

# REGULAR SESSION

# AGENDA

## MILWAUKIE CITY COUNCIL APRIL 7, 2009

MILWAUKIE CITY HALL  
10722 SE Main Street

2051<sup>st</sup> MEETING

### REGULAR SESSION – 7:00 p.m.

- |   | Page #    |
|---|-----------|
| <b>1. CALL TO ORDER</b><br>Pledge of Allegiance   |           |
| <b>2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS</b>   | <b>1</b>  |
| <b>A. Milwaukie High School Student of the Month – Lauren Hobson</b>  |           |
| <b>B. High Capacity Transit Study Project Briefing (Kenny Asher)</b>  | <b>2</b>  |
| <b>C. Urban and Rural Reserves Project Briefing (Katie Mangle)</b>  | <b>7</b>  |
| <b>D. Child Abuse Prevention Month -- Proclamation</b>  | <b>13</b> |
| <b>3. CONSENT AGENDA</b> <i>(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)</i>   | <b>15</b> |
| <b>A. City Council Work Session Minutes, December 16, 2008</b>  | <b>16</b> |
| <b>B. City Council Work Session Minutes, January 20, 2009</b>   | <b>20</b> |
| <b>C. City Council Regular Session Minutes, February 17, 2009</b>   | <b>27</b> |
| <b>D. Resolution Appointing Greg Hemer to the Design and Landmarks Committee</b>  | <b>43</b> |
| <b>E. Resolution Authorizing the City Manager to Sign Purchase Orders for City Police Vehicles</b>  | <b>44</b> |
| <b>F. Resolution Authorizing the City Manager to Enter into Intergovernmental Agreements with the Oregon Department of Transportation Regarding Federal Stimulus Projects</b>   | <b>48</b> |
| <b>4. AUDIENCE PARTICIPATION</b> <i>(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)</i> |           |

5. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*
  - A. **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.)* **95**
  - A. **Amendment to Milwaukie Municipal Code Chapter 10.20.090, Parking Violation – Citation – Ordinance (Sarah Lander)** **96**
  - B. **Amendments to Milwaukie Municipal Code Chapter 1.08, Short-Form Complaint and Citation Method and Code Enforcement Procedures – Ordinance (Bill Monahan)** **100**
  - C. **Three-Party Grant Agreement with Oregon Department of Transportation and Metro Regarding MTIP-Funded Planning Phase for Kellogg-for-Coho Initiative – Resolution (Alex Campbell)** **110**
  - D. **Council Reports**
  
7. **INFORMATION**
  
8. **ADJOURNMENT**

**Public Information**

- Executive Session: The Milwaukie City Council will meet in executive session immediately following adjournment pursuant to ORS 192.660(2)(i) performance evaluations of public offices and employees.
- 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



**To: Mayor and City Council**

**Through: Mike Swanson, City Manager**

**From: Kenneth Asher, Director of Community Development & Public Works**

**Subject: High Capacity Transit Study Project Briefing**

**Date: March 17, 2009 for April 7, 2009 Work Session**

**Action Requested**

None. This is a briefing on the regional planning underway to determine the region's high capacity transit priorities for the next 20 to 30 years. High capacity transit generally refers to light rail transit, bus rapid transit and commuter rail.

**History of Prior Actions and Discussions**

None.

**Background**

The Portland region is developing a plan to expand the regional High Capacity Transit (HCT) system over the next 20-30 years. The Plan will define the next generation of HCT improvements in the region by evaluating, and then prioritizing, a new set of corridors that should, over the next few decades, see light rail, rapid bus, or commuter rail improvements. Milwaukie staff has been participating in the planning process by sitting on a technical advisory committee which has met several times, most recently on March 25, 2009.

The planning process, which began late last summer and initially considered more than 50 possible HCT corridors, is now evaluating 17 separate corridors (see Attachment 1). The corridors are being studied for criteria ranging from community support, environmental impacts, economic benefits, deliverability and cost. Metro, the managing

agency, held a series of public meetings late last summer and is now seeking public input through a new online “build-a-system” tool to allow users to be “virtual planners,” choosing which high capacity transit lines to build within a limited budget (<http://www.metro-goingplaces.org/bast/>) Users can balance trade-offs such as ridership, cost, connection to attractions and institutions, and carbon emission reduction to create the system that they would like to see. The tool is coupled with a questionnaire addressing the project’s evaluation criteria to help Metro understand the values that drive people’s thinking on transit investments. Interested persons can participate in this online activity until April 24.

The HCT planning process will continue for four more months, during which time the corridors will put into ranked “tiers” and approved by the Metro Council, with the highest ranking corridors then positioned for early implementation actions (e.g. alternative analysis studies). Metro staff anticipates ranking between eight and 16 corridors total. See Attachment 2 for a diagram of the planning process and calendar.

Staff recommends that the City continue to participate in the process to ensure that the data being used to evaluate possible Clackamas County corridors is accurate. As corridors are prioritized, staff will brief council on possible City of Milwaukie implications. These would arise from corridor planning that would seek to connect Milwaukie and Oregon City, Clackamas Town Center and Oregon City, or Clackamas Town Center and Washington Square.

### **Concurrence**

City staff has not submitted comments on this project. There is no action with which to concur. The HCT Plan is seeking feedback from local jurisdictions through the “Local Aspirations” process, which the Planning Director reported on to City Council last month. As the HCT Plan becomes more refined, staff will ensure that Milwaukie’s local aspirations are adequately reflected in the evaluation criteria.

### **Fiscal Impact**

None.

### **Work Load Impacts**

City staff attends HTC TAC meetings to track possible decisions that could influence future transportation patterns or land uses in Milwaukie.

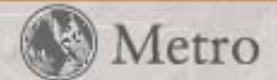
### **Alternatives**

None.

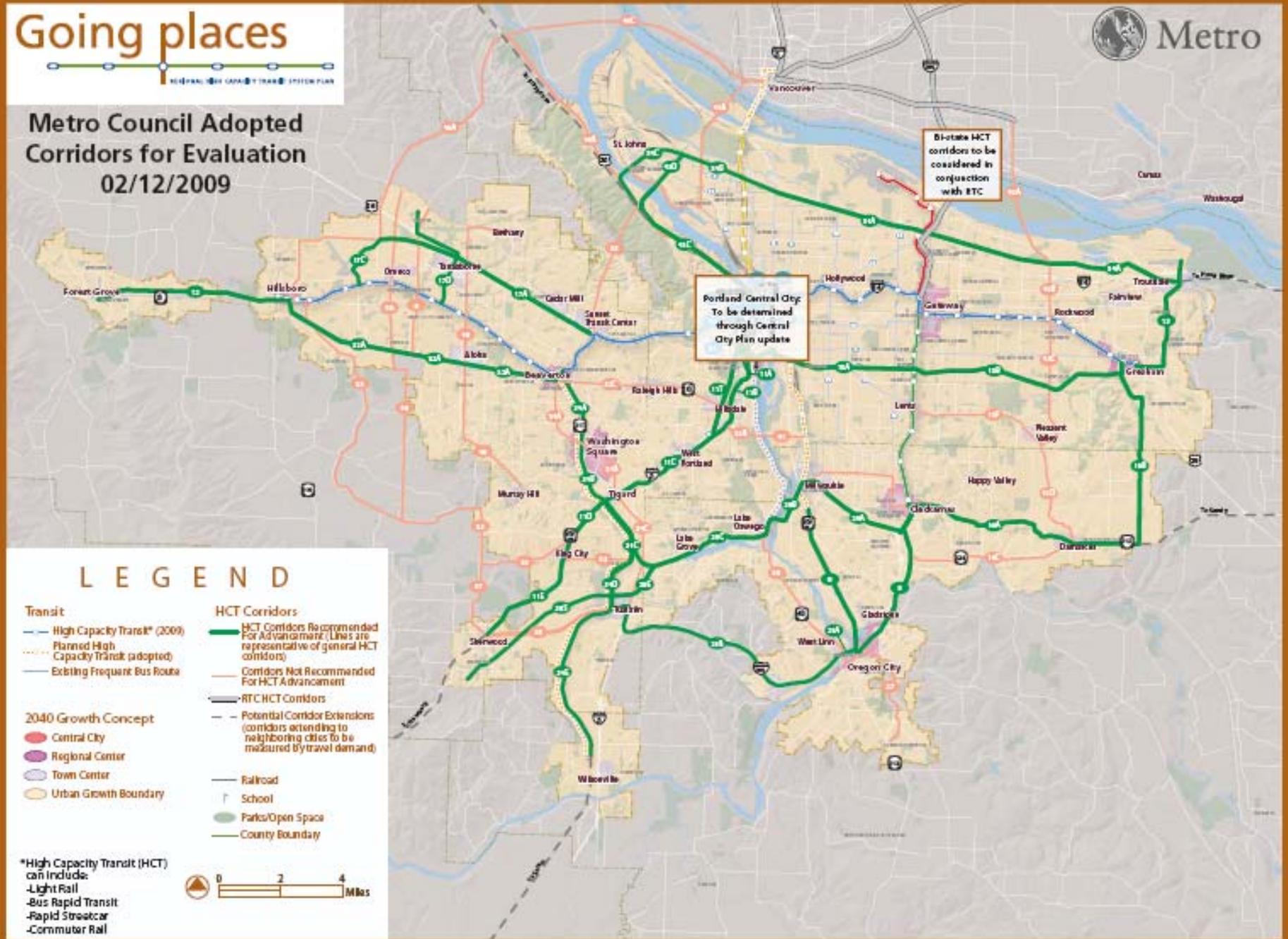
### **Attachments**

1. Corridors for Evaluation Map (adopted by Metro Council 2/12/2009)
2. HCT Planning Process Diagram

# Going places



## Metro Council Adopted Corridors for Evaluation 02/12/2009



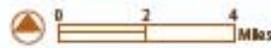
Portland Central City  
To be determined  
through Central  
City Plan update

Bi-state HCT  
corridors to be  
considered in  
conjunction  
with RTC

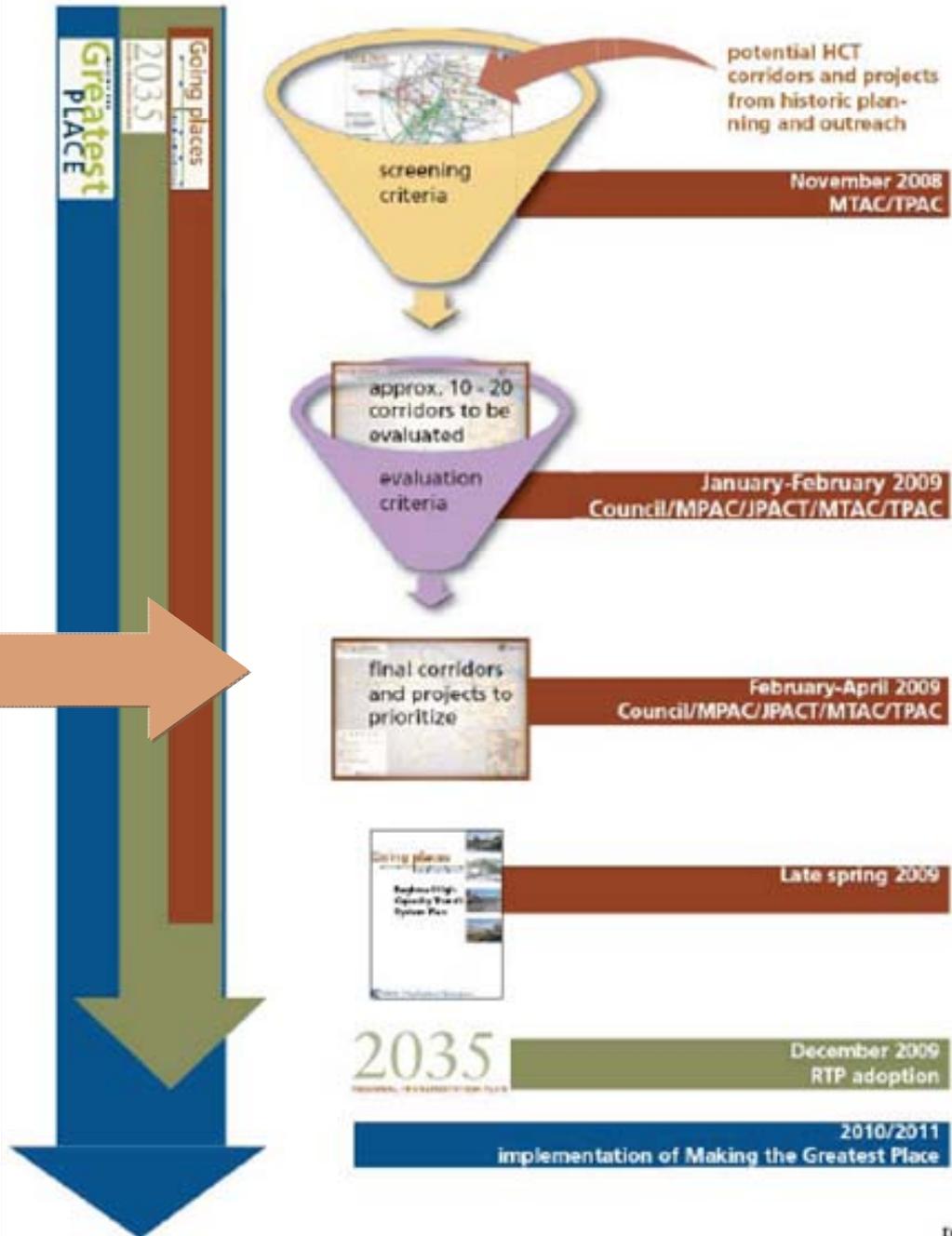
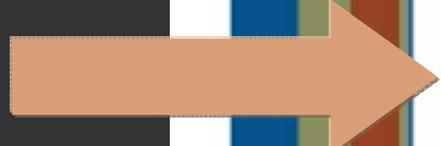
### LEGEND

- |   |   |
|---|---|
| <b>Transit</b>                            | <b>HCT Corridors</b>  |
| — High Capacity Transit* (2009)           | — HCT Corridors Recommended For Advancement (Lines are representative of general HCT corridors)             |
| — Planned High Capacity Transit (adopted) | — Corridors Not Recommended For HCT Advancement   |
| — Existing Frequent Bus Route             | — RTC/HCT Corridors   |
|   | — Potential Corridor Extensions (corridors extending to neighboring cities to be measured by travel demand) |
| <b>2040 Growth Concept</b>                | — Railroad  |
| ● Central City                            | — School  |
| ● Regional Center                         | — Parks/Open Space  |
| ● Town Center                             | — County Boundary   |
| ● Urban Growth Boundary                   |   |

\*High Capacity Transit (HCT) can include:  
-Light Rail  
-Bus Rapid Transit  
-Rapid Streetcar  
-Commuter Rail



We Are Here





**To: Mayor and City Council**

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

**From: Katie Mangle, Planning Director**

**Subject: Regional Urban and Rural Reserves Project Briefing**

**Date: March 27 for April 7, 2009 Work Session**

### **Action Requested**

None. This is a briefing for discussion only, in response to Councilor Barnes' request for a briefing on the regional Urban and Rural Reserves project.

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

**March 2009:** Staff briefed Council on ongoing long-range planning activities. As part of this discussion, staff presented a recent memo outlining Milwaukie's aspirations for growth. Staff provided that memo to Clackamas County and Metro to inform the Urban and Rural Reserves project.

### **Background**

The regional Urban and Rural Reserves project is a regional project being led by Metro in partnership with the three counties. The purpose of the Urban and Rural Reserves project is, in part, to designate appropriate land to be reserved for eventual incorporation into the Metro Urban Growth Boundary (UGB) over the next 50 years. The project is a result of a requirement created by the state legislature in 2007 (in Senate Bill 1011). Through this process, some land outside the UGB will be designated as "urban reserve" or "rural reserve".

The intent of the study is to allow the region to plan ahead for areas to be incorporated into Urban Growth Areas on a 50 year horizon and ensure that areas planned for eventual incorporation are able to receive urban services (water, sewer, transportation, and others). The study area includes approximately 400,000 acres, illustrated on the map in Attachment 1. Identifying areas for potential UGB expansion should provide greater certainty about which areas will accommodate future growth, increase long-term protection of agricultural, rural and natural areas, and build more region-wide support for both the process used to make decisions to expand the UGB and resulting regional growth decisions.

This work is being carried out through coordinated efforts of Clackamas County, Multnomah County, Washington County and Metro staffs. These four agencies comprise the project's "Core 4". Clackamas County's approach has been to convene an Urban and Rural Reserves Technical Advisory Committee, and invited Planning Directors from all Clackamas County cities in the study area. Milwaukie staff has participated in this committee. The County also convened a PAC, which does not include Milwaukie. See Attachment 2 for a diagram of the committee structure for the project.

The state rule that drives this project<sup>1</sup> establishes some "factors" for defining reserves, including the following that pertain to urban reserves:

- UR-1: *Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments.*
- UR-3: *Can be efficiently and cost-effectively served with public schools and other urban level public facilities and services by appropriate and financially capable service providers.*

Clackamas County has evaluated candidate reserve lands for suitability for providing urban services, and identified, through a mapping process, areas that should be protected as rural reserves and areas that should be considered for future urbanization. The project is using several "screens" to evaluate the suitability of the study area for potential urban and rural reserve designations. The first step was an initial screening of the entire area at a broad landscape scale utilizing certain key factors from the state administrative rules. More refined analysis was then applied to those lands that passed through the first screening in order to develop a prioritized list of candidate reserve areas. The preliminary areas Clackamas County has identified for future urban reserves are shown on the map in Attachment 3. The areas are coded based on their suitability for water and sewer service.

### **Relevance to the City of Milwaukie**

Inner-ring cities, including Milwaukie, Portland, and Beaverton, have a shared interest in influencing how the region plans for expansion of the urban growth boundary and expansion of urban services. Simply put, expanding the region's commitment to extend

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<sup>1</sup> Oregon Administrative Rule 660 section 27

urban services runs counter to the need to improve urban services to existing development within Milwaukie and adjacent unincorporated areas.

**Project status/ next steps**

Metro’s project Steering Committee will consider both rural and urban reserves together from a regional perspective and will make a coordinated recommendation on candidate areas to the Core 4 by April 2009. This recommendation will allow Metro staff to continue to work with local advisory committees on a more detailed analysis of these candidate areas so that the Core 4 and the Steering Committee can engage in a discussion leading to a final recommendation for Urban and Rural Reserves in July 2009.

**Concurrence**

City staff has not submitted comments on this project. There is no action with which to concur.

**Fiscal Impact**

None.

**Work Load Impacts**

City staff attends bi-monthly UUR TAC meetings, but is not currently dedicating a high level of effort to tracking or participating in this project.

**Alternatives**

None.

**Attachments**

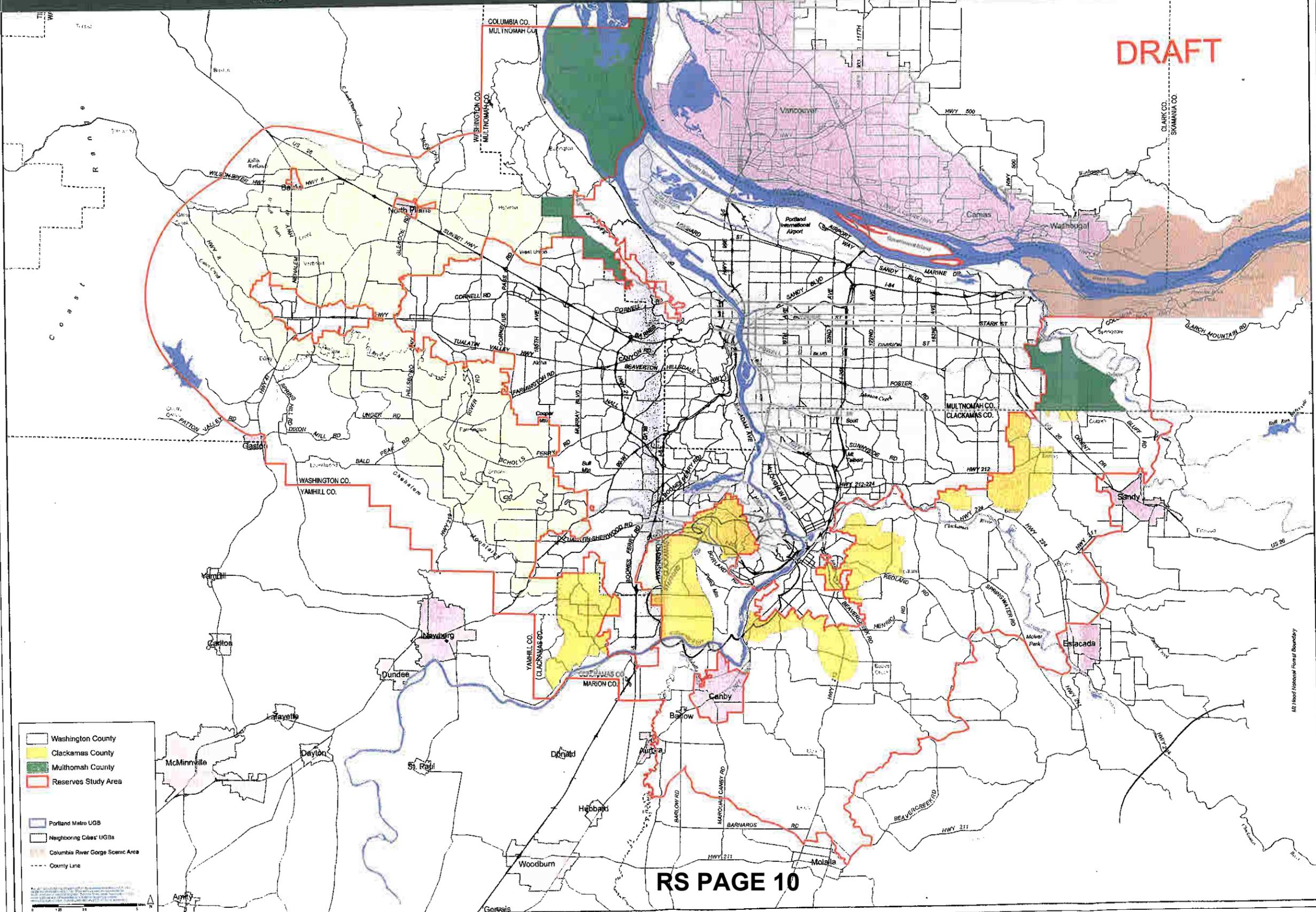
1. Candidate Urban and Rural Reserves land
2. Diagram of the committee structure for the project.
3. Preliminary Urban Reserves Candidate Areas and Service Suitability



# Urban and Rural Reserve Study Areas

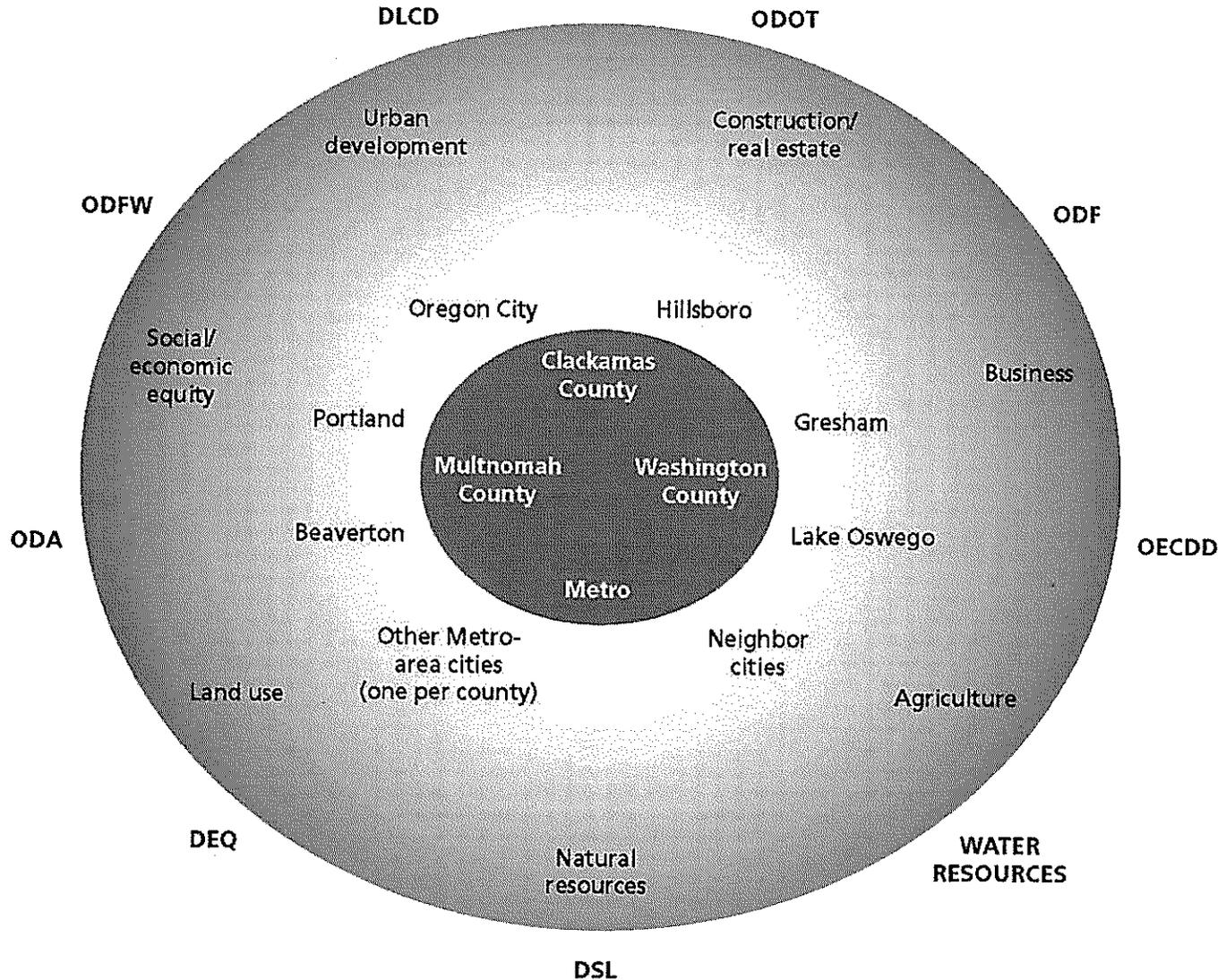
## Draft Urban Reserve Candidate Areas for Evaluation

