends of Mt Scott and Kellogg Creeks and North Clackamas Parks District Advisory Board. In favor of project – excited about it moving forward. Thinks there are 5 springs under the lake that could be rehabilitated.

Chuck W said that there is a great opportunity for salmon – the ponds created from the springs need to be deep enough for salmon habitat – Coho in particular.

Susan Shawn. Friends of North Clackamas Parks. Wants a better balance in the area between sports and creeks. Is completely behind the project. Is concerned about Kronberg Park – it is blank on the map – what will be done there? Parking structure? Wants to be sure it isn't parking or a sports complex. Wants it to be a restored area with hiking trails.

Kenny said city is legally committed to making it (Kronberg) a park. It will become part of the park network in south Milwaukie –Kronberg, Dogwood and Riverfront Park.

Fred MacGregor. Swanson Hydrology and Geomorphology. Has a professional and personal interest in the project. Mart H asked if he could describe the condition of the lake bottom? Said he doesn't know but there are probably sediments. Chuck W referenced a graph in the handouts that was a survey of the bottom of the lake – shows accumulation of sediment. He said that this use to be part of the Clackamas River, years and years ago, and that there is gravel and cobble under the lake. Most sediment is in the lower lake. Kenny A showed a map of the lake indicating that most sediment is within 500-800 feet of the trestle.

Shirley Stageberg. Milwaukie Presbyterian Church. The back of their property fronts the lake. Thinks there are 10-12 springs in the area – 2 of them are on their property. They have been working on the property to clean it up and getting rid of invasive species. She is concerned about the amount of silt in the lake. She said recent water samples have shown the temperature of the lake is about 70° at the surface. She wants this to be a healthy lake.

Jon Cottrell. Milwaukie Presbyterian Church. Asked about sewer pipes in the area. Does the sewer line go under the lake? There are steelhead in the basin and Coho. This is not good habitat for spring salmon, they need really deep pools.

Kenny A said that a CCSD main sewer line crosses the lake near 26th through Kronberg Park and under McLoughlin. Asked if lake was lowered to build line? Consensus was that it was lowered.

Nancy Kinnaman. Milwaukie Presbyterian Church. Has lived here since 1965 and has seen various efforts to clean up property – hopes this one lasts. Is supportive of the project – hopes we can accomplish it.

Matt Clark. Johnson Creek Watershed Council. Advocates for the project as a member of the council.

Matthew Graham. Clackamas Review. Just here to listen.

Bob Storer. Clackamas County – WES. There is a watershed report out this week. Found a lot of fish – most in Mt. Scott Creek above I-205 up to Spring Mountain. Good stewardship is beneficial to the watershed. A total watershed assessment will be completed in February. A watershed action plan will be completed next spring. There will be a lot of opportunity for citizen input. Despite common belief the culvert under I-205 is not a barrier to fish migration – it is a partial barrier, but some fish have gotten through.

Kenny A. Wanted to be sure people understand that the dam is a barrier.

Chuck W. Fish ladder is a weir structure – a type of ladder that requires a lot of control. Sometime it is better than others – depends on the time of year – either too low or too high a flow most of the time.

Bob Storer. The ladder is functional for strong swimming species, like Coho or Steelhead, other species cannot use current ladder. Removal of the ladder would help all species.

Dave Unsworth. TriMet. Said the light rail project to Park Avenue needs to cross McLoughlin on new concrete bridge. A study of crossing impacts was just completed. Has to do a biological assessment. They will be looking at mitigation. Permits from Army Corps of Engineers and OFWS will be needed to do any mitigation. He said TriMet could be a financial participant in the project. Wants to be sure they get the biggest bang for the buck in whole light rail project.

Dave Heitzman. PGE Hydrology Department. He works on stream and lake salvage operations. Resources (such as on-staff biologists) could be available to help.

Ben Ellis. Lives on lake. Wants this part of the creek to look like the rest above Oatfield Road.

Helen Ellis. Lives on lake. Lake is part of our heritage – it was wider, deeper and cleaner in the past. She wants it preserved as it was in the past. She will support the project.

Chris Runyard. Tsunami Crew. Since 1999 they have planted over 20,000 trees in the watershed. Excited by what is happening here – it is one his favorite areas in the watershed. Hopes that the project can be pushed through and completed.

Gary Klein. Citizen and Riverfront Board Vice-Chair. Family has lived in area since 1940s. Supports the project. Concerned about drawdown and how it will affect fish and the fish ladder. Wants to work with the project and the Riverfront Park at the same time.

Jennifer Belknap Williamson. Brown & Caldwell. Working with WES on a watershed action plan. Interested in the project and what it could mean for the overall watershed.

Pat Russell. Resident of Clackamas County – lives at the top of the watershed. This creek use to be called Coldwater Creek. Asked how much of the land the treatment plant sits on was filled and how much was the natural spit? Needs a strategy for funding. Thinks the project gets lost in with other larger projects. Thinks the [20] agencies involved need a common strategy. Is an advocate for the creek. Asked why ODOT has not taken the lead on this project, to help Milwaukie. Enthused about project getting off the ground. Same points are being made tonight that were made at a meeting 2 years ago, except for the temporary drawdown. He had concerns about habitat, parks, riverfront usage, downtown redevelopment, number of crossings over estuary. How do we find the estuary? Asked how we deal with steelhead? Need to interact with the estuary. Thought downtown development should extend to River Road. Thinks there is no sense of place now – a lot of mish-mash. Thought lanes on McLoughlin should be cut – 5 is too many – does not create a sense of place. Would like to see a permanent drawdown. Gave staff a 7-page question sheet.

Mark Turkel. Metro. Metro has a number of interests in the project. Three he mentioned at the meeting are: 1) Nature in Neighborhoods – green spaces; 2) MTIP funds; 3) Partners w/TriMet on the light rail EIS.

Brian Monberg. Metro. Interested in park spaces and light rail and how they interact.

Joyce Felton. Metro. Did not have anything more to add than had already been said.

Gary Seagler. Lives by lake. Wanted to echo what Helen Ellis had said. Wanted to see the lake cleaned up and deepened – realizes it is not a good solution. Is on board with ideas. Would like to see natural barriers to back yards – doesn't want a fence. Asked what vegetation would be like for homeowners. Thought the light rail bridge will be too large a structure. Aesthetics need to be looked at – the bridge would harm beauty of nature in the area.

Randall Welsh. Property owner. Supportive of the right thing to do. Wants to be involved. Likes having the lake. Wonders if we will rename Lake Rd if this project moves forward.

Sherri Dow. Resident. Supports project.

Katie MacCready. Resident. Supports project.

David Aschenbrenner. Citizen/Hector Campbell NDA. Just observing.

Dick Shook asked if the Clackamas County Board of Commissioners had been notified of the meeting and suggested that they be involved in this project.

Kenny Asher wrapped up the stakeholder comment portion of the meeting. He noted concerns from the meeting seemed to be around how it would be executed. The project has support and a head of steam to keep it going. He noted that no federal agencies were in attendance tonight. Felt Clackamas County should be involved. This project is going to be a monumental effort. Asked the group what they thought the city should be focused on in the next several months to keep this project going?

Bob Storer. Should focus on County Commissioners and the sustainability staff in the county and get them behind this project. There should be a County Commissioner assigned as a liaison to this project.

Pat Russell. Asked how much it was going to cost? Need to get the community excited that something is happening with the project – need to see some action.

Mart Hughes. He counted 18 agencies that should be involved – watershed-wide. There should be participation by local government throughout the watershed. He thought an IGA with the agencies should be drawn up for a restoration plan. This is a key project for the entire watershed. When salmon start showing up in people's back yards they will be more excited about that than having a stagnant lake.

Kenny asked Bob Storer how CCDS feels about this?

Bob Storer. Said all agencies in the watershed need to be involved – there are going to be a lot of impacts. Need to reach out to all the agencies in the watershed. City of Milwaukie will be a key stakeholder in the process. The County is supportive of the project – but one agency can't do it alone. Hopes people will stay involved throughout the project.

Kenny asked Metro staff about the schedule for preliminary engineering work and final EIS for the Portland to Milwaukie light rail project. If we have the watershed action plan going on in the next six months and there is energy around a more specific project in lower part of creek - which is the lake removal, do we need to be aware of your schedules so we don't miss the boat?

Dave Unsworth. This project will require a lot of technical coordination. Asked who is going to manage the drawdown? That is not a small task. What about the bridge? What is the impact?

Kenny will talk with stakeholders about the schedule.

Dave H. PGE. He hopes that people will love that the lake is gone. Hopes that the historic perspective is captured. Need to document what we have, capture oral histories, significance of the lake and what it meant to the development of Milwaukie.

Kenny asked ODOT what they see as their role in this process?

Rich Watanabe said they would work on design standards together along with federal requirements.

Tonia Burns said that the community needs to work on things that can help this project now, like work parties to control non-natives.

Kenny said the South Downtown Revitalization Plan work will continue and that he expects input from the consultants working on that.

Pat Russell asked if this project could be done with an environmental assessment (AE) rather than an environmental impact statement (EIS)? The project needs to keep moving forward so people don't become disenchanted.

Alex Campbell. City of Milwaukie. Said he hoped that we can do an EA process – has had discussion with DEQ and Army Corps about doing the drawdown outside the federal permit process.

Kenny said that we would continue to work on the drawdown. Would have to be careful about how it is done, especially without permits.

Chuck W. said the time of year that would be the least impact we be July to September.

Pat Russell asked if it could be drawn down and not brought back up to full current level?

Chuck W. said probably not – it could damage the dam. The dam is designed to help keep the ladder working – it needs to keep pumping water out. The only fish passage is the ladder – we need to minimize how long it is down to maximize fish passage.

Kenny closed the meeting by reaffirming that people want this to happen, the city wants the project and stakeholders want the project to happen.

Kenny thanked everyone for coming and for their help in the past and in the future.

Comments from cards:

Rail bridge must be carefully designed both environmentally and aesthetically. Funding needs to be stable. Keep focused on environment, local property owners, and positive, net end results. Find continuous ways to keep all stakeholders communicating. Keep public use appropriate – keep trails to green space – not necessarily through property owners land. “Environment” foundations such as ‘the confluence’ may be helpful for funding and expertise. What about the ‘superfund’ money from the Willamette cleanup? May want to include sports clubs such as ‘Bass & Catfish Club’ or ‘anglers’ clubs to help both funding and manual labor. Don’t put too much emphasis on the downtown plan other than the under McLoughlin walkway. This has more to do with environment than economy or such development.

Removal of culverts providing fish refuge in Camas Creek at its confluence with Mt. Scott Creek in North Clackamas Park. Restoration of riparian corridors through neighborhoods. Good opportunity to see what effect the elimination of the dam would have.

Swanson Hydrology. Additional issues would include water quality improvements in the urban watershed. This would improve the health of not only the targeted fish but all aquatic and plant life that benefit the targeted fish species – can integrate with redevelopment. In regards to specialized expertise, we at Swanson Hydrology specialize in these very projects. We bring the science and engineering together to solve problems such as these. There is a great source of funding available through EWEB, Oregon State. We have helped a number of our clients secure funding for study, design, and construction of restoration projects throughout NW Oregon. There is likely additional funding opportunities available for ‘dam’ removal projects.

Rick Till. The City should contact American Rivers regarding river restoration strategies and funding sources. Trout Unlimited may also have expertise and resources that may be helpful. It is critical that the city explore other watershed improvement initiatives to ensure that habitat is

protected and restored. This must include protection for upstream natural areas such as 3-Creeks and efforts to reduce non-point source pollution throughout the entire watershed. To maximize the benefit of improved fish passage the city should collaborate with Clackamas County to maximize protection of stream buffers and restore denuded areas. The presence of polluted sediments underscores the importance of watershed wide water quality measures to reduce point and especially non-point source pollution. Other non-profits to consider working with: American Whitewater, Rivers Network, local land trusts, Willamette Riverkeepers, local Sierra Club affiliate, Oregon Wild, and Save Our Wild Salmon.

Chris Runyard. What about airborne sediment? (ala Roosevelt Lake)

Steve Berliner. Look for opportunities during the draw-down to capture and remove non-native fish. Look for other short-term benefits to a draw-down such as removing buried trash; doing soils testing including pollutant levels, and take lots of samples for later lab work. I support the draw-down phase as a way to study and analyze conditions for permanent restoration later. I agree with a speaker (Pat Russell) who said get the County Commission involved to the greatest extent possible. The fix of the lake truly benefits the entire stream system and watershed as a whole, most of which is non-Milwaukie jurisdiction. Be sure to document thoroughly the draw-down with still and videography, before, during, and after full draw-down, and the refilling time-lapse as well. Show debris uncovered, stranded or removed fish, work and inspections as they take place. This will be historical record for the City, and for future studies and interest in both the history, and in similar projects.

3.

CONSENT AGENDA

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION

October 21, 2008

Mayor Bernard called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Council Present: Mayor Jim Bernard and Councilors Deborah Barnes, Greg Chaimov, and Susan Stone.

Staff Present: City Manager Mike Swanson, Community Development and Public Works Director Kenny Asher, Resource and Economic Development Specialist Alex Campbell, Community Services Director JoAnn Herrigel

Members of Troop 143 working on their Community Service Merit Badge for Eagle Scout were in attendance.

Proposed Jackson Street Bus Shelter Improvements

Mr. Asher was joined by Yung Park, TriMet manager of capital projects. He reminded Council this was all toward the goal of dissolving the downtown transit center. That did not mean getting rid of bus service or stops but getting layovers out of the downtown, upgrading shelters, and separating the bus shelters so that they were not all concentrated in such a small area. For a long time the focus was on the bus layovers, and they have now switched strategies to upgrading the existing facility. They would still like to get the layovers taken care of, but at the moment he did not have an answer for where they would go. It was still a goal to get them off the downtown streets, but there would be fewer of them. They wanted to focus on now was better use of the block, make it more appealing, and deal with social and visual issues with which we are contending in the downtown for years. There have already been some stakeholder meetings.

Mr. Park said the goals were to improve user experience, reduce the footprint, and beautify the downtown. They would be creating a hub where there would be an activity of transfers and and separation of regular pedestrians. Those improvements could all work together in unison. That followed along in their transit improvement plan and TriMet's vision for building that total transit system. It would include customer information, passenger amenities, which were all elements they wanted to incorporate on Jackson Street. He showed Council a snapshot of what was in place today. There were 9 buses that connected in Milwaukie and the connections and various routings were scattered. There were about 190 bus stops and 15 shelters. They averaged 3360 daily boardings in Milwaukie. More than half of that activity was in the downtown transit center on 21st/Jackson. The new plan consolidated routing and streamlined operations to reduce the footprint of buses operating in Milwaukie and centralizing it on Jackson and the block surrounding City Hall. There would be some minor activity of buses headed south on 21st between Harrison and Jackson. The majority of the bus movement would be on Jackson and Main. Other bus routings that were scattered would be consolidated. They classified bus stops into activities from Level 1 to 3. Level 3 was primarily what you would see in major transit connections where ridership is in excess of 300 patrons a day and where there are amenities. The enhancements to Jackson Street would be at a

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level 3. He showed the Council various slides of enhanced bus stops with ticket vending machines, trashcans, transit tracker, and a sense of permanence and place. In August they modified and made a mock up of Jackson Street to emulate what the transit hub could look like and how buses could work and mingle between traffic and other activities. He showed a bulb out where the future shelter would be. Their tests showed that buses and other traffic could get through with bus 70 and 75 layovers on Jackson without impeding traffic flow. In addition they concentrated specifically on Dark Horse and their driveway on the south side of Jackson between Main and 21st Avenue. They tested if having buses on both ends would impede or have any bearing on loading zone activities. It showed they could coincide and not have a lot of conflicts. They looked at the City Hall parking lot for employees and visitors and will work with operators to make sure some of the current conditions could be reduced and minimized. He showed a rendering of changes they were envisioning for Jackson. Today, Line 75 had a minimum of 15 minutes layover 7 days per week so when buses layover there was more than one bus along 21st near Waldorf. They envisioned that be changed so the 75 would layover on backside of City Hall headed south on 21st between Harrison and Jackson. With the changes they needed to find layover room for 2 buses and their testing showed that 2 buses could layover on the south side of Jackson between the driveways. By doing that they would be able to build some of the corners out for a major transit hub with activity for all outbound and inbound buses. The inbound bus had more activity and people waiting, and that area would be a longer distance to support more amenities and shelters. The outbound corner would have a smaller footprint.