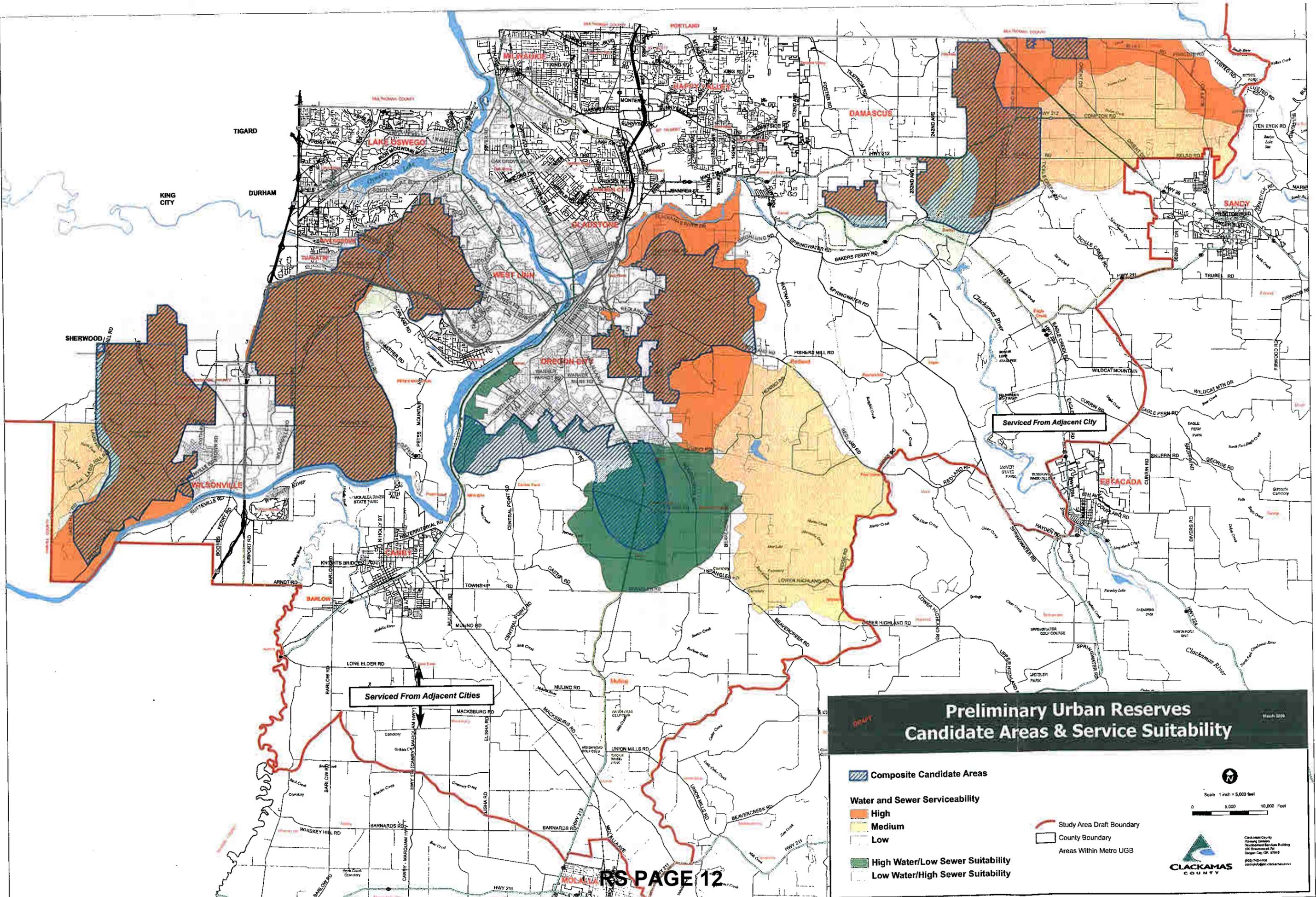
**DRAFT**



	Washington County
	Clackamas County
	Multnomah County
	Reserves Study Area
	Portland Metro UGB
	Neighboring Cities' UGBs
	Columbia River Gorge Scenic Area
	County Line

# Reserves Steering Committee





### Preliminary Urban Reserves Candidate Areas & Service Suitability

March 2008

	Composite Candidate Areas
<b>Water and Sewer Serviceability</b>	
	High
	Medium
	Low
<b>Water and Sewer Suitability</b>	
	High Water/Low Sewer Suitability
	Low Water/High Sewer Suitability

	Study Area Draft Boundary
	County Boundary
	Areas Within Metro UGB

Scale 1 inch = 5,000 feet

0 5,000 10,000 Feet

Clackamas County  
Planning Division  
Development Services Building  
100 Brownwood Rd.  
Oregon City, OR 97058  
(503) 342-6000  
www.clackamascountyor.gov

## **PROCLAMATION**

### **CHILD ABUSE PREVENTION MONTH**

**Whereas**, preventing child abuse and neglect is a community problem that depends on involvement among people throughout the community;

**Whereas**, data indicates a steady level of child abuse and neglect each year. In 2007, there were 12.2 victims per 1000 children with founded incidents of child abuse and neglect in the state of Oregon. For Clackamas County, child abuse remained steady at 6.7 per 1000 children in 2007. Whether suffering neglect, harsh physical punishment, threat of harm, sexual abuse or psychological trauma, the children who survive will carry the scars of their abuse for the rest of their lives

**Whereas**, research shows, child abuse and neglect not only directly harm children, but also increase the likelihood of criminal behavior, substance abuse, health problems such as heart disease and obesity, and risky behavior such as smoking;

**Whereas**, we know, child maltreatment occurs when people find themselves in stressful situations, without community resources, and don't know how to cope;

**Whereas**, the majority of child abuse cases stems from situations and conditions that are preventable in an engaged and supportive community;

**Whereas**, child abuse and neglect can be reduced by making sure each family has the support they need to raise their children in a healthy environment;

To improve our future, all citizens should become involved in supporting families in raising their children in a safe, nurturing environment;

To this end, effective child abuse prevention programs succeed because of partnerships created among social service agencies, schools, faith communities, civic organizations, law enforcement agencies, and the business community. Successful programs and initiatives in Clackamas County include:

- Healthy Start of Clackamas County which is a home visitation program for first time parents.
- The Family Education and Support Network parent resource web-page.
- Family Stepping Stones relief nursery.
- Clackamas County Sheriff's Office Child Abuse and Domestic Violence Summit.
- Clackamas County Multi-Disciplinary Task force
- The Children's Center, which supports and conducts medical assessments of children who are suspected victims of abuse or neglect.
- The establishment of the Homeless Children's strategic planning committee.

**NOW, THEREFORE, WE**, The City Council of the City of Milwaukie hereby proclaim the month of April, 2009 as:

**CHILD ABUSE PREVENTION MONTH IN THE CITY OF MILWAUKIE**

We call upon all Milwaukie citizens to observe this month and every day by demonstrating our gratitude to those who work to keep our children safe, and by taking action in our own communities to make them healthy places where children can grow and thrive.

ADOPTED this 7<sup>th</sup> day of April, 2009.

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Mayor Jeremy Ferguson

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Council President Deborah Barnes

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Councilor Greg Chaimov

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Councilor Susan Stone

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Councilor Joe Loomis

3.

# CONSENT AGENDA

## MINUTES

### MILWAUKIE CITY COUNCIL WORK SESSION

DECEMBER 16, 2008

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

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

Staff Present: City Manager Mike Swanson, City Attorney Bill Monahan

#### **Board and Commission Interviews**

The Council interviewed David Januzs for a vacancy on the Library Board.

#### **Interim Mayor Interviews**

Council interviewed Jeremy Ferguson, Gabe Storm, and Art Ball for the Interim Mayor position.

#### **Business Recycling Requirement Ordinance**

**Ms. Herrigel** drafted a City ordinance for compliance with a Business Recycling Ordinance which was passed by Metro in September 2008. A stipulation of that ordinance required all local governments to adopt Business Recycling Requirements by February 27, 2009. She wanted to get feedback on the draft City ordinance and hear ideas on implementation. She would come back January 20 with a proposed amendment to the City code. She passed out copies to Council. There would be 2 changes to the existing code. One is an insertion of a description of the business recycling requirements with a final draft to be section 13.23.045 and add a definition that would define a business. The items covered in the code would require removal of recycling from waste stream, provide containers for inside and outside for business, post accurate signs of what should be recycled and how it should be prepared. Lastly, would be a stipulation for business parks. It was very similar to the Metro model ordinance but with some specific changes to ensure City code was consistent with Clackamas County code. She along with other jurisdictions were proposing compliance for this to be assistance driven. That did not mean that she would be going to businesses to verify that there was no recycling in the garbage nor would she be citing anyone. Over her 14-year tenure she had never cited anyone for solid waste. She had warned and sent letters stating there was a violation but never had cited anyone. She was proposing to give businesses 12-18 months to reach compliance through education. It would be to their advantage to identify in each business by signing a document that stated who the designated point of contact was. The haulers will help with mailings and getting educational materials out, and they agreed to provide information on who needed help and work with the City. She was working closely with the County staff to develop an IGA related to door-to-door education and code compliance. She was sensitive to having other agencies do things for the City. She did not feel it was appropriate for Metro to do enforcement as she wanted it closer at hand. She worked closely with the County and felt comfortable working on this with them. She did not feel that there would be a lot of enforcement issues. She planned to meet with the haulers on January 5 to review the language and would

CITY COUNCIL WORK SESSION – DECEMBER 16, 2008

DRAFT MINUTES

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**RS PAGE 16**

try to get additional input from businesses through the Chamber of Commerce and business groups to figure out the best method of outreach. Her intention was to bring Code modifications to Council on January 20. She was interested to hear from Council if they felt there were elements to add and ideas for an effective implementation process.

**Mayor Bernard** asked if apartments were included.

**Ms. Herrigel** replied they were not included in this ordinance. She was not sure why apartments were not included. Implementation would be difficult because of tenant and management turnover.

**Councilor Stone** asked about having a recycling bins on apartment property.

**Ms. Herrigel** replied generally they were there, but there were instances when containers were taken away or sometimes there was a lapse. Generally a tenant or a new manager would call asking for the containers.

**Councilor Stone** asked about commingling. What did source separation mean?

**Ms. Herrigel** replied that it meant there would be separation of garbage and recycling, which was defined in the Code.

**Councilor Stone** thought maybe it would be a good idea to think about encouraging recycling block styrofoam and other plastics that were difficult to recycle. She asked if there was a way, as part of this education, to incorporate how to recycle styrofoam and possibly have a drop site in the City.

**Ms. Herrigel** said there was a possibility of that, but there problems. Recently there was an event at Southgate, which was well attended, but there were not a lot of markets for that kind of material. She said they could do the education. It was currently done through *Trash Talk* distributed from Clackamas County twice a year.

**Councilor Stone** said there were places that would take them, but you have to get a lot of it to make the trip worthwhile. She questioned the time given to businesses to comply. Was that to implement the program?

**Ms. Herrigel** said the City would be asking businesses to comply with containers inside and outside, have signs of how to use them, and they have to have a service to collect regularly. They hope that the provision and the opportunity of recycling would get people to participate. She was not interested in going to businesses to see if they are participating. Sometimes just having it in the room increased recycling, and that was what they were hoping.

**Councilor Stone** was questioning the timeline – the sooner the better.

**Ms. Herrigel** said the County visited 250 businesses recently and found there were containers outside but no where to recycle inside. In general she thought people were already complying, but they needed to provide the internal mechanism to put their stuff in it. If it took longer than 12-18 months she felt that would be staff's fault and not theirs.

**Councilor Stone** asked Ms. Herrigel if she thought 12-18 months was a realistic timeline. Could it be done sooner?

**Ms. Herrigel** replied that was a good questions, and she did not know. She thought getting to 800 businesses over the last 9 months would be easy, but she found that it was not.

**Councilor Barnes** asked if it applied to small businesses in homes.

**Ms. Herrigel** said generally speaking for people that had businesses at home they already have commercial recycling. It was not in the same form, but they had a blue container and were generally complying. She believed those businesses would be covered under the ordinance, but she would confirm. In general they were already complying because they were already recycling their home garbage. The question was implementation, and if they would need to sign an agreement. They want to be sure people understood how to use the containers. She just wanted to see compliance.

**Councilor Chaimov** commented that his personal preference was to tell Metro to pound sand regarding laws to adopt. Ms. Herrigel handled this well and if she would have come to them, of her own initiative, and they were told it was best public policy for the City of Milwaukie he would be pleased to support it.

**Councilor Loomis** asked if Ms. Herrigel had reached all 800 businesses.

**Ms. Herrigel** said there are 800 businesses and Shannon Martin from the County had visited 250 businesses. She would like to visit the various organizations and talk to them and get their feedback. They do know through various meetings that Metro has had with various jurisdictions that generally their response was similar to Councilor Chaimov's. Their preference would be that it was not mandatory. They were finding that people were not participating and they were not sure what to do. 100,000 tons of materials were still going into a landfill on an annual basis.

**Councilor Loomis** asked if any outreach was done through the Chamber.

**Ms. Herrigel** believed that all of the chambers in Clackamas County were visited by Metro and County Staff. Metro gave a report to the Chamber policy group.

**Councilor Chaimov** said their review was that they would be pleased to voluntarily work towards improving recycling but did not like that it was mandatory ordinance.

**Ms. Herrigel** said the outreach was done by Metro and local governments using a copy of the draft Metro ordinance. Metro has since passed the ordinance so now it had to go back to all of the jurisdictions to discuss implementation.

**Councilor Loomis** asked if the haulers would be sending out the letters.

**Ms. Herrigel** replied they would use the mechanism, but she would write the letter. She agreed with the haulers that the letter should not come from the hauler since it was a City regulation.

**Mayor Bernard** said he went to work and without even talking to his employees there were recycling boxes everywhere. It should be about education. He did not see giving people fines for not recycling.

**Ms. Herrigel** added that she did not feel it was necessary to put in additional language regarding infractions. The provision of the boxes would come from the hauler for external and from the local jurisdiction for internal. There would be no cost to the customer.

**Councilor Stone** asked if the \$400,000 Metro was allocating to implement was given to County then parceled out to the jurisdiction.

**Ms. Herrigel** said that is an additional \$400,000 that was added by Metro to existing money given out to jurisdictions, and it would be divided among jurisdictions on a population basis. She hoped to pass on the City portion to the County to cover the cost of implementation.

**Councilor Stone** asked for clarification on the model ordinance in attachment C that stated it did not apply to a business in a residence. So it would not apply to home run businesses.

**Ms. Herrigel** said that was the difference with the Metro ordinance and was a topic of discussion among the jurisdictions.

**Councilor Stone** said it should be very clear.

**Ms. Herrigel** said she would make it clear.

**Mayor Bernard** adjourned the work session at 6:45 p.m.

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Pat DuVal, City Recorder

## MINUTES

### MILWAUKIE CITY COUNCIL WORK SESSION

JANUARY 20, 2009

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

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

Staff Present: City Manager Mike Swanson, City Attorney Bill Monahan

#### **Board and Commission Interviews**

**Mayor Ferguson** passed out a list of 10 interview questions that Mr. Swanson created for Council to ask candidates interested in serving on boards and commissions.

**Councilor Barnes** said she thought it was a good idea to use the same questions for all candidates. She thought Council needed to do a better job of letting candidates know the next steps for after the interview and when they would hear from the City. She did not think they needed to ask every candidate all 10 questions because some were more in-depth than needed for certain positions.

Council interviewed Christopher Wilson, Greg "Frank" Hemer, Sarah Knaup and Gabriel Storm for vacancies on the Planning Commission, Design and Landmarks Committee and the Budget Committee.

#### **Children's Center of Clackamas County**

**Tonia Hunt**, Executive Director of the Children's Center of Clackamas County provided a handout explaining the work that they did at the Children's Center. She was there to let Council know about their work and how they partner with the Milwaukie Police Department in cases of suspected child abuse in Milwaukie and throughout Clackamas County. The Children's Center was the designated medical assessment center for Clackamas County, which meant that children who have been identified as possible victims of sexual abuse and severe cases of physical abuse would most likely be seen at their facility. The children got a complete checkup from medical staff, and signs of abuse were fully documented. The children then talked to their specially trained forensic interviewers. The interviews were videotaped and witnessed by the investigating law enforcement agency as well as DHS caseworkers. They worked very closely with community partners and found out that many people did not know they existed even though they had been in operation for almost 5 years. They wanted to get the word out and talk about the work that they did and make sure that community leaders know about that work and how thrilled they were to be partnered with agencies such as the Milwaukie Police Department and serving children and families in Milwaukie. They have served about 1,000 children in Clackamas County and many were from the Milwaukie city limits. They were the only service provider for Clackamas County, and saw anywhere between 12-24 children from Milwaukie every year. Most of their referrals came from law enforcement or DHS. They served Sandy, Wilsonville, Lake Oswego, Oregon City and all throughout the County. The Children's Center was growing. They started seeing about 100

CITY COUNCIL WORK SESSION – JANUARY 20, 2009

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children per year and last year they served 300 children and had to turn away another 100. Their capacity had hit the limit. They were addressing that by going into a capital campaign to begin building a facility that would allow them to see 2 children at a time. Currently their facility had one exam room, waiting room and interview room. Assessments take 3-4 hours so they can see 2 children per day. Their capacity issues had a direct impact on safety for children and communities, and they wanted to do everything they could to make sure they had the capacity to see 2 children at a time. If that was the case they would be able to accommodate regularly scheduled appointments as well as urgent cases, which they were getting requests for more and more.

**Mayor Ferguson** asked about outreach. What types of connections and outreach was being done with municipalities?

**Ms. Hunt** said they work regularly with the Multi-Disciplinary Team (MDT), which was a state legislative body that every county had, and was responsible for coordinating care and investigation in cases of child abuse. Milwaukie PD sends a law enforcement agent to those meetings as do other agencies. All of the agencies come together at the MDT to coordinate including the Children's Center. The MDT is a small select group so they wanted to go beyond that. They were in the process of expanding their prevention outreach work. They thought it was important to make adults understand that their responsibility was to protect kids. Teaching kids to protect themselves has been found to be ineffective. Their intake workers are in touch regularly with law enforcement agencies and DHS caseworkers around the County to make sure they were meeting their needs. They exchanged records and tracked cases when appropriate. They were doing what they could but would love to do more. She thought there was probably more abuse going on in Milwaukie than what they were seeing, and they wanted to be a resource to the children being affected by abuse.

**Councilor Barnes** asked if they had worked with the North Clackamas Parent Institute. She would love to see, as a senior project, a video made about the Children's Center and put on cable.

**Ms. Hunt** said they had worked with the Parent Institute and their prevention specialist would be there for the first time. They had a brief promotional video, but it was not cable access appropriate, and she thought it would be a wonderful opportunity to expand that.

**Councilor Stone** was curious about the capital campaign and how much money was needed to expand.

**Ms. Hunt** said it was overwhelming considering the economic times right now. They were a relatively young organization and for them to be in a capital campaign was daunting, but they thought it was doable. The total goal was \$3 million for the building and \$1.5 million for maintenance and operating reserves. The land was donated by Willamette Falls Hospital. They were still in the early stages but had some strong prospects through the community development block grant program, some private funding that has been committed and being considered, and individuals who were pledging support.

**Councilor Stone** asked about the statistics on the children that were seen. If they went back in the environment, what were the statistics on the abuse patterns?

**Ms. Hunt** replied it varied by family. Some families were well equipped to handle the trauma of abuse and tap into resources and do everything they could to not

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only treat the trauma that had occurred but prevent future trauma. Other families were in painful cycles of high risk behavior, drug use, domestic violence or economic turmoil that put children at risk. Those were children that many times kept bumping up against the system over and over. They were not an agency that made decisions about child placement. They were providing information to the agencies about what they needed to know to make those decisions. They helped families overcome barriers to get the needed resources and stayed in contact with the families that wanted to keep in touch.

### **Trolley Trail Intertie Briefing**

**Mr. Swanson** said this came up because Councilor Chaimov forwarded him email about this issue. He attended a meeting on December 30<sup>th</sup>, which was the second meeting that had to do with the Intertie. The first meeting was with WES staff and the BCC. WES appeared before the Board to talk about the routing of a diversion pipeline. The staff recommended that the diversion pipeline route be the 3 Creeks Route that paralleled I-205. It was largely a gravity system that would affect much of the diversion on the east side to TriCities. At that time, the Board introduced the possibility of running the diversion pipe down the Trolley Trail and construct the pipeline at the same time as the Trolley Trail. The Board had asked about that potential and staff was to come back on December 30<sup>th</sup> to answer questions that the Board had. He found out about the meeting on the 30<sup>th</sup> and attended along with 20 citizens from the unincorporated area, most of whom were members of Friends of the Trolley Trail. The staff, understandably because of all of the storms during December, was not able to come back with a lot of the answers that the Board wanted. A general discussion ensued. The reason it was felt that the Trolley Trail was important was because the theory was if you build the diversion pipeline down the trolley trail it made it easier to justify decommissioning Kellogg. The reason he attended was to get into that discussion. A lot of discussion was had at that meeting about the Trolley Trail itself. It would be constructed and maintained by the North Clackamas Parks & Recreation District. There was a lot of discussion about relative costs of the two alternatives. The Trolley Trail was more expensive because it was not a gravity system. It would require pumping, but at the same time it would reduce the cost to the North Clackamas Parks District, and those savings could be used to build some amenities such as lights and drinking fountains. The difference was approximately \$1 million over a 20-year period of time. The Chair of the Commission then opened up to audience comments. He thought a number of comments made were interesting. Many of the people said that they had been waiting a long time and said they did not need to look at the alternative of putting a diversion pipe on the trail because it was going to delay things. The fact was that construction of the pipeline and the trail simultaneously would not affect the timing of the Trolley Trail construction. Most interesting to him were two or three people who objected to the Trolley Trail alignment because they were concerned about odors, which he thought was highly ironic since Island Station and the downtown had been dealing with odors for decades. There was a follow-up meeting today at 3:30 and he had heard the commissioners decided to move on with construction of the Trolley Trail, which he felt was in the interest of the Friends of the Trolley Trail. He didn't get the sense that a decision had been made in terms of the issue of the intertie and the diversion alignment. He thought that was still on the table. That meeting brought him to a place where he had been dealing with, along with Councilor Barnes, for months on the wastewater issue. The wastewater issues seemed to him a lot like the 4 level chess game. There were alignment issues, the wholesale issue and the Kellogg

issue. He thought we were now on the wholesale agreement issue. A number of months ago they received a draft from WES and the City returned a draft to them, which was summarily dismissed. He had now received a third draft that changed the first draft by at least recognizing that we had subsidized the District since inception and that Kellogg was destined at sometime in the future to be decommissioned. Those were not substantive commitments. That resulted in getting an equal seat at the table. The rates in the future were not unlike the past rates because we were being asked to pay for a capacity issue, which we did not create. The proposed rate was exorbitant. One way of describing it was when we look at the 1970 agreement it required that we pay 40% of the construction cost. We have used between 20-30% of the capacity. That difference had been used by the District to meet its capacity needs even though it was paid by Milwaukie ratepayers. He had been arguing in the meetings with staff that we needed a setoff against future rates of those monies that the City, for the last 38 years, had subsidized the District. That same treatment is destined or proposed in the agreement to continue in the future. We would be subsidizing the District for an issue that we did not create. They cited the reason to be equity. Their definition of equity was that everyone should be at the same level. His definition was that equity did not just take into account the cost and making sure everyone was paying. It took into account the past. The County had refused to look at the past. He could not give a figure, but it was substantial. The status of Kellogg – Councilor Barnes fought the good battle and got the partners group to agree that they would all work toward development of an IGA that would envision decommissioning Kellogg. We did not know whether that IGA would happen. They had to sit at another table and talk with our partners, other cities, the county and unincorporated area about the structure of decommissioning Kellogg. The sharing of the costs and what would be done with the property. In other words, we developed another process. We had gone from Clearwater, where we had an answer, to two-step process where we would develop the answers and a rate structure that did not recognize the subsidy that the City provided for 38 years and that created another situation where the City would be subsidizing in the future. Realizing that after a lot of work we had not come up with a whole lot he had taken a look at finally saying this was what we need. What he had done was draft a letter to the BCC Chair. He sent a rough draft copy to Council yesterday. Along with that letter he would send a staff memo that tried to explain our position and when we would be willing to sign an agreement. We would be willing to sign the agreement when we got a commitment on Kellogg, but the commitment had to include a plan for decommissioning that had a date certain, the property must be returned to useful condition, include a financial scenario that made specific concessions to the City and concessions in terms of loss of livability in Island Station and the lost development opportunities that the City had experienced because of the presence of Kellogg. We would also ask for a wholesale agreement that substantively recognized the past and future partnership of the City and District. We began in 1970 as partners. The City and County came together to create a system that would treat wastewater. In the case of the unincorporated area, the City would have its own collection system. Somehow over the years we have been reduced to a renter rather than a partner. What we were saying was that we wanted to be in a partnership situation and that we wanted specific financial concessions for the capacity that we paid for but was used by CCSD1. It must also reflect our actual contribution to the capacity problem by proposing a fair rate structure in the future. Right now, it proposed that we would be subsidizing the District. We also needed a commitment that any future capital contributions by the City were undertaken only when they were budgeted, within the City budget, and after the City had been consulted and had

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approved the expenditures. Currently, the City was awaiting the annual bill. It could be as much as \$3 million for projects that we did not know anything about until we got the bill. This was a departure from where everything had been going, but where everything had been going was basically more process and more discussions. He thought it was time we laid our cards on the table. He did not want to get into a big discussion tonight because it was a difficult and multi-layered issue. He wanted to schedule the discussion for February 3<sup>rd</sup>. He had talked to Jon Mantay about having him here and giving him time to respond. The letter was not final. When the staff memo and letter were done they would be sent to Mr. Mantay, and he assumed Commissioner Peterson and Mr. Mantay would be at that meeting. He was setting up the issue, and he felt it was time to meet it head on. He did not want another discussion; he wanted the County to know what the City wanted. It was about fairness and equity for the past and future ratepayers of the Milwaukie. It was about fairness and equity in terms of what was happening on the Riverfront. In thinking about the intertie issue and hearing from people that lived within the District complaining about the potential for odor from a pipeline he felt that enough was enough and it was time. We had been good players in the process, but the process was not going to get us anywhere. He would be asking Council to continue the code issue during the regular session to be continued again for a month, in light of the fact, that he had asked the attorneys to look at the code provisions and make certain that they were defensible if enacted. He was at the point that he was ready to recommend it for adoption. He did not see solving this issue without taking a strong stand. He thought we were at the point where we needed solid direction from the Council. He can tell you that the staff is able and willing to move fast and forward and boldly, but they need to know where Council wants to go.

**Councilor Chaimov** said first regarding the affect of the facility on livability normally on a day like today in the late afternoon he would have taken his dogs for a walk along the riverfront by the sewage treatment plant. He had stopped doing that because it smells so bad he does not go that way. He was much happier going someplace that did not smell like the facility that was treating our water. Second, his issue on the direction in which we go, he thought the items outlined as being necessary to protect the City were those for which we needed to demand, but they also needed to be able to give the direction if we said this was what we needed to protect our citizens and the County says no. It may be that the consequences are worth bearing and it may be that the consequences are not worth bearing. For him that would be the most important factor in making a decision.

**Mr. Swanson** said he had changed the closing paragraph in this new draft, which was different from what Councilor Chaimov saw. There was always the chance they would say no, but he tended to look behind what was motivating. He rewrote the last paragraph, which had the list of what we requested. It was the opening sentences. It says, "Our responsibility is to Milwaukie's ratepayers. We will not abandon them by agreeing to an inequitable rate structure developed in order to entice a politically difficult constituency that you have to face. You will not find that constituency any less challenging if it is given a seat like that promise to us." The point is that he thought a lot of what motivated was the fear of a certain political group. We needed activity from the Island Station neighborhood and other neighborhoods to counter that, at the board level, with our own active participation. He thought we could do our work, but as a community we needed to band together on this issue. He thought if we are able to do that he did not fear defeat.

**Councilor Stone** said it bothered her and the whole thing speaks of mistrust of each other between the County and the City. She did not think you got very far with anything when you did not have trust as a foundation. She felt that somehow we needed to be able to sit down and talk about that because to her that was forming all of the mistrust. She absolutely believed that we really needed to make sure that it is equitable for all ratepayers, especially in Milwaukie. Whatever we did with wastewater it needed to be environmentally sound and state of the art, passing DEQ regulations. She had been a strong proponent for Clearwater and she would like to know out of curiosity what that was going to cost comparatively speaking to what we are dealing with now. She had been researching some different types of sewer treatment plants and had visited several in the Oregon and Washington area and she was particularly impressed with one she saw in Edmonds, Washington. It reminded her a lot of Milwaukie. With technology the way it is because of all of the discord going on maybe we needed to look at what technology could provide us if this did not happen and if we could not decommission Kellogg and what would that cost and how can we be sensitive to the livability issue that the Island Station and downtown Milwaukie had been dealing with. She was open to looking at the possibility. She had seen what could be done. She had played on golf courses that are sewage treatment plants and it was incredible what could be done now.

**Mr. Swanson** had visited that plant, and it was possible. The point was that we had to take a position. If the position was that if we were going to sit down and talk some more while rates were implemented then we are going to be talking and paying and we are going to be in the same position. He thinks that they are not listening and what they were looking for was some solid direction from the political body at this point. That would mean a lot in terms of the future. He was saying it would be a lovely time, but he thought right now because of what he had been doing over the last week they were asking how much were you looking at, which was the first time they have ever asked that question. It was because we were standing up and that is why we needed direction from this level. Would it be easy? No. A lot of it had to do with trust, but on this one he was going to say participating and going to the point where talking about another group was not good. We have shown the trust and the position that WES has taken has been consistent and that was they were not going to consider the past and look at the subsidy and they would not move off of that. At one time the commissioners were telling them in 2003 that they were going to move Kellogg. That was no longer where they were. They were going to convene a group to try to develop an IGA, but the provisions of that IGA could end up Milwaukie pays the whole thing. It was not an answer; it was just another process.

**Councilor Loomis** said that he did not have a comment, but that he would want to meet with Mr. Swanson to go over the information prior to the meeting.

**Councilor Barnes** said she was the only elected official at the table. The people at the table admitted that nobody trusted any other jurisdiction that was sitting at the table. The Oregon City and Damascus City Managers said that Milwaukie had a right to be heard. Gladstone did not care. She wrote down something that the Damascus City Manager said which was, "If Oregon City and Tri-City get lower rates over a period of time and that is a commitment that the County was willing to make then why not accommodate Milwaukie?" She thought that was an interesting statement coming from Damascus, and she appreciated the comment. We needed to keep in mind this is a political situation. This had been a long time coming. We went through all of this with Clearwater. That decision should have been made. Think about how much money had been spent since

that could have been spent on Clearwater. They have done studies and more studies, etc., but the bottom line was we either ended up paying more than our fair share for new rates that we have to sell to our citizens for what in return? We will still have a treatment plant and nothing had changed. We do not even get a real seat at the table because we have to be voted into CCSD1 and that was not going to happen. We sit here with the same treatment plant and our customers in Milwaukie who really do not have a seat at the table. We had a commitment in writing through that IGA that they will study when to get rid of it, but we are still paying higher rates in Milwaukie, still have the treatment plant and nothing has changed except we are paying more. It was said loudly at the table if Milwaukie wanted to get rid of the treatment plan then Milwaukie needs to pay for it. It would add \$48 to monthly bills. It was a catch-22 and nobody was moving. That was the farthest we got in 18 months.

**Mayor Ferguson** said his only concern was that Council had enough time between now and the February 3<sup>rd</sup> meeting. He would spend some time with Mr. Swanson. He wanted to be sure that all of Council had the opportunity to get questions out and answered from Mr. Swanson. He asked if Council was comfortable with that timeline.

**Mr. Swanson** said he would make time and be available. This was the issue that needed resolution on. Critical to getting that resolution was the knowledge that the Council stood united and strong in a position.

**Mayor Ferguson** adjourned the work session at 6:45 p.m.

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Pat DuVal, City Recorder

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
February 17, 2009**

**CALL TO ORDER**

**Mayor Ferguson** called the 2048<sup>th</sup> meeting of the Milwaukie City Council to order at 7:05 p.m. in the City Hall Council Chambers.

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

Staff present: City Attorney Bill Monahan, Community Development and Public Works Director Kenny Asher, Resource and Economic Development Specialist Alex Campbell, Community Services Director JoAnn Herrigel, and Assistant Planner Li Alligood.

**PLEDGE OF ALLEGIANCE**

Members of Webelos Den 3 Pack 259 presented the colors.

**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS****Milwaukie High School**

**Mayor Ferguson** announced over 5,000 people convened in Salem for Stand for Children at the Sate Capital. The Milwaukie High School Pep Band was the only full band invited to attend. It was selected based on its reputation amongst all bands in the State of Oregon. He recognized members of the musical group.

Tanner Novak, Keeli Centers, and Lynne Hutson discussed the band and orchestra activities in the community and urged people to attend the upcoming Spaghetti Serenade fundraiser.

**A. Light Rail Open House Announcement**

**Ms. Herrigel** and **Mr. Asher** discussed an open house on March 4 having to do with the light rail project specifically targeting the southern section in Milwaukie and Oak Grove at Rose Villa at 5:30 p.m. They would be covering a variety of issues about who will do the work and when certain aspects of the project will be mitigated and how much money we will have. Stations will be set up around the room on preliminary engineering, the Final Environmental Impact Statement (FEIS), coverage of Willamette River Crossing, park-and-ride locations, and station types and locations. The final two areas would be the Trolley Trail and when it would be built and the impact of the light rail line, and the Citizens Advisory Committee (CAC) members will be present to talk with people. The event has been advertised in *The Pilot* and various websites.

**Mr. Asher** hoped the City Council could attend. The last time there was a large format presentation was the locally preferred alternative (LPA) about 9 months ago. Staff had encouraged TriMet to hold an open house in this area, and it obliged. He discussed the beginning of preliminary engineering (PE) and the army of consultants lined up to do this work including environmental, track, and station design. None of the funds could be counted as match until one actually got into PE which was permitted by the Federal Transit Administration in writing. Everything that had happened was done within existing budgets to move the project along. He understood the approval was within 2 weeks, and there would be a lot of activity. The idea of PE was to get the project to

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30% design. A lot of decisions will need to be made just to get the project to 15% in the next 4 months, and everyone will need to get up to speed on how it will be done.

## **CONSENT AGENDA**

**Councilor Stone** wanted to remove item E from the consent agenda for discussion. The title of the resolution had the amount of \$85,000 and the staff report said \$84,000.

**It was moved by Councilor Stone and seconded by Councilor Barnes to adopt consent agenda items A-D.**

- A. City Council Work Session Minutes November 18, 2008;**
- B. Resolution 8-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Christopher Wilson to the Milwaukie Planning Commission;**
- C. Resolution 9-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing David Janusz to the Milwaukie Ledding Library Board; and**
- D. Resolution 10-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Amending Resolution No. 54-2008 by Establishing a Library Fine Amnesty Week from April 12, 2009 through April 18, 2009 in Recognition of National Library Week.**

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

## **AUDIENCE PARTICIPATION**

**Mayor Ferguson** announced each speaker would have 3 minutes.

**Councilor Stone** noted often members of the audience had been given 5 minutes to speak, and she wanted to go back to that. She would like to give people the time if they needed it.

**Phil Stose**, Clackamas County, presented a protest letter against actions in Dual Interest Area “A”. This was regarding the plan to do the sewers. For the Mayor’s behalf he wanted to provide a timeline. This was a copy of the final sanitary system study commissioned by the County in 1989. It went for quite some time and involved some prior Clackamas County unincorporated area. Bordering Milwaukie to the west, Portland to the north, I-205 to the east, and Clackamas County to the south. Back in 1990 we had a number of different meetings. Clackamas County put on a lot of meetings, outreach regarding this. There were a lot of studies and citizen letters. You name it, it was in the book. In March 9, 1990 they presented a petition to the County that had 200 signatures of people living in what we were calling now Dual Interest Area “A.” They were petitioning Clackamas County to be included in Clackamas County Service District #1. It was ignored. They continued on. There were a number of meetings between April 1990 to March 2008 there were a lot of studies made and a lot of outreach for Clackamas County. A lot of work was done on this project. Clackamas County Service District did a tremendous amount of work trying to get that area sewered. There were a lot of properties in there, and the entire area was unsewered. They were all on septic tanks. They all had septic problems. You name it. It ran the gamut from sewage flowing out into the street. Sewage going into Johnson Creek. It was a mess. The other part of it was there were a lot of older houses, a lot of retired people, a lot of people on fixed incomes. That has not changed throughout this time period. He continued. In March 20 of this year the City of Milwaukie had a neighborhood meeting at Lewelling. Susan Stone was there as well as Joe Loomis. At

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that meeting Grady Wheeler tried to do a presentation, but he was not too successful at it. They had a number of little comment cards they handed out. He wanted to give the Council an idea of the response. There was one question, how interested are you in public sanitary service? Out of the 32 people that signed these cards 15 said very interested, 11 said somewhat interested, 3 not interested, and a couple not sure. The second question that was very important, and the City Council would understand why, how interested are you in annexing to Milwaukie. Out of the 32 who filled out these cards 0 were interested, 1 somewhat interested, 5 not too interested, and...

**Mayor Ferguson** said Mr. Stose's time was up.

**Mr. Stose** said that was not 3 minutes.

**Mayor Ferguson** responded it was 5 minutes.

**Mr. Stose** asked to do one more thing.

**Mayor Ferguson** replied Mr. Stose's time had been exceeded.

**Mr. Stose** read a letter, "We the undersigned property owners and/or registered voters of Clackamas County...

**Mayor Ferguson** asked Mr. Stose to pause for a moment. He asked Tobie Stose if she wished to give Mr. Stose some of her minutes.

**Ms. Stose** replied that she would.

**Mayor Ferguson** reset the timer at 5 minutes.

**Mr. Stose** began again. "We the undersigned property owners and/or registered voters of Clackamas County in the area known as Dual Interest Area A, hereby state our intention to refuse to annex to the City of Milwaukie for any reason whatsoever. Further, we want it known that we wish to remain part of Clackamas County and have our sewer services provided by Clackamas County Service District #1." This was 222 signatures on this letter of protest. One of the problems with this whole process was that he did not know where the staff got these people that were interested in sewers. People were interested in sewers, but they would like to have it from Clackamas County Service District #1. We made it clear in the past that we did not vote for any of you. We do not owe allegiance to any of you. We were citizens of Clackamas County. We voted in Clackamas County. We paid taxes in Clackamas County, and our intention was to stay there. Along with that the City Council had in your own Comprehensive Plan a policy on annexation. Joe Loomis asked this question on October 7, "Why aren't these people able to vote for this?" One of the objectives, #3, on annexation was they will deliver services in this area when the City was able to provide an adequate supply of needed services and a majority of the residents and property owners within an area who desired City services. Here we were tonight. They had been in touch with Speaker of the House Dave Hunt, and he came to a meeting at a church they put on January 27. He was very favorable, and he had his legal staff looking at this. The only question they had, the only demand they had was to be included in the Clackamas Service District #1 plan. That was the only thing that would be acceptable to them. They were going to continue to fight this. They were going to continue to dig in their heels. They wanted sewers, but they did not want them from the City of Milwaukie. They were not going to annex to do it. He asked if there were any questions. Thank you for your time; we will be in touch. There were 254 homes in there and 316 legal properties. Out of that there was a two-thirds majority. He was getting more signatures. Three more people came to him and wanted to sign it tonight. It was continuing to grow. He did not know where staff got the 75 people from. They were probably people who had failing septic systems. Septic systems were a problem. We would like to address the problem. They had been working with Clackamas County since 1990. But the problem was Milwaukie

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was consistently saying that was our urban growth boundary, and it would service that part of it. As far as the intergovernmental agreement went, there was nothing that said you could not go back and talk with Clackamas County and change part of that agreement. It was not written in stone. It was up to the City. Clackamas County cannot do anything until the City Council decided that they could go to Service District #1. That was why they were there tonight. That was why they wrote the letter.

**Councilor Stone** noted there was no date on the petition and asked Mr. Stose to tell the Council the timeframe that he collected those signatures.

**Mr. Stose** replied they began collecting those signatures on January 27 until last Thursday. He thanked Councilors Stone and Loomis for supporting them so far.

**Mark Gamba**, Milwaukie, was called to speak, but it was determined he wished to speak on the business recycling matter.

**Tobie Stose**, Clackamas County, said when Mr. Stose first asked her to get involved she was reluctant. She did not have the long back history that a lot of the neighbors had. She did not have a 20-year history of fighting against annexation. She went to the meeting that they referred to as the pitchfork meeting. It was pretty much that attitude throughout the meeting. People were not just angry, they were furious. She did not know them. She would wave at them when they were out puttering in their yards. This was something very close for a lot of people. After a little while she started chipping in more. She started talking to people a little more. She started going door-to-door. She wanted to make sure people had someone to connect with, someone to talk to, get a list of phone numbers. At the meeting on November 4, 2008, Mr. Asher read his comments into the record. He made it really clear that he knew we did not want this and he knew some of the reasons we did not want it. Then in his comments he talked about why he felt it was acceptable to go against the wishes of the citizens involved. His logic went right out the window at that point. The direct quote was, "certainly if one of Milwaukie's neighborhoods voted to secede from the City, the City would not stand aside and let that happen in the name of self determination. Clearly the City must overrule neighborhood opinion occasionally if it is in the larger interest of the City to do so." The logic was flawed because cities did have the right to assert measures of control over their neighborhoods, but we were not a neighborhood of the City of Milwaukie. You should not have the right to overrule the people who were not even in your city. We do not vote on your politics because we are not in your City. She did not see how not being in your City we do not get to vote and you can still do whatever you want with us. That did not seem logical to her. Is this a case that warrants the City of Milwaukie going against a neighborhood? She believed it was and the reason was that it had to do with perception. It was painfully clear to her that the residents of Dual Interest Areas "A" had a very negative perception of the City of Milwaukie or at least those who came forward and testified in these chambers and talked to us at our meetings. Her perception of the City of Milwaukie was very different and she knew others were as well. She knew his perception was different but the very arrogance of that statement was appalling to her for him to say he knows what all the perceptions were for the people who owned the 318 tax lots. We certainly did not say he could be our spokesperson. We have come up each time to say what we thought. It had to do with old, longstanding disputes with the City of Milwaukie and those people. There were a lot of people out there who signed this letter of protest who were like her who have not lived here for that long. They did not have a longstanding history with the City of Milwaukie, but they were getting one because of how they were being treated now. Her dislike for the City of Milwaukie had nothing to do with people 20-years ago. It had to do with what was happening today.

## **PUBLIC HEARING**

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

**Mr. Monahan** briefly discussed the proposed amendments and recommended continuing the hearing to the first meeting of March 2009. Both amendments would affect the Kellogg Treatment Plan and continue matter as negotiations continued.

**It was moved by Councilor Chaimov and seconded by Councilor Stone to continue the hearing on the amendments to Milwaukie Municipal code (MMC) Section 19.321.7 and 19.321.3 to the March 3, 2009 City Council meeting. Motion passed with the following vote: Councilors Chaimov, Stone, and Loomis and Mayor Ferguson voting “aye” and Councilor Barnes voting “no.” [4:1]**

## **OTHER BUSINESS**

### **A. Business Recycling Requirement – Ordinance, 2<sup>nd</sup> Reading**

**Ms. Herrigel** reviewed the previous action and the requirements of the ordinance. She urged the City Council to adopt an ordinance amending Chapter 13.24 of the Milwaukie Municipal Code regarding the establishment of a business recycling requirement program for businesses in the City. At the last meeting the Council did vote positively on this amendment. She understood the Council had to vote on it one more time and asked for the group’s indulgence to provide a little more information this time than she did the last time. This amendment would require several things.

**Mayor Ferguson** asked the audience members to take their conversation outside or keep it a little lower.

**Ms. Herrigel** continued. First and foremost businesses would be required to separate their recyclables from the rest of their garbage. The second was that they put up posters and educational material for the people who worked there about where they could recycle, what they could recycle, and how to prepare those recyclables. Third they needed to provide containers for recycling those materials both inside and outside the establishment. Finally they needed to have someone come get it. They needed to provide service for those recyclables. That was basically what this requirement would do.

**Ms. Herrigel** urged as the Community Services Director that the City Council adopt the code amendments for the following reasons. First of all it had the potential to keep recyclable materials out of the landfill to direct those recyclables to further reuse in the US and elsewhere. Secondly, we have provided voluntary recycling services to businesses in the community for about 20 years in the City of Milwaukie and still we have less than 100% participation. She did not know why that was. She saw this as a particularly good tool to get the attention and encourage those businesses to participate in what she thought was a very good public policy for the City. Thirdly, she believed this program would not be hard on businesses in the City of Milwaukie. It will actually provide us with one more tool to encourage participation in a program in the City which had existed for about 20 years. If the City Council passed this ordinance this evening, here is what staff would do. First they would send a letter to all of the businesses in the City through the garbage haulers’ billing systems and tell them what the requirements were, how they could comply, and give all the contact information. The County already had a piece on its website talking about the 5 easy steps for businesses to meet the business recycling requirements, so a lot of her work was almost done. Secondly, the haulers would provide lists of their customers who were not already recycling and not participating in the commercial business recycling program. Then they would begin

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visiting one-on-one all of the businesses that were not recycling and provide them with signs and stickers, educational materials, and assist them in contacting their garbage haulers to ensure the containers both inside and out were appropriate and that the haulers could service them. Staff would provide them with boxes for the inside for next to people's desks and central locations. They will also ask the business to sign a simple form with the name of the actual contact person for the recycling side of the business. Often when they did a cold call to a business, they spoke with a receptionist or someone answering the phone, but they might not be the person involved in recycling or has coordinated it with the business. They want to identify a point person at each of the businesses. What she anticipated in terms of participation and enforcement they would generate a list of those not participating now, so they would go door-to-door to get them to sign up. They will spend a lot of time with people who did want to sign up first. For those who said they were not interested Ms. Herrigel would frankly advise staff to give them the information and the materials they needed to comply and tell them you would call them back shortly then go on to the next willing participant. These business recycling regulations were about willing participants. At the end of all the visits of the almost 800 businesses in the City of which 250 had been visited during the last year. Several of them had been visited in the past and set up which she would show in pictures. They already made the first part of the pass and will continue on. At the end of those visits if there were still a significant number of businesses that said they do not want to sign up and did not want to play then they will go back to find out if they were willing to participate. She hoped to at the end of the first and second passes to come back to Council and say this is what we found. Over the last year we have visited this number of businesses and here are the numbers that said they would not participate and this was why they said they would not participate. She was not planning on enforcing or fining anyone over this next year. What she wanted to do was to get a handle on who was out there that did not want to participate. She was not seeing there were a lot of problems out there. She would plan on tracking all of the businesses and who was not participating and why. She walked up and down the streets on Wednesday before she left work and provided a slide show of what she found beginning with her own work space. At City Hall and other facilities the garbage receptacle was smaller than the recycling container. The intent was to encourage more recycling and less garbage. She showed how a central work area was set up where she could put all of her recyclables except for glass. She noted she was not seeing a lot of glass being generated at City Hall. Next she showed a slide of a downtown coffee shop where the recycling was on the bottom shelf. It was as big as a regular tub that you see in a restaurant. They said they had a similar-sized bin in the back. She showed a slide of the external recycling containers. Two were for garbage and two were for recycling. She believed this garbage area served all of the businesses in the building and not just the one she showed. She thought there were about 4 or 5 in the building. There were 5 containers total, and she believed there were 2 garbage and 3 recycling. She showed the container in a parking lot of more than one business in the downtown. There was 1 garbage and 2 recycling containers. She showed a side view of the same thing. When the gate was closed you could not tell what was in there. She showed another alley up the street from the coffee shop. They had a storage area on the left, and there was a truck pulled up in back of it. It did not take that much room. She was finding there were a lot of alleys in the City. She showed the recycling area next to Cha Cha Cha. The 2 containers on the right-hand side were for recycling.