Mr. Asher said one of the outcomes was to take all transit activity off the east side of 21st. Today there were 2 bus stops and all of the layovers. Under the new plan there would be no layovers and no bus stops. The whole edge on 21st would be reclaimed for parking and probably beautified. They looked early on at consolidating all bus activities on 21st Avenue, but they decided that was the wrong the move because that was where there were the fewest eyes on the street. Most complaints about the transit center were mostly people downtown feeling uncomfortable because of the configuration. They thought moving the bus activity into plain view on Jackson and Main where they propose most activity.

Mayor Bernard asked if there would there be bus slabs on Jackson Street.

Mr. Park said those were included in the proposal. They also chose Jackson because of the 80-foot right-of-way, and one of their main goals was to ensure they did not impede travel flow on Jackson. They looked at widening the sidewalk and still have 11-foot travel zones. He showed shelter examples where there was separation of traffic and pedestrian flow from waiting riders and provided a clear view. The shelters had closed circuit television and that was an element that they would make sure was integrated into the shelter design. They would work with IT to ensure a feed to Milwaukie Police as well as TriMet security. The shelters would be lit, visible, would accommodate transit tracker and real time data. The notion of the shelters was to make sure they would have some level of seating, but the majority of people would be waiting a very short time before their transfer. The shelters had an opening on both ends and closed on two sides to provide shelter for inclement weather. They provided a concept plan and design, and they were waiting for the final steps in funding the package which should be done by the end of next month. They would advance to design and engineering, and conduct outreach. They would like to come back in the late winter with a short list of potential shelter designs. They were hoping to get

through that process and into the construction process with an opening late summer 2009. With the green line opening in the fall there would be additional route refinements.

Mayor Bernard thought they would need to accommodate the Farmers' Market, which ran May through October because some prime spots would be dug up. He advised utilizing 21st during construction and not Main Street. He asked if this project would be coordinated with the sewer line project.

Mr. Asher replied the sewer project was set for this summer.

Mr. Park anticipated the construction phase to be from late spring to early summer; 2-3 months at the most. It was basically putting in the forms and building the bulbouts and integrating some of the street design principles.

Mr. Asher said this project could not afford streetscape improvements on 21st Avenue. A net result is a gain of 10 – 15 on-street parking spaces.

Councilor Barnes was glad to see the testing of the CCTV as the results would be important for light rail planning. When she went on police ride-a-longs they stopped at the transit center over and over again. She hoped the camera that would discourage some of the current behaviors.

Mr. Park said there would be additional lighting from the shelter and depending on the level of the streetscape improvements it would increase lighting.

Councilor Stone asked if landscaping was included in the cost.

Mr. Asher replied the right-of-way and bulbouts would be landscaped. Additional landscaping would require finding another funding source. This project would only be able to pay for the right-of-way improvements.

Councilor Stone asked if the transit center were to move completely out of downtown how many parking spaces would the free up.

Mr. Asher responded three would be approximately 10 additional spaces.

Councilor Chaimov asked who the other stakeholders were that were referenced in the presentation?

Mr. Asher replied they met with Darkhorse Comics, Waldorf School and both were in favor of the project. They met with the Historic Milwaukie NDA and with reservations they were in support and viewed this as an improvement over the status quo. They met with City Hall employees. They were cautiously in support but they had real concerns with the interface between the driveway, apron and the buses, visibility and traffic. It was a public building and in a sense they were intensifying the public nature of the street and this block. They concurred that this design made the most sense.

Councilor Chaimov asked if the reconfiguration increased or decreased traffic in the intersection of 21st and Harrison Street.

Mr. Park replied the busses currently loading on 21st would no longer do that.

Councilor Stone asked what ever happened to moving the transit center out of the downtown. She thought that was the goal. She had a hard time believing that if we spent \$500,000 to lay down concrete pads and make improvements that this would be anything but permanent. She felt like we were not getting what we really asked for and found that hard to swallow spending that much money on a temporary solution that could very well be a permanent solution, which was not the solution they wanted.

Mr. Asher clarified the funding. It was coming from the Federal Transit Authority (FTA) through TriMet and was not City funds. It would be a combination of federal funds and TriMet's regional flexible funds, which were available to be spent anywhere in the region. He thought the City was quite deserving of these improvements because of what the City had contended with through the years with the transit center. TriMet did not disagree as seen in Mr. Park's presentation. Level 3 features were warranted, and we had been living with less than a Level 1. He directed Council back to the Transportation System Plan (TSP). He staffed the transit group and had a close understanding of what this community wanted to see in the way of transit service and facilities in town. He met with that group 6 or 7 times, and Mr. Park attended several of those meetings along with Phil. Selinger. They checked out all of the policies and rewrote the Transit Chapter, and that plan called for making a better facility and getting rid of the layover buses and to disaggregate the stops. That was what he was trying to implement. He thought there were people in town who had imagined, through the years, that all of this activity could disappear from downtown. That was not what the current plan called for, and he thought that would be a mistake. He did not think the problem was downtown bus service, but rather the configuration.

Councilor Stone thought that they were led to believe a long time ago that the transit center would be going north of downtown. We would still have bus service and the need, but not the buses laying over.

Mr. Asher said that was still a goal and they were down to 4 lines and with the opening of the green line 2 more of the lines that layover in Milwaukie would disappear so they would be down to the 70 and 75 laying over in Milwaukie. In the peak the worst case scenario would be 5 buses laying over at once. Typically most hours of the day there would be 1-3. They still have some buses laying over in downtown and they did not have a solution for where to put them. He went through a bunch of options with Mr. Selinger and the one they landed on would not work. It was still a goal to get rid of the layovers, and he would continue to work on that with TriMet. This was an improvement that could be in place by this time next year. He had heard from the stakeholders that it was a good idea.

Councilor Barnes asked what the status was with TriMet's Southgate property.

Mr. Park thought it would most likely be used for staging and construction activities for light rail. There were also looking at interim uses.

Mr. Asher proposed to carry on with the project. When they got down to the shelter types, which was a key design, he would like to hold a public meeting where people could provide input and then he would like to carry on to build it.

Councilor Stone said the prototype shown in the presentation was not necessarily the prototype for what would happen.

Mr. Asher said it was not necessarily the prototype, but it was one they were interested in learning more about. There may be a couple more out there to compare.

Councilor Barnes asked if the prototype fit the budget.

Mr. Park replied currently it did.

Mayor Bernard suggested including the downtown businesses.

Mr. Asher added he also presented this to the breakfast group, and they liked the idea. The Design and Landmarks Committee would also be in the loop.

Councilor Stone said the other issue for her in terms of design was tying it in to the elements of Riverfront Park. They talked about having natural stone materials, wood and those types of things. The prototype was from a large city in a foreign country and very modern looking.

Mr. Asher said Council would hear from them after the New Year to talk about design of shelters.

Councilor Stone said for the record she thought it should go north with the light rail hub and everything. That was what she wanted and it was her dream.

Possible Urban Renewal Work Plan

Mr. Campbell talked about the need for urban renewal, why that was a solution and would ask for Council's questions about mechanics and the big picture responses. The need is to find funding to implement the Downtown Plan, and how to balance public area improvement costs. There were also a lot of other things in the Downtown Plan – projects, improvements, parks and plazas and funds were needed for those as well. Our downtown was not currently generating the kind of redevelopment that we want to see. That was clear when we looked North Main's difficulty in leasing spaces. Jerry Johnson talked to Council about the need for adding amenities to Downtown. The only way we would be able to do that is to fund them. Another indication that he had seen in the work that had been done in the City was in the Oregon Downtown Development Association 2003 downtown implementation report. The report stated in the next steps section that additional funding was needed and called out urban renewal. Urban Renewal was the answer because it was the best mechanism. The best evidence was the number of municipalities and counties that were using it. In Clackamas County alone there were 10 Urban Renewal districts. The key reason that Urban Renewal is so powerful is because it was a way for us to work with and a way for all the other taxing jurisdictions to participate with the City. The City was foregoing some revenue in this area in order to reinvest in the area and Urban Renewal was a mechanism set up by the legislature for us to ask other taxing jurisdictions to participate and also to forgo some revenue in order to invest in the area.

Mayor Bernard asked Mr. Campbell to explain Urban Renewal. You have a piece of bare land and then start with a base value.

Mr. Campbell referenced the graphic on page 2 trying to get to that point. At the start of an urban renewal district the base was frozen. The new tax revenues that were generated by an increase in assessed value were reserved for expenditures alone within the district. The fundamental idea behind tax increment financing (TIF) was to stimulate that additional investment and borrow against the future revenues and in that way you stimulate that investment. When that happened you get additional investment revenue and you can pay off those bonds more quickly. In Oregon you cannot do a TIF without Urban Renewal. That was the primary reason that cities adopted Urban Renewal.

Councilor Chaimov said one of the concerns citizens expressed about urban renewal districts was that they seemed to go on perpetually. Was there a way to assure people?

Mr. Campbell replied the reason that urban renewal districts were extended was because they were very successful. The City of Sandy just extended its district because people were excited about the beautification projects that were taking place under phase one. He did not know how to provide assurance of how to prevent a future Council from extending it. It would be difficult to say what a future Council would do, but they would have to go through the same process.

Mayor Bernard added some cities limited the amount. There could also be agreements to adjust the base.

Councilor Chaimov said it looked as if the Council did something like this, the City would benefit substantially, but it may be at the cost of schools and fire district. How do we make it worth their while?

Mr. Campbell replied that was a fundamental reality of urban renewal. It was hard to say that Milwaukie should not participate because Milwaukie was on the end of not getting those benefits. School funding was not ultimately tied to property taxes due to Measure 50 and it was funded at the state level. North Clackamas schools would not see any revenue difference if Milwaukie adopted an urban renewal district. The state made up the difference in its financial calculation, which meant that because urban renewal existed in 60 other places throughout the state Milwaukie was paying slightly more in income taxes to pay for the education throughout the state. Those districts were not in any different position than the City. The City was also giving up revenue because we believe in the long-term it would be a benefit to financial stability. We were not asking them to do anything we were not willing to do.

Councilor Stone said in a way it was like borrowing against the equity in a house.

Mr. Campbell said it was borrowing against future rates.

Councilor Stone said it was borrowing against the future City tax revenue.

Mr. Campbell clarified there were certainly some districts that spent money on a pay as you go basis. The borrowing was not an essential part of the project. You could get revenue in through TIF and use it to fund programs or projects without borrowing against the future stream. One of the real powers and benefits was that it gave you the ability to borrow against future revenues.

Councilor Barnes said one of the ways we prove to residents is that when we do something like this we had specific things that it would pay for. We did that with the gas tax. We made a promise of the list of things that would be done. She would like to see a list of things that would be done.

Mr. Campbell said the initial urban renewal district would have a very clear limitation on how much it could borrow, and it would expire when that amount of money had been raised. They would have a clear list of projects within that plan. He was jumping to the question of how we made sure it was never extended.

Councilor Stone asked if were looking at a 20 year plan?

Mr. Campbell provided calculations based on 25 years, and he had not experience with anything less than 10. 20-25 years were typical.

Mr. Asher added part of the reason was because those districts typically do not generate as much revenue as one might think. It often took quite a while to see the curve begin to shoot up because where you were really getting the power of the increment was on the value of new property tax. The new property tax would be based on improvements and we were limited because of Measure 5 and 50.

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The natural appreciation in a district would be no more than 3% per year. Part of the reason why we see urban renewal districts being set up as 20-25 years was in recognition of the fact that it took several years especially if you are borrowing.

Councilor Stone was concerned about creating this district in these economic times. Was this a good time to be forging ahead with this or not?

Mr. Campbell replied this was an ideal time. It may not be an ideal time to borrow, but we would need to show a track record of some growth in increment before we would be able to borrow. It would put the City in a position that we are ready to borrow in a couple of years when the credit market hopefully returns to some reasonable amount of normalcy.

Councilor Stone said our other alternative was to put in on the ballot for the voters to bond the developments that we wanted to see.

Mr. Campbell thought the only other way the City would raise capital at this level would be a general obligation bond, and those did require a vote.

Mr. Asher explained bonds would be 100% on the backs Milwaukie taxpayers. Oregon has enabled municipalities to arrange it differently so that the cost can be spread beyond our own city limits to the bases of other taxing jurisdictions, which made it a very popular program. Milwaukie has been on the sidelines watching other cities benefit.

Mayor Bernard had been interested in this for a long time. A lot of people who are very concerned that certain districts like the Clackamas Town Center have gone on forever.

Mr. Asher added the City of Portland had some come off the rolls also, but those did not get any of the attention. The attention went to renewals and extensions of districts, which was because stakeholders want them to continue.

Mayor Bernard said there are different models. He noted that Oregon City had an Urban Renewal Commission. He liked the City Council to make that decision.

Mr. Campbell said there was an option when you activate an Urban Renewal you either choose to have that authority directed by City Council or you could direct another body to govern.

Councilor Barnes asked what approval he was looking for from Council.

Mr. Campbell said basically it was saying yes to move forward. The steps would be do set up a public outreach, timelines, consultant selection, and putting together an RFP. There were financial calculations and legal analyses to be done. He thought they were pretty well equipped to handle a lot of the public outreach and the cost for a consultant would be \$25,000 - \$40,000. That would come from the economic development budget in the general fund, which was an appropriate funding source.

Councilor Stone would like to know of the Oregon cities and counties that had created these urban renewal districts how many were successful? She would also like to know of those that were not successful and why. She also wanted to know what their plan would be. What was the list of projects? She would like to see those numbers before going further.

Mr. Asher said that described the step they were wanting to take now. They could do some work without setting up of an urban renewal district. It would take a while to do that. In order to answer the list of project we need to know what kind of increment a district would be able to generate, and in order to know that

you need to decide the size of the district and what it included and excluded. There was quite a bit a technical work in drawing up a boundary and projecting revenue growth. A lot of that work they could do in the office with a consultant and report back in a few months. They would learn a lot more without committing to anything. The district would need to be contiguous and could not be more than 15% of the land area or the assessed value.

Mr. Campbell thought because of the size of Milwaukie we could go a little higher but there were limitations.

Mayor Bernard asked if that meant we could stretch up to Albertsons.

Mr. Asher said it depended how they drew it. You look at potentially high value property or property that would be redeveloped you want to grab those sites because they go from essentially having no assessed value to a ton of assessed value and you can enjoy that increment over the life of the district.

Mr. Campbell said and also in areas where you are interested in stimulating that investment by spending money. The other part of it was what they were originally posing to begin public outreach to talk about which of the projects that were essential to include.

Mr. Asher said it was primarily for the downtown plan and they saw the greatest need there. That was the core and had the most needs.

Councilor Stone asked if we needed a consultant up front. Can it be done in house?

Mr. Campbell asked if she wanted him to give the list of projects. They were working the opposite way. They knew Council was interested in public area requirements. There were a couple key things that were obvious that are center pieces of the Riverfront Downtown Framework Plan.

Councilor Stone did not have a good feel for the creation of the urban renewal district or for how long it would be and what would be the ultimate cost to the City and what is the size of area would be included. She thought some of those questions could be answered in house.

Mr. Asher said some of the questions they could answer. He would be happy to meet with Councilor Stone.

Councilor Barnes observed this was very complicated and probably needed to be explained a couple of times.

Mr. Asher would like to answer Councilor Stone's questions and also move forward without making any commitments. Staff would probably come back to Council in a few months.

Mayor Bernard adjourned the work session at 6:58 p.m.

Pat DuVal, City Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
December 16, 2008**

CALL TO ORDER

Mayor Bernard called the 2044th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Council President Joe Loomis and Councilors Deborah Barnes, Greg Chaimov, and Susan Stone.

Staff present: City Manager Mike Swanson, Resource and Economic Development Specialist Alex Campbell, Community Development and Public Works Director Kenny Asher, Engineering Director Gary Parkin, Operations Director Paul Shirey

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Recognize Mayor Jim Bernard for His Service to the Community

It was moved by Councilor Barnes and seconded by Councilor Chaimov to adopt the resolution recognizing Mayor Jim Bernard for his services to the community. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis. [4:0]

RESOLUTION 88-2008:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON RECOGNIZING JAMES BERNARD FOR HIS SERVICE TO THE CITY AS MAYOR

B. Annual Update on the Street Surface Maintenance Program

Mr. Asher provided the second annual report on the Program funded by three local revenue sources: street maintenance fee, local gas tax, and utility privilege tax. In the past calendar year the reconstruction and paving of King Road from Hollywood Avenue to 43rd Avenue was the biggest project. It was budgeted at \$800,000 but came in just a little under that amount. Other projects completed this year were Oak Street from Hwy. 224 to Monroe and Washington Street from Hwy. 99E to Oak Street. The Street Division sealed almost 8,000 feet of pavement cracks, and more will be done this spring. There was a lot of positive feedback for these projects. He noted revenue had been coming in somewhat higher than conservatively anticipated originally due in part to the Engineering Department's doing a lot of the work in house. The remaining project was the Logus Road overlay. Year three projects included Linwood Avenue from Railroad Avenue to Monroe Street, 27th Avenue from Lake Road to Washington Street, and Roswell Street from 32nd Avenue to 42nd Avenue. Mr. Asher noted the Lake Road project had been adjusted to coincide with the Enhancement Project. He discussed preventative maintenance and the current debate over the most effective pavement sealing method.