**Ms. Herrigel** walked up and down Main Street in the City of Milwaukie and did not find anyone that was not already complying. She found only places that were complying. She did not find places that did not already have containers already in their parking lots fit in very creative ways. When she talked to businesses personally they were very positive, and several of them were here tonight. She knew the Council got a letter

directly from a business on International Way that was very positive, and there was a BRAG winner present. She was not seeing this as something that was arduous. She was seeing it as positive. She was not getting a lot of bad input from the businesses and hoped the City Council was not either.

**Councilor Chaimov** asked Ms. Herrigel if it was her best professional judgment that this ordinance was needed by and was in the best interest of the City of Milwaukie.

**Ms. Herrigel** responded “yes.”

**Mark Gamba**, Milwaukie, was surprised he had won an award because it was like falling off a log. It could not be much easier. He had a trash can and a recycle bin. He emptied the trash can about one a month and the recycle bin about once a week. One of the ways around that was recycling. There was a substantial amount not going into the landfill. One of the biggest problems we had in America was that we used more resources than we could sustainably create. It was his personal opinion it should be a federal law. It was so easy to do there was no reason not to.

**Sherri Dow**, Milwaukie, citizen, was here tonight wearing several hats. She was there as a citizen. She had lived here for almost 27 years. She supported recycling. This was an important ordinance for the Council to pass. Resources would go back into commerce. It was well known that recycling did create more jobs than waste. The second thing was that about 13 years ago she was a volunteer for the City. She actually contacted businesses, as many as she could find in the City at that time, about the program. Even that long ago most businesses were doing some recycling and were very positive about the recycling experience. Thirdly, she was a staff person for the County in the recycle at work program, and she may be helping implement it in the City of Milwaukie. This was a tool to get those additional resources because people might not know they can recycle something. Maybe they had not been updated on the recycling containers. To her this was another tool to get those materials back in the stream of commerce.

**Julie Wisner** and **Rob Kappa**, Milwaukie residents. Ms. Wisner said they were a tag team because they graduated as master recyclers together under Ms. Dow. She finally found something she was as passionate about as speed bumps. Recycling had recently taken the place of her traffic endeavors. She started with the Clackamas County Master Recycling Program, and Mr. Kappa was in her class. They both enjoyed it thoroughly. She was now in the University of Oregon post baccalaureate certificate program studying sustainability. She started with Master Recycling, and it was an excellent class. She took it because she always wanted to know more about it. It gave her the courage to start a program in her own office in Milwaukie. Everyone jumped on board. She was afraid it would get some negative feedback, but everyone was really ready to do it. She did not really know how to implement it, but her experience in the class made it easy. She called Clackamas County, and they sent someone out. They brought the boxes and stickers and educated the staff on what to put in. It took maybe 20 minutes to half an hour. Now for the past 2 years they had been recycling, and it was easy and fun. Instead of wincing when they threw something away, they were happy they were getting them out of the landfills and doing the responsible thing with their recyclables. They usually recycled mostly paper in her office. It was just paper, paper, paper everywhere. Now they had downsized from a great big can to the smallest can you can have for a commercial business. Her boss just looked at her and asked what was in it for him. Ms. Wisner replied he would pay less for his garbage bill. He loved it. Less was going to the landfill, and everyone was feeling really good about doing the right thing for our City and our planet. The mantra in Master Recycling was reduce, reuse, and recycle. That was exactly what they were doing at work. She could not describe how easy it was. She was thrilled Milwaukie was on board with the

program and recommended implementation. She discussed the feasibility of tax incentives to business owners for their compliance. Instead of taking a negative approach and sending out the sustainability police, give tax breaks to the businesses that were complying. She heard that from several people and wanted to pass it along.

**Mr. Kappa** was a resident and master recycler and master gardener and planned to take the master watershed program in the future when the classes opened up. That seemed to be where his interests and loves were. The previous speakers stated it eloquently. It was easy and was good for the environment and business. His feeling was that we needed to change our habits because we were unfortunately in a way a very wasteful country. We wasted a lot, and we needed to change that. When one changed their habits then the culture changed and how people thought about what they bought and what they threw away. It would actually reduce the amount of garbage. He thought Ms. Herrigel discussed the topic adequately. He did not see them going out with their code enforcement books making people do something they may or may not understand. He believed Ms. Herrigel and her staff would come back to the City Council if there were challenges to discuss the issues. He did not see that happening. When the economy turned around he believed this region would see an explosion of development and new businesses coming in. Ordinances like this were excellent teaching tools which would be needed in order to reduce what we were putting into the landfill. Until you have been to a landfill or a plastic roundup or any of those other events that took place throughout the tri-county area it was just phenomenal what came in. If it did not come in through these other recycling methods it would all end up in the dump.

**It was moved by Councilor Chaimov and seconded by Councilor Stone for the second reading by title only and adoption of the ordinance establishing business recycling requirements in the City of Milwaukie. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting “aye.” [5:0]**

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

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

**ORDINANCE NO. 1992:**

**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**

**B. Milwaukie Municipal Code Amendments Chapters 1.01 and 1.04 – Ordinance**

**City Attorney Monahan** provided the staff report. This was the second time staff had come forward in the past few months to bring the City Council some of the code amendments that were part of an overall method to improve the municipal code. Staff came forward a couple of months ago, and Council adopted some preliminary code amendments. This whole process would hopefully be concluded by November 2009. The amendments before the Council at this meeting had to do with general provisions. He referred to the attachment that listed the specific code amendments proposed at this time. They were primarily housekeeping in that they recognized the transition of the code from when it was originally adopted to bring it up to date. There were some changes to definitions such as “city”, “person”, “sidewalk”, and “street” to make them more applicable to what the true meaning of those terms were. There were also other housekeeping amendments. The ordinance included a description of several definitions

that he brought to Council's attention. The Council would be seeing more of these as staff went through the process between now and November.

**It was moved by Councilor Chaimov and seconded by Councilor Stone for the first and second readings by title only and adoption of the ordinance amending Milwaukie Municipal code Title 1, Chapters 1.01 and 1.04. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting "aye." [5:0]**

The City Attorney read the ordinance two times by title only.

**The City Recorder polled the Council: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting "aye." [5:0]**

**ORDINANCE NO. 1993:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTERS 1.01, CODE ADOPTION, AND 1.04, GENERAL PROVISIONS**

**C. National Main Street Program Agreement**

**Mr. Campbell** provided the staff report and was joined by Jamie Johnk, Clackamas County Business and Economic Development Team, and Ms. Alligood a member of the Planning Department Team and staff person coordinating with Community Development on this plan and also the urban renewal program. Ms. Johnk would provide an overview of the Main Street program which was a highly used, multifaceted program for downtown renewal.

**Ms. Johnk** was with Clackamas County Business and Economic Development and was also the Clackamas County Main Street Coordinator. This was an exciting opportunity not only for Clackamas County but also the State and Milwaukie. She had the privilege of working with Main Street when she was an economic developer in the Midwest so she got to see first hand how effective the Main Street Program could be. When she heard Oregon was reinstating the program here she jumped on the bandwagon and Clackamas County and was knocking on Oregon Main Street's door when they were developing a program. They had been working since February of last year working on the statewide program. Traditionally downtowns have been the social and financial center of communities and home to the activities and events in its downtown. Downtown support local businesses keeping the money in the community and served as incubators for entrepreneurs to stimulate the local economy. Downtown was a symbol of health and vitality and served as the historic core of the community. We have to ask ourselves what happened to our downtowns. Downtowns and neighborhoods were no longer the primary providers for goods and services. As communities grew so did suburban development including a more auto-oriented society. Downtowns suffered from a complicated cycle of disinvestment. Businesses left, rental rates slipped, property owners no longer invested in their properties leaving their downtowns looking uncared for and unattractive to visitors and shoppers. Then of course we had our wonderful shopping malls and shopping centers that started competing with our downtowns for businesses.

Over the years approaches to downtown revitalization ranging from big dollar pedestrian malls a lot of cities were developing to rehabilitations that failed because they focused on just one or two elements without looking at the full spectrum of issues. Twenty-six years ago the National Trust for Historic Preservation developed an approach to assist communities in addressing their downtown revitalization. Main Street was a proven comprehensive approach to downtown revitalization and has been implemented in over

1,800 cities in 45 states across the nation. It utilized a 4-point approach which consisted of organization which brought stakeholders and community leaders together to develop one goal for downtown revitalization; promotion which created that positive image that brought shoppers back downtown; design which was getting your downtown back into top physical condition to make it more physically attractive to make people want to come to your downtown; and finally economic restructuring which strengthen the existing community assets while building a more diverse business space. We have to remember revitalization is a process. The decline of our downtowns happened over a period of time. If we think it was going to be fixed overnight we were wrong. There was a long-term commitment to make.

We look at Main Street as an economic development tool. The appearance of a downtown whether it had a negative or positive had an economic impact on the community. If the downtown looked abandoned or unattractive you were not going to get shoppers into the downtown. However, if it was attractive, appealing, and the streets were nice and the buildings were nice you were more apt to get more businesses interested and more property owners interested, and you were going to get more shoppers in your downtown. Main Street also supported innovative and creative businesses and encouraged partnerships and collaboration and monitors downtown businesses so that communities can be proactive as opposed to reactive. It had the organizational capacity to manage downtown, training to help and support sustainable businesses, and acted as important economic indicators to let you know how businesses were doing downtown. Since the onset of the National Main Street Program, they have been collecting statistics over those years. She added a slide to show the true economic impact that National Main Street had on downtowns. Over the last 26 years there has been \$31.5 billion in physical improvements in downtowns across the nation. 72,000 new businesses were created, 331,000 new jobs, and 178,000 buildings had been rehabilitated or preserved. For every dollar invested in program administration whether it came from a municipality, from a governmental agency, or any other funding mechanism \$28 were invested in the physical improvements of the property. To her that was a real significant economic development tool.

In most programs across the nation they had one level of Main Street. You were a performing Main Street or you were not in the program. You had to build up to be certified. In Oregon with the diverse makeup of our cities we decided we needed a 3-level approach. They created an exploring downtown that those communities like Milwaukie that needed to learn a little bit more about the Main Street program and get their plan in place. Then there was transforming. They were on their way to getting the goals and objectives set out. They were kind of working the program. Then the performing Main Street were those that were designated Main Streets by national accreditation. They constantly had to stress this was a self-help program. Downtown revitalization was not the city, county. They knew the property owners could not achieve it alone. It was a partnership and collaborative effort that we need to bring to the community using public and private resources to have a successful revitalization program. Years of experience has shown the most successful programs were those with a strong public – private investment.

On September 26, 2008 they announced their first Oregon Main Street Community with Governor Kulongoski in Oregon City to announce the four performing Main Streets. One of them was Oregon City she was proud to say. They announced seven transforming communities, and Sandy was the Clackamas County transforming community. Across the State there were a few more than that. They had Statewide 35 exploring communities, and she believed they had up to 46. At the time 9 of them were Clackamas County communities. Milwaukie was on there. They actually added two

additional to the list since September. They had really been busy promoting Main Street throughout the State. Clackamas County in conjunction with Oregon's Main Street program operated off of using the four-point approach just like the State and national. They still work toward instilling the same principles of success. Our program did do something a little different than Oregon alone did. They provided additional hands-on assistance to our Clackamas County community providing additional technical assistance, resources, and services to help fulfill the revitalization goals. Oregon Main Street had one staff person and he could not get to all 56 of his participating communities across the State on a regular basis. But with the regional program they created Main Street also had Clackamas County to work with and to provide those additional services and assistance to them. That has been very innovative. Our program is serving as a model Statewide and recently they found out it was serving as a model nationwide. There had never been a program quite like this before, and they were pleased to have been asked to the National Main Street Conference next week to talk to other coordinators about how this kind of program was created in Clackamas County. The overall goal is to build high quality, livable, sustainable communities in Clackamas County. That was what it was all about.

In order to explain Ms. Johnk showed a graph on how they built a successful Main Street Program. These were the steps 1-2-3. We inform the City Councils and business groups, the community and interested parties about the Main Street Program. Then they begin organizing. They begin their training. Assessing the community's assets. Early on Mr. Campbell provided the community assessment to help identify where they could help the community. They developed a work plan. They implemented those work plans, and then they moved onto the next level of Main Street where it could become a transforming or performing level of Main Street. Some of the services Oregon and Clackamas County will provide are targeted technical assistance that might include business workshops for your downtown businesses on merchandizing and window dressing, how to run a business successfully. It will include training and education workshops. They would actually have their first training workshop in March. They would do community assessments, historical inventories, and preservation programs. Design and architectural assistance. Response team evaluation which was a national consultant coming out and meeting with the local communities. Then they had network and list serves with promotional assistance. She and Mr. Campbell had talked about where they could best serve the City of Milwaukie. They would be completing a historic inventory for the downtown to determine the number of historic properties in the downtown area and would also be completing a market analysis. Those were two key components that needed to be done in order not to get too far ahead of ourselves.

The next steps were to get organized. They wanted to share the program with the City Council tonight and hear any questions and find out where the Council was on the program. They needed to form a group to focus on Main Street. They needed to get business and property owners and community stakeholders involved by getting involved in a project that helped make Milwaukie a successful Main Street community. That concluded her presentation on the Main Street program.

**Mr. Campbell** looked at it as needing to get smarter and more organized. As Ms. Johnk mentioned there was one obvious place where we needed to get smarter and that was just understanding more about the economics of our downtown. Understanding what the market was. Understanding the market potential. Currently the vision was to use that as an organizing tool to involve our businesses and participate in the study. There were obviously other opportunities to build downtown involvement through discussions about urban renewal. He thought that was really one of the key challenges. Staff had had discussions with the City Council about that in the past.

There were some rumblings about the downtown Milwaukie business group and that was a really positive sign that those people were coming together to meet each month and talk about how to support each other. We were really going to have to keep working that side of it. The Main Street effort would really help structure that a lot. Ms. Johnk was bringing us resources to help do that. Staff wanted the City Council to know what they were doing. Ms. Johnk had asked for an agreement to memorialize. The County was coming forward with these resources and wanted the City to sign on the dotted line and say yes we were interested in these resources because we were interested in working the program. They were here tonight to bring the Council up to date on what they were doing and to ask for the official sign off.

**Mayor Ferguson** asked if there was a cost for these resources or if it was just a partnership with the County.

**Ms. Johnk** replied the cost the community was time – the business community. The historical inventory and workshops came at no cost. It was provided by Clackamas County and the State of Oregon.

**Councilor Chaimov** thought it was a wonderful program and was pleased the City would be exploring it.

**Councilor Stone** said it sounded like a really good program and help us in our endeavors to get our Main Street active again. She did have a couple of comments on the staff report. In terms of fiscal impact it said “none.” In workload comments it said, “Moving to a higher level of participation would likely require either a significant commitment by downtown business representatives at a higher level by City staff than is currently possible.” Did that mean money in terms of another staff person? What did that mean.

**Mr. Campbell** was thinking that probably did not belong in that section of the staff report. He was thinking forward to a decision that was 6 months, 12 months down the road whether we wanted to move forward to the transforming or performing Main Street level. What he was trying to get at was that it would require either additional City resources or a real step up by the downtown business community. He did not think we were at the level where we needed to make that decision. He was just kind of flagging that. We were moving down that process where the question would hopefully be raised.

**Councilor Stone** had another comment on the agreement itself. She referred to page 3 of the agreement which was page 61 in the packet where it said “local programming” that the City agreed to minimum participation standards. Under that it said in 3.10 at the very bottom, “Assume full responsibility for all costs and expenses associated with the performance of the local program and the performance of its rights and responsibilities under this agreement. ...acknowledges that the CCMS and OMS are not responsible for any costs associated with their participation in the Main Street Program.” What did that mean?

**Mr. Campbell** replied it was clarifying that they did not pay for City staff time.

**Councilor Stone** understood it meant current staff time.

**Councilor Barnes** thought it was an incredible opportunity and appreciated staff had taken so much time seeking out ways to improve our economic development opportunities. She thanked Mr. Campbell for being on the forefront for Milwaukie.

**Mr. Campbell** said Ms. Johnk sought us out.

**Councilor Loomis** thanked Ms. Johnk. It was something we had been wanting to do for a long time. We did need to be organized to get there, and it sounded like Ms. Johnk was the person to lead the charge.

**Ms. Johnk** reminded the City Council it was a collaborative partnership. Milwaukie was a great candidate for the Main Street Program. It had a beautiful downtown.

**Councilor Stone** could not wait to see what kind of historic resources we could tap into and preserve. That was something she was very passionate about. Saving the wonderful resources that were around us.

**It was moved by Councilor Chaimov and seconded by Councilor Loomis to direct the City Manager to sign an intergovernmental agreement with Clackamas County formalizing the City's commitment to participate in the Main Street Program as an "exploring" Main Street. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting "aye." [5:0]**

#### **D. Urban Renewal Feasibility Study Contract Approval – Resolution**

**Mr. Campbell** provided the staff report. In October of last year City Council directed staff to move forward with exploring the feasibility of urban renewal downtown particularly with a focus on covering streetscape improvements that were a potential burden on downtown property developers. They were also given that direction with a caveat that staff should also provide Councilor Stone with additional information about the program. He met with Councilor Stone since that time in turn talked about what were they key pieces of information we really needed to move forward. They came to the conclusion that in order to have an effective conversation with the public and key stakeholders they needed some additional facts. We needed to understand what possible potential urban renewal revenues they were talking about. They needed to be able to manage expectations to give people a realistic idea of what urban renewal could mean for the City. They also needed to bring in some assistance to look at the assumptions about what projects were most likely to encourage private investment in downtown. With that they put together the request for proposals (RFP) the Council had as an attachment to the staff report. They had a lot of interest nationally. They had over 35 firms request packets. They received 7 proposals for services. They felt all 7 were really high quality. All included both urban renewal experts and also commercial market analysis expertise. They did an initial scoring of those proposals, and they felt that 2 were at the A+ level. They were brought in for an interview. Ms. Alligood, Mr. Asher, and Mr. Campbell sat down with those 2 firms. They selected one they felt really represented the deepest technical expertise on the topic. They sort of sat down and figured out they were hiring an expert and wanted the best expert on this specific. Those talents were represented by Tashman Johnson. Jeff Tashman's name was almost synonymous with urban renewal in the State of Oregon. He had almost written the book on it. We were also planning after bringing this firm on board and getting into the work a little bit a preliminary level of stakeholder outreach that would include a basic level of education. Urban renewal was sort of like an onion especially when you got into tax increment financing. It really took some time to unravel exactly how it worked. They wanted to start that process. They also just wanted to let folks know exactly what it was they were doing. What this preliminary feasibility study was going to do. The likely revenues that would be generated based on a couple of different scenarios. He thanked Councilor Chaimov for pointing out the that RFP mistakenly said the eastern part of the City rather than the western part. We were looking at downtown urban renewal and would be studying the area around downtown. In this first phase there were some opportunity areas that were not directly in the downtown that may make sense to package together. They were doing a fairly broad study with the assumption that the ultimate area would be more narrow than the area we were studying. They would be explaining that going to stakeholder groups with the goal that they would come back to City Council sometime early this summer to explain what the findings were, what the consultant found in terms of likely revenue generation given a couple of different scenarios. What were maybe some of the key projects we did not already

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have on our list that the consultant really encouraged us to look at. What the consultant thought about our initial project list and where they fell. Just through the interview process everyone said downtown streetscapes were very important. That was one of the most obvious things you could do to help stimulate private investment. They would talk about what made sense to the City Council for further development of the plan in consultation with the stakeholders and the community.

**Councilor Loomis** said more information was always better. He was interested in hearing more about it.

**It was moved by Councilor Barnes and seconded by Councilor Chaimov to adopt the resolution directing the City Manager to sign a contract with Tashman Johnson LLC to provide urban renewal feasibility study services. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting “aye.” [5:0]**

**RESOLUTION NO. 11-2009:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DIRECTING THE CITY MANAGER TO SIGN A CONTRACT WITH TASHMAN JOHNSON LLC TO PROVIDE THE CITY WITH URBAN RENEWAL FEASIBILITY STUDY SERVICES.**

**Items removed from Consent Agenda for Discussion**

**E. Resolution 12-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Awarding a Contract to Daneal Construction, Inc. for \$85,000 for Construction of Spring Park, Located at 1880 SE Sparrow Street in Milwaukie, and Authorizing the City Manager to Sign a Personal Services Agreement with That Firm.**

**Mayor Ferguson** opened the proposed resolution up for modification and discussion.

**Ms. Herrigel** said Councilor Stone was right. Ms. Ragel had written the staff report and she had to rewrite the resolution at the last minute to get it in the packet and put in the wrong number. It should be changed from \$85,000 to \$84,000 because the original bid was around \$83,500.

**It was moved by Councilor Chaimov and seconded by Councilor Barnes to amend proposed resolution to substitute \$84,000 for \$85,000.**

**Councilor Stone** wanted to clarify that was the figure but one of the other points was in the body of the resolution. She referred to page 77 of the Council packet and was wondering why it was not appearing like that. It was not to exceed the amount of \$84,000 which was what she was looking for to put in this report just to make it consistent with how we often did our resolutions.

**City Attorney Monahan** said what one would do was at the end of the last paragraph it said, “the contract for construction of Spring Park located at 1880 SE Sparrow awarded to DaNeal Construction, Inc. and that the City manager is authorized to sign a personal services agreement not to exceed \$84,000.”

**Mayor Ferguson** said there was a motion proposed and seconded then there was a modification.

**Councilor Chaimov suggested a friendly amendment to his amendment which would be at the conclusion of the word “firm” the concluding part of the proposed resolution to add the phrase “in an amount not to exceed \$84,000.” Councilor Stone seconded. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting “aye.” [5:0]**

It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt the resolution as modified awarding a contract to DaNeal Construction, Inc. in an amount not to exceed \$84,000 for the construction of Spring Park. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting “aye.” [5:0]

**RESOLUTION NO. 12-2009:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON AWARDING A CONTRACT TO DANEAL CONSTRUCTION, INC. FOR \$84,000 FOR CONSTRUCTION OF SPRING PARK LOCATED AT 1880 SE SPARROW STREET IN MILWAUKIE AND AUTHORIZING THE CITY MANAGER TO SIGN A PERSONAL SERVICES AGREEMENT WITH THAT FIRM.**

**E. Council Reports**

**Mayor Ferguson** discussed the Light Rail Steering Committee meeting on March 5 from 3 – 5 p.m. in the Metro Building Room 370. Councilor Stone had expressed interest in being seated on that Committee. He asked if that would work into her schedule.

**Councilor Stone** did not have her full March schedule.

**Mayor Ferguson** said TriMet had asked for feedback as to who the City Council was appointing to that Steering Committee. He would like to provide them with a name by the end of this week.

**Councilor Stone** would look at her schedule as there may be a way to change it around.

**Councilor Chaimov** could accommodate the meetings in his schedule if Councilor Stone could not.

**Mayor Ferguson** would like to get back to TriMet by the end of this week. He asked for Council reports.

**Councilor Loomis** had nothing to report at this time.

**Councilor Barnes** attended the Stand for Children Rally in Salem and attended Wastewater meetings which continued this week.

**Councilor Stone** attended the Ardenwald Neighborhood monthly meeting. Columbia Care did not come and had cancelled at the last minute. Police Chief Bob Jordan spoke about his input he had been asked to give on the plans and answered the questions. There were still a lot of people in the neighborhood that were really working to make sure that all the i's were dotted and the t's were crossed as far as this development was concerned. There would hopefully be every month Columbia Care was being invited to the meetings. They were being pretty good about coming, but they had cancelled this one at the last minute. She also hoped to attend the Spaghetti Serenade at Milwaukie High School.

**Councilor Chaimov** nothing to report since the last *Friday Memo*.

**Mayor Ferguson** and Mr. Asher met with representatives from Sen. Jeff Merkley's office, and it was a great meeting. He left with the sense there would be further meetings with that office. He thought it was a productive time. They had time to share with them what was going on in Milwaukie. He actually had the opportunity to do a downtown walk and showed them the Kellogg Dam, downtown storefronts, and North Main Village. Then he got ill and did not have an opportunity to do a whole lot more in

**CITY COUNCIL REGULAR SESSION – FEBRUARY 17, 2009**

**DRAFT MINUTES**

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the last couple of weeks. He thanked Mr. Asher, Mr. Campbell, and staff for all the extra help.

**Mayor Ferguson** announced the Council would meet in executive session immediately following adjournment pursuant to ORS 192.660(2)(i) performance evaluation of public officers and employees.