Mr. Asher reviewed the project selection process based on the 2004 pavement condition assessment which indicated the network was barely in the satisfactory range at 67. The program would gradually bring the condition up to the hoped-for goal of 75.

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The Engineering Department assumed the workload and was doing an excellent job of managing the program. He briefly reviewed the 10-year \$10 million program and reiterated that revenues were running ahead of the projected budget and could result in a \$1 million balance at the end of 10 years. He did not anticipate any changes to the program unless additional funding sources for local street maintenance came through the state or federal governments in which case the City's program would be adjusted. He thanked businesses and residents for their support of the Street Surface Maintenance Program.

Councilor Loomis commented on the asphalt sidewalk on 37th instead of concrete.

Mr. Parkin explained it was a Community Development Block Grant (CDBG) project. Concrete had originally been planned on both sides of the street, but less expensive asphalt was used in light of future development of the property. He added some work had to be redone to meet Americans with Disabilities (ADA) requirements.

Councilor Barnes expressed thanks to the Public Works Department for its work during the recent inclement weather to keep Milwaukie streets safe. She discussed the feasibility of moving some of the projects up if money became available.

Mr. Asher responded there was a correlation between how long maintenance was deferred and final cost of repairs.

Councilor Stone asked if fees could be eliminated if other funding became available.

Mr. Asher replied that was the intent.

Councilor Stone noted there were speed bumps on 27th Avenue and asked if those were considered part of the surface.

Mr. Parkin replied the overlay process would take the speed humps out and put them back in after an evaluation of the need and desire to have them.

Councilor Stone did not want to eliminate something that was working.

C. Community Development Block Grant Projects

Mr. Campbell discussed priorities and the need to show the benefits of each project to low and moderate income residents. Community Development Block Grant (CDBG) funds are allocated to the cities through Clackamas County. After gathering data from the neighborhood leadership, City departments, the Transportation System Plan (TSP), and previous Capital Improvement Plans (CIP), several projects were identified as being excellent candidates for the City's priority list: Harrison Railroad crossing to improve pedestrian safety and bring the City closer to implementing a quiet zone; Hillside Manor / Murphy Site Redevelopment Planning; NE Milwaukie Sewer Extension; and Phase 2 Main Street Sewer Main Replacement.

Mr. Swanson discussed the request from the Children's Center and the City's possible letter support for this human infrastructure request. Another possible project was sidewalk and stormwater improvements on Balfour.

Mayor Bernard would support such a letter in order to help protect the more vulnerable in society.

Councilor Barnes would also support a letter on behalf of the Children's Center. She was most interested in the railroad crossing and sewer extension projects.

Councilor Chaimov agreed with Councilor Barnes.

Councilor Stone asked if Milwaukie would allocate some of its grant money to the Children's Center.

Mr. Swanson replied County staff would make recommendations to the County Commissioners based on feasibility and benefit. The City would not substitute the Children's Center project for one of its own.

Councilor Stone supported human infrastructure because it was the most important. She asked if there were more projects on staff's list.

Mr. Campbell replied some projects that had not made the priority cut or were ineligible were the Meek Street storm project, Logus Road, City Hall rehab, and sidewalk on King Road past 37th Avenue.

Councilor Stone supported the Main Street Sewer Main replacement.

Councilor Loomis was in favor of preparing a letter supporting the Children's Center. He recommended dropping the Hillside Manor project to the bottom of the list.

Mr. Campbell commented on the importance of manageable matches. He would drop priority 2, Hillside Manor/Murphy Site Redevelopment Planning to the bottom of the list. He explained staff's interest in being at the table to represent the City's interests during the redevelopment master planning process and to make the project a community asset by making use of the Murphy site and incorporating mixed use. He commented on the portions of 37th Avenue that were completed using CDBG funds.

Councilor Barnes wanted to ensure the neighborhood association was included and fully informed of the process.

Mr. Campbell understood two projects were more appealing: the Harrison Railroad Crossing and Main Street Sewer Main.

The group agreed Main Street was the more important of the two.

Mr. Asher clarified relocating the Main Street Main would be done with or without CDBG funds. The Harrison Railroad crossing project would add funds for the quiet zone effort.

Mayor Bernard and Councilors Barnes, Chaimov, and Loomis agreed on Harrison Railroad Crossing having top priority. Councilor Stone recommended Main Street for top priority.

CONSENT AGENDA

Councilor Barnes, referring to consent agenda item E, hoped to meet with Judge Gray as she had been receiving many comments related to traffic court recently.

Mr. Swanson would contact Judge Gray to schedule a work session to discuss photo radar activity. He noted there would likely be some stabilization as Chief Jordan planned to focus primarily on the neighborhoods. Court dates would be considered on the basis of need.

Councilor Chaimov requested that consent agenda item H, the Resolution Authorizing Dual Interest Area A Loan Agreement be pulled for discussion.

It was moved by Councilor Barnes and seconded Councilor Stone by to adopt the consent agenda.

- A. City Council Work Session Minutes, November 18, 2008;
- B. Resolution 89-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Assessing the Costs of Abatement of the Nuisance Located at 5237 SE Brookside Drive and Entering the Same on the Docket of City Liens Pursuant to Milwaukie Municipal Code Section 8.04.200(D);

- C. Resolution 90-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Certifying Election Results for the November 4, 2008 General Election;
- D. Resolution 91-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Siri Bernard to the Milwaukie Design and Landmarks Committee;
- E. Resolution 92-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Margaret Anderson to the Public Safety Advisory Committee as the Lewelling Neighborhood District Association Representative;
- F. Resolution 93-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Ron Passmore to the Public Safety Advisory committee as the Island Station Neighborhood District Association Representative; and
- G. Contract for Municipal Court Judge Services

Motion passed unanimously with the following vote: Councilors Barnes, Chaimov, Loomis, and Stone and Mayor Bernard voting 'aye.' [5:0]

AUDIENCE PARTICIPATION

Russ Isom, Milwaukie Christian Church, found in talking with area families that many needed food and help with paying utilities and rent. He looked forward to any partnership with the City to help fill these needs and discussed the feasibility of drop-in shelters.

Mayor Bernard suggested a discussion in a future work session.

Councilor Chaimov is there anyone on staff with experience on those kinds of issues as a starting point.

Mr. Swanson would talk with staff. He applauded Mr. Isom and those working on this matter. Traditionally smaller cities were not involved in human services, but he felt it was important to be responsive as economic difficulties made people feel insecure with the possible outcome being emotional abuse. He suspected some churches could be opened up unless there were land use issues.

Mr. Isom announced a brainstorming session on January 10 to discuss ways to help.

PUBLIC HEARING

Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 and 19.321.3 – Ordinance

Mr. Swanson briefly discussed the proposed amendments and recommended continuing the hearing to the second meeting of January.

It was moved by Councilor Chaimov and seconded by Councilor Stone to continue the amendments to the Milwaukie Municipal Code Sections 19.321.7 and 19.321.3 to the regular City Council meeting on January 20, 2009. Motion passed with the following vote: Councilors Chaimov, Loomis, and Stone and Mayor Bernard voting 'aye' and Councilor Barnes voting 'no.' [4:1]

OTHER BUSINESS

A. City Initiated Street Right-of-Way Vacation of Kellogg Creek Drive in North Clackamas Park – Ordinance, second reading

It was moved by Councilor Barnes and seconded by Councilor Chaimov for the second reading and adoption of the ordinance vacating a portion of Kellogg Creek Drive.

Councilor Stone noted the email from Ms. Batey and the proposed pole sign. Vacation of the right-of-way related directly to putting up a different sign, and she asked if the sign code should be considered first.

Mr. Swanson responded that Councilor Chaimov had asked the central question. Would the vacation be granted in and of itself if the sign were not an issue? This would have been an appropriate action without any other motivating factor which for him meant the action should be taken. To hold it up would unfairly burden the user, the Milwaukie Center.

Motion passed with the following vote: Councilors Barnes and Chaimov and Mayor Bernard voting ‘aye’, Councilor Stone voting ‘no’, and Councilor Loomis abstaining. [3:1:1]

The City Manager read the ordinance for the second time by title only.

The City Recorder polled the Council: Councilors Barnes and Chaimov, and Mayor Bernard voting ‘aye’, Councilor Stone voting ‘no’, and Councilor Loomis abstaining.

ORDINANCE NO. 1991:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, VACATING A PORTION OF KELLOGG CREEK DRIVE

H. Resolution Authorizing Dual Interest Area “A” Loan Agreement

Councilor Chaimov requested that Mr. Swanson explain how the City of Milwaukie would not be stuck with a \$3.8 million loan it could not repay.

Mr. Swanson replied the City was required to maintain its fees at a level at which the loan would be repaid, and in reality the loan would be repaid through hookups. Staff was working with residents to help them understand the importance of connecting to a sewer system, and some objected to the notion of annexing to the City. The agreement would be closely monitored as he did not believe the expense should be on the backs of current ratepayers. If hookups did not appear to be sufficient he would look for other means including asking the County to assume the project and obligation for pay back. He discussed the recent staff’s canvassing of the subject area. The loan was a significant step forward in meeting the criticism that Milwaukie did not follow through.

It was moved by Councilor Chaimov and seconded by Councilor Barnes adopt the resolution authorizing the loan agreement.

Councilor Loomis was happy to hear the situation would be monitored to make sure current ratepayers did not carry the burden. He did not like to part about doing it because of the criticism; it should be because it was the right thing to do. He asked about the household credit.

Mr. Asher replied staff was beginning to discuss an IGA with the Development Agency because it was the right thing to do and briefly commented on the per household credit concept. He shared some comments he heard when staff canvassed the Dual Interest

CITY COUNCIL REGULAR SESSION – DECEMBER 16, 2008

DRAFT MINUTES

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area and noted the importance of continued communication and good will. The proposed loan would be guaranteed by the wastewater fund, so if few people hooked up, the offset cost would come from that fund and capital reserve.

Mr. Swanson added the fund would not be raided to pay this off, and he would not balance annexation on the backs of the current ratepayers. Any use of funds would be restored. He noted the County had been very supportive, and programs available for those on fixed incomes would be investigated. Staff would report annually on this program much like it did on the street surface maintenance program.

Councilor Stone asked if there were an estimate of how many were willing to hook up.

Mr. Asher replied about 10% said they would hook up immediately. Two variables were that it would be less expensive to connect sooner than later, and there may be an installment program. Some might be living with old systems close to failure, but no one can calculate when a system would fail.

Mr. Swanson observed the third issue was that people did not believe anyone would pull this off. The City and County have been talking about this for 20 years or more. Milwaukie can get it done but would have to monitor the program carefully.

Mr. Asher added some people were very interested in sidewalk, streetlights, and stormwater improvements in that area.

Motion passed with the following vote: Councilors Barnes, Chaimov, Loomis, and Stone and Mayor Bernard.

B. Council Reports

Councilor Chaimov attended the Sellwood Bridge Policy Advisory Committee meeting and went on a police department ridealong.

Councilor Barnes visited VP Sleep Technologies and attended the Ardenwald Christmas Party and Umbrella Parade.

Councilor Stone attended the Ardenwald Christmas Party.

Councilor Loomis attended the Winter Solstice and thanked staff for its work.

Mayor Bernard attended the Holiday Tree Lighting and Winter Solstice. He discussed the light rail bridge meeting. He thanked citizens for electing him and giving him an opportunity to serve and grow. He felt he was a much better person for serving the City of Milwaukie with this Council and sharing in decisions he hoped moved the community forward.

ADJOURNMENT

It was moved by Councilor Barnes and seconded by Councilor Stone to adjourn the meeting. Motion passed with Councilors Stone, Loomis, Barnes, and Chaimov and Mayor Bernard voting ‘aye.’ [5:0]

Mayor Bernard adjourned the regular session at 8:54 p.m.

Pat DuVal, Recorder



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: JoAnn Herrigel, Program Administrator

Subject: Qwest Audit

Date: December 16, 2002

Action Requested

Authorize the City Manager to sign an Intergovernmental Agreement (IGA) with other participating Oregon jurisdictions for hiring a consultant to complete a joint financial audit of Qwest.

Background

In 2001, a group of 24 Oregon cities joined together to fund an audit of Portland General Electric Company (PGE). This group of Cities formalized their association and adopted the name Oregon Municipal Audit Review Committee, or, OMARC. The City of Milwaukie contributed \$2,728 toward the audit of PGE. We received \$144,767 from PGE in April of 2002 as a result of inaccuracies discovered during the audit.

In August 2002, OMARC asked Oregon cities if there was any interest in a financial audit of Qwest and Verison. Some cities have franchises with both Verison and Qwest, and some, like Milwaukie, have a franchise with only one. 52 of the cities in the state that have Qwest franchises, of which Milwaukie is one, expressed interest. OMARC is now asking cities that are interested in pursuing the audit to sign an IGA and commit to paying a portion of the total cost of the audit. Milwaukie's cost allocation, based on population and franchise fees received, is \$10,223.56. The amount for this audit is higher than the PGE audit because two companies are being audited and because the City of Portland's contribution has been capped at \$55,000 due to their expense with a recent Qwest litigation.

The OMARC steering committee has selected Maximus, the firm that completed the PGE audit, to conduct the Qwest and Verison audits. The total cost of the audits is \$500,000.

Concurrence

The City Manager concurs with the staff proposal.

Fiscal Impact

The City would contribute \$10, 223.56 toward the total cost of the audit. Adequate funds have been allocated in the 02-03 budget to cover this contribution. The City would stand to benefit financially from any inaccuracies found during the audit.

Work Load Impacts

In order to minimize the cost of the audit, staff will need to dedicate some time to comparing Qwest customer lists to addresses in the City. During the PGE audit, staff put in about 40 hours on this task.

The Program Administrator will monitor the audit process and relay information to the City Manager, Council and the Finance Director.

Alternatives

Authorize the City Manager to sign the IGA for the Qwest audit.

Deny the City Manager authority to sign the IGA for the Qwest audit.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN A SETTLEMENT AGREEMENT WITH QWEST FOR UNDERPAID TELECOMMUNICATIONS FEES OF \$31,732 FOR THE PERIOD COMMENCING JANUARY 1, 2000 THROUGH DECEMBER 31, 2005.

WHEREAS, the City signed an intergovernmental agreement with other participating Oregon jurisdictions (under the name OMARC) for hiring a consultant to complete a joint financial audit of Qwest; and

WHEREAS, OMARC and the consultant have determined that Qwest underpayments of franchise fees were existent but not sizable; and

WHEREAS, Qwest has offered to settle with all jurisdictions participating in the original audit effort;

NOW, THEREFORE, BE IT RESOLVED that the City Manager is authorized to sign a settlement agreement with Qwest for underpaid Telecommunications Fees of \$31,732 for the period commencing January 1, 2000 through December 31, 2005.

Introduced and adopted by the City Council on _____ .

This resolution is effective on _____ .

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

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SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is between Qwest Corporation ("Qwest"), a Colorado corporation, and Milwaukie ("City"), an Oregon municipal corporation. Qwest and the City are referred to collectively herein as "the Parties."

RECITALS

- A.** Qwest pays a Franchise fee rate of 7% of Gross revenue. ("Telecommunications Fee").
- B.** A group of Oregon cities formed the Oregon Municipal Audit and Review Committee ("OMARC"), to review and analyze Telecommunications Fee revenues received from Qwest ("Review").
- C.** OMARC formed the OMARC Steering Committee ("Steering Committee") to make certain administrative decisions on behalf of the Oregon Cities in undertaking the Review.
- D.** On January 22, 2003, the Steering Committee sent Qwest a notice of intent to review Qwest's payment of the City's Telecommunications Fee on behalf of the members of OMARC.
- E.** Qwest and the City have not yet undertaken the Review, and no final determination has been made with respect to whether Qwest underpaid the Telecommunications Fee to the City during a review period commencing on January 1, 2000 and continuing through December 31, 2005 ("Review Period"), which, if underpaid, would constitute a debt to the City.
- F.** Qwest and the City are desirous of avoiding further expense in undertaking the Review, and desire and agree to provide for payment, in accordance with the terms of this Agreement, and thereby to settle and resolve any and all potential claims and disputes between them with respect to the Telecommunications Fee during the Review Period ("the Claim").

G. Qwest and the City have reached an amicable resolution of the outstanding issues and wish to effectuate a payment by Qwest, with such actions resulting in full satisfaction and settlement of all outstanding claims for the Telecommunications Fee during the Review Period.

NOW, THEREFORE, the Parties, through their undersigned representatives who are fully authorized to take the actions contemplated herein, pursuant to the foregoing recitals and in consideration of the following mutual promises, covenants and agreements, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

AGREEMENT

1. Telecommunications Fee. The City and Qwest agree that, in consideration for the payment of the Claim, in the amount set forth in Section 3 hereof, that Qwest shall be deemed to, and shall have paid all of the Telecommunications Fee that was due and owing for the Review Period, including interest or penalties, and, that upon payment of such amount, the City shall not undertake any collection activity with respect to the Telecommunications Fee for the Review Period.

2. Effective Date. The Effective Date of the Agreement shall be the date of the last signature hereon, however, it is the intent of Qwest to enter into a similar agreement with 47 other Oregon cities listed in Exhibit A and notwithstanding the date of the last signature in this Agreement, this Agreement will not be effective until the date of the last signature on all 48 Agreements with each of the Oregon cities listed in Exhibit A. Should an Agreement not be secured by Qwest with any one of the 48 Oregon cities listed in Exhibit A, this Agreement will not be effective.

3. Amount. Qwest agrees to pay the City, and the City agrees to accept from Qwest, as full satisfaction of the Telecommunications Fee for the Review Period, within 30 days of the Effective Date, the total amount of \$31,732.00 ("the Amount"). The City agrees that no further Telecommunications Fee, including interest or penalties thereon, shall be assessed for the Review Period by the City, and the City agrees to take no further action in any administrative or

judicial proceeding to collect such Telecommunications Fee, with respect to any Telecommunications Fee accruing during the Review Period. Receipt by the City of payment of the Amount shall constitute a release by the Parties of all claims, known and unknown, that each party may have against the other with respect to the Telecommunications Fee for the Review Period (“Released Claims”). Payment shall be made at the address provided for notices in Section 9 of this Agreement.

4. This Agreement does not apply to, or release Qwest from payment of any taxes or fees, other than those described in the First Recital of this Agreement.

5. **No Admission.** The Parties agree that this Agreement is a full and complete compromise of the Claim and is made solely for purposes of settlement and that by entering into this Agreement none of the Parties are making any admissions as to the substantive factual or legal issues regarding the Claim, and that in the event of future disputes regarding payment of the Telecommunications Fee that become due and owing after the Review Period, that this Agreement may not, and shall not, be introduced into evidence in any administrative or judicial action.

6. **Voluntarily Entered.** The Parties represent and warrant that this Agreement is entered into voluntarily by the Parties with full knowledge of the consequences and implications of the obligations set forth herein. The Parties also represent and warrant that they have had the opportunity to be represented by counsel of their choice throughout the negotiations which preceded the execution of this Agreement, and in connection with the preparation and execution of this Agreement, and that they have carefully and thoroughly reviewed this Agreement in its entirety.

7. **Exclusive Purpose.** The terms and conditions of this Agreement are made solely for the purpose of resolving outstanding claims for the Telecommunications Fee during the Review Period, do not constitute an admission of fact, and may not be used by either party in any other action or proceeding.

8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and may be amended or modified only by a writing signed by the Parties hereto.

9. Notices. All notices required or permitted to be given or to be made upon any party hereto shall be in writing and shall be personally delivered or telecopied, and also sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed to have been received for purposes of this Agreement on the day the notice is personally delivered or telecopied and deposited in the mail.

(a) All notices to Qwest regarding this Agreement should be sent to:

Andrew E. Ottinger, Vice President – Corporate Tax
Qwest Corporation
1801 California Street, 25th Floor
Denver, Colorado 80202
Fax: (303) 672-5902

(b) All notices to the City regarding this Agreement should be sent to:

JoAnn Herrigel, Community Services Coordinator
10722 SE Main Street
Milwaukie OR 97222

10. Waiver of Costs, Etc. In connection with this Agreement, each party shall bear its own costs related thereto, including, but not limited to, attorney fees and each party waives any claim for any award of costs, disbursements or attorney fees in this matter.

11. Governing Law; Venue. The terms, provisions, interpretations and enforcement of this Agreement shall be governed by the laws of the State of Oregon, without regard to conflict of laws analysis. Any litigation between the Parties arising out of or related to this Agreement shall be brought and maintained in the Circuit Court for Clackamas County, Oregon. Provided, if any litigation arising under this Agreement is brought in a federal forum, it shall be brought and maintained in the United States District Court for the District of Oregon in Portland, Oregon.

12. Binding Obligation. The obligations of the Parties set forth in this Agreement shall be binding on the Parties, their successors and assigns.

13. Warranty of Authority. Each party to this Agreement hereby covenants and represents that the individual signing on its behalf is fully empowered to bind the party to the obligations and commitments set forth herein.

14. Counterparts. This Agreement may be executed in counterparts and by facsimile, and, if so executed, will be effective as if simultaneously executed at the time of receipt of the last executed counterpart.

15. Final Agreement. This Agreement is final and conclusive in all respects and all right to question the same by appeal or otherwise, is hereby waived.

16. No Party Deemed Drafter. The settling Parties agree that this Agreement has been negotiated by the settling Parties, by and through their respective counsel, all of whom have participated in the drafting hereof. The Parties agree that any rule of construction which provides that a document is to be construed against the draftsman shall not apply.

17. Severability. In case any one or more of the provisions of this Agreement shall be found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired. Further, any provision found to be invalid, illegal or unenforceable shall be deemed, without further action on the part of the Parties to this Agreement, to be modified, amended and/or limited to the minimum extent necessary to render such clauses and/or provisions valid and enforceable.

18. No Assignment. City represents and warrants that it has not previously pledged, encumbered, assigned or transferred, or purported to pledge, encumber, assign or transfer any Released Claims.

IN WITNESS WHEREOF, the undersigned Parties have duly executed this Agreement to be effective on the date as set forth in Section 2 hereof.

QWEST CORPORATION

By: _____
(signature)

Name: _____
(print)

Title: _____

Date: _____

CITY OF Milwaukie

By: _____
(signature)

Name: _____
(print)

Title: _____

Date: _____

EXHIBIT A

List of Oregon Cities participating in this Settlement Agreement, collectively referred to as the "Oregon Cities":

- | | |
|-----------------------|--------------------------|
| CITY OF ADAIR VILLAGE | CITY OF MADRAS |
| CITY OF ALBANY | CITY OF MILTON-FREEWATER |
| CITY OF ASHLAND | CITY OF MILWAUKIE |
| CITY OF ATHENA | CITY OF NEWPORT |
| CITY OF BAKER CITY | CITY OF NORTH PLAINS |
| CITY OF BEND | CITY OF OREGON CITY |
| CITY OF CANNON BEACH | CITY OF PENDLETON |
| CITY OF COLUMBIA CITY | CITY OF PHOENIX |
| CITY OF CORVALLIS | CITY OF PORTLAND |
| CITY OF COTTAGE GROVE | CITY OF REDMOND |
| CITY OF DALLAS | CITY OF ROGUE RIVER |
| CITY OF EUGENE | CITY OF ROSEBURG |
| CITY OF FALLS CITY | CITY OF SALEM |
| CITY OF FLORENCE | CITY OF SEASIDE |
| CITY OF GLADSTONE | CITY OF SISTERS |
| CITY OF GRANTS PASS | CITY OF SPRINGFIELD |
| CITY OF GRESHAM | CITY OF ST. HELENS |
| CITY OF HAPPY VALLEY | CITY OF STANFIELD |
| CITY OF HERMISTON | CITY OF TALENT |
| CITY OF INDEPENDENCE | CITY OF TIGARD |
| CITY OF IRRIGON | CITY OF TUALATIN |
| CITY OF JEFFERSON | CITY OF WARRENTON |
| CITY OF KLAMATH FALLS | CITY OF WEST LINN |
| CITY OF LAKE OSWEGO | CITY OF WOODBURN |

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING GABRIEL STORM TO THE MILWAUKIE BUDGET COMMITTEE

WHEREAS, a vacancy exists on the Milwaukie Budget Committee; 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, Gabriel Storm possesses the necessary qualifications to serve on the Milwaukie Budget Committee.

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

SECTION 1: That Gabriel Storm is appointed to the Milwaukie Budget Committee by unanimous vote of the Milwaukie City Council on January 20, 2009.

SECTION 2: That his term of appointment shall commence immediately and shall expire on March 31, 2010.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on February 3, 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, APPOINTING MYSTY DIONNE TO THE CITIZENS UTILITY ADVISORY BOARD

WHEREAS, a vacancy exists on the Milwaukie Citizens Utility Advisory 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, Mysty Dionne possesses the necessary qualifications to serve on the Milwaukie Citizens Utility Advisory Board.

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

SECTION 1: That Mysty Dionne is appointed to the Milwaukie Citizens Utility Advisory Board by unanimous vote of the Milwaukie City Council on January 20, 2009.

SECTION 2: That her term of appointment shall commence immediately and shall expire on March 31, 2011.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on February 3, 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, APPOINTING SARAH J. KNAUP TO THE DESIGN AND LANDMARKS COMMITTEE

WHEREAS, a vacancy exists on the Milwaukie Design and Landmarks Committee; 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, Sarah J. Knaup possesses the necessary qualifications to serve on the Milwaukie Design and Landmarks Committee.

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

SECTION 1: That Sarah J. Knaup is appointed to the Milwaukie Design and Landmarks Committee by unanimous vote of the Milwaukie City Council on January 20, 2009.

SECTION 2: That her term of appointment shall commence immediately and shall expire on March 31, 2012.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on February 3, 2009.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Resolution No. _____

6.
OTHER BUSINESS



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: JoAnn Herrigel, Community Services Director
Subject: Business Recycling Requirement Ordinance
Date: January 21, 2009

Action Requested

Adopt the attached ordinance amending Chapter 13.24 of the Milwaukie Municipal Code regarding the establishment of a Business Recycling Requirement for businesses in the City.

History of Prior Actions and Discussions

March 2008: City and Metro staff met with Council to discuss an ordinance being considered by Metro Council which would require local governments to pass Business Recycling Requirement ordinances.

December 16, 2009: Staff met with Council in work session to discuss implementation of a Business Recycling Requirement ordinance for the City of Milwaukie.

Background

The City of Milwaukie and Clackamas County have used an "opportunity" model for recycling in the business sector since the mid 1990s. Under this model, the City ensured that haulers provided recycling collection services to their commercial customers, but did not require those customers to recycle. In partnership with Metro, Milwaukie and other local governments provided educational materials and technical assistance to businesses who requested help with recycling and waste prevention.

Clear progress has been made as a result of these efforts, but businesses in the region still dispose of more than 100,000 tons of recyclable paper and containers annually. From 2003 to 2007, Metro and their local government partners explored options for

increasing business recycling by convening public/private work groups and conducting stakeholder outreach. More than 1,000 people provided advice on approaches for increasing business recycling.

In November 2007, after reviewing the costs and benefits of potential approaches and input from Metro's Policy Advisory Committee (MPAC) and the Metro Solid Waste Advisory Committee (SWAC), the Metro Council chose to develop a required business recycling program for formal consideration. Metro councilors and staff met with local business associations and elected officials to explain the Business Recycling Requirements program, which requires local governments to require businesses to recycle all types of recyclable paper and certain containers such as plastic bottles, aluminum cans and glass.

Between February and August 2008, more than 300 business representatives and elected officials participated in these meetings (including the Milwaukie City Council and the North Clackamas Chamber of Commerce in March 2008). Overall, participants indicated that education and incentives are the best way to encourage businesses to recycle, but that requirements may be needed to make recycling a priority. Based on the regional input, the Metro Council adopted the Business Recycling Requirements program on September 18, 2008.

In February of 2008, anticipating the passage of the Metro ordinance, Milwaukie staff began coordinating with Clackamas County "Recycle At Work" staff to initiate a targeted recycling outreach and technical assistance campaign for the 800 or so commercial businesses in the City. Since the winter of 2008, County staff has contacted 250 of the City's businesses to provide information and assistance regarding commercial recycling.

In November 2008, City staff met with the franchised garbage haulers to discuss the Metro ordinance and its impact on Milwaukie commercial customers. The Metro ordinance requires that local governments adopt local ordinances to implement the Business Recycling Requirement by February 27, 2009. Staff walked through the potential components of a City ordinance with the haulers and developed a tentative schedule for its adoption and implementation.

In December 2008, staff met with Council to discuss proposed code language for the implementation of Milwaukie's Business Recycling Requirement. Staff then met with the garbage haulers on January 12 to review this same language. The haulers supported the language proposed in the attached ordinance.

Proposed Code Language

The proposed language modifies the current solid waste chapter in the following ways:

- 1) It adds a definition for "Businesses" under the definition section of this chapter, and
- 2) It inserts a new subsection, 13.24.045 Business Recycling Requirement that requires that businesses separate recyclables from other waste and provide signage and receptacles for collection of those recyclables.

Home based businesses would not be affected by this new language. However, the language does require that any landlord providing commercial space for commercial businesses and providing garbage service as a part of their lease, also provide recycling service, signage and receptacles.

Compliance

The compliance strategy for this program will be "assistance driven". Staff and haulers will work with businesses to help them implement waste reduction and recycling programs using on-site assistance and education materials crafted to the individual business' needs. Signage, receptacles and education materials will be provided to businesses by either the City (through County outreach staff) or the garbage haulers. Proof of compliance will not be based on quantitative measurement of business waste generation and recycling but rather on verification that Best Management Practices are in place and being used. Any compliance strategy employed by the City (or the County, as our agent) will be phased in over a 12 to 18 month period to allow businesses time to implement appropriate systems. The effective date of this code change is April 1, in order to allow time for information to be distributed to businesses and education to begin in the field.

Best Management Practices will include:

- Collection and recycling of, at least, paper, cardboard, glass and plastic bottles and metal cans. Collection of other materials would be encouraged.
- Regularly scheduled collection service for recyclables
- A two-sort system, with all materials mixed together but glass collected separately
- Provision of internal and external recycling collection containers
- Accurate and clear labeling of all collection containers
- Provision of educational materials and/or training for employees, tenants and janitorial staff (where appropriate)

Concurrence

The City's franchised haulers support the City staff's code amendment and schedule for implementation of the new ordinance. The County solid waste staff has reviewed the language and find it consistent with the County's and other local jurisdictions.

Fiscal Impact

A portion of the additional \$400,000 allocated by Metro toward the implementation of this program will be used by the County, on the City's behalf, toward business compliance assistance. No new funding needs are anticipated.

Work Load Impacts

None expected.

Attachments

- Ordinance adopting Code amendment
- Code language as amended

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTER 13.24 OF THE MILWAUKIE MUNICIPAL CODE TO ESTABLISH A BUSINESS RECYCLING REQUIREMENT PROGRAM.

WHEREAS, the City of Milwaukie historically has shown support for reduction of the amount of solid waste generated and disposed per capita by implementing source separation and recycling programs; and

WHEREAS, businesses annually generate almost half the region's garbage and dispose of more than 100,000 tons of paper and containers each year that could otherwise be recycled; and

WHEREAS, Metro, the regional government has adopted Ordinance No.08 1200, which amends Metro Code Chapter 5.10, Regional Solid Waste Management Plan, by adding provisions to implement a business recycling requirement;

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Section 13.24.020 is amended to insert the following definition:

"Business" means any entity of one or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational, or other activity that is non-residential in nature, including public bodies.

Section 2. A new section 13.24.045 Business Recycling Requirement is added which reads:

13.24.045 Business Recycling Requirement

All businesses within the City shall comply with waste prevention, recycling and composting requirements as set forth in this Chapter and the regulations promulgated hereunder.