## **ADJOURNMENT**

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

**Mayor Ferguson** said the City Council would not come back into regular session after the executive session and adjourned the regular session at 8:45 p.m.

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Pat DuVal, Recorder

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING GREG HEMER 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**, Greg Hemer 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 Greg Hemer is appointed to the Milwaukie Design and Landmarks Committee by unanimous vote of the Milwaukie City Council on March 3, 2009.

SECTION 2: That his 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 April 7, 2009.

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

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

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

Resolution No. \_\_\_\_\_



**To: Mayor and City Council**

**Through: Mike Swanson, City Manager**  
**Kenny Asher, Community Development/Public Works Director**  
**Paul Shirey, Public Works Operations Director**

**From: Ernie Roeger, Fleet Supervisor**

**Subject: Authorize the City Manager to Sign Purchase Orders for City Police Vehicles**

**Date: March 27 for April 7, 2009 Council Meeting**

**Action Requested**

Authorize the City Manager to sign purchase orders totaling \$75,000 for the purchase of one Police Department patrol SUV, and one Police Detective vehicle.

**Background**

Fleet Services has a vehicle replacement program that is designed to replace vehicles on a regular schedule in order to provide safe and reliable vehicles.

Fleet Services' replacement schedule for FY 2008/2009 calls for the replacement of various vehicles for the Police and Public Works departments. Attachment 1 is the City of Milwaukie Standard Criteria for Vehicle Replacement. The CIP for 2008/09 called for the replacement of a Police patrol SUV and a Police detective vehicle. These vehicles were included in the 2008/09 Fleet reserve budget. Indecision on what needed to be purchased led to the delay in the purchase of these vehicles. It was decided to cancel the purchase of a police motorcycle that was in the Fleet reserve budget.

The new vehicles will be purchased through the Oregon State Cooperative Purchasing Program. The amount budgeted for the replacement of these vehicles and equipment is \$75000.

### **Concurrence**

The Public Works Operations Director and Fleet Supervisor have conferred with the Police Chief, Police Sergeant, on how many, and what types of vehicles are needed for the Police department.

### **Fiscal Impact**

The funds to purchase this equipment come from the Fleet Reserve fund. The Fleet Reserve fund operates like a savings account for each department and division, which put aside monies each year to replace vehicles and equipment on a regular replacement schedule.

The monies received from the sale of all used vehicles, will go back into the fleet reserve fund, for future purchases.

### **Work Load Impacts**

Each new vehicle requires set up costs and fleet staff time. This is figured into the overall cost of each vehicle and is included in the \$75,000 total.

### **Alternatives**

Because the funds are available and the vehicles and equipment is needed, staff does not see any available alternatives.

### **Attachments**

1. Standard Criteria for Vehicle Replacement
2. Resolution

**CITY OF MILWAUKIE  
FLEET SERVICES  
STANDARD CRITERIA FOR VEHICLE REPLACEMENT**

**AGE:** We have set up a schedule of replacement for the various vehicles and equipment as follows:

**1. POLICE PATROL CARS – 4 YEARS or 80,000 MILES:** Patrol cars are used as an essential tool for the officers and receive much more stress on the drive train components than normal vehicles. This type of stress takes a toll on these vehicles and can become a safety issue.

**2. DETECTIVE, POLICE CHIEF AND CAPTAIN CARS - 5 YEARS:** Detective cars are replaced more often in order to remain anonymous. These vehicles are used for surveillance. The Police Chief and Police Captain's cars are replaced more often due to moderate to high stress and mileage.

**3. PICKUPS AND LIGHT DUTY TRUCKS – 10 YEARS:** These vehicles are the front line pickups, vans, service trucks and small dump trucks that are used in the everyday maintenance and inspection work of each division of Public Works.

**4. HEAVY DUTY TRUCKS – 15 YEARS:** The heavy-duty trucks are built to last longer and are not use as often.

**5. BACKHOES, LOADERS, ROLLERS AND AIR COMPRESSORS – 15 YEARS:** These vehicles are not used on an every day basis but are essential to the overall operations of Public Works.

**MILEAGE:** We look at the total mileage on a vehicle; being a small city we do not put high mileage on a vehicle (other than the police patrol cars). However, the usage is mostly stop and start city driving. This type of usage is much harder on the drive train of a vehicle than over the road or freeway driving.

**CONDITION:** Condition is a big factor in making a decision to replace a vehicle. Fleet staff evaluates the vehicle by looking at all of the components such as body condition, rust, door fit, door hinges, floorboard condition, paint and body damage. We look at the suspension and steering components, brake system, and perform a safety check to make sure the vehicle meets all the safety requirements. We evaluate the condition of the drive train, engine, transmission, and rear end to determine if a major repair is coming due.

**COST RECORDS:** Cost records gives staff the information of cost history, and repairs made. This would indicate to us if any future repairs would exceed the worth of the vehicle.

**WHAT IS THE VEHICLE USED FOR:** A major factor in vehicle replacement is what the vehicle is used for, and how often the vehicle is used. A good example is a police patrol vehicle that is used daily, even sometimes on a double shift, and in extreme conditions; compared to a backhoe that may only be used for emergency repairs possibly one time per week.

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE PURCHASE OF CITY VEHICLES THAT WERE APPROVED FOR REPLACEMENT IN THE FISCAL YEAR 2008/2009, AS PER THE CITY VEHICLE REPLACEMENT CRITERA.**

**WHEREAS**, the 2008/2009 City budget was approved and adopted at the June 17, 2008 City Council meeting; and

**WHEREAS**, the approved City budget identified vehicles for the Police Department that are authorized for purchase during Fiscal Year 2008/2009; and

**WHEREAS**, the City established vehicle replacement guidelines that have been followed by City staff to procure prices for police and public works replacement vehicles; and

**WHEREAS**, the City is an eligible entity and a member of the Oregon Cooperative Purchasing Program and is authorized to purchase vehicles under the program; and

**WHEREAS**, the City will purchase the vehicles through a vendor approved through the Oregon Cooperative Purchasing Program that has submitted a competitive bid approved by the State for purchases by program members; and

**WHEREAS**, the City will purchase the police vehicles through the Oregon Cooperative Purchasing Program at a total cost of \$75,000;

**NOW, THEREFORE, BE IT RESOLVED** that the City of Milwaukie authorizes the City Manager to sign purchase orders for obtaining two new vehicles from an Oregon Cooperative Purchasing Program approved vendor at a total cost of \$75,000 as per the approved 2008/2009 budget.

Introduced and adopted by the City Council on \_\_\_\_\_ .

This resolution is effective on \_\_\_\_\_ .

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

ATTEST:

APPROVED AS TO FORM:  
Ramis, Crew, & Corrigan, LLP

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

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



**To:** Mayor and City Council

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

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

**Subject:** Inter-Governmental Agreements with ODOT Regarding Federal  
Stimulus Projects (Jackson Street Improvements & Linwood Paving)

**Date:** March 20 for April 7, 2009 Regular Session

### **Action Requested**

Approve resolution authorizing the City Manager to enter two Inter-Governmental Agreements (IGAs) with ODOT concerning federal stimulus-funded street projects.

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

**March 2009:** Council approved a Resolution providing for design funds to expand the Jackson Street bus shelter project to ensure project eligibility for federal stimulus funding.

### **Background**

The American Recovery and Reinvestment Act was recently enacted by the federal government. One portion of the ARRA provides funds for federal aid “highway” projects, which can include street projects on streets that are functionally classed as “urban collector” or higher. Approximately \$335 million in ARRA highway funds were allocated to Oregon. Of these, \$38 million was provided to the Portland-metro region, to be allocated by the Metropolitan Planning Organization. The decision-making body is the Joint Policy Advisory Committee on Transportation (JPACT).

The ARRA highway funds come with all of the usual federal-aid highway project requirements, including NEPA compliance, federal permitting rules (where applicable), consistency with the Regional Transportation Plan, and ODOT contracting requirements. In addition, localities are required to be prepared to “obligate” funds by December 31, 2009. To obligate funds, the project must have passed through all reviews and hurdles necessary to allow ODOT to actually bid the project. In addition, all funds must be actually expended by the end of September 2010.

Because of the numerous and complex requirements, City staff worked to select projects that were of greatest benefit to the public, but also met all of the program requirements. JPACT approved a project slate that included \$725,000 for the Jackson Street project and \$208,000 for pavement re-surfacing on Linwood Avenue. (The attached IGA actually states the amount as \$300,000. However, this figure was high due to an accounting error; the City is expecting a revised IGA to arrive shortly.)

As described before Council on March 3, the Jackson Street project builds on the already-planned TriMet project to consolidate downtown bus activity on Jackson Street. The additional project elements provided by the federal stimulus contribution include: utility under-grounding, full build-out of wider sidewalks from Main to 21<sup>st</sup>, bulb-outs at all four corners, additional street furniture, stormwater improvements, and a full concrete street cross-section. Staff and the project design team presented several possible conceptual designs at a public workshop on March 16. There was a clear consensus among the group regarding the best overall design and for more modern bus shelters, of the options presented by TriMet.

TriMet’s portion of the entire project cost will be approximately \$500,000; the federal share will be roughly \$725,000; and the City’s share is expected to be \$40,000 (already appropriated).

The Linwood Avenue re-surfacing project consists of a 2” grind and overlay of Linwood Avenue from Monroe Street to Harmony/Railroad Ave. The project is estimated to cost approximately \$580,000, of which federal ARRA funds will pay for \$208,000. In addition, because this contribution to the Linwood project frees up additional funds in the City’s Street Surface Maintenance Program (SSMP) budget, the City will be paving River Road as well. The Resolution includes a budget amendment to allow a City payment to ODOT of up to \$5,000 for administrative costs on this project, which will not be recouped.

### **Concurrence**

Community Development staff worked with the Engineering staff on SSMP programming. Community services staff are involved in community outreach on the Jackson Street project.

### **Fiscal Impact**

Expenditure of \$5,000 of Street Surface Maintenance Program funds to make use of federal stimulus funding for the project.

### **Work Load Impacts**

Projects can be managed within existing workloads, but some adjustments are likely to be necessary in order to accommodate the additional number of capital projects. For instance, the Operations Director has agreed to oversee construction management on the Jackson Street project.

### **Alternatives**

Reject stimulus funding for transportation improvements.

### **Attachments**

1. Resolution
2. ODOT cover letter and IGA for Jackson Street project
3. ODOT cover letter and IGA for Linwood Avenue paving

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING EXECUTION OF AGREEMENTS WITH THE OREGON DEPARTMENT OF TRANSPORTATION FOR ECONOMIC STIMULUS PROJECTS AND PROVIDING APPROPRIATION AUTHORITY TO EXPEND SOME STIMULUS FUNDS IN THE CURRENT FISCAL YEAR.**

**WHEREAS**, the Federal government established the American Recovery and Reinvestment Act (ARRA) of 2009 with the purpose of stimulating the economy, in part, through the funding of local public improvement and transportation projects; and

**WHEREAS**, the Joint Policy Advisory Committee on Transportation (JPACT), acting as the MPO for the Portland metro-region approved the use of ARRA funds on two City of Milwaukie projects (Jackson Street improvement and Linwood Avenue resurfacing); and

**WHEREAS**, the City wishes to expend some of these funds, which will be made available to the City on a reimbursement basis, within the current fiscal year to prepare the required environmental documentation for the Jackson Street improvement project; and

**WHEREAS**, Council approved Resolution No. 14-2009 to advance design of the Jackson Street improvement project via a design contract with Harper Houf Peterson Rhigellis; and

**WHEREAS**, utilization of ARRA funds requires that the City move quickly on the design, bidding and construction of the project.

**NOW, THEREFORE, BE IT RESOLVED** that the Council authorizes the City Manager to sign a "Local Agency Agreement" and an ARRA Checklist for both the Jackson Street improvements project and the Linwood paving project.

**BE IT FURTHER RESOLVED** that the Street Surface Maintenance Program budget shall include \$5,000 for costs related to the Linwood Ave. paving project in Fiscal Year 2008-2009. Funds shall be re-allocated from contingency.

Introduced and adopted by the City Council on April 7, 2009.

This resolution is effective immediately.

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

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

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



Oregon

Theodore R. Kulongoski, Governor

Department of Transportation  
Transportation Enhancement Program  
355 Capitol St. NE, Room 326  
Salem, OR 97301-3871

March 19, 2009

City of Milwaukie  
Alex Campbell  
6101 SE Johnson Crk Blvd  
Milwaukie, OR 97206

**RE: Economic Stimulus Project - Confirmation and Agreement  
Jackson Street: Main Street - 21st Avenue Sidewalks**

The above-named project has been accepted for funding through the American Recovery and Reinvestment Act of 2009 (ARRA). The funds will come from the portion of Oregon's ARRA funds sub-allocated to cities, counties, and metropolitan areas. According to the distribution formula, **City of Milwaukie** is eligible to receive up to **\$725,000** from the city/county sub-allocation. The amount identified for this project is **\$725,000**.

The ARRA program has specific goals, deadlines and reporting requirements different from those of other federal or state programs. One critical difference is that ARRA funds are available only until March 3, 2010. If a project is not ready for bid at that time, the ARRA funds will be withdrawn for redistribution to other projects in Oregon, or may be lost to other states. To avoid losing any of Oregon's ARRA funds, it is important to start your project promptly and advance it to contract on time. Several actions must occur before the project can begin:

- Complete the ODOT Project Prospectus and Environmental Classification.
- Sign the Local Agency Agreement and ARRA Checklist.
- Add the project to the Statewide Transportation Improvement Program (STIP).
- Secure a qualified consultant (if needed) and obtain Notice to Proceed from ODOT.

**Local Agency Agreement** - The Agreement for your project is enclosed. This Agreement contains provisions specific to the ARRA, and Standard Provisions that apply to all federal-aid transportation projects in Oregon. For priority treatment, you must sign and return all four copies to the **ODOT Agreement Coordinator, ARRA Program, 455 Airport Road, SE, Bldg. K, Salem, OR 97301-5348** no later than **April 13, 2009**. The Agreement text is the same for all ARRA projects. **Do not request changes** unless there are errors specific

to your agency or project identification. If you return the agreement late, the project may be delayed several weeks as it will miss being included in expedited STIP and environmental approvals ODOT has planned.

**ARRA Checklist** - The enclosed checklist is provided for all ARRA projects awarded to local government agencies to clarify their responsibility for timely completion of ARRA projects. The Agency official signing the Agreement must **complete and return this checklist** with the four copies of the Agreement before ODOT will execute the Agreement, or give Notice to Proceed.

**Prospectus, STIP Amendment and Notice to Proceed** - When you return the signed Agreement and Checklist your project will be assigned to a Local Agency Liaison in the ODOT Region 1 office. This person will work with ODOT Highway Program staff (Salem) to complete the actions needed before giving your project a Notice to Proceed for the ARRA-funded portion of the project.

For general information about the ARRA program you may contact me at (503) 986-3640. If you have specific questions about the next steps for your project, please contact **Tom Weatherford, ODOT Region 1 at 503.731.8238.**

Sincerely,



Martin E. Andersen, PE  
Local Government Section Manager

cc: Tom Weatherford, ODOT Region 1, Local Program

Enclosures (4) original agreements  
(1) Checklist  
(1) Envelope

American Recovery and Reinvestment Act of 2009  
**ARRA Checklist for Local Agencies**

This checklist is required for all ARRA-funded projects awarded to local government agencies, as a condition of ODOT signing the attached Local Agency Agreement for the Project.

**Instructions:** (1) Read the referenced sections of the Local Agency Agreement; (2) Initial each box below; (3) Sign at the bottom of the page.

**Jackson Street: Main Street - 21st Avenue Sidewalks  
City of Milwaukee**

I understand that the following provisions apply to the funds approved for this Project:

- ARRA funds are not a grant. They are paid as reimbursement for actual Project costs based on invoices approved by ODOT or a certified local agency.
- Project approval by ODOT, and inclusion in the Statewide Transportation Improvement Program (STIP), do not constitute formal authorization to begin work. Any costs incurred prior to FHWA Authorization and ODOT Notice to Proceed will not be reimbursed.  
(Terms of Agreement #3)
- ARRA funds are available only until March 3, 2010. State may withdraw funds not obligated for construction by that date, and will not replace the withdrawn ARRA funds.  
(Terms of Agreement #9b)
- There is no match required for the ARRA funds but the Local Agency is responsible for non-participating Project costs. (Terms of Agreement #2; Standard Provisions #23 and #24)
- The Local Agency has responsibility for long-term maintenance of the Project.  
(Special Provision #7; Standard Provision #47)
- The Local Agency will have to repay ARRA and other federal funds under conditions described in Terms of Agreement #8 and Standard Provision #32.

I understand that the following sections of the Standard Provisions apply to this Project:

- Project Administration (1, 2)
- Preliminary and Construction Engineering (3, 4)
- USDOT Assistance Agreement (5-9)
- State Obligations including: Project Funding Request (10), Finance (11), Project Activities (12-16), Right-of-way (17-22)
- Agency Obligations including: Finance (23-33), Railroads (34), Utilities (35, 36), Standards (37-41), Grade Change Liability (42-44), Contractor Claims (45, 46), Maintenance Responsibilities (47), Workers Compensation Coverage (48), Lobbying Restrictions (49A-49E)

\_\_\_\_\_  
*Authorized Agency Official*

\_\_\_\_\_  
*Date*

LOCAL AGENCY AGREEMENT  
American Recovery and Reinvestment Act of 2009

**Jackson Street: Main Street - 21st Avenue Sidewalks  
City of Milwaukie**

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its **Department of Transportation**, hereinafter referred to as "State," and the **City of Milwaukie**, acting by and through its elected officials, hereinafter referred to as "Agency" collectively hereinafter referred to as "Parties."

**RECITALS**

1. **Jackson Street, Main Street, and 21<sup>st</sup> Avenue** are a part of the **city street** system under the jurisdiction and control of **Agency**.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. The American Recovery and Reinvestment Act of 2009, hereinafter referred to as the "ARRA", provides funding for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization, for fiscal years 2009 and 2010.
4. The ARRA provides each state an allocation of ARRA funds for cities, counties and metropolitan areas.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**TERMS OF AGREEMENT**

1. Under such authority, State and Agency agree to perform **reconstruction of sidewalks and streetscape, including street trees, street furniture, curb extensions and utility undergrounding on Jackson Street from Main Street to 21<sup>st</sup> Street**, hereinafter referred to as "Project." The location of the Project is approximately as shown on the detailed map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

Agency/State  
Agreement No. 25498

2. The Project shall be conducted as a part of the ARRA Program under Title 23, United States Code. The total Project cost is estimated at **\$765,000**, which is subject to change. ARRA Program funds for this Project shall be limited to **\$725,000**. The Project will be financed with ARRA funds at 100 percent of the maximum allowable federal participating amount. Agency will not be required to provide a match for the ARRA funds but will be responsible for any non-participating costs, including all costs in excess of the available federal funds. No ARRA funded invoices will be accepted and no ARRA funded payments will be made after September 30, 2015.
3. The federal funding for this Project is contingent upon approval by the FHWA and receipt of federal funds by State. Any work performed prior to "authorization" (also called obligation of funds) by FHWA or outside the scope of work will be considered non-participating and paid for at Agency expense.
4. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
5. Agency shall place signs that identify Project as "American Recovery and Reinvestment Act of 2009" (State approved design). Agency may affix additional signage that identifies local funds used for the Project.
6. Agency shall report to State the required reporting data by federal and state mandates for delivery of the ARRA program. State shall inform the local agencies of the reporting requirements once they have been received from FHWA and the Department of Administrative Services and such requirements shall be made a part of this Agreement.
7. The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment or September 30, 2015, whichever is sooner. No work can begin on this Project until Agency receives a Notice To Proceed from State's Local Agency Liaison.
8. This Agreement may be terminated by mutual written consent of both Parties.
9. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

Agency/State  
Agreement No. 25498

- b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
  - c. If Agency fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
10. Because of the ARRA funding requirements, Agency must advance the Project for obligation of funds prior to March 1, 2010; and State must make a determination no later than December 31, 2009 whether this date will be met. Therefore, if the Project has not advanced to the point of being in the State's "Plans, Specification and Estimates" (PS&E) process by December 31, 2009, the Project will be reviewed by State, in coordination with the Oregon Local Program Committee. If State determines that the ARRA funds will not be, or are unlikely to be, obligated for construction prior to March 1, 2010, State may terminate this Agreement effective upon delivery of written notice to Agency, allowing the funds to be distributed to another project at State's discretion; and State shall have no obligation to replace the ARRA funds with other state or federal funds.
11. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
12. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
13. Agency, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon

Agency/State  
Agreement No. 25498

Agency's breach of any such conditions that requires State to return funds to the Federal Highway Administration, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

14. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
15. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
16. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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

This Project is amended into the 2008-2011 Statewide Transportation Improvement Program, Key No. 16457 that was approved by the Oregon Transportation Commission on November 14, 2007 or will subsequently be approved by amendment to the STIP.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

Agency/State  
Agreement No. 25498

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways, to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

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

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**  
Alex Campbell  
6101 SE Johnson Crk Blvd  
Milwaukie, OR 97206  
campbella@ci.milwaukie.or.us  
(503) 786.7608

**State Contact:**  
Tom Weatherford, ODOT Region 1  
123 NW Flanders Street  
Portland, OR, 97209-4012  
Thomas.L.WEATHERFORD@odot.state.or.us  
503.731.8238

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

By \_\_\_\_\_  
Deputy Director, Highways

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

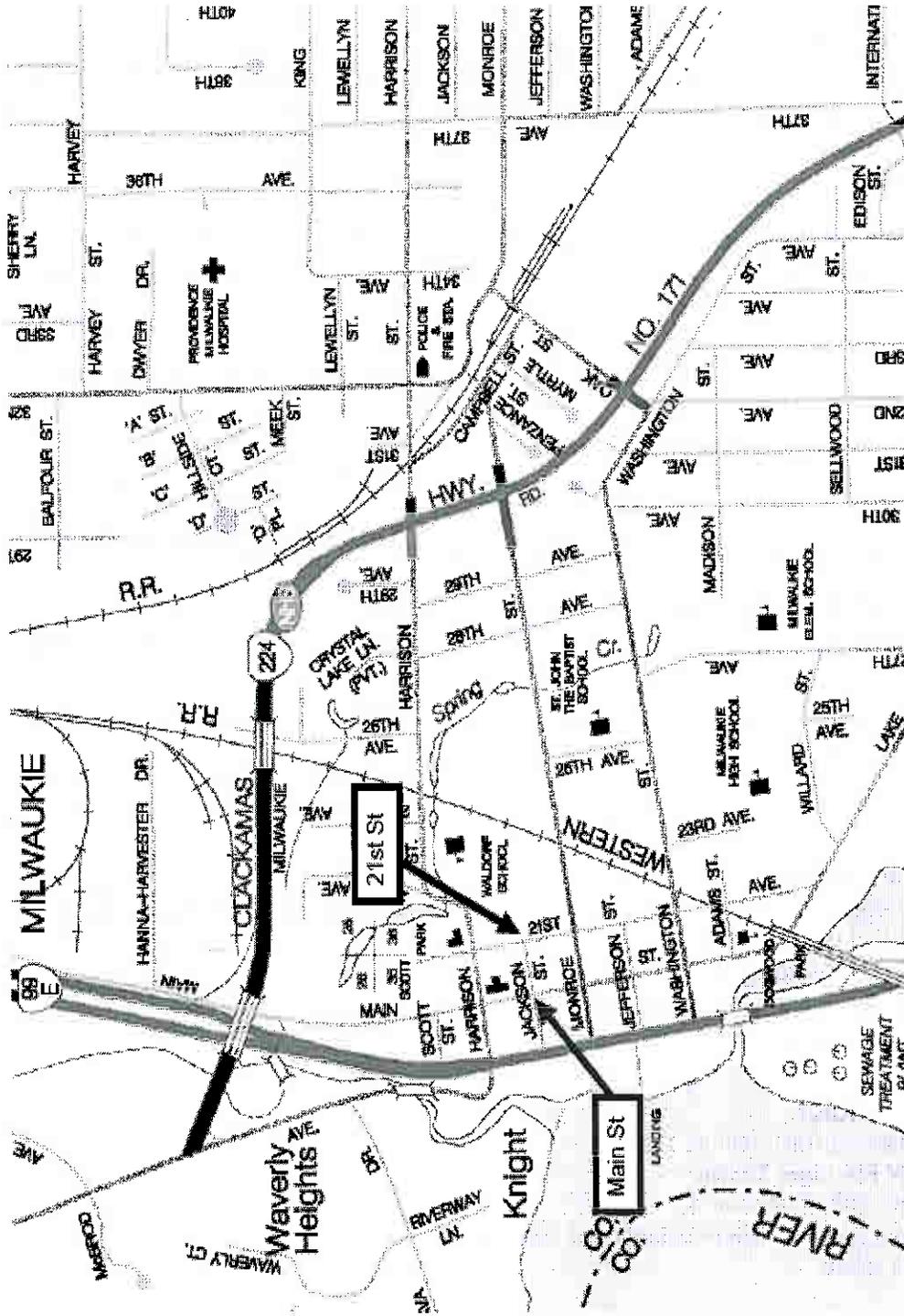
By \_\_\_\_\_  
Local Government Section Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

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



Jackson St - Main St - 21st Ave

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ATTACHMENT NO. 1 to Agreement No. 25498  
SPECIAL PROVISIONS

1. Agency or its consultant shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, assist State with acquisition of necessary right of way and/or easements, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates.
2. Upon State's award of the construction contract, Agency, or its consultant, shall be responsible to perform all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract.
3. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered under this Agreement, Agency and Consultant shall enter into a Personal Services Contract approved by State's Chief Procurement Officer or designee (Salem). Said contract must be reviewed and approved by State's Chief Procurement Officer or designee prior to beginning any work. This review includes, but is not limited to the Request for Proposal, Statement of Work, advertisement and all contract documents. This review and approval is required to ensure federal reimbursement.
4. State may make available Region 1's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the Consultant and reimburse State for payment of any Consultant costs that are not eligible as federal participating costs or that are not included as part of the total cost of the Project.
5. Final billings shall be submitted to State for processing within two (2) years from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) and 2) third notification for construction. Partial billing (progress payment) shall be submitted to State within one (1) year from the date that costs are incurred. Final billings submitted after two (2) years shall not be eligible for reimbursement. No ARRA funding will be available for project reimbursement after September 30, 2015. State shall not be responsible to provide additional funding to Agencies that do not have final billings processed before this date.
6. If Agency overlays a bridge, Agency shall either (a) load rate a bridge when adding two (2) inches of pavement to an existing bridge deck to determine if the capacity of the bridge or (b) remove 2-inches of Asphalt Concrete (AC) from the bridge deck and then place 2-inches back for a zero net gain of Asphalt Concrete (in-lay/over-

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lay) on the bridge deck. Agency shall then sawcut the new AC pavement at the bridge ends and fill with poured joint filler to account for bridge movement.

7. Agency shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation and/or service demand. State and Agency agree that the useful life of this Project is defined as 20 calendar years. State may conduct periodic inspections during the life of the Project to verify that Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of this Agreement.

## **ATTACHMENT NO. 2**

### **STANDARD PROVISIONS**

#### **JOINT OBLIGATIONS**

##### **PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

##### **PRELIMINARY & CONSTRUCTION ENGINEERING**

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to

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any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

**REQUIRED STATEMENT FOR United States Department of Transportation  
(USDOT) FINANCIAL ASSISTANCE AGREEMENT**

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in Title 49, CFR, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in Title 49, CFR, Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with Title 49, CFR, Part 26, to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of Title 49, CFR, Part 26, in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; OMB CIRCULAR NO. A-87 and NO. A-133 Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

## STATE OBLIGATIONS

### PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The program shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

### FINANCE

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

### PROJECT ACTIVITIES

12. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
13. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
14. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.
15. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.

16. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

### **RIGHT OF WAY**

17. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.
18. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
19. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
20. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
21. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
22. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

## AGENCY OBLIGATIONS

### FINANCE

23. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement. If federal funds are used, Agency will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. Agency will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.
24. Agency's estimated share and advance deposit.
- A. Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - B. Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
  - C. Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
  - D. Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
25. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.

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26. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
27. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
28. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.
29. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
30. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710, Final billings shall be submitted to State for processing within three months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering 2) last payment for right-of-way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
31. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).

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32. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:-
- a) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
  - b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
  - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
33. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

#### **RAILROADS**

34. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

#### **UTILITIES**

35. Agency shall cause to be relocated or reconstructed, all privately or publicly-owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements of the Project. Only those utility relocations, which are eligible for federal-aid participation under, Title 23 CFR 645A, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.

36. Agency shall follow established State utility relocation policy and procedures. The policy and procedures are available through the appropriate State's Region Utility Specialist or State's Right of Way Section Railroad Liaison, and Utility Engineer.

### STANDARDS

37. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "State Highway Design Manual" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".
38. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Plan", unless otherwise requested by Agency and approved by State.
39. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
40. All plans and specifications shall be developed in general conformance with the current "Contract Plans Development Guide" and the current "Oregon Standard Specifications for Highway Construction" and/or guidelines provided.
41. The standard unit of measurement for all aspects of the project shall be English Units. All project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

### GRADE CHANGE LIABILITY

42. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
43. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
44. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

### **CONTRACTOR CLAIMS**

45. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.
46. Notwithstanding the foregoing defense obligations under Paragraph 45, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

### **MAINTENANCE RESPONSIBILITIES**

47. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

### **WORKERS' COMPENSATION COVERAGE**

48. All employers, including Agency that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its contractors complies with these requirements.

### **LOBBYING RESTRICTIONS**

49. Agency certifies by signing the Agreement that:
- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- E. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 35, 36, and 47 are not applicable to any local agency on state highway projects.



# Oregon

Theodore R. Kulongoski, Governor

**Department of Transportation  
Transportation Enhancement Program**  
355 Capitol St. NE, Room 326  
Salem, OR 97301-3871

March 19, 2009

City of Milwaukie  
Alex Campbell  
6101 SE Johnson Crk Blvd  
Milwaukie, OR 97206

**RE: Economic Stimulus Project - Confirmation and Agreement  
Linwood Avenue: Monroe Street - Railroad Avenue Resurfacing**

The above-named project has been accepted for funding through the American Recovery and Reinvestment Act of 2009 (ARRA). The funds will come from the portion of Oregon's ARRA funds sub-allocated to cities, counties, and metropolitan areas. According to the distribution formula, **City of Milwaukie** is eligible to receive up to **\$300,000** from the city/county sub-allocation. The amount identified for this Project is **\$300,000**.

The ARRA program has specific goals, deadlines and reporting requirements different from those of other federal or state programs. One critical difference is that ARRA funds are available only until March 1, 2010. If a project is not ready for bid at that time, the ARRA funds will be withdrawn for redistribution to other projects in Oregon, or may be lost to other states. To avoid losing any of Oregon's ARRA funds, it is important to start your project promptly and advance it to contract on time. Several actions must occur before the project can begin:

- Complete the ODOT Project Prospectus and Environmental Classification.
- Sign the Local Agency Agreement and ARRA Checklist.
- Add the project to the Statewide Transportation Improvement Program (STIP).
- Secure a qualified consultant (if needed) and obtain Notice to Proceed from ODOT.

**Local Agency Agreement** - The Agreement for your project is enclosed. This Agreement contains provisions specific to the ARRA, and Standard Provisions that apply to all federal-aid transportation projects in Oregon. For priority treatment, you must sign and return all four copies to the **ODOT Agreement Coordinator, ARRA Program, 455 Airport Road, SE, Bldg. K, Salem, OR 97301-5348** no later than **April 13, 2009**. The Agreement text is the same for all ARRA projects. **Do not request changes** unless there are errors specific

to your agency or project identification. If you return the agreement late, the project may be delayed several weeks as it will miss being included in expedited STIP and environmental approvals ODOT has planned.

**ARRA Checklist** - The enclosed checklist is provided for all ARRA projects awarded to local government agencies to clarify their responsibility for timely completion of ARRA projects. The Agency official signing the Agreement must **complete and return this checklist** with the four copies of the Agreement before ODOT will execute the Agreement, or give Notice to Proceed.

**Prospectus, STIP Amendment and Notice to Proceed** - When you return the signed Agreement and Checklist your project will be assigned to a Local Agency Liaison in the ODOT Region 1 office. This person will work with ODOT Highway Program staff (Salem) to complete the actions needed before giving your project a Notice to Proceed for the ARRA-funded portion of the project.

**1R Resurfacing Projects** - This project appears to fit the definition of 1R Resurfacing. ODOT intends to process all the 1R "overlay" projects as a group, and pursue an expedited environmental approval for the group from the Federal Highway Administration (FHWA). If the project is later modified and no longer fits the 1R guidelines, incorporated by reference in the Agreement, your agency must request an amendment of the Agreement and reinitiate the environmental approvals.

For general information about the ARRA program you may contact me at (503) 986-3640. If you have specific questions about the next steps for your project, please contact **Tom Weatherford, ODOT Region 1 at 503.731.8238.**

Sincerely,



Martin E. Andersen, PE  
ODOT Local Government Section Manager

cc: Tom Weatherford, ODOT Region 1, Local Program

Enclosures (4) original agreements  
(1) Checklist  
(1) Envelope

American Recovery and Reinvestment Act of 2009  
**ARRA Checklist for Local Agencies**

This checklist is required for all ARRA-funded projects awarded to local government agencies, as a condition of ODOT signing the attached Local Agency Agreement for the Project.

**Instructions:** (1) Read the referenced sections of the Local Agency Agreement; (2) Initial each box below; (3) Sign at the bottom of the page.

**Linwood Avenue: Monroe Street - Railroad Avenue Resurfacing  
City of Milwaukee**

I understand that the following provisions apply to the funds approved for this Project:

- ARRA funds are not a grant. They are paid as reimbursement for actual Project costs based on invoices approved by ODOT or a certified local agency.
- Project approval by ODOT, and inclusion in the Statewide Transportation Improvement Program (STIP), do not constitute formal authorization to begin work. Any costs incurred prior to FHWA Authorization and ODOT Notice to Proceed will not be reimbursed. *(Terms of Agreement #3)*
- ARRA funds are available only until March 3, 2010. State may withdraw funds not obligated for construction by that date, and will not replace the withdrawn ARRA funds. *(Terms of Agreement #9b)*
- There is no match required for the ARRA funds but the Local Agency is responsible for non-participating Project costs. *(Terms of Agreement #2; Standard Provisions #23 and #24)*
- The Local Agency has responsibility for long-term maintenance of the Project. *(Special Provision #7; Standard Provision #47)*
- The Local Agency will have to repay ARRA and other federal funds under conditions described in Terms of Agreement #8 and Standard Provision #32.

I understand that the following sections of the Standard Provisions apply to this Project:

- Project Administration (1, 2)
- Preliminary and Construction Engineering (3, 4)
- USDOT Assistance Agreement (5-9)
- State Obligations including: Project Funding Request (10), Finance (11), Project Activities (12-16), Right-of-way (17-22)
- Agency Obligations including: Finance (23-33), Railroads (34), Utilities (35, 36), Standards (37-41), Grade Change Liability (42-44), Contractor Claims (45, 46), Maintenance Responsibilities (47), Workers Compensation Coverage (48), Lobbying Restrictions (49A-49E)

\_\_\_\_\_  
*Authorized Agency Official*

\_\_\_\_\_  
*Date*

LOCAL AGENCY AGREEMENT  
American Recovery and Reinvestment Act of 2009  
1R-Paving

**Linwood Avenue: Monroe Street - Railroad Avenue Resurfacing  
City of Milwaukie**

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its **Department of Transportation**, hereinafter referred to as "State," and the **City of Milwaukie**, acting by and through its elected officials, hereinafter referred to as "Agency," collectively hereinafter referred to as the "Parties."

**RECITALS**

1. **Linwood Avenue, Monroe Street, and Railroad Avenue** are part of the **city street** system under the jurisdiction and control of **Agency**.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. The American Recovery and Reinvestment Act of 2009, hereinafter referred to as the "ARRA", provides funding for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization, for fiscal years 2009 and 2010.
4. The ARRA provides each state a sub-allocation of ARRA funds for cities, counties and metropolitan areas.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**TERMS OF AGREEMENT**

1. Under such authority, State and Agency agree to pave various streets or roads as further identified and shown in the description (Exhibit A-1) and map (Exhibit A-2) both attached hereto and by this reference made a part hereof, hereinafter referred to as "Project". The Project will consist of **a 2-inch pavement overlay in accordance with 1R Guidelines, with grind at intersections.**

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2. The Project shall be conducted as a part of the ARRA Program under Title 23, United States Code. The total Project cost is estimated at **\$579,775**, which is subject to change. ARRA Program funds for this Project shall be limited to **\$300,000**. The Project will be financed with ARRA funds at 100 percent of the maximum allowable federal participating amount. Agency will not be required to provide a match for the ARRA funds but will be responsible for any non-participating costs, including all costs in excess of the available federal funds.
3. The federal funding for this Project is contingent upon approval by the FHWA and receipt of federal funds by State. Any work performed prior to "authorization" (also called obligation of funds) by FHWA or outside the scope of work will be considered non-participating and paid for at Agency expense.
4. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
5. Agency shall place signs that identify Project as "American Recovery and Reinvestment Act of 2009" (State approved design). Agency may affix additional signage that identifies local funds used for the Project.
6. Agency shall report to State the required reporting data by federal and state mandates for delivery of the ARRA program. State shall inform the local agencies of the reporting requirements once they have been received from FHWA and the Department of Administrative Services and such requirements shall be made a part of this Agreement.
7. The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment or September 30, 2015, whichever is sooner. No work can begin on this Project until Agency receives a Notice to Proceed from State's Local Agency Liaison.
8. This Agreement may be terminated by mutual written consent of both Parties.
9. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

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- i. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
  - b. If Agency fails to provide payment of its share of the cost of the Project.
  - c. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
10. Because of the ARRA funding requirements, Agency must advance the Project for obligation of funds prior to March 1, 2010; and State must make a determination no later than December 31, 2009 whether this date will be met. Therefore, if Agency has not submitted the Project "Plans, Specification and Estimates" (PS&E) package to State's Region office by December 31, 2009, the Project will be reviewed by State, in coordination with the Oregon Local Program Committee. If State determines that the ARRA funds will not be, or are unlikely to be, obligated for construction prior to March 1, 2010, State may terminate this Agreement effective upon delivery of written notice to Agency, allowing the funds to be distributed to another project at State's discretion; and State shall have no obligation to replace the ARRA funds with other state or federal funds.
11. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
12. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
13. Agency, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon

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Agency's breach of any such conditions that requires State to return funds to the Federal Highway Administration, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

14. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
15. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
16. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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

This Project is amended into the 2008-2011 Statewide Transportation Improvement Program, Key No. **16489** that was approved by the Oregon Transportation Commission on November 14, 2007 or will subsequently be approved by amendment to the STIP.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

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On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways, to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

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

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_

Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**

Alex Campbell  
6101 SE Johnson Crk Blvd  
Milwaukie, OR 97206  
campbella@ci.milwaukie.or.us  
(503) 786.7608

**State Contact:**

Tom Weatherford, ODOT Region 1  
123 NW Flanders Street  
Portland, OR, 97209-4012  
Thomas.L.WEATHERFORD@odot.state.or.us  
503.731.8238

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

By \_\_\_\_\_

Deputy Director, Highways

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

Local Government Section Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_

Assistant Attorney General

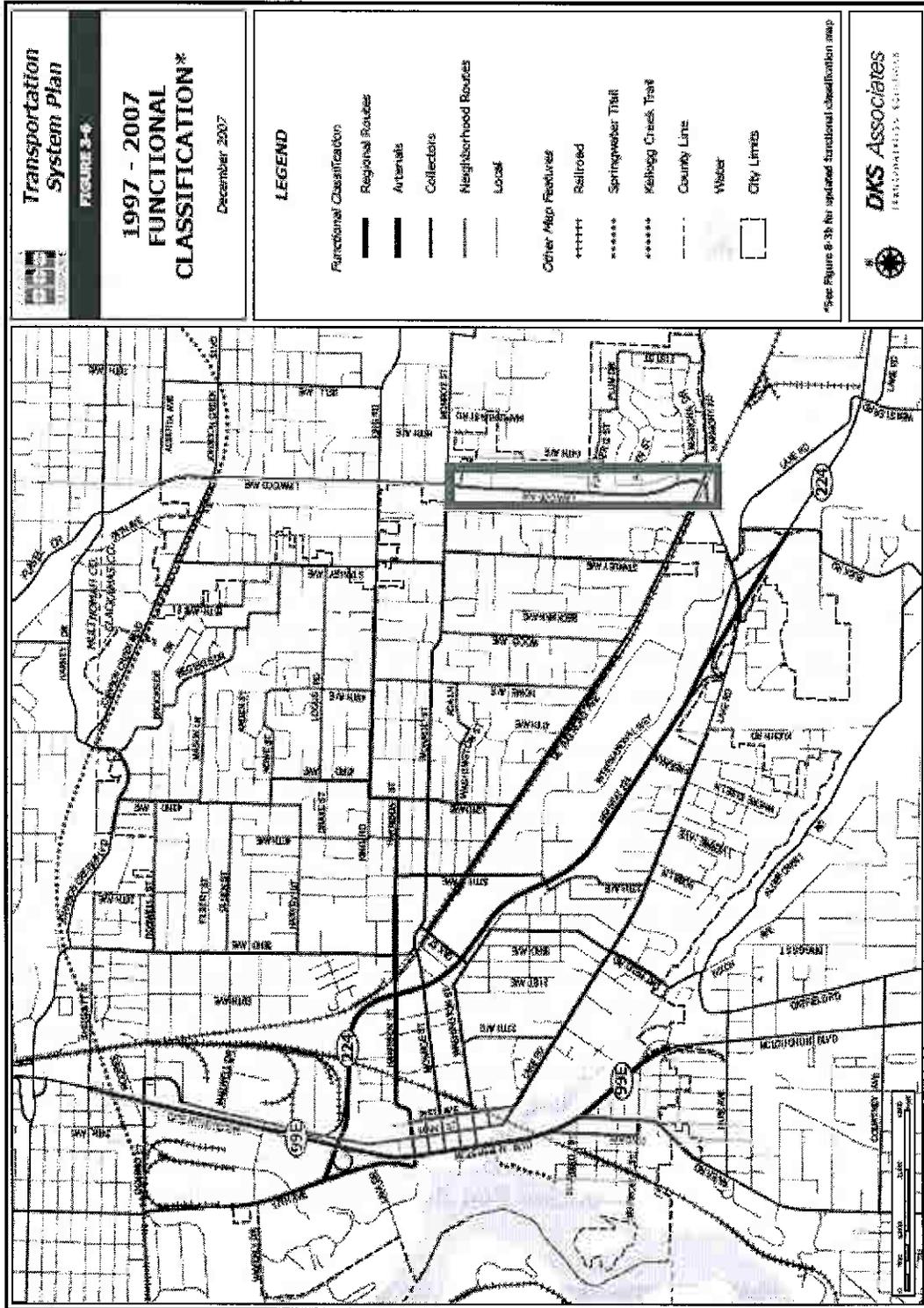
Date: \_\_\_\_\_

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Exhibit A-1  
Description

**Project Limits**

Linwood Avenue from Monroe Street to Railroad Avenue.



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ATTACHMENT NO. 1 to Agreement No. **25473**  
SPECIAL PROVISIONS

1. Agency or its consultant shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates.
2. Upon State's award of the construction contract, Agency, or its consultant, shall be responsible to perform all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract.
3. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered under this Agreement, Agency and Consultant shall enter into a Personal Services Contract approved by State's Chief Procurement Officer or designee (Salem). Said contract must be reviewed and approved by State's Chief Procurement Officer or designee prior to beginning any work. This review includes, but is not limited to the Request for Proposal, Statement of Work, advertisement and all contract documents. This review and approval is required to ensure federal reimbursement.
4. State may make available Region 1's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the Consultant and reimburse State for payment of those services, which are not eligible as federal participating costs and included as part of the total cost of the Project.
5. Final billings shall be submitted to State for processing within two (2) years from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) and 2) third notification for construction. Partial billing (progress payment) shall be submitted to State within one (1) year from the date that costs are incurred. Final billings submitted after two (2) years shall not be eligible for reimbursement. No ARRA funded invoices will be accepted and no AARA funded payments will be made after March 1, 2010. State shall not be responsible to provide additional funding to Agencies that do not have final billings processed before this date.
6. If Project involves pavement overlay on a bridge, Agency shall either (a) load rate the bridge when adding two (2) inches of pavement depth to an existing bridge deck to determine if the capacity of the bridge or (b) remove two inches of Asphalt Concrete (AC) from the bridge deck and then place two inches back for a zero net

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gain of Asphalt Concrete (in-lay/over-lay) on the bridge deck. Agency shall then sawcut the new AC pavement at the bridge ends and fill with poured joint filler to account for bridge movement.

7. If Project is a 1R resurfacing project included in the Statewide Programmatic Categorical Exclusion approved for ARRA projects, Agency shall ensure that Project conforms to the 1R Resurfacing Guidelines, attached by reference and shown on <http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>.
8. This Project Agreement does not require a Right of Way Services agreement as described in Standard Provisions, Paragraph 18. This Project will require right of way certification. Agency shall complete and sign the attached Right of Way Certification form, shown on Exhibit B, attached hereto and by this reference made a part hereof.
9. Agency shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation and/or service demand. State and Agency agree that the useful life of this Project is defined as eight (8) calendar years. State may conduct periodic inspections during the life of the Project to verify that Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of this Agreement.

**Oregon Department of Transportation**  
**RIGHT-OF-WAY CERTIFICATION**  
**Local Government ARRA 1R Projects**

1. Project Information:

Section _____	Bid Opening _____
Highway _____	FAP No. _____
County/City _____	Key No. _____
R/W Map # <u>NONE</u>	

2. Primary Declaration:

(Modify or delete statements that do not apply then delete this instruction).  
I certify that to the best of my knowledge the following statements are correct with regard to the right-of-way for this project (23 CFR 635.309):

No additional right-of-way was acquired. Construction can be accomplished within the existing right-of-way.

3. Signature of Certifying Agency: (Both signatures required on Local Public Agency Projects).

_____	_____
(enter name), Asst. State R/W Manager	Local Government Agency
_____	_____
Date	Date

4. Distribution: (modify the distribution to fit your particular Region, with the exception of R/W Project Administration).

Original:	R/W Project Administration
Copy:	Local Governments Section
Copy:	Region R/W Manager
Copy:	Region Local Agency Liaison

## **ATTACHMENT NO. 2**

### **STANDARD PROVISIONS**

#### **JOINT OBLIGATIONS**

##### **PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

##### **PRELIMINARY & CONSTRUCTION ENGINEERING**

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

**REQUIRED STATEMENT FOR United States Department of Transportation  
(USDOT) FINANCIAL ASSISTANCE AGREEMENT**

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in Title 49, CFR, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in Title 49, CFR, Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with Title 49, CFR, Part 26, to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of Title 49, CFR, Part 26, in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; OMB CIRCULAR NO. A-87 and NO. A-133 Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

**STATE OBLIGATIONS**

**PROJECT FUNDING REQUEST**

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The program shall include services to be provided by State, Agency, or others. State shall notify

Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

### **FINANCE**

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

### **PROJECT ACTIVITIES**

12. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
13. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
14. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.
15. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
16. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

### **RIGHT OF WAY**

17. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.

18. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
19. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
20. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
21. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
22. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

## **AGENCY OBLIGATIONS**

### **FINANCE**

23. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement. If federal funds are used, Agency will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. Agency will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.
24. Agency's estimated share and advance deposit.
  - A. Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - B. Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within

forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.

- C. Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
  - D. Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
25. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.
26. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
27. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
28. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.
29. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.

30. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710. Final billings shall be submitted to State for processing within three months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering 2) last payment for right-of-way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
31. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).
32. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
- a) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
  - b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
  - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
33. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

### **RAILROADS**

34. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others.

Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

### UTILITIES

35. Agency shall cause to be relocated or reconstructed, all privately or publicly-owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements of the Project. Only those utility relocations, which are eligible for federal-aid participation under, Title 23 CFR 645A, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.
36. Agency shall follow established State utility relocation policy and procedures. The policy and procedures are available through the appropriate State's Region Utility Specialist or State's Right of Way Section Railroad Liaison, and Utility Engineer.

### STANDARDS

37. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "State Highway Design Manual" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".
38. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Plan", unless otherwise requested by Agency and approved by State.
39. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
40. All plans and specifications shall be developed in general conformance with the current "Contract Plans Development Guide" and the current "Oregon Standard Specifications for Highway Construction" and/or guidelines provided.
41. The standard unit of measurement for all aspects of the project shall be English Units. All project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

### GRADE CHANGE LIABILITY

42. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.

43. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
44. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

### **CONTRACTOR CLAIMS**

45. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.
46. Notwithstanding the foregoing defense obligations under Paragraph 45, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

### **MAINTENANCE RESPONSIBILITIES**

47. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

### **WORKERS' COMPENSATION COVERAGE**

48. All employers, including Agency that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its contractors complies with these requirements.

### **LOBBYING RESTRICTIONS**

49. Agency certifies by signing the Agreement that:
- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

Agency/State  
Agreement No. 25473

- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- E. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 35, 36, and 47 are not applicable to any local agency on state highway projects.

6.  
OTHER BUSINESS



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Sarah Lander, Code Compliance Assistant  
JoAnn Herrigel, Community Services Director

Subject: Amending Milwaukie Municipal Code 10.20.090 Parking Violation - Citation

Date: March 30, 2009

#### Action Requested

Approve an ordinance that amends City of Milwaukie Municipal Code Chapter 10.20.090 to establish specific guidelines for the payment of parking fines/bail by the court date printed on the citation and to increase the fine after the court date.

#### Background

The Transportation System Plan (TSP), adopted in 2008, included a chapter specifically on parking in downtown Milwaukie. This chapter includes a set of policies by which the City will manage parking and a set of recommended capital and operating improvements. A multi-departmental Downtown Parking team has been at work implementing, or forming strategies to implement, many of the TSP recommendations in an effort to make parking functions more efficient.

The proposed Code amendment is a housekeeping task. Currently, the City's citation practice differs from the language in our Municipal Code. Citations issued by the Police and Code Enforcement staff state that payment of fines/bail is required by the court date printed on the citation. Municipal Code, on the other hand, states that parking citation fines/bail are due within 5 days of issuance. In order to make practice consistent with Code, staff is requesting that Municipal Code 10.20.090 be amended to state that fine/bail payment is due by the court date shown on the citation. This amendment would

be consistent with the processing and payment of all other citations issued within the City.

Additionally, the City wishes to have the Municipal Code reflect a specific fine increase resulting from failure to pay the fine/bail by the court date printed on the citation. The current language is vague, leaving the violator confused regarding the penalty for late payment. Amending the Municipal code to clarify the fine/bail amount for late payment would be consistent with the City policies for delinquent water accounts, business licenses and other Municipal and ORS citations issued within the City. With parking at a premium in the downtown it is important to have parking regulations enforced regularly, consistently and with consequence.

Concurrence

The City of Milwaukie's Police and Records Departments have reviewed the proposed code language and believe it is consistent with the City's policies and procedures. The City Attorney and Community Services Director have reviewed and commented on the new code language.

Fiscal Impact

None

Work Load Impacts

This new code language will not increase work load, and may actually reduce the time it takes to explain the difference between citation fine/bail payment due date and court date.

Alternatives

Deny the code amendment and give direction to staff to investigate further.

Attachments

Ordinance  
Code amendment

**10.20.090 Violation—Citation.**

A. Whenever a vehicle without an operator is found parked in violation of a restriction imposed by this chapter or state law, the officer finding the vehicle shall conspicuously affix to the vehicle a traffic citation instructing the operator to answer to the charge against him or pay the penalty imposed ~~within five days during the hours and~~ **by the court date stated in the citation,** at a place specified in the citation. If payment is not made or **if bail is not posted by the operator by the court date the fine will be doubled.**

B. Whenever an operator accumulates five or more traffic citations affixed to a vehicle and the bail or fines remain unpaid, a certified letter may be sent to the registered owner of the vehicle, return receipt requested, informing the owner that the bail or fines must be paid within ten days from the date of mailing of the certified letter or the vehicle may not be parked or allowed to stand on a street and may be impounded in accordance with Section 10.20.095 of the Milwaukie Municipal Code.

C. The owner of a vehicle parked in violation of a parking restriction shall be responsible for the offense, except when the use of the vehicle was secured by the operator without the owner's consent.

D. In a prosecution of a vehicle owner charging a violation of a restriction on parking, proof that the vehicle at the time of the violation was registered to the defendant shall constitute a presumption that the defendant was then the owner in fact. (Ord. 1728 § 1, 1993; Ord. 1361 § 7, 1977)

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTER 10 OF THE MILWAUKIE MUNICIPAL CODE TO REFLECT COURT PROCEDURES FOR PARKING CITATION DUE DATE AND FINE.**

**WHEREAS**, Chapter 10.04 generally defines vehicle and traffic terms; and

**WHEREAS**, Chapter 10.20.090 (A) defines parking violation citation procedures; and

**WHEREAS**, the City wishes to clearly provide direction to parking violators of the deadline for either paying a fine or posting bail; and

**WHEREAS**, the City wishes to have the Municipal Code reflect fine increases that result from failure to pay a fine or post bail;

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

Section 1. The Municipal Code of Milwaukie Chapter 10.20.290, is amended to read as follows:

**10.20.090 Violation—Citation.**

A. Whenever a vehicle without an operator is found parked in violation of a restriction imposed by this chapter or state law, the officer finding the vehicle shall conspicuously affix to the vehicle a traffic citation instructing the operator to answer to the charge against him or pay the penalty imposed by the court date stated in the citation, at a place specified in the citation. If bail is not posted by the court date the fine will be doubled.

Section 2. Severability

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 3. Effective Date and Publication

This Ordinance shall take effect immediately after its adoption.

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



To: Mayor and City Council  
Through: Mike Swanson, City Manager  
From: Pat DuVal, City Recorder  
Bill Monahan, City Attorney  
Subject: Amendments to Milwaukie Municipal Code Chapter 1.08, Short-Form Complaint and Citation Method and Code Enforcement Procedures  
Date: March 24, 2009 for April 7, 2009 Regular Session

Action Requested

Adopt an ordinance amending Milwaukie Municipal Code (MMC) Chapter 1.08, Short-Form Complaint and Citation Method and Code Enforcement Procedures.

History of Prior Actions

- July 1989, Ordinance 1659 was adopted and included general provisions for the short-form complaint and citation and code enforcement procedures
- November 18, 2008, work session update on project by City Attorney and City Recorder.

Background

At the City's request, the City Attorney's Office reviewed the current Code to identify areas that were out-of-date or otherwise might need to be changed. Former City Attorney Gary Firestone read the entire code at a basic level paying special attention to sections and chapters that appeared to have issues based on his experience with the City and knowledge of changes in the law over the years. As some time had elapsed since Mr. Firestone's, Mr. Monahan was asked for any additional comment on the initial Code review.

A number of sections in Chapter 1.08 were identified as needing to be deleted or amended. The objective is to better define the roles of city officials involved in administering the code enforcement program as well as to provide details of the steps required before the municipal court issues a warrant to remedy a violation. Proposed

changes also properly identify the departments that are involved in the code enforcement process.

The republication of the municipal code originally scheduled for May 2009 is being postponed to November 2009 to allow departments more time to bring amending ordinances before Council. This will be the first republication of the Milwaukie Municipal Code since it was first published in 1986. This effort, based on City Attorney recommendations, will clarify and update the code as well as improve current page numbering, formatting, and overall appearance of the document. Funds were budgeted in the 2008 – 2009 for the project, and staff will request that the funds for this project be carried over to the 2009 – 2020 budget.

#### Concurrence

The proposed amendments were reviewed by the City Attorney's Office, Finance Director, Code Enforcement Division of the Community Services Department, and Municipal Court Judge Ron Gray.

#### Fiscal Impact

There are no direct financial impacts.

#### Work Load Impacts

None.

#### Alternatives

Council may decide not to adopt the proposed amendments to MMC Chapters 1.08.

#### Attachments

1. Redline code sections and purpose for amendments
2. Proposed ordinance

## Proposed Amendments to Chapter 1.08 and Rationale

### Chapter 1.08 Short-Form Uniform Complaint and Citation Method and Code Enforcement Procedures.

#### **1.08.040 Use of Language.**

~~As used in this chapter, pronouns indicating the masculine gender shall include the feminine gender; singular pronouns shall include the plural; and "person" shall, where appropriate, include any partnership, corporation, unincorporated association, the state of Oregon, or other entity. (Ord. 1659 § 1 (part), 1989)~~

*Delete: This section relating to use of language in this Chapter is unnecessary because it repeats material from §1.04.040 that apply to the whole code.*

#### **1.08.120 Immediate remedial action. ~~required when~~**

*Amend: The title of this section is awkward and recommend simply to read "Immediate remedial action."*

#### **1.08.130 Remedial action by city – Costs.**

- A. ~~In the event a department head finds that there is a danger to the public health, safety or welfare, the city may, without notice, remedy the violation and charge the remedial costs back to the defendant.~~ When a code enforcement officer requires immediate remedial action to address an alleged violation and gives or attempts to give notice as provided in Section 1.08.020, the city manager or designee shall decide whether there is a danger to the public health, safety, or welfare. If the city manager or designee finds such a danger, the city may remedy the violation and may charge the cost of remediation to the defendant.
- B. ~~The code enforcement officer shall have the right at reasonable times to enter into or upon property in accordance with law to investigate or to remedy the violation.~~ In remedying the violation, the city may enter into private property only after obtaining consent of the owner or other person in charge of the property or pursuant to a warrant. The municipal court may issue a warrant to enter private property and remedy a violation only if the municipal court determines (1) that city manager or designee has reasonably determined that there is a danger to the public health, safety, or welfare, (2) that the code enforcement officer provided or attempted to provide notice under Section 1.08.120, (3) that if notice was provided, the property owner or other responsible person has refused or failed to remedy the violation within a reasonable amount of time, given the nature of the violation, and (4) that the city has the ability to remedy the violation.

### **1.08.190 Use of citation.**

A citation conforming to the requirements of this chapter may be used by employees of the following departments: the ~~fire department~~ city's fire protection provider, the police department, ~~the animal/parking control department~~, ~~the public works department~~ and the community development department and code enforcement.

*Amend: indicates those department that actually issue citations.*

### **1.08.250 Hearing request or waiver – Payment of bail.**

B. In any case, the court may direct that a hearing be held; otherwise, the court may enter the appropriate judgment, impose a fine civil penalty, direct that the fine civil penalty be paid out of the bail deposited by the defendant, and remit to the defendant any amount by which the bail exceeds the fine civil penalty. No sentence to jail may be imposed, or fine civil penalty imposed in excess of the bail deposited by the defendant, unless a hearing is held.

*Amend: in most cases the penalty for violation of the Code is a civil penalty and not a fine except for traffic and other regulations administered by the police department.*

### **1.08.260 Civil penalty – Assessment of fees.**

A. Upon a finding that the violation was committed by the defendant, the court:

A.5 Shall assess a fee of fifty dollars (\$50), ~~which amount is to be dedicated to the payment of the city's costs in abating properties and other costs directly related to enforcement of the code~~ to be used for costs of code enforcement and monitoring. The city may use such proceeds for the abatement of violations when those responsible for the violation do not pay the full costs of abatement.

B. Upon subsequent receipt of proof of abatement by the defendant, the court may reduce any penalty or fee assessed under this section by up to one-half of the original amount.

### **1.08.265 Subsequent hearing.**

If at the subsequent hearing the court determines that the defendant has not abated nor made reasonable attempts to abate the violation, the court may authorize the city to enter defendant's property and to abate the violation, if possible. If the City abates the violation, a further hearing shall be set at which the court shall order the defendant to pay the costs reasonably incurred by the city in abating the violation.

### **1.08.280 Enforcement – Rules and regulations.**

The municipal court judge is authorized to promulgate any procedural rules ~~he~~ the judge considers necessary to enforce this chapter and to punish for contempt of court.

### 1.08.300 Lien filing and docketing.

- A. When a judgment is rendered by the municipal court judge in favor of city for the sum of ten dollars (\$10) or more, exclusive of costs and disbursements, the code enforcement officer shall, at any time thereafter while the judgment is enforceable, file with the finance director a certified transcript of ~~all those entries made in the docket of the hearings officer with respect to the action in which the judgment was entered~~ the judgment. The materials filed shall include a certification by the municipal court clerk that to the best of the clerk's knowledge, the judgment remains in effect and unsatisfied.
- B. Upon receipt of this ~~transcript~~ judgment, the finance director shall enter the judgment ~~of the hearings officer in~~ on the city's lien docket.
- C. From the time of entry of the judgment in the city's lien docket, the judgment shall be a lien upon the real property of the person against whom the judgment was entered ~~in the trial~~. Except as provided in subsection D of this section, entry of the judgment in the city's lien docket shall not thereby extend the lien of the judgment more than ten (10) years from the original entry of the judgment at the hearing.
- D. Whenever a judgment of the municipal court that has been entered pursuant to this subsection is renewed ~~by the judge~~, the lien established by subsection C of this section is automatically extended ten (10) years from the date of the renewal order.
- E. ~~The finance director shall file the transcript of the judgment with the Clackamas County Clerk for entry in the judgment docket of the circuit court. All costs associated with the filing of the transcript shall be added to the amount of the judgment.~~ In addition to the lien authorized by this section, the city may use any other method authorized by law to enforce or collect judgments.

### 1.08.320 ~~Penalty—Payment due when~~ Payment of penalty

### 1.08.330 ~~Delinquent civil penalties~~ Use of state courts.

~~Delinquent civil penalties and those imposed by default judgment which were assessed for violations may, in addition to any other method, be collected or enforced pursuant to Oregon Revised Statutes 30.310.~~ The city may use any method of collecting penalties authorized by law, including actions in state court authorized by statute, including any proceeding authorized in ORS Chapter 30.

## ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 1.08 SHORT-FORM COMPLAINT AND CITATION METHOD AND CODE ENFORCEMENT PROCEDURES.**

**WHEREAS**, the City is preparing a republication of its Municipal Code incorporating all general ordinances; and

**WHEREAS**, it includes general provisions for the short-form complaint and citation and code enforcement procedures originally adopted by Ordinance 1659 on July 19, 1989; and

**WHEREAS**, this chapter authorizes the use of a short-form uniform complaint and citation in certain cases by certain city employees and describes the content of the form; and

**WHEREAS**, this chapter describes the procedures for the use of complainant, court, or defendant; and

**WHEREAS**, it has been determined certain sections of Ordinance 1659 have become obsolete or are otherwise outdated; and

**WHEREAS**, all other sections of Chapter 1.08 remain as written;

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

Section 1. Section 1.08.040, Use of language, is deleted.

Section 2. Section 1.08.120, Immediate remedial action required when, is amended to read as follows:

1.08.120      Immediate remedial action.

Section 3. 1.08.130 Remedial action by city – Costs, is amended to read as follows:

1.08.130      Remedial action by city – Costs.

- A. When a code enforcement officer requires immediate remedial action to address an alleged violation and gives or attempts to give notice as provided in Section 1.08.020, the City Manager or designee shall decide whether there is a danger to the public health, safety, or welfare. If the city manager or designee finds such a danger, the city may remedy the violation and may charge the cost of remediation to the defendant.
- B. In remedying the violation, the City may enter into private property only after obtaining consent of the owner or other person in charge of the property or pursuant to a warrant. The Municipal Court may issue a warrant to enter private property and remedy a violation only if the Municipal Court determines (1) that City Manager or designee has

reasonably determined that there is a danger to the public health, safety, or welfare, (2) that the code enforcement officer provided or attempted to provide notice under Section 1.08.120, (3) that if notice was provided, the property owner or other responsible person has refused or failed to remedy the violation within a reasonable amount of time, given the nature of the violation, and (4) that the City has the ability to remedy the violation.

Section 4. 1.08.190, Use of citation, is amended to read as follows:

1.08.190      Use of citation.

A citation conforming to the requirements of this chapter may be used by employees of the following departments: the city's fire protection provider, the police department, and code enforcement.

Section 5. Section 1.08.250, Hearing request or waiver – Payment of bail, is amended to read as follows:

1.08.250      Hearing request or waiver – Payment of bail.

- B. In any case, the court may direct that a hearing be held; otherwise, the court may enter the appropriate judgment, impose a civil penalty, direct that the civil penalty be paid out of the bail deposited by the defendant, and remit to the defendant any amount by which the bail exceeds the civil penalty. No sentence to jail may be imposed, or civil penalty imposed in excess of the bail deposited by the defendant, unless a hearing is held.

Section 6. Section 1.08.250, Civil penalty -- Assessment of fees, is amended to read as follows:

1.08.250      Civil penalty – Assessment of fees.

- A. Upon a finding that the violation was committed by the defendant, the Court:
- A.5 Shall assess a fee of fifty dollars (\$50), to be used for costs of code enforcement and monitoring. The city may use such proceeds for the abatement of violations when those responsible for the violation do not pay the full costs of abatement.
- B. Upon receipt of proof of abatement by the defendant, the court may reduce any penalty or fee assessed under this section by up to one-half of the original amount.

Section 7. Section 1.07.265, Subsequent hearing, is added as follows:

1.08.265      Subsequent hearing.

If at the subsequent hearing the court determines that the defendant has not abated nor made reasonable attempts to abate the violation, the court may authorize the city to enter defendant's property and to abate the violation, if possible. If the City abates the violation, a further hearing shall be set at which the court shall order the defendant to pay the costs reasonably incurred by the city in abating the violation.

Section 8. Section 1.08.280, Enforcement – Rules and regulations, is amended to read as follows:

1.08.280      Enforcement – Rules and regulations.

The municipal court judge is authorized to promulgate any procedural rules the judge considers necessary to enforce this chapter and to punish for contempt of court.

Section 9. Section 1.08.300, Lien filing and docketing, is amended to read as follows:

1.08.300      Lien filing and docketing.

- A. When a judgment is rendered by the Municipal Court Judge in favor of City for the sum of ten dollars (\$10) or more, exclusive of costs and disbursements, the code enforcement officer shall, at any time thereafter while the judgment is enforceable, file with the finance director a certified transcript of the judgment. The materials filed shall include a certification by the Municipal Court Clerk that to the best of the Clerk's knowledge, the judgment remains in effect and unsatisfied.
- B. Upon receipt of this judgment, the Finance Director shall enter the judgment on the City's lien docket.
- C. From the time of entry of the judgment in the City's lien docket, the judgment shall be a lien upon the real property of the person against whom the judgment was entered. Except as provided in subsection D of this section, entry of the judgment in the City's lien docket shall not thereby extend the lien of the judgment more than ten (10) years from the original entry of the judgment at the hearing.
- D. Whenever a judgment of the Municipal Court that has been entered pursuant to this subsection is renewed, the lien established by subsection C of this section is automatically extended ten (10) years from the date of the renewal order.
- E. In addition to the lien authorized by this section, the City may use any other method authorized by law to enforce or collect judgments.

Section 10. Section 1.08.320, Penalty – Payment due when, is amended to read as follows:

1.08.320      Payment of penalty.

Section 11. 1.08.330, Delinquent civil penalties, is amended to read as follows:

1.08.330      Use of state courts.

The city may use any method of collecting penalties authorized by law, including actions by statute, including any proceeding authorized in ORS Chapter 30.

Section 12. All other sections of Chapter 1.08 remain as written.

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



**To:** Mayor and City Council

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

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

**Subject:** Three-Party Grant Agreement (with ODOT and Metro) Regarding  
MTIP-Funded Planning Phase for Kellogg-for-Coho Initiative

**Date:** March 20 for April 7, 2009 Regular Session

### **Action Requested**

Approve resolution authorizing the City Manager to enter a three-party Inter-Governmental Agreement (IGA) with ODOT and Metro in order to carry out a planning phase of work for the Kellogg-for-Coho Initiative. Resolution also provides an appropriation in order to allow City to provide local match for the grant, as previously committed by the City.

### **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**

As described at City Council Work Session on February 3, 2009, the Kellogg-for-Coho Initiative builds on a number of years of City, County, and federal watershed planning. The primary goal of the project is restoration of fish passage and habitat improvement in the Kellogg/Mt. Scott watershed via removal of the Kellogg Lake dam/box culvert and elimination of Kellogg Lake.

The City received a federal contribution towards the project in 2007. The City received an award of \$1.055 million in regionally-allocated “flexible funds” (often referred to as “MTIP” funds because they are reflected in the Metro Transportation Improvement Program). The City committed to providing a local match of 10.27% to this allocation. Last fall, City staff began conversations with Metro to start spending some of this money as a planning phase.

The attached IGA is the result of that work and would allow the City to begin spending funds within the next month or two. 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.

The attached agreement identifies the likely cost of this phase of work as approximately \$370,000, to be funded by the MTIP grant and the City’s local match. City contribution will be in the form of \$25,000-worth of staff time (a “soft match”) and will contribute \$13,050 as an out-of-pocket “hard match.” The staff report seeks budget authority to make this payment up front, as required by the grant agreement. The \$13,050 would be transferred from the Logus Road project line-item in the Stormwater Capital and Reserve Fund, which staff is confident will not be expended. The Kellogg-for-Coho Initiative is a key element of the City’s efforts to improve water quality and is a key aspect of compliance with the City’s NPDES permit.

## **Concurrence**

Community Development staff worked with the Engineering staff on Logus Road project budgeting and contingency levels.

**Fiscal Impact**

The \$13,050 contribution will not negatively impact current project commitments.

**Work Load Impacts**

Project can be managed within existing workloads.

**Alternatives**

Delay agreement initiation to FY 2009-2010. Any project delay, however, will reduce the City's chances to compete for federal stimulus funding for this project.

**Attachments**

1. Resolution
2. Draft Grant Agreement IGA

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING EXECUTION OF A THREE-PARTY AGREEMENT WITH METRO AND THE OREGON DEPARTMENT OF TRANSPORTATION TO EXPEND LOCAL AND FEDERAL MONEY ON A PLANNING PHASE FOR THE KELLOGG-FOR-COHO INITIATIVE.**

**WHEREAS**, the City has planned to pursue the restoration Kellogg Creek through the adoption of the Downtown And Riverfront Land Use Framework Plan, participation in the U.S. Army Corps of Engineers feasibility study, and applying for regional flexible funds to support the project ; and

**WHEREAS**, the project has the potential to contribute to the recovery of several threatened salmon species, improve the aesthetic appeal of the area, increase recreational opportunities, and support redevelopment of the southern end of downtown; and

**WHEREAS**, the region, acting through Joint Policy Advisory Committee on Transportation, elected to dedicate scarce federal transportation dollars, at the City’s request, to the project; and

**WHEREAS**, the Kellogg-for-Coho Initiative is a key element of the City’s efforts to improve water quality and mitigate stormwater run-off impacts; and

**WHEREAS**, the City is prepared to initiate a planning phase of work to fully-define the project and select the best approach to restoring fish passage.

**NOW, THEREFORE, BE IT RESOLVED** that the Council authorizes the City Manager to sign an Inter-Governmental Agreement with ODOT and Metro to establish a planning phase of work, to be funded primarily by the regional flexible fund award.

**BE IF FURTHER RESOLVED** that the Council provides appropriation authority for the expenditure of \$13,050 on the project. The appropriation authority is to be transferred from the Logus Road Improvement project funding within the Stormwater Capital and Reserve Fund (Fund 580).

Introduced and adopted by the City Council on April 7, 2009.

This resolution is effective immediately.

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

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

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

## INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT is made and entered into by and between **THE STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "**ODOT**"; the **City of Milwaukie** acting by and through its **Council**, hereinafter referred to as "**Agency**" and the Portland Urbanized Area Metropolitan Planning Organization, hereinafter referred to as "**METRO**".

### RECITALS

1. By the authority granted in ORS 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. **METRO**, an independent public agency not in the employ of **ODOT**, is the designated Metropolitan Planning Organization for the Portland Urbanized Area.
3. **ODOT** considers **METRO** to be the sub-recipient to any federal funds identified in this Agreement. **ODOT** will make available the federal funds identified in the Agreement on behalf of **METRO** to the **Agency** for the Project identified in "Exhibit A" on a reimbursement basis.
4. **METRO** and **Agency** desire to enter into this Agreement for their mutual benefit of developing a project for the Metropolitan Transportation Improvement Program (MTIP). The MTIP schedules spending of federal transportation funds in coordination with significant state and local funds in the Portland metro region. It demonstrates how these projects relate to federal regulations regarding project eligibility, air quality impacts, environment justice and public involvement.
5. **ODOT**, as the state agency responsible for pass-through Federal-Aid Surface Transportation Funds, is therefore a party to this Agreement.

**NOW THEREFORE**, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

### TERMS OF AGREEMENT

1. The purpose of this Agreement is to enable **METRO**, through **Agency**, to plan for the restoration of fish passage to Kellogg Creek hereinafter referred to as "Project", as described in Exhibit A (scope, schedule and budget summary) attached hereto and by this reference made a part hereof.
2. The Project shall be conducted as a part of the Federal-Aid Urban Surface Transportation Program (STP), Title 23, United States Code, CFDA No. 20.205. The total Project cost is estimated at **\$370,424**. Federal Urban STP funds for this Project

Key No.

shall be limited to **\$332,350**. **Agency** shall be responsible for all matching funds and non-participating costs. The local match is \$38,074. **Agency** shall provide \$25,000 of project match in the form of in-kind contribution (staff time). This \$25,000 is included in the Anticipated Budget described in Exhibit A. **Agency** shall document such hours and provide documentation to **METRO** as provided for under **Agency** Obligations below.

3. **Agency** shall make all payments for Project at 100 percent. **ODOT** shall reimburse **Agency** invoices at the pro-rated federal share. All costs beyond the federal reimbursement and any non-participating costs will be the responsibility of the **Agency**. **Metro** shall perform work in the estimated amount of **\$5,015**. **Metro** shall send monthly invoices to **Agency's** Project Manager. **Agency** agrees to the federal reimbursement to **Metro** and for the reimbursement of **Agency's** matching portion of the actual amount expended. **ODOT** shall be performing work on the Project in a federal funding oversight role as well as reviewing impacts on **ODOT's** facility. These reviews and oversight tasks will be performed by **ODOT** at Project expense. The estimate of **ODOT** expenses is **\$15,000**. **ODOT** shall send monthly statements to **Agency's** Project Manager. **Agency** understands that **ODOT's** costs are estimates only and agrees to the federal reimbursement to **ODOT** and for the reimbursement of **Agency's** matching portion of the actual amount expended by **ODOT**.
4. The terms of this Agreement shall begin on the date all required signatures are obtained and FHWA approval has been given and shall terminate on completion of the Project and final payment or two calendar years following the date of the notice to proceed, whichever is sooner. This Agreement may be amended upon mutual consent of all parties.
5. The federal funding for this Project is contingent upon approval by the FHWA. Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at **Agency's** expense.

## **AGENCY OBLIGATIONS**

1. **Agency** shall be responsible for the performance of its share of the work described in Exhibit A.
2. **Agency** shall present invoices and required supportive documentation regarding specific tasks and the progress on said tasks as shown in Exhibit A (i.e. monthly progress statement), for 100 percent of actual eligible costs incurred by **Agency** on behalf of the Project directly to **METRO's** project manager for review and approval. Invoices and required supportive documentation shall be presented for periods of not less than one-month duration, based on actual eligible expenses incurred. Invoices shall display 100% of total eligible expenses incurred during the period of the invoice, and identify any matching amounts if applicable. Invoices shall also

display a categorical breakdown of costs, such as personnel costs (salary and benefits), other direct charges, and indirect charges that are appropriate for this project. Documentation must be received by **METRO** before payment will be made, and may include copies of receipts for expenditures or system-generated accounting reports that document actual expenses incurred. **Agency** shall be responsible for all matching funds and all non-participating costs.

- a. Eligible project expenses are those deemed allowable by OMB Circular A-87.
  - b. In the event the invoice is not approved, **METRO** shall request corrective action be taken and accomplished prior to approval of the invoice. The invoice shall be resubmitted with documentation supporting completion of the corrective action.
3. **Agency** shall keep accurate cost accounting records. The cost records and accounts pertaining to the work covered by this Agreement shall be retained by **Agency** for a period of three (3) years following final payment. Copies shall be made available upon request to either **METRO** or **ODOT**. **METRO** and **ODOT** may request a copy of **Agency's** records pertaining to this Project at any time. When the actual total cost of the Project has been computed, **Agency** shall furnish **METRO** with an itemized statement of final costs.
4. If the **Agency** engages a personal services contractor(s) to accomplish any work described in Exhibit A, the **Agency** shall:
- a. Select personal services contractor(s) in accordance with **ODOT** and federal procedures (ODOT contractor services will provide technical support to advise **Agency** on selection process on request);
  - b. Ensure that personal services contractors comply with all applicable federal laws, regulations, rules, policies and procedures pertinent to this agreement
  - c. Provide **METRO's** Project Manager with the opportunity to review and approve contractor's work, billings, and progress reports prior to approval by ODOT.
5. **Agency** shall reimburse **METRO** directly for invoiced reimbursement of eligible costs incurred in accordance with the Scope of Work, Exhibit A, and Budget, Exhibit B. Agency shall seek reimbursement from **ODOT** for these expenses via monthly reimbursement requests through **METRO**.
6. **Agency's** project manager is Alex Campbell. Mailing address: City of Milwaukie / 6101 SE Johnson Creek Boulevard / Milwaukie, OR 97206. Phone number: (503) 786-7608.

## METRO OBLIGATIONS

1. **METRO** shall be responsible for the performance of its share of the work described in Exhibit A.
2. In consideration for the services performed as shown on Exhibit A, **METRO** agrees to authorize **ODOT** to make available on **METRO's** behalf, an amount not to exceed **\$332,350** in **METRO's** Federal Urban STP funds. **Agency** shall be responsible for all matching funds and non-participating costs.
3. **METRO** certifies, at the time this Agreement is executed, that sufficient funds from **METRO's** Federal Urban STP allocation are available and authorized for expenditure to finance costs of the Project. **METRO** shall ensure inclusion of the Project in the MTIP using STIP number 15598. If there is an amendment to the MTIP regarding the Project outlined in "Exhibit A", the ODOT Project Manager shall be informed of the change, and an amendment to the STIP and this Agreement shall be made as needed.
4. **METRO** shall submit monthly invoices to **Agency** for reimbursement of eligible costs incurred in accordance with the Scope of Work, Exhibit A, and Budget, Exhibit B.
5. **METRO** shall submit to **ODOT** monthly cost reports, reimbursement requests and/or **Agency** invoices that have been approved by **METRO** for payment by **ODOT**. **METRO** shall also provide **ODOT** quarterly progress reports regarding specific tasks and the progress on said tasks.
6. **METRO** shall keep accurate cost accounting records. The cost records and accounts pertaining to the work covered by this Agreement shall be retained by **METRO** for a period of three (3) years following final payment. Copies shall be made available upon request. ODOT may request a copy of **METRO's** records pertaining to this Project at any time. When the actual total cost of the Project has been computed, **METRO** shall furnish **ODOT** with an itemized statement of final costs.
7. **METRO's** project manager for this Agreement is Ted Leybold, 600 NE Grand Ave., Portland, OR 97232-2736, (503) 797-1759.

## ODOT OBLIGATIONS

1. **ODOT** shall be responsible for the performance of its share of the work described in accordance with the Scope of Work, Exhibit A, and Budget, Exhibit B.
2. Upon receipt of monthly reimbursement requests from **METRO**, and invoices and supporting documentation approved by **METRO** for **Agency**, **ODOT** shall review for approval and make payment to **Agency** for eligible costs reviewed and approved by **METRO**.

3. **ODOT** has no monetary obligation under this Agreement other than in its role as a “pass-through agency” to distribute Urban STP funds on behalf of **METRO** for the Project outlined in “Exhibit A”.
4. **ODOT’s** project manager for this Agreement is Thomas Weatherford of the **ODOT** Region 1 Planning Section, 123 SW Flanders, Portland, OR 97209, or by phone at (503) 731-8238.

## GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of all parties.
2. **ODOT** may terminate this Agreement effective upon delivery of written notice to **METRO** and **Agency**, or at such later date as may be established by **ODOT**, under any of the following conditions:
  - a. If **METRO** and/or **Agency** fails to provide services called for by this Agreement and as further outlined in Exhibit A within the time specified herein or any extension thereof.
  - b. If **METRO** and/or **Agency** fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from **ODOT** fails to correct such failures within 10 days or such longer period as **ODOT** may authorize.
  - c. If **ODOT** fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the Agreement.
  - d. If Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if **ODOT** is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
4. **METRO** and **Agency** agree to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270, which hereby are incorporated by reference. Without limiting the generality of the foregoing, **METRO** and **Agency** expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

5. **METRO** and **Agency** shall perform the service under this Agreement as independent contractors and shall be exclusively responsible for all costs and expenses related to their employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
6. All employers, including **METRO** and **Agency**, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. **METRO** and **Agency** shall ensure that each of its subcontractors complies with these requirements.
7. **METRO** and **Agency** acknowledge and agree that **ODOT**, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of **METRO** and **Agency** which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by **ODOT**.
8. As federal funds are involved in this Agreement, EXHIBITS B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by **METRO** representative. **Agency** also certifies to any provisions of Exhibit B and C which are applicable to its situation as a sub-sub recipient of federal funds.
9. All parties shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless each other, their officers and employees from any and all claims, suits, and liabilities which may occur in their respective performance of this Project.
10. Notwithstanding the foregoing defense obligations under paragraph 10 above, no party nor any attorney engaged by any party shall defend any claim in the name of the other parties or any agency/department/division of such other parties, nor purport to act as legal representative of the other party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other parties. Each party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other parties are prohibited from defending it, or that other party is not adequately defending it's interests, or that an important governmental principle is at issue or that it is in the best interests of the parties to do so. Each party reserves all rights to pursue any claims it may have against the other if it elects to assume its own defense.
11. **METRO** and **Agency** as a recipient of federal funds, pursuant to this Agreement with **ODOT**, shall assume sole liability for their organization's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon **METRO** and **Agency's** breach of any such conditions that

requires **ODOT** to return funds to the Federal Highway Administration, hold harmless and indemnify **ODOT** for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of **METRO** and **Agency**, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

12. This Agreement may be executed in several counterparts [facsimile or otherwise] all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

13. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of **ODOT** to enforce any provision of this Agreement shall not constitute a waiver by **ODOT** of that or any other provision.

**IN WITNESS WHEREOF**, the parties hereto have set their hands as of the day and year hereinafter written.

This Project is in the 2006-2009 Statewide Transportation Improvement Program that was approved by the Oregon Transportation Commission on August 17, 2005.

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

On April 12, 2004, the Director approved Subdelegation Order No. 10 in which the Director delegates authority to the Division Administrator, Transportation Development to approve and execute personal service contracts and agreements over \$75,000 for programs within the Transportation Development Division when the work is related to a project included in the STIP or in other system plans approved by the Oregon Transportation Commission or in a line item in the legislatively adopted biennial budget and;

To approve and execute all agreements, approved by the OTC, for Metropolitan Planning Organization agreements outside the Transportation Program Development limitation and acceptance of funds sent to ODOT, but not earmarked for Transportation Program Development.

METRO/ /ODOT  
Agreement No.

Portland Urbanized Area Metropolitan  
Planning Organization

By \_\_\_\_\_

Date\_\_\_\_\_

By \_\_\_\_\_

Date\_\_\_\_\_

**Approved for Legal Sufficiency**

By \_\_\_\_\_

Date\_\_\_\_\_

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

By \_\_\_\_\_

Division Administrator for the Transportation  
Development Division

Date\_\_\_\_\_

**Approval Recommended**

By \_\_\_\_\_

Region Manager, Region 1

Date\_\_\_\_\_

**Approved for Legal Sufficiency**

By \_\_\_\_\_

Assistant Attorney General

Date\_\_\_\_\_

# EXHIBIT A

## EXHIBIT A: SCOPE OF WORK

**TITLE:** OR 99-E BRIDGE AT KELLOGG LAKE (Planning Phase)

### BACKGROUND/HISTORY

Kellogg Lake and the mouth of Kellogg Creek lie immediately south of downtown Milwaukie. A box culvert beneath the OR 99-E bridge over Kellogg Creek impounds Kellogg Lake, just above the confluence with the Willamette River. A fish ladder was constructed in the 1990s in an attempt to restore fish passage. However, the culvert and fish ladder structure remain a significant temporal barrier to fish passage. As such, the culvert was identified as the critical barrier to restoration of the Kellogg/Mt. Scott Creek salmon populations (Harza 2001). The culvert is an integral element of the OR 99-E bridge over Kellogg Creek and protects the main central support of the bridge. The 4-lane OR 99-E bridge is directly above the culvert. A secondary 2-lane bridge, which provides access for the Kellogg Wastewater Treatment Plant, spans Kellogg Creek immediately downstream and shares the same abutments as the OR 99-E bridge.

### PROJECT FOCUS

- Select fish passage restoration approach. (Requires significant work to establish reasonable level of confidence cost estimates.)
- Vet approach with experts, the public, and regulatory authorities.
- Scope/ identify key issues for PE and permitting.
- Write project prospectus, including selection of NEPA approach.

### PROJECT OBJECTIVES

(1) Primary goal of the project is restoration of fish habitat and passage at the mouth of Kellogg Creek. Fish passage restoration success is defined in terms of restoring passage for state- and federally-listed endangered fish species. Restored passage will be achieved by (a) either removing or otherwise circumventing the temporal fish passage barrier constituted by the existing box culvert and sub-optimal fish ladder underneath the OR-99E bridge over Kellogg Lake; and (b) allowing the drainage of Kellogg Lake, itself a fish passage barrier for salmonids due to high temperatures. Restoration goal includes the establishment of rearing and refuge habitat in the current lake area.

(2) 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.

## EXHIBIT A

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

### *Possible Approaches to Restoration of Fish Passage:*

- (1) Removal and reconstruction of the bridge/bridges. This approach would entail removal of the box culvert and allow the establishment of a ramped naturalized fishway channel.
- (2) Retrofit. Establishment of a new channel that would provide similar fish passage function to a naturalized channel and allow drainage of the lake. Any retrofit must, of course, preserve the structural integrity stability of the existing bridges and footings.

### *Stream channel restoration:*

An integral component of the project will be restoration of a stream channel within the existing lake bed. Restoration plan will include the establishment of cool-water pools to provide rearing and refuge habitat for Spring Chinook and Coho salmon.

### *Key time-frames*

- Background research and cost-estimating necessary to reach a conclusion on fish passage approach is expected to take 60-90 days.
- Transportation planning is expected to last 30-60 days and would commence after fish passage approach selection.
- Restoration planning is expected to span 90 – 120 days, but could commence prior to selection of passage approach.
- ODOT prospectus work is expected to run 30-60 days.
- NEPA and environmental planning is expected to span 30-60 days.
- Goal for substantial completion of project work is October 2009.

## STATEMENT OF WORK

### **Task 1: Project Management**

#### **OBJECTIVE:**

**Ensure the selected alternative has been properly vetted by key stakeholders and technical experts.**

#### **SUBTASKS:**

1. Agency shall provide the following:
  - a. Lead agency

## EXHIBIT A

- b. Provide U.S. Army Corps of Engineers feasibility study files and documents
  - c. Review work product of contracted services
  - d. Convene Technical Advisory Committee (TAC)
  - e. Public outreach and stakeholder communications
  - f. Coordination and information-sharing with other relevant planning projects such as City of Milwaukie South Downtown planning; P2M LRT (Metro/TriMet); Clackamas Water Environmental Services (WES) Watershed Management Plan; and ODFW Draft ESA Recovery plan
2. Contractor shall provide the following:
    - a. Strategic consultation with City staff regarding overall project
    - b. Technical support, including assistance with drafting agendas, and attendance at TAC meetings
  3. ODOT shall provide the following:
    - a. Act as Federal Highway Administration representative
    - b. Assist with bid/contractor selection
    - c. Provide representative(s) to TAC
  4. Metro shall provide the following
    - a. Contract management oversight, ensuring delivery of scope, schedule and budget
    - b. Approval of agency and contractor billings for reimbursement of project expenses
    - c. Submission of project reporting to Federal Highway Administration

### **DELIVERABLES:**

TAC membership list and minimum of 3 TAC meetings

(Agency administrative coordination with Contractor technical support)

Participation in TAC discussions

(All)

Purpose and Need statement, including study area definition

(Agency with Contractor support and input from TAC/ODOT/FHWA)

### **Task 2: Fish Passage Approach Selection**

## EXHIBIT A

### OBJECTIVE:

**Development of sufficient technical information to select a project approach.  
Definition of approach and issues  
sufficient to complete ODOT  
Prospectus.**

### SUBTASKS:

1. Agency shall provide the following:
  - a. Select an alternative approach
2. Contractor shall provide the following:
  - a. Initial feasibility review for passage and constructability.
    - i. Requires review of 2003 Cornforth/ ACE Geotech study.
    - ii. May require some additional field investigation
    - iii. Include consideration of in-water work requirements/ schedules
  - b. Design sufficient to generate cost estimate with contingency of 35-40% range.
    - i. Requires sufficient H&H to develop scour/erosion/flow models (data available in initial ACE studies)
    - ii. Requires some preliminary construction phasing definition
    - iii. Requires consultation with ODOT regarding structural, geometric, and traffic sufficiency of proposed solutions
    - iv. Requires consideration of future access needs on west side of OR 99-E
    - iv. Requires review of sediment evaluation and preliminary consultations with DEQ on likely sediment stabilization approach
    - v. Requires consultation with fish and wildlife agencies regarding needed bridge span width
    - vi. Requires inclusion of additional costs necessary to allow construction of a pedestrian under-crossing
  - c. Selection. Contractor will assist in technical review of alternatives against selection criteria, which will be weighted heavily toward financial feasibility and ESA benefit, but will include consideration of compatibility of approach with secondary goals. Review/evaluation will require consultation with NMFS, ODFW and other relevant agencies regarding sufficiency of fish passage.
3. ODOT shall provide the following:
  - a. Provide input on alternative selection
  - b. Provide structural, geometric, and traffic sufficiency requirements for a bridge retro-fit alternative

### DELIVERABLES:

## EXHIBIT A

Memo on constructability/feasibility of alternative approaches.

(Contractor)

Memo commenting on structural geometric, and traffic sufficiency requirements for retro-fit approach (ODOT)

Memo on fish passage benefits of alternative approaches.

(Contractor)

Planning level cost estimate of alternative approaches.

(Contractor)

Alternative selection

(Agency)

### **Task 3: Bridge/Roadway Transportation Planning**

#### **OBJECTIVE:**

**Development of conceptual roadway planning for a replacement bridge (as necessary, per alternative selection above).**

#### **SUBTASKS:**

1. Agency shall provide the following:
  - a. Provide local agency input regarding TSP plans, Riverfront Park plans, etc.
2. Contractor shall provide the following:
  - a. Work with ODOT highway staff on replacement requirements, including bike/ped infrastructure
  - b. Coordinate with Riverfront Park access planning
  - c. Develop possible detour options
3. ODOT shall provide the following:
  - a. Actively participate in design-level discussions
  - b. Provide formal comment on any proposed changes to access or key configurations
4. Metro shall provide the following:
  - a. Actively participate in design level discussions at request of Agency

#### **DELIVERABLES:**

Conceptual circulation plan, including primary bike/ped connections, for study area.

(Contractor)

## EXHIBIT A

### **Task 4: Restoration Design**

#### **OBJECTIVE:**

**Develop conceptual design of restored stream channel.**

#### **SUBTASKS:**

1. Agency shall provide the following:
  - a. Provide input, in particular, on trail placement and integration with adjacent uses
  - b. Provide data on size and location of known City of Milwaukie stormwater system outfalls
2. Contractor shall provide the following:
  - a. Survey existing lake bed
  - b. Map existing lake bed
  - c. Design plan, profile, and cross-sections of restored stream
  - d. Design naturalized stream channel connection to confluence/mouth
  - e. Definition of Project Boundaries; edge constraints, and flow diversion plan
  - f. Selection of active channel width (based on hydrology, cost constraints), stream channel location and likely pool locations
  - g. Development of planting approach
  - h. Development of planning level cost estimate
  - i. Review of survey information developed by US Army Corps and supplementation as necessary
  - j. Develop railroad trestle protection/reinforcement plan
  - k. Develop stormwater outfall mitigation/pre-treatment approach
  - l. Develop preliminary design alternatives for integration with and access to land uses to south and north of lake and possible trail placements
  - m. Develop proposed approach for pedestrian crossing of creek

#### **DELIVERABLES:**

Concept-level environmental lake-bed restoration design.

(Contractor)

Definition of key mitigation issues and possible solutions, including stormwater and railroad trestle protection. (Contractor)

Rendered drawing of restored creek with proposed bridge, restoration treatments and pedestrian paths (Contractor)

### **Task 5: ODOT Prospectus and Check List**

## EXHIBIT A

### OBJECTIVE:

**Complete a draft ODOT prospectus and environmental check list.**

### SUBTASKS:

1. Agency shall provide the following:
  - a. Provide narratives for Prospectus form itself
  - b. Review technical information and check-list
  - c. Assist with collection of relevant documents developed by other federally-funded projects, such as wetlands deliniation, potential cultural resource surveys, etc.
2. Contractor shall provide the following:
  - a. With City assistance, complete Prospectus form
  - b. Fill out Prospectus checklist and document relevant facts
3. ODOT shall provide the following:
  - a. Provide review of draft Prospectus
  - b. Formally review completed Prospectus

### DELIVERABLES:

Review draft prospectus  
(ODOT)

ODOT Prospectus & Checklist, with documentation  
(Contractor)

### **Task 6: Pre-Planning for Permitting & NEPA Processes**

### OBJECTIVE:

**Develop plan for permitting process; evaluate and select proper level of NEPA compliance.**

### SUBTASKS:

1. Agency shall provide the following:
  - a. Provide input on land use, 4(f), socio-economic, and transportation context and potential effects
  - b. Convene and facilitate pre-permitting discussions
2. Contractor shall provide the following:
  - a. Explore feasibility of pursuing environmental permitting under a Nationwide 404 permit and/or a SLOPES process.
  - b. Identify key issues to be resolved to allow moving forward under such a scenario, including key elements to be covered by any necessary BA, including, in particular, stormwater issues.
  - c. Include consideration of possible trail placement and treatments

## EXHIBIT A

- d. Consult with ODOT/FHWA regarding Environmental Assessment or Categorical Exclusion processes
3. ODOT shall provide the following:
  - a. Review agenda for pre-permitting discussions
  - b. Participate in inter-agency consultations
  - c. Make ODOT environmental staff available for informal background discussions
  - d. Provide FHWA and/or agency input on NEPA process selection

### **DELIVERABLES:**

Consultation meeting summaries

(Contractor)

Recommended federal permitting & NEPA process

(Contractor)

### **Task 7: Assessment Methodology**

#### **OBJECTIVE:**

**Establish criteria by which to evaluate project success.**

#### **SUBTASKS:**

1. Agency shall provide the following:
  - a. Provide input on City/project capacity for on-going monitoring
  - b. Assist with collection of pre-existing data
2. Contractor shall provide the following:
  - a. Develop matrix of key indicators for tracking project success

### **DELIVERABLES:**

Project success matrix

(Contractor)

### **Task 8: Other**

#### **OBJECTIVE:**

**Carry out tasks to maximize project opportunity for success and positive community impact.**

#### **SUBTASKS:**

1. Agency shall provide the following:
  - a. Oral history project

## EXHIBIT A

- b. Development of public education project component
- c. Finance plan refinement
- d. On-going public involvement

### **DELIVERABLES:**

Oral history report

(Agency)

Public education plan

(Agency)

Finance plan

(Agency)

## EXHIBIT A

### EXHIBIT B: ANTICIPATED BUDGET

#	task	Total Hours	Agency	ODOT	Consultant	Metro	Total
1	Project management and coordination	465	\$9,911	\$1,500	\$37,000	\$4,250	\$52,661
2	Fish Passage Approach Selection	990	\$4,515	\$7,500	\$95,500	\$0	\$107,515
3	Bridge/Roadway Transportation Planning	239	\$2,000	\$3,750	\$18,400	\$765	\$24,915
4	Restoration Design	625	\$675	\$2,250	\$69,800	\$0	\$72,725
5	ODOT Prospectus & Check-list	271	\$675	\$1,200	\$29,400	\$0	\$31,275
6	Pre-Planning for Permitting/NEPA Process	270	\$1,125	\$1,125	\$31,300	\$0	\$33,550
7	Assessment Methodology	35	\$225	\$0	\$3,300	\$0	\$3,525
8	Other (PI, fin plan, oral hist)	230	\$7,258	\$0	\$0	\$0	\$7,258
	<b>Total hours</b>	3,125	\$26,384	\$17,325	\$284,700	\$5,015	\$333,424
	<b>Total Personnel Cost</b>	-	\$0	\$0	\$0	\$0	\$333,424
	<b>Printing</b>						\$7,000
	<b>Travel</b>						\$0
	<b>Computer</b>						\$0
	<b>Total Materials &amp; Services Cost</b>						\$7,000
	<b>Contingency</b>						\$30,000
	<b>Grand Total</b>						\$370,424

METRO/ /ODOT  
Agreement No.

For purposes of Exhibits B and C, references to Department shall mean ODOT, references to Contractor shall mean Agency and references to Contract shall mean Agreement.

**EXHIBIT B  
CONTRACTOR CERTIFICATION**

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

**DEPARTMENT OFFICIAL CERTIFICATION**

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

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**EXHIBIT C**

Federal Provisions  
Oregon Department of Transportation

**CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION**

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

**EXCEPTIONS:**

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

**II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS**

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400)

to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a

participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

### III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

#### **Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

##### Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction",

"participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a

prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

**IV. EMPLOYMENT**

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without

liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

#### V. NONDISCRIMINATION

During the performance of this Contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of

subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.

2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:
  - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
  5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
    - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
    - b. Cancellation, termination or suspension of the agreement in whole or in part.
  6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of

Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

#### VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

##### **DBE POLICY STATEMENT**

**DBE Policy.** It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

**Required Statement For USDOT Financial Assistance Agreement.** If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

**DBE Obligations.** The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such

contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Department deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Contract.

**Records and Reports.** Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

**DBE Definition.** Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

**CONTRACTOR'S DBE CONTRACT GOAL**

**DBE GOAL**   0   %

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING  
DEPARTMENT'S DBE PROGRAM  
REQUIREMENT CONTACT OFFICE  
OF CIVIL RIGHTS AT (503)986-4354.