- A. Businesses shall source separate all recyclable paper, cardboard, glass and plastic bottles and jars, and metal cans for reuse or recycling;
- B. Businesses shall ensure the provision of recycling receptacles for internal and/or external maintenance or work areas where recyclable materials are collected, stored, or both.
- C. Businesses shall post accurate signs that:
 - a. Describe the location where recyclable materials are collected, stored, or both;
 - b. Identify the materials the Business must source separate for reuse or recycling; and,
 - c. Provide recycling instructions.
- D. Persons providing garbage collection service to business tenants as part of their rental/lease, shall provide recycling collection systems enabling the business tenants to recycle in compliance with this chapter and any regulations promulgated hereunder.

Section 3. These amendments will take effect on April 1, 2009.

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

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

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Chapter 13.24 SOLID WASTE MANAGEMENT

Note:

* Prior ordinance history: Ords. 1752 and 1760.

13.24.010 Policy.

It is declared to be the public policy of the city of Milwaukie to regulate solid waste management service by:

- A. Insuring safe, economical, and comprehensive solid waste management service;
- B. Insuring service rates and charges that are just and reasonable and adequate to provide necessary public service;
- C. Prohibiting rate preferences and other discriminatory practices; and
- D. Providing technologically and economically feasible resource recovery by and through the franchisees. (Ord. 1955 § 1 (part), 2005)

13.24.020 Definitions.

The following definitions shall apply to this chapter:

“City” means the city of Milwaukie, Clackamas County, Oregon.

“City council” or “council” means city council of Milwaukie, Oregon.

In addition, for the purpose of this chapter, the following definitions shall be applicable:

“Allowable expenses” means those expenses that are known and measurable, calculated in accordance with Generally Accepted Accounting Principles (GAAP), not in excess of the fair market value of like services, and are reasonably and prudently incurred by the franchisee in the course of performing its obligations under this franchise. A narrative of allowable expenses shall be established by the city in its administrative rules.

“Bulky wastes” means large items of solid waste such as appliances, furniture, large auto parts, trees, branches greater than four (4) inches in diameter and thirty-six (36) inches in length, stumps and other oversize wastes

whose large size precludes or complicates their handling by normal collection, processing or disposal methods.

“Business” means any entity of one or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational, or other activity that is non-residential in nature, including public bodies.

“Commission” means the State of Oregon Environmental Quality Commission (EQC).

“Compensation” includes any type of consideration paid for service, including but not limited to, rent, the sale of recyclable materials, and any other direct or indirect provisions for payment of money, goods or benefits by property owners, tenants, members, licensees, and similar persons. It shall, also, include any exchange of services, including the hauling of solid waste and waste. Compensation includes the flow of consideration from the person owning or possessing the solid waste or waste to the person collecting, sorting, transporting, or disposing of solid waste or waste.

“Curbside,” as defined here, may also be called “curbside/roadside” and means a location within three (3) feet of public right-of-way. This does not allow the garbage or recycling receptacle to be placed on the inside of a fence or enclosure even if the receptacle is within three (3) feet of said road or roads. For residences on “flag lots”, private roads or driveways, “curbside/roadside” shall be the point where the private road or driveway intersects a city road, public access road, state road or federal road.

“Department” means the State of Oregon Department of Environmental Quality (DEQ).

“Disposal site” means land and facilities used for the disposal, handling or transfer of, or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility subject to the permit requirements of ORS 468B.050; a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non-decomposable material, unless the site is used by the public either directly or through a solid waste collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

“Franchisee” means the person to whom a franchise is granted by the city council pursuant to this chapter. Such franchise shall grant exclusive rights to provide service and solid waste management service for compensation.

“Infectious waste” means biological waste, cultures and stocks, pathological wastes, and sharps, as defined in ORS 459.386 and 459.387.

“Person” means the state or a public or private corporation, cooperative, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

“Placed for collection” means solid waste or recyclable material that has been placed by the customer for service by a franchisee under the requirements contained in this chapter.

“Processing” means an operation where collected, source separated, recyclable materials are sorted, graded, cleaned, densified or otherwise prepared for end use markets.

“Recyclable material” means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

“Resource recovery” means the process of obtaining useful material or energy resources from solid waste and includes:

1. “Energy recovery,” which means recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material;
2. “Material recovery,” which means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties and can be reused or recycled for some purpose;
3. “Recycling,” which means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity;
4. “Reuse,” which means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

“Solid waste” and “waste” are interchangeable. “Solid waste” means and includes all putrescible and nonputrescible waste, including but not limited to, garbage; compost; organic waste; yard debris; brush and branches; land clearing debris; sewer sludge; residential, commercial and industrial building demolition or

construction waste; discarded residential, commercial and industrial appliances, equipment and furniture; discarded, inoperable or abandoned vehicles or vehicle parts and vehicle tires; manure; feces; vegetable or animal solid and semi-solid waste and dead animals; and infectious waste. "Waste" means useless, unwanted or discarded materials. The fact that materials, which would otherwise come within the definition of solid waste, may, from time to time, have value and thus be utilized shall not remove them from the definition. The terms solid waste or waste do not include:

1. Environmentally hazardous wastes as defined in ORS 466.055;
2. Materials used for fertilizer or for other productive purposes on land in agricultural operations in the growing and harvesting of crops or the raising of fowl or animals;
3. Septic tank and cesspool pumping or chemical toilet waste;
4. Source separated, principal recyclable materials as defined in ORS 459A and the rules promulgated there under and under this chapter, which have been purchased or exchanged for fair market value, unless the city declares a site of uncollected principal recyclable materials to be public nuisance;
5. Applications of industrial sludges or industrial waste by-products authorized through a land use compatibility statement or management plan approval and that have been applied to agricultural lands according to accepted agronomic practices or accepted method approved by the land use compatibility statement or management plan, but not to exceed one hundred (100) dry tons per acre annually; stabilized municipal sewage sludge applied for accepted beneficial uses on land in agricultural, nonagricultural, or silvicultural operations; sludge-derived products applied for beneficial uses on land in landscaping projects.

"Solid waste collection service" or "service" means the collection, transportation or disposal of or resource recovery from solid wastes.

"Solid waste management" means the management of the accumulation, storage, collection, transfer, handling, compaction, transportation, treatment, processing and final disposal or utilization of solid waste and waste or resource recovery from solid waste and facilities necessary or convenient to those activities. The franchisee may contract with another person to provide service of any type under the franchisee's service franchise, but the franchisee shall remain ultimately responsible for solid waste and waste management in the franchisee's franchised service area.

"Source separate" means that the person who last uses recyclable material separates the recyclable material from solid waste.

“Special wastes” shall have the meaning given to them in the METRO code as now referenced at METRO Code Section 5.02.015(s), or as hereafter amended, or as provided in the city’s administrative rules. The collection of “special wastes” shall be controlled by this chapter and any rules adopted hereunder.

“Transfer station” means a fixed or mobile facility normally used as an adjunct of a solid waste collection and disposal system or resource recovery station between a collection route and a disposal site.

“Unallowable expenses” means any expenses not included in the definition of allowable expenses and:

1. Interest and amortization on the purchase of franchise routes or other routes or business opportunities;
2. Political and charitable contributions;
3. Federal, state, and local income taxes;
4. Loss on sale of assets;
5. Officer’s life insurance premiums;
6. Director fees;
7. Interest on the purchase of equipment or facilities to the extent that the purchase price exceeds the fair market value of the asset at the time of purchase;
8. Penalties and fines.

“Waste” means material that is no longer usable or wanted by the source of the material, which material is to be utilized or disposed by another person. For the purposes of this paragraph, “utilized” means the productive use of wastes through recycling, reuse, salvage, resource recovery, energy recovery or landfilling for reclamation, habilitation or rehabilitation of land.

“White goods” means kitchen or other large appliances which are bulky wastes.

“Yard debris” means and includes grass clippings, leaves, tree and shrub prunings of no greater than four (4) inches in diameter or similar yard and garden vegetation. Yard debris does not include such items as: dirt, sod, stumps, logs, tree and shrub prunings greater than four (4) inches in diameter, rocks, plastic,

animal waste or manure, cat litter, potting soil, prepared food wastes or nonputrescible material. (Ord. 1955 § 1 (part), 2005)

13.24.030 Enforcement officers—Access to and review of books and records.

A. The city manager shall enforce the provisions of this chapter, and his agents, including police officers and employees of the public works department, may enter any premises for the purpose of determining

compliance with the provisions and terms of this chapter. Such entry shall be upon permission of the occupant or upon warrant.

B. In order for the franchisees to perform services under this chapter, it may be necessary for a franchisee to disclose to city or city may otherwise acquire, a franchisee's confidential business or technical information. The city may make an inspection for such purposes upon at least twenty-four (24) hours' notice, during normal business hours, at an office of the franchisee located in the local metropolitan area. The city will receive and maintain in confidence all information and will prevent the disclosure of information to others except as required by law in connection with litigation. The city will not use information for any purpose other than in connection with the performance of services pursuant to this chapter.

The above shall not apply to any portion of information: (1) which was developed by the city and is in the city's possession prior to the city's first receipt thereof directly or indirectly from a franchisee; (2) which is now or hereafter becomes through no act or failure to act on the city's part generally available on a nonconfidential basis; (3) which was heretofore or hereafter furnished to a franchisee by others as a matter of right without restriction on disclosure; or (4) which is required by law to be publicly disclosed by the city. Information shall not be deemed to be within one of the foregoing exceptions if it is merely embraced by more general information available on a nonconfidential basis.

The city agrees that each of its employees, agents and subcontractors who participates in the performance of services or who has access to information is obligated in a manner consistent with this section. The obligations of this section shall survive the termination of any request for services and the termination of this chapter. (Ord. 1955 § 1 (part), 2005)

13.24.040 Franchise required and exceptions thereto.

A. Except as otherwise provided in this chapter, it is unlawful for any person other than the franchise holders under the provisions of this chapter, to provide or offer to provide solid waste management or collection service in the city for compensation.

B. Nothing in this franchise shall:

1. Prohibit a federal or state agency that collects, stores, transports or disposes of waste, solid waste or recyclable materials, or those who contract with such agencies to perform the service, but only insofar as the service is performed by or for the federal or state agency;

2. Prohibit any person in the city from hauling that person's own waste, solid waste or recyclable materials in a lawful manner; provided, however, that no person will be permitted to haul such waste, solid waste or recyclable material for any other person or firm. In the case of a residential dwelling unit (whether individually owned, nonowner occupied or grouped through an association or cooperative of property owners) any waste generated or produced is owned by the individual owner or occupant and not by the landlord, property owner, cooperative or association or property manager or agent of such person;

3. Prohibit a generator of source separated recyclable material from selling or exchanging such material to any person for fair market value for recycling or reuse;

4. Prohibit any person from transporting, disposing of or resource recovering, sewage sludge, septic pumpings and cesspool pumpings;

5. Prohibit any person licensed as a motor vehicle wrecker under ORS 822.110 et seq., from collecting, transporting, disposing of or utilizing motor vehicles or motor vehicle parts;

6. Prohibit any person transporting solid waste through the city that is not collected within the city;

7. Prohibit a contractor registered under ORS Chapter 701 from hauling waste created in connection with the demolition, construction or remodeling of a building or structure or in connection with land clearing and development. Such waste shall be hauled in equipment owned by the contractor and operated by the contractor's employees;

8. Prohibit the collection, transportation and reuse of repairable or cleanable discards by private charitable organizations regularly engaged in such business or activity including, without limitation, Salvation Army, Goodwill, St. Vincent De Paul, and similar organizations;

9. Prohibit a person from conducting an activity determined by the city manager to be a civic, community, benevolent or charitable program, providing that such activity does not include the collection of putrescible solid waste. The organization conducting such program shall comply with all applicable provisions of this chapter;

10. Prohibit a person from transporting or disposing of waste that is produced as an incidental part of the regular carrying on of the business but a person shall not provide collection service for any accumulated waste generated by a customer of that business;

11. Require franchisee to store, collect, transport, dispose of or resource recover any hazardous waste as defined by or pursuant to ORS Chapter 466; provided, however, that franchisee may engage in a separate business of handling such wastes separate and apart from this franchise and chapter. (Ord. 1955 § 1 (part), 2005)

13.24.045 Business Recycling Requirement

All businesses within the City shall comply with waste prevention, recycling and composting requirements as set forth in this Chapter and the regulations promulgated hereunder.

- A. Businesses shall source separate all recyclable paper, cardboard, glass and plastic bottles and jars, and metal cans for reuse or recycling;
- B. Businesses shall ensure the provision of recycling receptacles for internal and/or external maintenance or work areas where recyclable materials are collected, stored, or both.
- C. Businesses shall post accurate signs that:
 - a. Describe the location where recyclable materials are collected, stored, or both;
 - b. Identify the materials the Business must source separate for reuse or recycling; and,
 - c. Provide recycling instructions.
- D. Persons providing garbage collection service to business tenants as part of their rental/lease, shall provide recycling collection systems enabling the business tenants to recycle in compliance with this chapter and any regulations promulgated hereunder.

13.24.050 Adoption and revision of rules.

A. Under authority of the municipal code, the city manager is authorized to adopt rules, procedures and forms to implement provisions of this chapter that regulate the collection and disposal of solid waste, recycling and yard debris within the city.

B. Any rule adopted or revised according to the authority of the municipal code shall require a public review process. Not less than ten (10) nor more than thirty (30) days before such public review process, notice shall be given by publication in a newspaper of general local circulation. Such notice shall include the place, time and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.

C. During the public review, the solid waste coordinator shall hear testimony or receive written comment concerning the proposed rules. The city manager shall review the recommendations; taking into consideration the comments received during the public review process and shall either adopt the proposal, modify or reject it.

D. An interim rule may be adopted by the city manager or his designee without prior notice upon a finding that failure to act promptly will result in serious prejudice of the public interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this subsection shall be effective for a period of not longer than one hundred eighty (180) days. (Ord. 1955 § 1 (part), 2005)

13.24.060 Sanitary and safety regulations.

Each franchisee shall comply with all state, federal, regional and city laws, rules and regulations relating to solid waste management service, as now or hereafter constituted. Violation shall be an offense against the city. Where enforcement action is not taken by any other agency, the city may exercise this authority in order to cure the violation. (Ord. 1955 § 1 (part), 2005)

13.24.070 Standards for collection and storage of solid wastes and recyclable materials.

A. Storage and collection of solid waste and recyclable materials shall not create vector production and sustenance, conditions for transmission of disease to man or animals, fire hazards or hazards to service or disposal workers or to the public. All solid wastes placed for collection shall be stored by the customer in a can (metal or heavy-duty plastic), cart, metal container or drop box, and such receptacles, other than drop boxes, must have tight-fitting covers and hand or mechanical bales to facilitate pickup. Extra volumes of solid waste that are in addition to the subscribed service, may be in heavy plastic bags that are securely tied at the top and which will accommodate the weight and volume of waste contained in them so that they do not break open upon being collected. The cleanliness of the grounds surrounding the solid waste and recyclable

materials storage area and of the receptacle for such materials shall be the responsibility of the customer. Solid waste containing putrescible materials shall be stored in closed containers.

B. Recyclable materials and yard debris shall be prepared by customers and placed at curbside for collection by a franchisee in accordance with rules and standards adopted under this chapter.

C. Customers shall provide a space for all cans, carts, containers or drop boxes, whether used for garbage or recycling, that has adequate and safe access for collection personnel and equipment. The space provided must also comply with the city development code.

D. Placement of receptacles for collection by a franchisee and requirements pertaining to weight limitations, type and quality, and contents of receptacles placed for collection by a franchisee shall be in accordance with rules and standards adopted under this chapter.

E. The temporary storage of solid waste is permitted without compliance with the requirements for solid waste disposal sites if the temporary storage is provided under safe and sanitary conditions. Temporary storage must comply with all relevant codes and chapters of the city. (Ord. 1955 § 1 (part), 2005)

13.24.080 Franchise requirements.

A. Each franchisee shall make available, for subscription, all levels of solid waste collection service for which the city sets rates, to every customer in its franchised geographic area, subject to the limitations in Section 13.24.150 for refusal of service. Collection of bulky wastes shall be made by special arrangement between franchisee and a customer. Each franchisee shall provide each of their new customers with city-approved written information on all solid waste and recycling collection services that are available and the rates for these services. The franchisee shall not intentionally provide solid waste collection service to customers in another franchisee's geographic area within the Milwaukie city limits except by arrangement with another franchisee under a subcontract. Customers shall be given written notice of any changes in service.

B. Each franchisee shall use proper and suitable equipment for the hauling, removal and transportation of solid waste. All equipment for transporting solid waste on public roadways within the city shall be covered and all equipment for handling the waste material shall be equipped with a metal body, watertight and drip proof to the greatest extent practicable. All equipment shall be kept clean at all times and sufficient equipment shall be kept on hand to properly and

adequately remove all solid waste, subject to the terms of this chapter, together with rules and standards adopted under this chapter.

C. Each franchisee shall make available solid waste management and collection service as defined in Section 13.24.020 of this chapter to customers in the city not less than once per week.

D. Each franchisee may subcontract with others to provide a portion of the service where the franchisee does not have the necessary equipment or service capability. Such a subcontract shall not relieve the franchisee of total responsibility for providing and maintaining service and from compliance with this chapter. The franchisee shall provide written notice to the city of its intention to subcontract any portion of the service prior to entering into such agreement, and provide the city with a copy of the agreement, which shall require city approval prior to the agreement becoming effective. The subcontractor shall comply with all provisions of this chapter.

E. Each franchisee shall provide the opportunity to recycle in accordance with Chapter 459A of Oregon Revised Statutes, together with the rules and regulations promulgated thereunder by the EQC, DEQ, METRO and the city.

F. Each franchisee shall permit inspection by the city of the franchisee's facilities, equipment and personnel at reasonable times.

G. Each franchisee shall comply with all laws relating to solid waste management service and shall not have a record of violations of law or chapters that would indicate an inability to satisfactorily perform the service being franchised.

H. Each franchisee shall submit a certificate of public liability insurance with a thirty (30) day notice of cancellation clause, acceptable to the city, which will cover its business operation including each vehicle operated by the franchisee. This coverage shall include contractual liability insurance. Coverage will include one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) general annual aggregate. The insurance shall name city as an additional insured and shall require written notice to city thirty (30) days in advance of cancellation. If contractor hires a carrier

to make delivery, contractor shall ensure that the carrier complies with this subsection. The insurance shall indemnify and save the city harmless against liability or damage which may arise or occur from an injury to persons or property as a result of the franchisee's operation of the solid waste business.

I. Each franchisee shall comply with the hours of collection which may be set by rules and regulations under this chapter.

J. Each franchisee shall provide staff, equipment, transportation and disposal for waste collected at one annual collection event in the city. Expenses from this event shall be reported in annual financial reports as allowable expenses for services provided within the city. (Ord. 1955 § 1 (part), 2005)

13.24.090 Nonexclusive franchise.

A. No person shall do business in the collection and transport of solid waste generated within the city without a current, valid city franchise. A franchise to provide collection service for solid waste, recyclable materials and yard debris in a service area of the city shall be granted only after a determination of need for the service. The determination of need is the responsibility of the city council, which will seek the best balance of the following objectives:

1. To insure safe, efficient, economical and comprehensive solid waste service;
2. To avoid duplication of service that will cause inefficiency, excessive use of fuel, increased traffic, and greater wear on streets;
3. To provide service in areas of marginal return;
4. To promote and encourage recycling and resource recovery;
5. To improve the likelihood of the franchise holder making a reasonable profit and thereby encourage investment in modern equipment;
6. To cooperate with other governmental bodies by recognizing their service arrangements; and
7. To otherwise provide for the service in a manner appropriate to the public interest.

B. In granting a franchise renewal or a new franchise due to an annexation, termination, or revocation of a franchise, the council shall, in addition to the above, consider the following factors in selecting a new or replacement franchisee:

1. The candidate's prior service record in the same or a related industry and its professional relationships with other corporate entities and local, regional and/or state jurisdictions;
2. The candidate's financial ability to perform the obligations of a franchise holder;

3. The candidate's equipment and personnel available to meet current and future needs of a franchise holder;

4. The candidate's ability to provide all services to customers within the geographic boundaries of the designated franchise area, including every residential, multi-family and commercial customer;

5. The candidate's exercise of the burden of proof demonstrating a proposed franchise area is being or has been underserved by the existing or previous franchise holder; and

6. The candidate's good moral character as is relevant to a franchised provider's customer relations, namely any unpaid judgments against the applicant (whether doing business under the same or another name) and any judgments for civil fraud or for a crime of dishonesty.

C. Franchises granted by the city shall be nonexclusive, however it is understood that during the term of franchises granted under this chapter, the city shall not grant any other person a franchise for solid waste management unless there is a showing by the applicant of the need for such additional service in the proposed service area. As to such application(s) the council may consider whether a current franchisee is capable of providing the additional service. In evaluating whether a need exists for additional service, the city council may consider, among any other criteria deemed relevant by the city council, the following items:

1. An increase in the population of the city;

2. An extension of the boundaries of the city;

3. Intensive residential, commercial or industrial development within the boundaries of the city;

4. Changes in solid waste technology and/or recycling collection technology that could substantially improve collection service or reduce collection costs to residents of the city;

5. The effect that an additional franchise would have on each existing franchisee's ability to meet the city's service standards and maintain a fair return on its investment;

6. The number of existing collection franchisees or drop box service franchisees, as applicable, providing service in the area of the city in which the applicant wishes to provide service; and

7. Changes in federal or state laws, rules or regulations that substantially affect solid waste or recycling collection requirements. (Ord. 1955 § 1 (part), 2005)

13.24.100 Term of franchise.

A. A franchise to provide collection service for solid waste, recyclable materials and yard debris in a portion of the city shall be granted for a period of ten (10) years, beginning December 21, 2005.

B. The city shall review franchises annually to evaluate rates and may review customer service and franchisee performance issues.

C. Staff shall report to the council a comprehensive review of the rates. As part of this review, the city may review customer service, franchise performance and overall state of the franchise system based on the first sixty (60) months of the franchise term. As part of that review, at the request of a franchisee, staff may make a recommendation to renew or not renew, and the council may consider renewing that person's franchise for an additional five (5) years to be added to the end of the existing term for a total of ten (10) years. Any such extension shall be granted only after the notice to all interested parties and a public hearing.

D. Nothing in this section restricts the council from suspending, modifying or revoking the franchise for cause pursuant to Section 13.24.140 of this chapter.

E. A franchisee who desires to terminate its rights and obligations under a franchise, shall give not less than ninety (90) days' notice of its intent. Upon receipt of such notice the council shall initiate proceedings to consider applications by any other person for a franchise to serve the same area. (Ord. 1955 § 1 (part), 2005)

13.24.110 Notice request for franchise applications.

A. Prior to the end of a franchise term, notice that the city intends to solicit applications for solid waste franchises shall be published in a newspaper of general circulation within the city. Notice shall also be sent to all holders of Milwaukie solid waste franchises. The city manager or his designee may keep a list of interested persons who will also be provided notice.

B. The city manager shall establish forms and deadlines. (Ord. 1955 § 1 (part), 2005)

13.24.120 Description of franchise areas.

A city solid waste franchise service area shall include single unit residential customers and any multifamily residential, commercial and industrial customers within that service area. The service areas shall be determined by council resolution. The franchise areas and the franchisees serving such areas shall be indicated on a map entitled "Solid Waste Franchise Service Areas of the City of Milwaukie" (the "map"). A copy of the map shall be dated with the effective date of the council resolution and maintained in the office of the city manager. Amendments to the map may be made by council resolution, and copies of amendments shall be kept on file by the city recorder. (Ord. 1955 § 1 (part), 2005)

13.24.130 Transfer of franchise.

A. An assignment or transfer of a franchise shall include, but not be limited to:

1. A sale, exchange or other transfer of fifty (50) percent or more of franchisee's assets dedicated to service in the city;

2. A sale, exchange, or other transfer of fifty (50) percent or more of the outstanding common stock of a franchisee;

3. Any reorganization, consolidation, merger, recapitalization, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which franchisee or any of its shareholders is a party which results in a change of ownership or control of fifty (50) percent or more of the value or voting rights in the stock of the franchisee; and

4. Any combination of the foregoing that has the effect of a transfer or change of ownership and control.

B. The franchisee shall provide no less than sixty (60) days' advance written notice to the city of any proposed transfer or assignment. Except as specifically authorized by the city, the franchisee shall not assign any of its rights or delegate or otherwise transfer any of its obligations to any other person without the prior consent of the city council. Any such assignment without the

consent of city council shall be void and any such attempted assignment shall constitute default and grounds for termination of the franchise.

C. If a franchisee requests the city's consent to transfer the franchise, the city shall act on such request within sixty (60) days of the receipt of the franchisee's written request together with all information, as set forth below, required for the city's action on the request. The city shall not unreasonably refuse to consent to an assignment of the franchise to a proposed assignee that has sufficient knowledge, experience, and financial resources so as to be able to meet, to the satisfaction of the city council, in its sole discretion, all obligations of the franchisee hereunder. An application to the city to consider a sale or other transfer of a franchise shall include the following:

1. A nonrefundable application fee of two thousand dollars (\$2000.00) payable at the time of application to the city in advance to defray the city's anticipated expenses and costs resulting from the franchisee's request;

2. Financial statements audited or reviewed by a certified public accountant of the proposed assignee's operations for the three (3) immediately preceding operating years together with any additional evidence of financial ability to perform its franchise obligations; and

3. A showing that the proposed assignee meets all city criteria for the grant of a franchise as are set out in Section 12.24.090 of this chapter. (Ord. 1955 § 1 (part), 2005)

13.24.140 Suspension, modifications or revocation of franchise.

A. The city council may suspend, modify or revoke the contract of a franchisee upon finding that the holder thereof has violated this chapter or ORS Chapter 459 or Chapter 459A, or any rule or regulation promulgated thereunder.

B. When the city receives information indicating a violation of this chapter, a written notice of such violation shall be provided to the franchisee. Such notice shall provide a description of the alleged violation, and shall provide a reasonable opportunity to correct the violation.

C. Upon receipt of the written notice, referred to in subsection B of this section, the franchisee shall have thirty (30) days from the date of mailing of the notice in which to comply or to request a public hearing before the city council. A request for a public hearing before the city council shall be made in writing and in the event a public hearing is held, the franchisee and other interested persons shall have a reasonable opportunity to present information and testimony in oral or written form.

D. The council shall adopt findings of fact and conclusions which will support or deny the alleged violation. The council may, on the basis of such findings, suspend, modify or revoke the franchise of said franchisee or condition such action upon continued compliance with this code. The franchisee shall comply with the time specified in the notice or with the order of the city council. (Ord. 1955 § 1 (part), 2005)

13.24.150 Interruption of service.

Each franchisee agrees, as a condition of their franchise, that whenever the city council finds that the failure of service or threatened failure of service would result in creation of an immediate and serious health hazard or serious public nuisance, the city council may, after a minimum of twenty-four (24) hours' actual notice to the franchisee and a public hearing if the franchisee requests it, provide or authorize another person to temporarily provide the service or to use and operate the land, facilities and equipment of the franchisee to provide emergency service. If a public hearing is requested by the franchisee, it may be held immediately by the city council after compliance with the minimum notice requirements for such meetings established by the Oregon Public Meetings Law. The city council shall return any seized property and business upon abatement of the actual or threatened interruption of service, and after payment to the city for any net cost incurred in the operation of the solid waste service. (Ord. 1955 § 1 (part), 2005)

13.24.160 Rates under this chapter.

A. The city council shall review and set rates on an annual basis by council resolution that considers the following goals:

1. Rates shall be established to the greatest extent practicable on a cost of service basis.

2. Rates shall be adequate to provide an expected operating margin for the subsequent rate year equal to ten (10) percent of composite franchise-wide gross revenues; however, the city shall not be required to change rates if the expected operating margin in the current year falls between eight (8) and twelve (12) percent of gross revenues. The ten (10) percent target, and the eight (8) to twelve (12) percent range of return on gross revenues is considered sufficient to reflect the level of business risk assumed by the franchisee, to allow investment in equipment, and to ensure quality collection service.

B. Accordingly, the city shall have the authority to commission audits, reviews, or analyses of franchisee annual reports to validate hauler submissions. The expected operating margin for the subsequent rate year shall incorporate projected and expected inflation factors, and the effect of known or expected increases or decreases in expenses or revenues prepared on a composite basis.

C. The rates charged by franchisees shall conform to the most current council rate resolution. Prior to implementation, the council must approve any interim rate for services not included in the current resolution.

D. If the haulers for the majority of the franchise areas within the city notify the city manager in writing that they believe a material change outside the franchisees' control has occurred, and the change will have an adverse effect on operating margins, such that current year operating margins will be less than seven (7) percent, a material change will be deemed to have occurred. At that time, the city may undertake any type of review it finds necessary to validate the existence of the material change and estimate its effect on the operating margin. If the results of the review are such that no rate adjustment is warranted, persons requesting the review shall reimburse the city for reasonable costs incurred during the investigation at the time the next payment of franchise fees is due.

E. If the city believes that a material change has occurred that will result in a current year operating margins falling under eight (8) percent or over twelve (12) percent, the city may undertake a supplementary rate review at its own expense.

F. A change in tipping fee at disposal facilities will be evaluated by the city to determine the effect upon rates and services. (Ord. 1955 § 1 (part), 2005)

13.24.170 Franchise fee.

A. For the privilege of using the city's streets and other facilities and for the purpose of defraying the city's regulatory expenses, each franchisee shall pay a franchise fee to the city equal to five (5) percent of cash receipts on residential service, commercial and drop box service, net of material sales revenue. For drop box service, disposal costs will be considered a pass through cost. The franchise fee shall be computed and collected on a calendar quarterly basis. The fee shall be paid by the franchisee not later than the last day of the month immediately following the end of the quarter. A franchise fee payment shall become delinquent if not paid by the last day of the month immediately following the end of the quarter. A simple interest charge of eighteen (18) percent shall be charged against the entire delinquent balance until the balance is paid.

B. At the time of payment of the quarterly fee, each franchisee shall file with the city manager a verified statement of quarterly cash receipts for the period covered by the tendered fee. Such statements shall be public records. Each franchisee shall maintain books and records disclosing the cash receipts derived from business conducted within the city, which shall be open at reasonable times for audit by the city manager or his designee. The city may require a uniform system of bookkeeping and record keeping to be used by all franchisees.

C. Material misrepresentation of cash receipts by a franchisee constitutes cause for revocation of the franchise.

D. The franchise fee imposed by this section is in addition to and not in lieu of any other fee, charge, or tax imposed by the city. The obligation to pay franchise fees on cash receipts generated from services performed under a city franchise shall survive termination of the franchise no matter how terminated.

E. The city council by resolution may change the amount and computation of franchise fees from time to time. The council, by resolution, may reallocate the franchise fee percentages for different customer groups, such as residential or commercial, if such a reallocation mitigates a cost of service disparity that is not fully corrected through the rate setting process. In order to do so, the city manager must be able to demonstrate that the composite rate of return among the franchisees is improved. Such a reallocation may not materially reduce the amount of total franchise fee revenue obtained by the city. (Ord. 1955 § 1 (part), 2005)

13.24.180 Payment for services and interruption or discontinuance of service.

A. Rules and regulations pertaining to billing sequences may be adopted pursuant to this chapter. Solid waste management service may be discontinued by any franchisee when payment for such service is delinquent for a period of thirty (30) days, and after giving ten (10) days' written notice of delinquency to the occupant of the premises. The franchisee shall not be required to resume service until the delinquency is paid and until a deposit equal to two (2) months' service is paid in advance. In the event service is discontinued for delinquency, the city shall be given a copy of the written notice of delinquency given by a franchisee to the occupant of the premises.

B. No franchisee shall terminate service to any or all of its customers under this chapter except in accordance with the provisions of this chapter. Service may be interrupted or terminated when:

1. The street or road access is unavoidably blocked through no fault of the franchisee or if there is no reasonable alternative route or routes to serve all or a portion of its customers; but in either event, the city shall not be liable for any such blocking of access; or

2. Adverse weather conditions render providing service unduly hazardous to persons or equipment providing such service or if such interruption or termination is caused by an "act of God" or a public enemy.

C. A franchisee shall have the right to establish, by agreement with individual customers in the city, the time or times when solid waste shall be gathered and collected, but such agreement shall not conflict with any rules adopted by the city. (Ord. 1955 § 1 (part), 2005)

13.24.190 Annexation of property to city.

If property is annexed by the city, the city and the franchisee shall comply with ORS 459.085(3). (Ord. 1955 § 1 (part), 2005)

13.24.200 Violations.

A. Without the consent of the owner or lessee, it is unlawful for any person to dispose of, place or deposit any waste, solid waste or recyclable materials in a container, drop box or other receptacle owned or leased by another person.

B. No unauthorized person shall take or remove any solid waste or recyclable materials placed for collection by a franchisee.

C. No person shall provide nor offer to provide solid waste management service in the city unless they are exempted under Section 13.24.040 of this chapter or unless they are a franchisee under this chapter.

D. No person shall violate any other provisions of this chapter or rules and regulations promulgated thereunder.

E. These violations shall be subject to the penalties set forth in Section 13.24.210 of this chapter. (Ord. 1955 § 1 (part), 2005)

13.24.210 Process for determining penalties.

A. Any person deemed to be in violation of any of the provisions of this Chapter, shall be charged with a civil infraction and cited into municipal court using the civil infraction procedures of Title I of the Milwaukie Municipal Code.

B. Any person violating any of the provisions of this chapter shall be deemed guilty of a civil infraction, and upon conviction thereof, shall be fined according to rules established under Chapter 1.12.010 of this code. Any nonfranchised person engaging in any of the activities franchised under this chapter for compensation, shall in addition be guilty of a civil infraction for each day of violation of the chapter and subject to an additional fine not exceeding one hundred (\$100.00) dollars for each and every day after the first day of such violation. (Ord. 1955 § 1 (part), 2005)



To: Mayor and City Council

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

From: Gary Parkin, Engineering Director

**Subject: Contract Award for Engineering Services for the Dual Interest Area
Wastewater Collection System**

Date: January 23, 2009 for the February 3, 2009 Regular Session

Action Requested

Authorize, via resolution, the City Manager to execute a contract not to exceed \$460,000 with Century West Engineering for geotechnical, final design, bidding and construction management services needed for the Dual Interest Area wastewater sewer extension project. (see scope of work, Attachment 1).

History of Prior Actions and Discussions

December 2008: Council approved a loan agreement for the Clean Water State Revolving Fund (CWSRF) loan to fund the extension of wastewater sewer to the Dual Interest Area "A" (Resolution No. 94-2008).

October 2008: Council approved moving forward with the extension of wastewater sewer to the Dual Interest Area including; entering into an Intergovernmental Agreement (IGA) with Clackamas County for use of Century West Engineering services through a contract between Century West Engineering and Clackamas County; making application for a DEQ loan needed to accomplish the sewer extension; and moving forward with the public information needed for the project (Resolution 81-2008, Attachment 2).

September 2008: Work session discussing the sewer extension project. Council requested additional information prior to acting.

May 2008: Work session to discuss the sewer extension project in light of City, County, State and intergovernmental requirements and policies. The lack of support of citizens in the area to annexation, but in support of receiving sewer service, most recently expressed at the March 20, 2008 open house, was noted. Staff presented information on relevant City and County policies, state law regarding annexation, and raised questions regarding service delivery and governance. Also in May 2008, the Clackamas County Board of Commissioners approves entering into a contract with Century West Engineering for the engineering services needed to advance the wastewater sewer extension for the County's portion of the wastewater sewer extension to the North Clackamas Revitalization Area (NCRA). Included in the contract is the City's portion of the preliminary engineering needed to qualify the City for the Clean Water State Revolving Fund (CWSRF) loan.

March 2008: Work session to discuss the need for, and timing of wastewater service to the unincorporated area adjacent to the northeastern border of the City. Working with Clackamas County, the City was beginning a public outreach effort to inform residents about the Dual Interest Area and determine public interest regarding connection to the City's public wastewater sewer system.

November 2002: Council directed the City Manager to sign a CDBG grant application to subsidize connection costs for low-income residents in the Dual Interest Area. This proposal assumed a City project to extend service to the unsewered unincorporated area.

July 1990: Clackamas County Order No 90-726 established an Urban Growth Management Agreement (UGMA) in which the City and County agreed to coordinate the future delivery of services to the unincorporated areas of North Clackamas County. In the northern Dual Interest Area (DIA), or DIA, the agreement states:

"The City shall assume a lead role in providing urbanizing services, whenever possible and according to adopted capital improvement programs."

Background

Over the past year, the City has been moving toward providing sewer service in the DIA in accordance with the Urban Growth Management Agreement (UGMA). The County is also moving to provide sewer service to the adjacent areas in the North Clackamas Revitalization Area (NCRA). The County offered to work with the City, through an IGA, to share engineering costs, by contracting with one firm for both areas.

The County solicited for the work, and the City participated in the selection of an engineering firm (Century West). Under the County's contract with Century West, Century West provided the City with preliminary engineering required for the City to apply for and obtain the CWSRF loan.

In October 2008, Council approved an Intergovernmental Agreement for the City and County to share engineering services for both sewer extension projects (Resolution 81-2008, Attachment 2). The IGA was then approved by the County's Board of Commissioners in December 2008.

In late December 2008, as City Engineering staff acted to engage Century West in the design of the extension project, staff learned that the county's contract with Century West did not include the \$460,000 required to complete the work in the DIA. County staff have explained to City staff that there was not sufficient information about the DIA to estimate the engineering cost when the contract was executed in May 2008.

Despite agreeing to manage the contract on behalf of the City in the IGA, the County has opted not to amend the Century West contract to include the \$460,000 for services to the DIA. The City must now contract directly with Century West.

City staff believes that, though working with the County thus far has helped facilitate the timely approval of the CWSRF loan and met the competitive solicitation requirements for selecting the engineering firm, the City should proceed under a direct contract with Century West. Although the project requires interaction with the County, that interaction can continue even if the engineering contracts are managed separately.

Concurrence

City staff participated in the Request for Quotes process initiated by the County and City staff recommended Century West Engineering.

The County has acknowledged the rationale for acting separately.

DEQ, the City's lender, does not oppose a separate engineering contract for the City.

Century West Engineering Corporation supports this action and is eager to execute this contract.

Fiscal Impact

By moving forward with the IGA to engineer the project, the City would be committing to spend as much as \$460,000. This amount would be paid for from the CWSRF loan. Loan repayment would be as connections were made and reimbursement charges collected and are guaranteed by the Wastewater Capital and Reserve fund.

Work Load Impacts

This action, if approved, slightly increases the City engineering workload as the direct manager of the engineering contract, from that required if working under the IGA with the County.

If not approved, a greater amount of the work would be needed to secure engineering services and significant time would be lost.

Alternatives

1. Council may direct staff to ask the County once more to add this work to their existing contract with Century West Engineering and complete the engineering in accordance with the IGA. The County has indicated that they would only do so were WES staff to assume a project management role for this DIA project with compensation for that role.
2. Council could decide to deny City Manager authorization of this contract, effectively stopping this project. This would dramatically shift previous policy direction given to staff and residents of the DIA.

Attachments

1. Contract Scope of Work for Century West Engineering Corporation for the engineering of the NE Milwaukie Sewer Extension Project and IGA.
2. Resolution 81-2008 authorizing the City Manager to enter into an IGA with Clackamas County for the design of the sewer extension project.
3. Resolution authorizing the City Manager to authorize a contract with Century West Engineering Corporation.

SCOPE OF WORK

Project Description:

This Project will include preliminary and final design services for approximately 14,500 linear feet of main line sanitary sewer pipe and one 0.30 MGD sanitary sewer pump station that will be divided into two construction phases identified as Johnson Creek North Improvements and Johnson Creek South Improvements. The Project boundary is shown on the attached exhibit, but is roughly described as being bounded by Wichita Avenue on the east, West Fork Road to the north, King Road to the south and 55th Avenue to the west.

The scope of work for the Project includes the following general tasks:

Task 0 - Project Management

This task includes the overall planning, monitoring, and control of the North Clackamas Revitalization Area – Johnson Creek Sanitary Sewer Collection System to meet the technical, cost, schedule, and communication objectives. The work will be accomplished under the following subtasks:

040 Project Management

Overall management of the project including:

- Weekly email reports on project status
- Monthly meetings with the client
- Monthly schedule updates and revisions

Task 1 - Preliminary Design Phase

110- Preliminary Design - Pump Station

The preliminary design will follow the guidelines laid out by DEQ and will address the primary design assumptions and issues associated with this project. The contents of the predesign report will address the following issues:

- Flow – Short Term and Ultimate
- Pump Station Location – Utilize current City owned property within the southeast corner of Tax Lot 12E30 AB06900 adjacent to SE 55th Avenue (Approximate size 35' x 42')
- Force Main Hydraulics – Analyze force main and its connection into the City of Portland's Lents Trunk sanitary sewer approximately 300 feet from the station.
- Facility Sizing – Wet well size requirements, operation and maintenance requirements, access requirements
- Pump Station Control Strategies – Pump operation so as to minimize odor, corrosion, and wear on the system.
- Design Criteria for the Pump Station
- Preliminary Design Drawings and Equipment Selection
- Cost Estimates
- Submit Conditional Use application to Clackamas County in order to site the pump station within the industrially zoned area.

Task 2 – Final Design and Bidding Phase

210 Survey

Land surveying tasks required for use during final design to establish details along the pipeline route will include:

- Establishing or setting permanent horizontal and vertical control for use in final design and construction phases.
- Tying into horizontal and vertical controls on the area. Setting control as appropriate for contractor to lay out construction project.
- Calling for locates of and tying underground utilities for construction plans.
- Setting basement windowsill elevation for all houses with basements. The window sill elevation will serve as a benchmark for homeowner to measure down to the basement floor slab (or as otherwise approved).
- Determining location and elevation of proposed individual house connections along the route
- Consultant discussing with property owners their preferences regarding these connections, including outlining cost, maintenance, landscaping, and future use of their property issues.
- Searching and tying existing rights-of way and other property corner monuments to identify the land boundary network sufficient for final alignment and easement preparation. This subtask does not include property surveys to reestablish property corners if they are missing or are not easily found.
- Obtaining adequate ground spot elevations to confirm accuracy of photogrammetric contours and to create a ground surface model for the sewer profile based upon the LIDAR data.
- Preparing easement descriptions, as identified later in this document.

220 Geotechnical Investigation

Conduct a geotechnical investigation adequate for final design. Major items to accomplish this include:

- Conduct soil borings along proposed alignment. 7 borings with total penetration of 150 lineal feet assuming average pipe invert 15 feet below ground surface. This includes one boring to a depth of 30 feet for the pump station wetwell. Borings extend 5 feet below estimated pipe/wetwell invert.
- Permission to access each site is to be provided by the City.
- Locate boring logs on plan & profile sheets.
- Analyze results of the field/laboratory testing and provide conclusions and recommendations on:
 - Soil and groundwater conditions expected during construction.
 - Mass classification of ground expected to be encountered along the alignment
 - Dewatering
 - Drainage requirements
 - Recommended geotechnical parameters for design to include soil strength, unit weights and trench earth pressure coefficients on pipe.
 - Recommendations on bedding and backfill including the suitability of the native materials for trench backfill

230 Environmental Permitting

Delineate environmentally sensitive areas necessary to install a pipeline adjacent to Johnson Creek along with drainage ditches with the public right-of-way for jurisdictional determinations. Prepare applications for a joint removal-fill permit (Division of State Lands) and Section 404 (Corps of Engineers) in the event a wetland delineation report is completed. Conduct an archaeological survey to determine if additional cultural resources work will be needed for the project. Major items to accomplish this include:

- Investigate to determine if any jurisdictional wetlands are present along the proposed pipeline alignment adjacent to Johnson Creek between the proposed pump station on SE 55th Avenue to SE Stanley Avenue across private property. This will also include roadway rights-of-way for any ditches that could possibly be

designated. Boundaries of wetlands and ordinary high water will be recorded by resource-grade GPS, or suitable alternative. Information will be placed on the project base map for permitting agency purposes. Boundaries will not be flagged in the field.

- Project assumptions include payment of all permit application fees by the City, preparation of a Biological Assessment will not be needed, Section 106 Consultation will not be needed and Threatened and Endangered Species surveys are not necessary.
- Prepare a final Wetland Delineation Report in the event any areas are discovered during the field observations.
- Submit applications with appropriate documents to USACE/DSL for processing as a Nationwide Permit.
- Prepare 1"=50' CAD (AutoCAD2006) drawings for a Rehabilitation Plan for temporary impacts to the wetland. The plan will describe on-site, in-kind mitigation.
- No meetings with project stakeholders are included. Communications with resource agencies will be via telephone.
- Conduct a field survey of the project area to gather additional information on the potential for cultural resources.
- Provide a letter report of the findings in the field survey.
- Future shovel testing if warranted will be considered out of scope with a separate negotiated fee to be provided.

240 Final Design - Collection System

Final design will include the following:

- Prepare 1" = 50' horizontal CAD (AutoCAD2006) base mapping including topographic and planimetric features, approximate property lines, and underground utilities. Plan views will be plotted above profiles. Topographic data and property line locations will be based upon aerial topographic, property line and contour information furnished by the City and confirmed by the Engineer. Existing utility information shall be obtained by the Engineer from the appropriate utility agency. Efforts to resolve property line and distant discrepancies are beyond the scope of services for this work.
- Layout proposed pipeline alignment to minimize disruption to surface features, waterways, wetlands and other significant impediments to construction.
- The project vertical datum is to be NAVD 88. Horizontal coordinates shall be based on the State Plane system, or as approved by the City.
- Review preliminary design with the City.
- Plot final design drawings on 11x17 bond sheets suitable for reproduction.
- All drawings will be done in accordance with Milwaukie standards, and as approved.
- Prepare engineer's estimate for the cost of construction based upon the final design.
- Coordinate with Clackamas County Department of Transportation the requirements for final surface restoration of streets.
- Replacement of utility lines which are in conflict with the ability to construct the collection system are not included in the design/surveying budget and shall be negotiated under a separate task.

250 Final Design - Pump Station

Final design will include the following:

- Pump station to incorporate submersible pumps within a packaged pump station with a fiberglass wetwell designed to withstand floatation effects of high groundwater in the area adjacent to Johnson Creek. Electrical panel with Moscad telemetry controls shall be located above ground within cabinetry specifically built for exposure to the elements. Sulphide control is not anticipated nor included in the fee based upon the short force main run of 300 feet which will connect into the City of Portland Lents Trunk.
- Standby generation is not included.

- Telemetry design shall include utilizing a Motorola Moscad-Lite System that is compatible with the current graphical interface equipment located in the Operations Center at Public Works Department on Johnson Creek Boulevard. Programming to be provided by the City.

260 Prepare Construction Bidding Documents

Prepare construction bidding documents based on City standards. Assume the project will include two (2) separate bid packages, spawning multiple years.

Prepare contract drawings using AUTOCAD 2006 format, or later version saved into 2006 format, including: cover sheets showing the location of the project's plan and profile sheets (1"=50'); detail sheet); and prepare bid form including quantities for unit pricing by the contractors.

Furnish one (1) master reproducible camera-ready set of bidding documents to the City for reproduction and distribution to bidders. Drawings will be 11X17 and bound separate from the specifications. Provide stamped original drawings in both 11x17 and 22x34 size.

Prior to the beginning of construction, provide the final contract document specifications as one file in both Word and PDF formats. Also provide the final "Released for Construction" construction drawings in AutoCAD 2006 and PDF formats.

270 Easements

Provide the City with the necessary easement information for their negotiations.

- Show all easements on the construction drawings
- City to provide all legal deeds to work from for each parcel.
- For estimating purposes, assume 18 easements (i.e. Temporary and Permanent on same parcel count as one easement).
- Prepare separate legal descriptions and 8-1/2" X 11" easement sketches for each easement required, appropriate for final negotiations and recording.
- Flag/mark easement locations in the field just prior to easement negotiations by the Owner (+/- 2').
- City will negotiate and obtain all easements required for construction of the project.

280 Bid Period Services

Provide the City with the necessary support during the approximate 4 week bidding period for each project.

- Prepare notice of advertisement. City will pay of advertisement for bids.
- Respond to contractor's requests for information during the bid period.
- Prepare any necessary addenda.
- Attend bid opening and tabulate bids.
- Make recommendation for award.

Task 3 – Construction Services

Construction services will include all engineering activities for each Project phase.

310 Construction Support during Construction

Construction will include all construction and contract close out activities for construction contracts such as:

- Respond to contractor questions
- Receive, log and track submittals
- Review submittals (shop drawings, materials, etc.).
- Redesign of areas encountering unforeseen obstacles.

320 Record Drawings

Revise the contract drawings to incorporate all changes made during construction. Final product shall be drawings with 4 – 11X17 half-scale drawings shown on each mylar sheet, as well as electronic files on CD-ROM in both AutoCAD 2006 format and Adobe Acrobat format. CD-ROM shall include all drawing files, reference drawings, plot files, and pcp files. Elevations will be taken from field stakeout notes.

330 Close Out

Closing out the project includes:

- Preparing preliminary and final "punch lists".
- Conducting the final walk through with City representatives to verify completion of any "punch list" items by the contractor.
- Preparing the final Certificate of Completion.
- Preparing the Final Report identifying outstanding issues, summarizing final costs, quantities and number of connections. The Certificate of Completion will be bound in the Final Report.

340 Construction Management

Engineer shall not be responsible for the means, methods, technique sequences, or procedures of construction selected by the contractor, or the safety precautions and programs incident to the work of the contractor. Engineer's efforts will be directed toward providing a greater degree of confidence for the City that the completed work will conform to the drawings and specifications, but Engineer will not be responsible for the failure of the contractor to perform work in accordance with such drawings and technical specifications. On the basis of site observations, Engineer shall keep the City informed of the progress of the work and shall endeavor to guard the City against defects and deficiencies in such work and may approve or reject work failing to conform to the contract documents. Other services will include full project management in the office supporting all activities of the field observer through weekly construction meetings, preparation of change orders, field revisions/clarifications and preparation of monthly pay requests. Project Manager Ron Weigel will be used to fill this role for the duration of the project.

Full-time onsite inspection of all construction activities include:

- Daily reports of all construction activities
- Weekly progress meetings with contractor
- Review of construction schedules
- Monitor testing in the field.
- Checking of unit quantities.
- Review of contractor's requests for payment.
- Maintaining project files/document control.
- Recording of as-built information.
- Public information – keeping public informed of construction activities and addressing any complaints.

350 Operation and Maintenance Manual

Provide complete Operation and Maintenance manual with suitable information to meet DEQ Guidelines with the following major headings:

- Introduction
- System Descriptions (Pump station/force main)
- Operation and Control
- Maintenance
- Emergency Plans and Procedures
- Safety
- Instrumentation and Control

**NORTH CLACKAMAS REVITALIZATION AREA (NCRA) - JOHNSON CREEK SANITARY SEWER COLLECTION SYSTEM
 "MILWAUKIE - ESTIMATED FEES"**

EXHIBIT B

1/7/2009	Project Manager	Project Engineer	CAD Designer	Construction Observer	P.S. Technology TSI Corlock (Subconsultant)	Topographic Survey DeHass & Assoc. (Subconsultant)	Pump Station Design CH2M-Hill (Subconsultant)	Environmental/Geotechnical CH2M-Hill (Subconsultant)	Total Hours	Total Fees
Task 0: Project Management and Public Mtg.										
040- Project Management	120								120	\$15,120
Subtotal Hours	120	0	0	0	0	0	0	0	120	
Subtotal Fees	\$15,120	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$15,120
Task 1: Preliminary Design Phase										
110- Preliminary Design - Pump Station (includes Conditional Use Application)	16	20	8		50		\$10,500		44	\$14,876
Subtotal Hours	16	20	8	0	50	0	\$10,500	0	44	
Subtotal Fees	\$2,016	\$1,760	\$800	\$0	\$0	\$0	\$10,500	\$0		\$14,876
Task 2: Final Design and Bidding (Phase I and II)										
210- Topographic Design Survey						\$44,500				\$44,500
220- Geotechnical Investigation							\$20,000			\$20,000
230- Environmental Permitting	20						\$24,250		20	\$24,250
240- Final Collection System Design and Cost Estimate	320	260	270						850	\$85,000
250- Final Pump Station Design and Cost Estimate					\$5,000		\$30,000			\$35,000
260- Construction Bidding Documents	60	20							80	\$8,000
270- Prepare Drawings	40					\$25,000 (Assume 18 drawings)			40	\$50,000
280- Bid Period Services	48	40							88	\$8,800
Subtotal Hours	488	320	288	0	50	0	\$30,000	0	1086	
Subtotal Fees	\$21,488	\$20,160	\$21,920	\$0	\$5,000	\$69,500	\$30,000	\$54,250		\$208,258
Task 3: Construction Phase										
360- Construction Management	180	140							320	\$35,000
360- Construction Observation				1080			\$2,500		1080	\$8,500
370- Hazard Drawings	24	24	60						108	\$9,639
390- Closure (CWSRF Requirements)	24	40	18						82	\$7,144
370- O & M Manual - Pump Station	4	4					\$5,000		8	\$8,518
Subtotal Hours	232	210	78	1080	50	0	\$7,500	0	1608	
Subtotal Fees	\$29,232	\$16,800	\$5,760	\$81,000	\$0	\$0	\$7,500	\$0		\$142,792
CWEC Expenses - Task 1 and 3										
Printing - 5 sets Preliminary Plans and Specifications (Phase I and II)										\$1,500
Final Plans and Spec's - Printed by Milwaukie - (Each Phase)										\$1,600
Message Miscellaneous										\$5,000
Subtotal Expenses										\$8,100
CWEC Expenses - Task 3										
Message										\$1,900
Miscellaneous										\$8,000
Subtotal Expenses										\$9,900
Subtotal Hours	838	950	372	1089	0	0	0	0	2888	
Subtotal Fees	\$107,856	\$48,760	\$27,920	\$81,000	\$5,000	\$69,500	\$48,000	\$54,250		\$498,586
Team Member										
Subtotal Fees - Task 0	\$15,120	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$15,120
Subtotal Fees - Task 1	\$4,376	\$10,500	\$0	\$0	\$0	\$0	\$0	\$0		\$14,876
Subtotal Fees - Task 2	\$111,348	\$84,250	\$89,500	\$0,000	\$0,000	\$0	\$0	\$0		\$285,098
Subtotal Fees - Task 3	\$128,292	\$7,800	\$0	\$0	\$0	\$0	\$0	\$0		\$136,092
TOTALS	\$264,036	\$102,850	\$89,500	\$0,000	\$5,000	\$69,500	\$48,000	\$54,250		\$538,586

Notes:
 1. 6 months of Project Management time @ 45 hours/month
 2. 8 months of full time inspection @ 180 hours/month



RESOLUTION NO. 81-2008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 (CCSD #1) FOR THE DUAL INTEREST AREA "A" WASTEWATER SEWER EXTENSION PROJECT; AND AUTHORIZING THE CITY MANAGER TO MAKE FINAL APPLICATION TO THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) FOR A LOAN FROM THE CLEAN WATER STATE REVOLVING FUND (CWSRF) TO FUND DESIGN AND CONSTRUCTION OF THE PROJECT.

WHEREAS, the unincorporated area east of the City of Milwaukie, identified as Dual Interest Area "A" in the City-County Urban Growth Management Agreement, is without a public wastewater sewer system; and

WHEREAS, the need for a public system in this area has been identified as a high priority by residents and the State, County, and City governments; and

WHEREAS, Chapter Six of the City of Milwaukie Comprehensive Plan and the City-County Urban Growth Management Agreement both identify the City as the preferred provider of urban services, including wastewater collection, within Dual Interest Area "A"; and

WHEREAS, the City of Milwaukie and CCSD #1 will be constructing a public wastewater sewer system (project) in their respective areas of jurisdiction within the City's Urban Growth Management Area; and

WHEREAS, the City of Milwaukie and CCSD #1 agree that sharing resources to avoid unnecessary duplication of staff, design costs, and equipment will promote efficiency and effectiveness in the administration, delivery and execution of the project; and

WHEREAS, the City of Milwaukie will establish a reimbursement district in the area whereby residents will be required to pay a proportional share of the design and construction costs of the project upon connection;

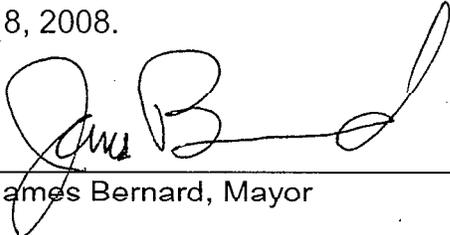
NOW, THEREFORE, BE IT RESOLVED that the City Manager is authorized to draft and execute an Intergovernmental Agreement with Clackamas County Sewer District No. 1 for the preliminary design and environmental report, geotechnical report, final design and bidding services, construction support, and construction management services for the Dual Interest Area "A" wastewater sewer extension project.

BE IT FURTHER RESOLVED that the City Manager is authorized to prepare and sign a loan agreement with DEQ for a loan from CWSRF in the amount of up to \$3.8 million to pay for the Dual Interest Area "A" wastewater sewer extension project, payments on interest and principal for such a loan are to be paid from reimbursement fees collected in the Dual Interest Area and wastewater rates.

BE IT FURTHER RESOLVED that City staff are directed to develop engineering and outreach strategies to effectively communicate with residents and engineer and construct wastewater collection service for the Dual Interest Area "A."

Introduced and adopted by the City Council on October 7, 2008.

This resolution is effective on October 8, 2008.



James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC



Pat DuVal, City Recorder



City Attorney

INTERGOVERNMENTAL AGREEMENT

Between

**CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
and
THE CITY OF MILWAUKIE, OREGON**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made this 18 day of Dec, 2008, by and between the Clackamas County Service District No. 1, a county service district ("CCSD No. 1") and the City of Milwaukie, a political subdivision of the State of Oregon ("City").

RECITALS

WHEREAS, City is a general purpose government organized pursuant to the laws of this state; and

WHEREAS, CCSD No. 1 is a limited purpose county service district organized pursuant to ORS Chapter 451 to provide sewage treatment service; and

WHEREAS, pursuant to ORS Chapter 451 the Board of County Commissioners ("BCC") has been designated as the governing body of CCSD No. 1; and

WHEREAS, CCSD No. 1 has entered into a contract for engineering design of sewer systems (the "Project") in the North Clackamas Revitalization Area, a county urban renewal district ("NRCA"); and

WHEREAS, a portion of the NCRA includes areas designated by the City and Clackamas County pursuant to an intergovernmental agreement as allowing the City to have first rights in providing services in such area ("Dual Interest Area"), and the City has the first option to provide urban services such as sewer service; and

WHEREAS, the City has expressed a desire to provide sewer service to this area in the future; and

WHEREAS, the parties hereto agree that sharing resources to avoid unnecessary duplication of staff, design costs, and equipment will promote efficiency and effectiveness in local government administration, service delivery and execution of the Project; and

WHEREAS, the parties have the authority to enter into this Agreement pursuant to ORS 190.030, and being fully advised;

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Recitals

The Recitals set forth above are incorporated by reference herein.

Section 2. Term

This Agreement shall have an initial term from the date of signing hereof until completion of the Design Services (defined below) and full payment as required in Section 4 below.

Section 3. Mutually Contracted Services

City and CCSD No. 1 agree that CCSD No. 1 shall contract directly with an engineering design firm (the "Service Provider"), pursuant to a regular competitive bid process, for work to design the proposed sewer system in the NCRA, including the Dual Interest Area (the "Design Services"). The work done in relation to the Dual Interest Area is for the benefit of the City, and the costs related to the creation of those services shall be the responsibility of the City (the "City Services"), and the remainder shall be for the benefit and responsibility of CCSD No. 1 ("District Services"). The parties agree, however, that CCSD No. 1 shall pay the Service Provider the full contract amount for the Design Services as such costs are incurred, and require that the Service Provider allocate costs between City Services and District Services in its invoice. The cost allocation shall be mutually agreed to by the District and City.

Section 4. Reimbursement by City

City agrees to pay CCSD No. 1 for all allocated City Services expenses incurred under the Service Provider Contract no later than 30 days after receipt of invoice from CCSD No. 1 showing the final amounts paid to Service Provider.

Section 5. Review of Services

The City shall receive copies of the Service Provider's work product relating to the City Services as such work is produced. After full reimbursement for the services to CCSD No. 1 as set forth in Section 4 above, ownership of such work shall transfer to the City.

Section 6. Termination of Agreement

This Agreement is conditioned upon the faithful performance by both parties of all the terms and provisions hereof, which are to be kept and performed. Either party may terminate this Agreement upon thirty (30) days written notice for any reason. Any costs incurred by CCSD No. 1 because of work done by the Service Provider up through the date of termination shall remain the full obligation of the City, and full payment for such amounts shall be due in full 30 days after the date of termination. The parties agree that if the City both chooses to not provide service in the Dual Interest Area and affirmatively states that CCSD No. 1 may provide such services, and CCSD No. 1 agrees to provide services in the Dual Interest Area, then CCSD No. 1 shall assume responsibility and obligation for all costs and charges relating to the Dual Interest

Area that resulted from work that is applicable to the provision of services by CCSD No. 1 in the Dual Interest Area. In such a case and to the extent the City has already made such payments under this Agreement, CCSD No. 1 shall reimburse the City for such payments. To the extent the work requested by the City is inapplicable to CCSD No. 1's plans, then the City shall retain ownership and responsibility for such work.

Section 7. Amendment

The terms of this Agreement may be amended by mutual agreement of the parties. Any amendment shall be in writing and shall refer specifically to this Agreement and shall be valid only when executed by the governing bodies of the parties, and attached hereto.

Section 8. Severability

In the event any of the provisions of this Agreement shall be held to be invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties hereto.

Section 9. Notice

Any notice herein required or permitted to be given shall be in writing and shall be effective when actually received and may be given by hand delivery or by the United States mail, First Class, postage pre-paid, addressed to the parties as follows:

If to City:

City of Milwaukie
ATTENTION: Jason Rice
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206

If to CCSD No. 1

Clackamas County Service District No. 1
ATTENTION: Kathy Frasier
150 Beaver Creek Road, 4th Floor
Oregon City, OR 97045

Changes to the above shall be by notice to the other in the manner provided in this paragraph.

Section 10. Dispute Resolution

The parties shall first attempt to resolve the dispute by negotiation between the City Manager for the City and the Director of the CCSD No. 1 followed by submission of the dispute to binding arbitration pursuant to the rules of the American Arbitration Association.

Section 11. Nonwaiver

Failure by any party, at any time, to require performance by the other party of any provision hereof shall in no way affect such party's rights to enforce the same, nor shall any waiver by any party or parties of the breach hereof be held to be a waiver of the succeeding breach or a waiver of this clause.

Section 12. Binding Effect

The covenants, conditions, and terms of this Agreement shall extend to and be binding upon, and inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have set their hands as of the date and year hereinabove written.

CITY OF MILWAUKIE, a political
subdivision of the State of Oregon

**BOARD OF COUNTY COMMISSIONERS,
GOVERING BODY OF CLACKAMAS
COUNTY SERVICE DISTRICT NO. 1**

By: 

Date: 12-01-08

By: 

Chair
Date: 12-18-08 TX-1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CENTURY WEST ENGINEERING CORPORATION FOR THE ENGINEERING SERVICES FOR THE DUAL INTEREST AREA "A" WASTEWATER SEWER EXTENSION PROJECT.

WHEREAS, the unincorporated area east of the City of Milwaukie, identified as Dual Interest Area "A" in the City-County Urban Growth Management Agreement, is without a public wastewater sewer system; and

WHEREAS, the need for a public system in this area has been identified as a high priority by residents and the State, County, and City governments; and

WHEREAS, Chapter Six of the City of Milwaukie Comprehensive Plan and the City-County Urban Growth Management Agreement both identify the City as the preferred provider of urban services, including wastewater collection, within Dual Interest Area "A"; and

WHEREAS, the City of Milwaukie and CCSD #1 will be constructing a public wastewater sewer system (project) in their respective areas of jurisdiction within the City's Urban Growth Management Area; and

WHEREAS, the City of Milwaukie and CCSD #1 agreed to and executed an Intergovernmental Agreement with Clackamas County Sewer District No. 1 for the preliminary design and environmental report, geotechnical report, final design and bidding services, construction support, and construction management services for the Dual Interest Area "A" wastewater sewer extension project; and

WHEREAS, the City of Milwaukie and CCSD #1 jointly agreed to award the engineering work to Century West Engineering Corporation through a public contracting process consistent with the City's procurement policy; and

WHEREAS, the County subsequently awarded a contract for the engineering work to Century West Engineering Corporation for their respective area of jurisdiction but declined to amend that contract to accommodate the terms of the IGA with the City;

NOW, THEREFORE, BE IT RESOLVED that the City Manager is authorized to execute a contract not to exceed \$460,000 with Century West Engineering Corporation for the preliminary design and environmental report, geotechnical report, final design and bidding services, construction support, and construction management services for the Dual Interest Area "A" wastewater sewer extension project.

Introduced and adopted by the City Council on February 3, 2009.

This resolution is effective on February 3, 2009.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney