

REGULAR SESSION

AGENDA

MILWAUKIE CITY COUNCIL NOVEMBER 3, 2009

MILWAUKIE CITY HALL

10722 SE Main Street

2064th MEETING

REGULAR SESSION – 7:00 p.m.

- | | Page # |
|---|--------|
| 1. CALL TO ORDER
Pledge of Allegiance | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | 1 |
| A. Third Preliminary Engineering Update on Light Rail
Presenter: Wendy Hemmen, Light Rail Design Coordinator | 2 |
| 3. CONSENT AGENDA <i>(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)</i> | 16 |
| A. City Council Minutes of September 1, 2009 Regular Session | 17 |
| B. A Resolution Affirming the Appointment of Ledding Library Board Member Mark Docken to Serve as the City of Milwaukie's Representative on the Clackamas County Library District Advisory Board | 28 |
| C. A Resolution Appointing Don Wiley to the Public Safety Advisory Board as the Linwood Neighborhood Association Representative | 29 |
| D. Resolution Authorizing an Agreement between the City of Milwaukie and Clackamas River Water for Vehicle Maintenance | 30 |
| E. OLCC Application for Mustafa, Inc., 4140 SE Harrison Street, Change of Ownership | 40 |
| 4. AUDIENCE PARTICIPATION <i>(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)</i> | |

- 5. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*
 - A. **None Scheduled**
- 6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)* **41**
 - A. **Supplemental Budget – Resolution** **42**
Presenter: Ignacio Palacios, Finance Director
 - B. **Clackamas County Community Covenant – Resolution**
Presenter: Mike Swanson, City Manager
 - C. **Council Reports**

7. **INFORMATION**

8. **ADJOURNMENT**

Public Information

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

2.

PROCLAMATIONS,
COMMENDATIONS,
SPECIAL REPORTS,
AND AWARDS



To: Mayor and City Council

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

From: Wendy Hemmen, Light Rail Design Coordinator

Subject: Third Preliminary Engineering Update on Light Rail

Date: October 23 for the November 3, 2009 Meeting

Action Requested

None. This is an informational update on progress and issues related to Preliminary Engineering on the light rail project in the City of Milwaukie.

History of Prior Actions and Discussions

May 5, 2008 – Third Preliminary Engineering Update to the City Council, a no action update of project status.

2007- 2008 - Various actions and discussions related to the South Corridor Phase 2 Light Rail Project, also called Portland-to-Milwaukie Light Rail, including adoption of a locally preferred alternative and an Umbrella Agreement with TriMet regarding transit improvements and expectations in the City of Milwaukie over the next ten years.

Background

On March 31, 2009, Federal Transit Administration (FTA) granted approval of Preliminary Engineering for the Portland-Milwaukie Light Rail Project. Because of the FTA's lengthy approval process, TriMet has ramped up efforts to complete the PE in less time than originally planned. PE was 15% complete in July 2009, will be 25% by

November 2009 and 30% by February 2010. Engineering consultants, surveyors, biologists, and architects have continued to develop preliminary engineering plans for the Locally Preferred Alternative (LPA) as last depicted in the August 3, 2009 plan set (15%). Review comments by local and state jurisdictions from the 15% plan set and continued design efforts are moving the project to 25% completion.

The SDEIS was completed May 2008. The FEIS work has begun and will be completed during PE, as the plan set reaches 30% completion. The draft FEIS will be out the first part of November for review by local agencies. The FEIS must be complete and accepted by the FTA in April 2010 for the FTA to issue a Record of Decision (ROD) which will allow the project to progress to additional phases.

The consultants working on the Final Environmental Impact Statement (FEIS) for Metro and TriMet have been given the 15% plan set to work from. These consultants have an initial draft FEIS. Various environmental studies include traffic, ecological, noise, vibration, visual, economic, historic, archaeological, cultural, acquisitions and displacements, community impacts, parks and recreation, geological, water quality and hydrology, air quality, energy, hazardous materials, utilities, public services, and safety and security. Milwaukie has just received the initial material regarding traffic from TriMet and will begin reviewing the data. The material will be divided amongst staff.

The Willamette River Crossing continues to advance in the design, the bridge type is set, the width is set, and major design elements have been selected. Lighting, architectural detailing, user zone delineation concepts continue to be reviewed and selected. The East Side Portland Streetcar project was approved for funding and the designs are being done to integrate with the Portland-to-Milwaukie Light Rail because streetcar will use the same crossing and tracks as the LRT on the new bridge.

The Steering Committee is scheduled to meet December 1st. The Project Management Group (PMG) continues to meet and make project decisions on a monthly basis. The Project Team Leaders (PTL) meet on a weekly basis addressing key issues and recommendations on a project wide basis. The Technical Advisory Committee (TAC) East Side meets twice a month and works through all issues on the east side making recommendations. In addition many specific issue meetings are occurring with the project team. The issues have been on both Portland and Milwaukie/Clackamas County sections.

The 15% comments have been reviewed and responded to. Outstanding issues from the 15% plan set are included in Attachment 1. Some of these include a connection from the Tacoma Station to Main Street, resolution of road crossings, utility relocations and replacements, and platform recommendation. These comments will continue to be addressed in the 25% review comments. Most comments from the 15% plan set will be

incorporated into the 25% plan set. The project is working diligently towards 25% completion, mid November. The 25% plan sets will be issued December 2 for additional review. After that, value engineering and FEIS incorporation will happen to reach 30% and completion of the preliminary engineering. There will be a new cost estimate based on the 25% plan set.

The Citizens Advisory Committee continues to meet on a monthly basis. The CAC will continue to meet on a monthly basis to raise and track concerns from each members' constituencies.

TriMet and City of Milwaukie Public Outreach is ongoing. Light rail meetings have been held where the City of Milwaukie and TriMet have presented the north Milwaukie alignment adjustments, Tacoma Station, Milwaukie Station (see attachment 2), and the Kellogg Lake/McLoughlin Boulevard structure recommendation by the PMG. Monthly community outreach meetings continue on the third Monday of each month. Other public meetings will continue to be held in or near Milwaukie as necessary. October had the Milwaukie Station workshop, Park Avenue park and ride workshop, Tacoma/Springwater Station park and ride workshop. All are listed on Milwaukie's website.

Union Pacific Rail Road (UPRR) negotiations continue to shape the location, size and design of the light rail system. The safety wall, Milwaukie Station design, track location, and crossings will adjust based on TriMet's ongoing negotiations with UPRR.

Preliminary engineering stage planning and workshops have been completed for the Tacoma/Springwater Park and Ride Station and the Park Avenue Park and Ride Station.

Traffic discussions have begun for the Johnson Creek Boulevard (JCB) corridor. Portland, Milwaukie, TriMet and, Metro are all in discussions about how to best address this road. Portland and Milwaukie will continue to work together for community solutions. The current proposal for traffic mitigation from the Tacoma park and ride is upgrades to traffic flow on JCB by signalizing the 32nd and 42nd Avenue intersections, adjusting signal timing and removing stop signs from 17th Avenue to 45th Avenue. However the final design mitigation plan for JCB is still years from being decided.

Six-foot tall Safety walls remain in the plan to intermittently separate freight trains from light rail trains from Mailwell Drive to Lake Road in downtown.

A pedestrian access route under the new light rail bridge from Milwaukie Station to Kronberg Park was an important community desire learned from various station and bridge workshops. Architectural design elements for the bridge are important to both

Milwaukie and Oak Grove residents. Design is continuing. The PMG recommendation for this structure is for 'H' columns for the Kellogg Lake structure in order to house a future pedestrian under-crossing (not in this project). This will allow Island Station residents and Kronberg Park users direct access to the Milwaukie Station and south downtown area.

The Park Avenue park and ride station has completed workshops. TriMet has taken into account what was heard at these workshops and incorporated them in to the station design. The final layout has the station platforms on the north side of Park Avenue with a side and center platforms. The Park Avenue pedestrian bridge inclusion remains unresolved.

On October 5, 2009 a workshop was held for the Milwaukie Station light rail platform and station area. Citizens wanted to honor historic Milwaukie. The issues were center or side platforms, pedestrian access to the station, and the Transit Oriented Development (TOD) site, see Attachment 3. Staff is working in the context of integrating the concepts and designs at this station and TOD site with the ideas and concepts from the South Downtown planning and pattern language. See attachment 4.

TriMet has been asked by ODOT Rail to demonstrate that High Speed Passenger Rail (HSR) is not precluded by the addition of Light Rail in the Tillamook Branch alignment. Light Rail is located to the east of the Tillamook Branch freight rail. ODOT Rail's proposal is for HSR to be located on the Tillamook Branch freight rail line. The Tillamook Branch will not be adversely affected by light rail.

TriMet's Safety & Security Committee met and discussed the following Milwaukie issues: Milwaukie Station with regard to access control and pedestrian routes, the Trolley Trail relocation by the project south of River Road and north of Park Avenue including the Park Avenue crossing, and the 21st and Adams intersection. Many more discussions are anticipated in the future that will review specific areas of concern on the entire alignment.

Milwaukie staff met with Gresham staff to discuss and learn about the access control issues regarding various Gresham stations. Staff learned about the specific applications of plazas and issues surrounding stations currently under design along the Banfield light rail lines.

Concurrence

None, as no action is requested at this time.

Fiscal Impact

None, as no action is required at this time.

Work Load Impacts

Not applicable.

Alternatives

None listed, as this is a discussion item only.

Attachments

1. 15% Comment Responses Top Issues To Be Addressed.
2. Letter to Leah Robbins, TriMet dated October 6, 2009.
3. 10/5 Meeting What We Heard.
4. Milwaukie Station Conceptual Visuals.



15% Comment Responses Top Issues To Be Addressed

COMMENT NUMBER	COMMENT DISAGREEMENT	SIGNIFICANCE OF ISSUE
646 – COM – ENG 8	Tacoma Station/Springwater trail connection to Main Street has been challenged.	City has identified this as a key connection for N. Main industrial area and bikes. TM response says no MUP connection.
562 – COM – OPS 5 659 – COM – ENG 21 663 – COM – ENG 25	Road crossings are yet to be resolved, full widths, road sections, sidewalks, etc.	Needs resolution. In meetings we have been getting push back to COM's standards and r/w.
653 – COM – ENG 15 655 – COM – ENG 17	Monroe quad gates unresolved	Says under review with COM & UPRR/ODOT Rail
623 – COM – LRDC15 637 – COM – CD 2	Main/Lake Road closure TriMet is showing as done by others. They should be doing this as part of this project, they are challenging.	TM says closure of Main Street by others, 16' ped facility defined within project limits.
851 – Odot Rail – Lanning 13	Milwaukie Lumber driveway on Monroe ignored. Must be resolved for QZ.	TM says driveway 90' from stop bar no treatment needed. If median then driveway blocked for 10'.
578 – COM – OPS 21 579 – COM – OPS 22 580, 581, 584, 587, etc.	Encasement issue still needs resolution	Based on information at latest meeting TM does not want to provide, OPS unsure how to proceed. OPS compiling utility info.
588 – COM – OPS 31	Spring Creek still needs resolution	Review with COM, no discussions from Fish & WL
674 – COM – ENG 36 675 – COM – ENG 37	Push back on undergrounding of overhead utilities, no resolution yet	Harrison beyond downtown, funding shows betterment. Review with COM.
631 – COM – LRDC23	Resolution needed on annexation issues	KLK input needed. Don't know what this means
629 – COM – LRDC21	Will continue showing center platform	Discussions continuing, TM has indicated center.
630 – COM – LRDC22	Push back to not show detailed cross-sections throughout the city for 25%.	TM says not detailed until PE. COM wants sections throughout city.
634 – COM – LRDC26	Natural resource overlays specific to Milwaukie appear that they won't be shown.	Wetlands, floodplain, OHW will be shown, say added mapping could be shown if needed. We've asked...
604 – COM – OPS 47 Thru 608 +	Some OPS issues not dealt with regarding protection from electrical	No response to issues raised. Asked for life cycle data etc. nothing.
638 – COM – CD 3	No response to the no chainlink allowed comment	No acknowledgement or response...



October 6, 2009

Ms. Leah Robbins
TriMet
710 NE Holladay
Portland OR 97232

Dear Ms. Robbins:

Please accept this letter as the City of Milwaukie's official recommendation concerning the downtown Milwaukie light rail station design. The City appreciates the many hours of work that have gone into studying Milwaukie's only station. In Milwaukie's small downtown, the choices made about the layout of the station are particularly important. As we stated in our June 2008 Memorandum of Understanding with TriMet, we feel the presence of light rail in our downtown environment raises unique concerns, and that the size, position and placement of all light rail infrastructure must be handled with great sensitivity to the surrounding land and buildings.

For reasons explained in the attached memo, we support the staff's recommendation for side platforms at the downtown Milwaukie station. We feel the staff has done a thorough analysis of the issues and that the side platform design will lead to a more interesting and active node right at the station platforms. That activity, which will generate more economic development downtown, make for a safe feeling on the platforms, and create a more pleasing station environment in general, is perhaps the greatest benefit that light rail can bring to a local community.

We forward this recommendation to you for many of the same reasons that we rejected the possibility of a terminus station at this location during the SDEIS process. Downtown Milwaukie is too small and too long neglected for us to support any design decisions that do not do everything possible to bring more eyes, feet and dollars into the station area.

Letter to Ms. Leah Robbins
October 6, 2009
Page 2

Through our South Downtown planning process and the October 5 Milwaukie Station Workshop, we are beginning to hear many exciting ideas from our citizens about how the station area might develop over time. We also have a handful of ideas to work on that relate directly to the light rail station itself. We look forward to TriMet's continued support and participation in restoring downtown Milwaukie to the family-friendly, accessible and charming place that it once was and can be again.

Respectfully Submitted,



Jeremy Ferguson
Mayor



Susan Stone
Steering Committee Representative



Kenny Asher
Project Management Group Representative

CC: City Council
Project Staff
CAC Members

Memorandum

To: Mayor Jeremy Ferguson
Councilor Susan Stone

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

CC: Mike Swanson, City Manager
City Council
TriMet Project Staff

Date: October 6, 2009

Re: Staff Recommendation on Downtown Milwaukie Station Platform Configuration

City staff and TriMet staff have been discussing the configuration of the downtown Milwaukie light rail station for the past several months. This is an important consideration for the light rail project in downtown, because the platform design will influence how people access the station, the width of the rail “footprint” at and near the station, and the relationship of the platforms to surrounding land uses.

For several months, City staff has requested that TriMet include a side or “split” platform design in the 25 percent plans, in place the center (or single) platform that was shown in the LPA and 15 percent set. The Planning Director provided TriMet with a memo on August 28 formalizing this request and offering several other clarifications about Milwaukie’s assumptions for our downtown station.

On October 5, TriMet held a public meeting in Milwaukie to discuss the station design, at which the platform configuration options were presented to our community. Staff attended this meeting, helped facilitate some of the tables, and took careful note of the opinions offered by community participants. We have also reviewed Katie’s August 28th memo, the notes from the October 5 community workshop, and have conducted field studies at our station site and at several existing light rail stations in Gresham, Portland, and Hillsboro.

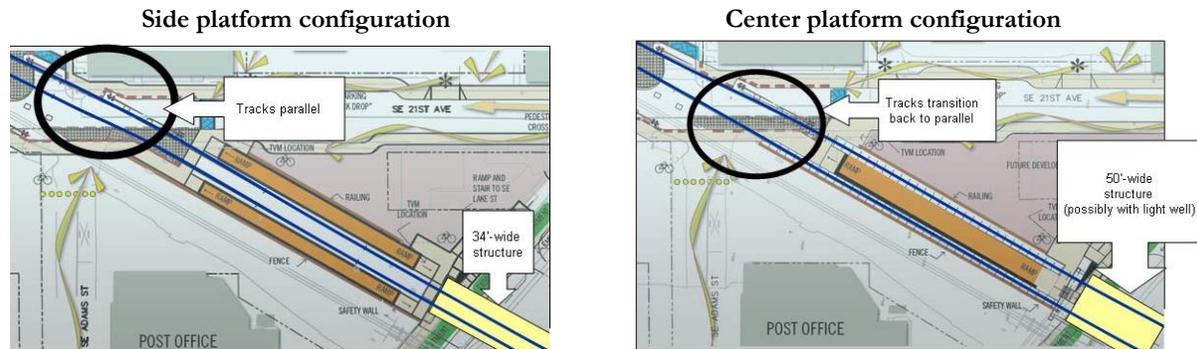
On the basis of all the above, the staff recommendation on this issue continues to be that side platforms will serve downtown Milwaukie in this location better than a center platform. This memo will explain our reasoning.

1. Scale

It is critical in Milwaukie’s small scale downtown that every project element be designed to be as slender and small as possible, to best fit into Milwaukie’s landscape and to acknowledge the real concerns that our community has raised about the overall size and mass of the facility. City staff has

concluded that the side platform configuration would introduce a smaller element into the immediate area.

For starters, according to the most recent drawings provided to the City by TriMet, both platform options (center and side) would occupy roughly the same footprint on the site.¹ Side platforms, however, would allow the two sets of rail tracks to be immediately adjacent to each other through the platform area and immediately north and south of the platform. This is important for two reasons: 1) It reduces by approximately 10 feet the length of the pedestrian rail track crossing on the west side of 21st Avenue.² 2) It results in the smallest possible bridge structure over Lake Road and Kellogg Lake, at approximately 34 ft wide. These differences are illustrated below:



By comparison, the center platform configuration pushes the two rail lines apart as they enter the station at Adams Street and leave the station over Lake Road, with the resulting bridge structure at approximately 50 ft wide, returning to the standard 34 ft width somewhere in the middle of Kellogg Lake – far out of view from the South Downtown area. Though the center platform option might allow a "light well" in the bridge structure over Lake Rd, which would be advantageous, the bridge that would accompany the side platform could also feature a smaller grate-covered skylight to allow light to reach the road.

There also appears to be more potential to reduce property impacts to the SE corner of 21st Avenue and Adams Street with the side platform by transitioning the tracks to the standard offset from the freight rail at the end of the platforms. And finally, for northbound riders who need to purchase tickets, this smaller footprint will allow for the least number of track crossings along the route from what will be the heavily used public sidewalk (on the west side of 21st Avenue), to the ticket machines, and then to the northbound platform.

2. Urban Design

The Milwaukie station site is a fairly unique one in the region and, for that matter, in most light rail systems. Most stations are either in public right of way, or adjacent to a street or parking lot. Here, light rail passenger waiting areas will be adjacent to freight tracks on one side and to developable land (the "triangle site") on the other. In downtown Milwaukie, the freight tracks are a challenge since they present a barrier between the platform area and the adjacent land and activity to the west (the South Downtown development area). The existing condition to the east of the platform location is different. To the east of the platform area, a series of design decisions will ultimately

¹ When the ballast retaining wall is included in the dimensions of the center platform configuration.

² The distance between the existing freight track and the new northbound light rail track would be 125 ft for the side platform option, 135 ft for the center option.

determine access to, and treatment of, the platform and its edges. These decisions are all the more important at this location because of the severe constraint posed by the freight tracks to the west.

A center platform design would obviate this future decision-making process. It would cause the parcel to the east of the platform area to be separated from the platform by rail tracks. The side platform configuration, on the other hand, would allow for multiple options to relate the station to the surrounding land and activities to the east, while designing for the appropriate level of access control.³ Staff maintains that in this situation, the Milwaukie platforms must interact safely and seamlessly with all adjacent landscaping, buildings and/or activity areas. Whereas the center platform would be islanded by ballasted trackway on both sides, a side platform would allow the east side (northbound) platform to situate in the landscape in a manner that can support City goals for activating urban spaces throughout downtown. The triangle site could more easily develop with a structure or structures that together add activity to the platform area. The land could be used in a variety of ways – landscaping, pathways, or building(s). The side platform configuration offers the City the most flexibility for creating a space that contributes to the vibrancy of downtown. Short of predicting exactly how the triangle site should develop, staff does hold that the side platform configuration offers more options to effectively integrate nearby land uses than does the center platform configuration.

3. Access Control

Under any platform configuration, the station and track crossings must be designed to ensure passenger safety and security. Important in that consideration is TriMet's ability to conduct fare inspections on clearly signed TriMet property. The City will work with TriMet on this goal through the design process. However, staff does not accept that this goal, by itself, should determine the platform configuration. In either configuration, the passenger waiting area must provide clear vision from 21st Avenue and adherence to Crime Prevention Through Environmental Design (CPTED) principles. These principles, according to the City's Umbrella Agreement with TriMet (MOU) will be applied collaboratively during the project's design (Section C(2b)). This design collaboration has begun, and it will continue well into the final design phase.

The Downtown Milwaukie station does present interesting challenges given the unique conditions of the site, but it is precisely this uniqueness that must give the station area its character and comfort. It is not a site to be walled, fenced, or tracked off from the surrounding area solely for safety and security purposes. Most waiting will occur on the northbound platform. What happens next to this platform is extremely important and cannot be fully resolved at this stage of design. However the center platform would force a conclusion now that all passengers should wait between light rail train tracks (which itself is not entirely conducive to a safe and comfortable experience).

4. South Downtown Planning Coordination

In 2008, more than 30 Milwaukians agreed to be interviewed by the Center for Environmental Structure about their deepest hopes and wishes for downtown Milwaukie. Many points of consensus came through strongly in that process, including a widely held feeling that Milwaukie should have a special light rail station environment – something more than what normally occurs at MAX stations. Many people spoke of a traditional-looking station area, and a station that fits into its surroundings. (All comments on this topic can be found in small print at the end of Pattern 5 in the recently released *A Pattern Language for the South Downtown of Milwaukie, Oregon*, June 2009). One way the emerging South Downtown concept plan will attempt to address this hope is by establishing a station-type building on the triangle site immediately east of the platforms. The building would be a

³ Staff is seeking to do further studies to explore these options.

focal point in the South Downtown – a destination in its own right – and a place that will be appreciated by waiting transit patrons.

Although the precise building type and program has not been worked out yet, the building would visually anchor the light rail station, provide amenities for waiting passengers, add shelter, warmth and bodies to the platform area, and make the downtown Milwaukie arrival and departure experience much more satisfying. Possible uses that have been imagined for this building (and related site area) include bike valet parking facilities, a relocated post office, café, City information, and the Milwaukie Museum. Many participants at the October 5 public workshop also voiced support for this idea. It is, in fact, the most popular idea that staff has heard from community members in all the light rail planning to date.

With the side platform design, access between the building, its outdoor space, and the platform could be direct and understandable even while accommodating a clearly defined "fare paid" zone and access controls. A center platform, on the other hand, would separate the waiting passengers from the building site by the northbound set of tracks. TriMet, which has agreed to redevelop the triangle site with City once it is no longer needed for light rail construction, will be the City's continuing partner in the final design and development of the site.

For these four reasons (Scale, Urban Design, Access Control and South Downtown Planning Coordination), staff recommends the City take a position in support of side platforms. TriMet staff has informed us that such a change cost approximately \$1.1 million more than the assumed center platform from the LPA. City staff has requested a breakdown of these costs, but haven't yet been provided anything clear enough to present. We understand that most of the costs arise from the "doubling" effect of building two platforms instead of one. This cost impact was raised by some community members at the October 5 workshop. While staff is sensitive to the overall project budget and the gap that remains, we do not feel that cost should be a driving decision factor at this juncture. Concurrent with this discussion about Milwaukie's platforms are various processes to better understand the total scope, cost and required contingency for the project, which is evaluating not million dollar items, but items that total tens of millions (even up to a hundred million). With all the outstanding questions remaining about the total project costs, and the updated cost estimate not yet started, staff feels it would be a mistake to subordinate any of the four reasons presented in this memo to a cost impact that cannot yet be understood.



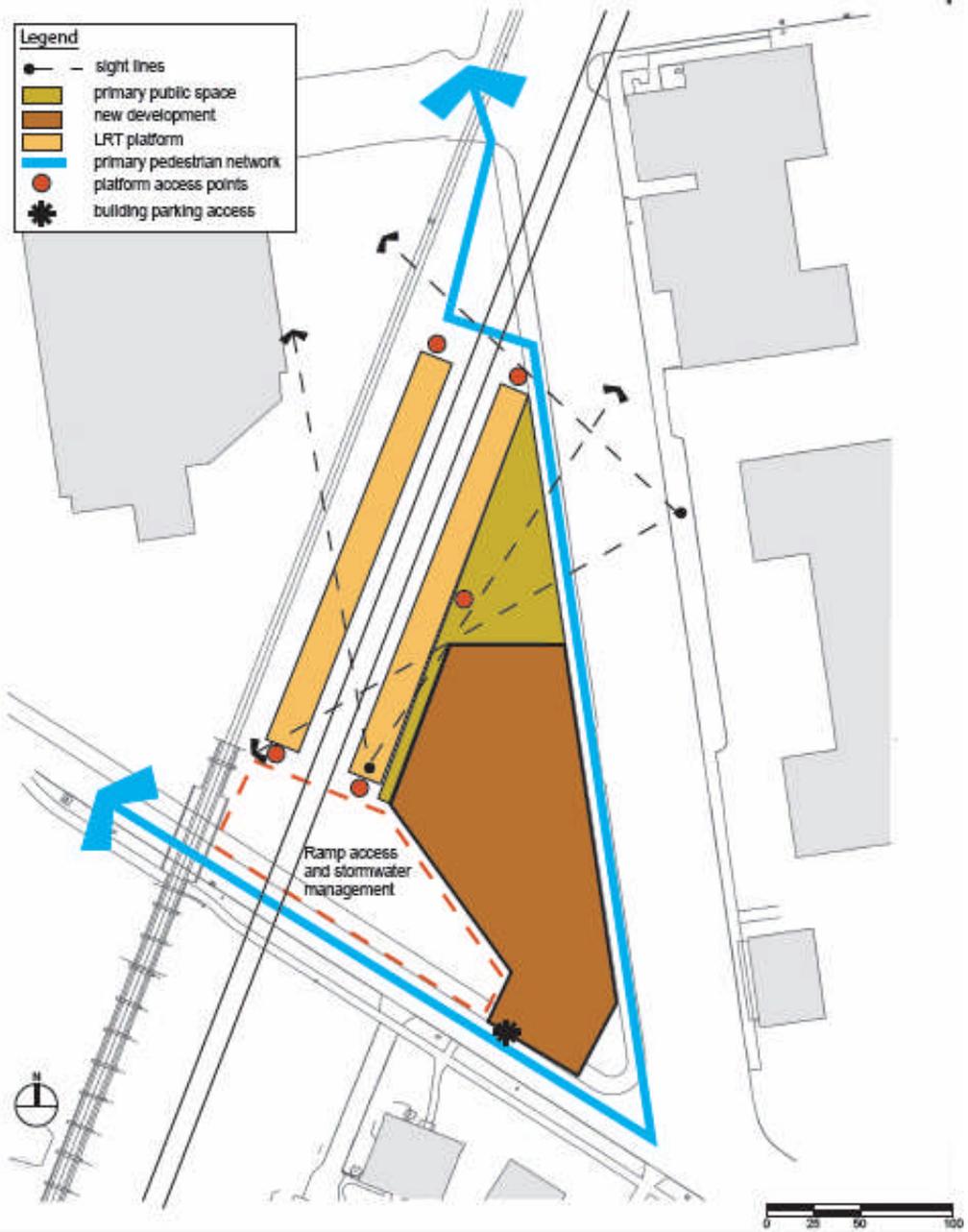
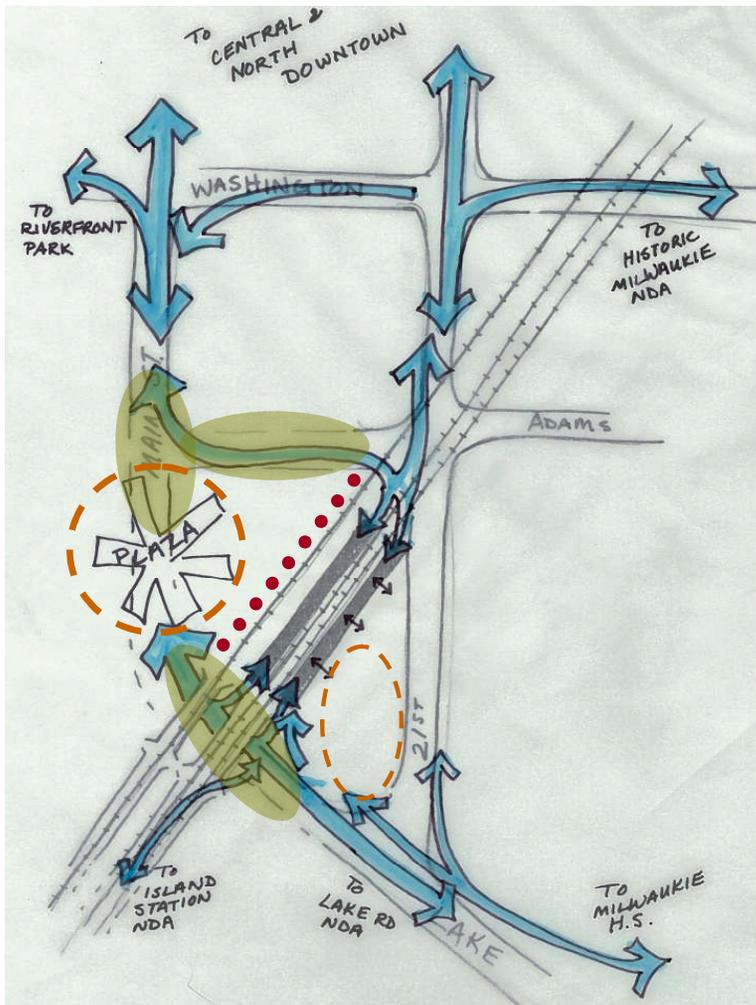
10/5 Meeting – What We Heard

Table recommendations re: Side vs. Center Platforms:

1. Couldn't decide
2. Like center – simpler access, cheaper
3. Center
4. Couldn't decide
5. Center – costs less, defines station
6. Center – lower cost

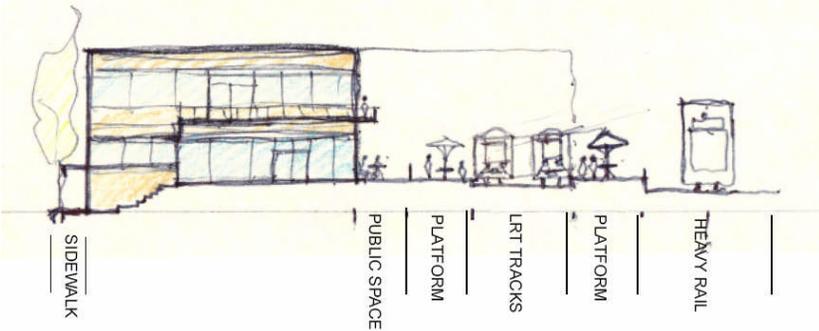
Discussion:

- Design should honor historic Milwaukie – high quality
- Relate to south downtown plan
- Like idea of place nearby to wait, café on triangle site, many ideas for potential activities
- Bicycle access & parking important
- Concerns about ped safety
- Security
- Integrate plantings, use them to make area soft & secure
- Natural light & transparency
- Nice, walking, comfortable
- Safety under bridge
- Maintain site lines to station
- Small bridge over Kellogg



Milwaukie Station - Development Opportunities

Option 1



1 NORTH ELEVATION

scale: 1" = 30'

3.

CONSENT AGENDA

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
SEPTEMBER 1, 2009**

CALL TO ORDER

Mayor Ferguson called the 2061st meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Community Services Director JoAnn Herrigel, Community Development Coordinator Nicole West, Community Development and Public Works Director Kenny Asher

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Resolution Recognizing Capt Jim Colt on His Retirement

Mr. Swanson read Resolution No. 53-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Expressing Appreciation for the Years of Valuable Service to the City by Captain Jim Colt and Recognizing Him on His Retirement.

It was moved by Councilor Chaimov and seconded by Councilor Barnes to approve Resolution 53-2009. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting "aye." [5:0]

B. North Clackamas Urban Watersheds Council

Ms. Herrigel and **Ms. West** reported on the removal or modification of the Kellogg Dam at Hwy 99E and the Kellogg for Coho Initiative. Ms. Herrigel briefly commented on recent endeavors to use Metropolitan Transportation Improvement Program (MTIP) funds for concept planning with the various partners. A watershed council, suggested by Kenny Asher, started meeting in January with incredible success. The group was formally recognized by the Board of County Commissioners (BCC) and is working on strategic planning and funding. The council was working on establishing itself as a 501C(3) and looking forward to hiring a part-time coordinator. The intent of this report was to bring attention to and gain support for the North Clackamas Urban Watersheds Council. She indicated the watersheds on a map.

Ms. West added these were some of the last unrepresented watersheds statewide and urged people to visit the Council website at www.ncuwc.org.

C. Wastewater Treatment Report

Mayor Ferguson reported the City Council met last week in executive session regarding wastewater negotiations and possible litigation. Several citizens had requested information on what was going on, and this was the first in a number of presentations. He and Councilor Barnes would make this presentation to the Citizens Utility Advisory Board (CUAB) at its meeting tomorrow night.

Mr. Asher reported Milwaukie was in multiple negotiations with Clackamas County Service District #1 (CCSD1) which was governed by the Board of County

CITY COUNCIL REGULAR SESSION – SEPTEMBER 1, 2009

DRAFT MINUTES

Page 1 of 9

Commissioners (BCC). These talks included the wholesale contract, partnership agreement, Kellogg Treatment Plant improvements, and the Kellogg Treatment Plant study.

In 1970 the City agreed to share in the construction costs of the new treatment plant to replace the one in the north industrial district. Milwaukie agreed to pay for 40% of the new plant and for that contribution be allowed to use 40% of the capacity. In 1970 Milwaukie paid almost \$1.6 million for the use of the Plant, but it was not being used as envisioned. Milwaukie never grew to the point of using 40% of the capacity; instead it has steadily used about 25%. Today, however, the District used about 77% of the capacity because of growth. In addition to Kellogg, the District rents capacity from the TriCity Plant in Oregon City. The Kellogg Treatment Plant was at capacity with most of it being used by District customers. Expressed in today's dollars, Milwaukie had contributed about \$11.6 million over the years. In addition to paying for treatment, Milwaukie was also billed for keeping the Plant current. One question was: What did Milwaukie purchase for that contribution? Mr. Asher discussed the average monthly billing of which \$11, about one-half of the sewer bill, was for treatment. He summarized the wholesale contract negotiations that began November 2007 when the BCC changed its policy related to Milwaukie as a customer saying it needed to pay its fair share of current capital needs. He summarized the various rates that had been discussed with Water Environment Services (WES) and its capacity management program. This Council had not signed the contract to date. He noted the City had dropped its overpayment claim in April because it was getting in the way of moving forward with more substantive issues. The City offered \$13.50 for operations and maintenance and capital improvements at Kellogg and some portion of TriCity expansion. That offer was rejected. Mr. Asher summarized discussions including City representation and discussed the language contained in the recent termination letter. A July 2009 letter stated the new rate was \$25.31 per equivalent dwelling unit (EDU), and if the parties did not reach agreement by February 2010 the City would be required to find a new treatment provider in 5 years. Negotiations hurdles were: Did Milwaukie have any ownership rights? Should Milwaukie pay for capacity it did not and will not use? Should Milwaukie pay to correct the District's capacity deficit? Should the new contract provide Milwaukie with expanded rights concerning the future use of Kellogg? These were all points of disagreement between Milwaukie and the District and stood in the way of progress. The City was in the process of gathering records from the District so it could better understand what was intended when the Plant was built in the 1970's. Negotiations would continue once the documents were provided. Mayor Ferguson and Councilor Barnes would provide an update to the CUAB.

Clackamas County was vigorously pursuing a partnership agreement. Mr. Asher discussed the January 2008 Blue Ribbon Committee study and May recommendation. Issues included capacity parity, efficiencies, equity, and governance. This led to the work on the partnership agreement, and a number of questions remained. The agreement morphed into a set of bylaws which the cities were considering. He commented on Milwaukie's remaining concerns including rates and the future of the Kellogg Treatment Plant.

Mr. Asher discussed the Kellogg Treatment Plant improvements to prevent overflows. The City and WES staff had a pre-application conference to discuss permit requirements in June 2008, and almost a year later the City received a letter stating that WES was going to proceed with the project without land use review because the project had been modified. The electrical permit was denied because the land use issues were still in the way, and staff felt it needed more information before granting the permit. The City received a large set of "courtesy" drawings whereupon staff reiterated and clarified its need for information to help assess necessary permitting. WES stated the

improvements were maintenance upgrades including the aeration blowers and piping for which only an electrical permit was needed. The permit was again denied due to lack of information.

This at one time was a large project, but now it was only a piece of it. Staff needed to determine what this piece meant to the overall project. Mr. Asher agreed the Plant had maintenance issues and expressed concern about environmental impacts. The District had now decided it needed a strategic planning process for the Kellogg Treatment Plant which he felt was unrelated. All of these processes were overlaid which meant it made the process difficult for the City and its residents to track.

CONSENT AGENDA

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

- A. City Council Regular Session Minutes of July 21, 2009; and**
- B. Resolution 54-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Directing the City Manager to Sign a Contract Amendment with Tashman Johnson LLC to Provide Additional Services under the Existing Urban Renewal Feasibility Study Services Contract.**

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

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

None scheduled

OTHER BUSINESS

A. Contract Amendment for David Evans & Associates for Riverfront Design

Ms. Herrigel provided the staff report requesting that the City Council adopt the resolution to extend the term of the contract to September 2010 and increase the contract amount by \$150,000. The design elements were fairly well defined, and staff had begun submitting permit applications as design work continued. To this point David Evans had been paid \$500,000, and she showed examples of what staff and the consultant had been working on to reach the 70% plan goal. So far the joint permitting application had been submitted to the Corps of Engineers and Division of State Lands (DSL). She discussed the review periods and local land use reviews. The remaining land use processes would be done soon and followed by a Design and Landmarks Committee review. Some site preparation would be done this winter with the relocation of the waterline generally between Harrison and Jefferson Streets. Along with that they hoped to build a welcome plaza to give the area a more manicured look. Staff would submit grant applications in order to begin construction of the plaza in 2011. She discussed the cost of comparable projects in the region. The estimated project cost including the bridge over Kellogg was approximately \$6 million. At this point there were no other funding sources, and there may be some matches. The North Clackamas Parks and Recreation District wants to get this project into its capital improvement plan, so funds may be available from that source.

Councilor Stone expressed her frustration that contractors continually came back asking for more money.

Ms. Herrigel responded that the contractor was not necessarily asking for more money but rather she was asking for more work. Although she worked to keep costs down, this was a very expensive process. She noted the Riverfront Board concurred with the proposed action.

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the resolution amending contract #2006-097 with David Evans & Associates for landscape design and engineering services for Milwaukie Riverfront Park. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone and Loomis and Mayor Ferguson voting “aye.” [5:0]

RESOLUTION NO. 55-2009:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CONTRACT #2006-097 WITH DAVID EVANS AND ASSOCIATES, INC. FOR LANDSCAPE DESIGN AND ENGINEERING SERVICES FOR MILWAUKIE RIVERFRONT PARK TO EXTEND THE TERM TO SEPTEMBER 2010 AND INCREASE THE COMPENSATION BY \$150,000, RESULTING IN A “NOT TO EXCEED” AMOUNT OF \$650,000.

B. Discussion of Parecki Issue with Regard to the Minutes of the City Council Regular Session of December 18, 2007

Mayor Ferguson stated that in June Mr. Parecki sent an email to City Council requesting that the transcript from the testimony missing from the December 18, 2007 minutes be added. He had spoken with individual Council members, and there were mixed feelings. There was no clear direction given to staff in June, and he wanted to do so at this meeting. He referred to his proposal which was his extrapolation from viewing the video: “Councilor Barnes and Mr. Parecki were discussing different funding streams with regard to the missing testimony of December 18, 2007. Councilor Barnes was referring to the assumption of the loan purchase of the Safeway property, and Mr. Parecki was referring to the \$738,000 Special Public Works Fund Loan to complete public area improvements at and in the vicinity of North Main Village. Councilor Barnes is correct in stating that Main Street Partners picked up the tab for \$650,000 which is the approximate balance due on the loan for purchase of the real property. Mr. Parecki is correct in stating that there is a Special Public Works Fund Loan taken out for \$738,000 that the City has 20 years to pay and that the City is paying it out of the general fund. The project funded with the Special Public Works Fund listed on Attachment A that described what that paid for.” If the City Council voted to add this statement from December 18, 2007 this was what Mayor Ferguson proposed to add.

Councilor Chaimov did not feel it was appropriate to add this information to the minutes. Before the City Council adopted minutes he felt it was appropriate to accept almost any request for an addition or a change. Following the standard Mr. Parecki suggested from *Robert’s Rules of Order* this proposal did not meet that standard. It was appropriate to add or change minutes when there was a material omission or error that rendered the minutes misleading or significantly incomplete. He understood that was something like not recording a vote or getting the vote wrong. A discussion between a constituent and a councilor talking about different things that did not involve a specific vote did not, to him, rise to the standard of the kind of change that was appropriate to add at this point.

Councilor Stone thought *Robert’s Rules of Order* could be interpreted in that way. She was looking at this strictly that a citizen came forward who felt something was omitted.

CITY COUNCIL REGULAR SESSION – SEPTEMBER 1, 2009

DRAFT MINUTES

Page 4 of 9

Indeed it seemed like they were talking about two separate issues related to that same project. She was in favor of honoring the citizen request and adding what Mayor Ferguson proposed in terms of an explanation. All the Council was trying to do was to honor a citizen request. It would behoove the Council to put the explanation in.

Councilor Loomis had the perception that the minutes were official, but the video was the actual record.

Mayor Ferguson said he and Mr. Swanson had a meeting with Mr. Parecki. That was the direction of the conversation at the work session, but the City Council did not take a strong position. Mr. Swanson noted in the meeting that the written minutes were the official record.

Mr. Swanson brought copy of what minutes looked like after they were approved by the Council. They were bound and paginated. He contended even though there was a video this in the end was the document the Council reviewed and approved. This was the form since Milwaukie first began business and was the permanent record of every meeting in the City.

Mr. Parecki did not wish to add any comments.

Mr. Swanson explained staff would not disassemble that volume and add to the December 18, 2007 minutes. If the Council adopted something it would appear as something added in the September 1, 2009 minutes. He suggested saying this was language included that referred to testimony taken December 18, 2007. It seemed to him that had been a situation in which both people were right. He noted some of the comments had been lost on the audio tape when it was changed.

It was moved by Mayor Ferguson and seconded by Councilor Loomis to make the notation for the minutes adding the minutes he drafted in his paragraph that were included in the packet that he previously read.

Councilor Stone asked if this was just going to be put in and not the statements from Mr. Parecki and Councilor Barnes.

Mayor Ferguson said his proposal was to add the paragraph and the attachment. Adding the statements was not in his motion.

Councilor Stone asked if it appeared in there would it be clearer with Mayor Ferguson's clarification.

Mayor Ferguson replied it was the essence of the discussion rather than the verbatim discussion. The Council did not typically have verbatim discussions in its minutes, and he believed this captured what Mr. Parecki wanted added.

Mr. Swanson did not believe this added a thing to the history of this City or the processes of this Council which was perhaps the point Councilor Chaimov was making. This was a tempest in a teapot, and this was a way to get it out of the way. Its addition will not mean a thing and did not add anything substantive to what the City Council had done. Adding it did not do a lot of harm.

Councilor Barnes asked if someone came forward and wanted specific words in the minutes in the future on any meeting did that mean the City Council would move forward?

Mayor Ferguson said if the scenario were repeated where there was a break in the tape or a substantial part of a testimony was left if a citizen stepped forward the City Council would have to look at it and treat them equally no matter who the citizen was.

Motion passed 3:2 with the following vote: Councilors Stone and Loomis and Mayor Ferguson voting "aye" and Councilors Barnes and Chaimov voting "no."

CITY COUNCIL REGULAR SESSION – SEPTEMBER 1, 2009

DRAFT MINUTES

Page 5 of 9

C. Discussion of Parecki Issue with Regard to Public Area Requirements

Mr. Swanson said this matter, over which there had been a number of discussion, had to do with Mr. Parecki's development in the downtown and questions regarding public improvements. Initially there was a long list of improvements totaling about \$150,000 based on code language at the time. When the proportionality analysis was applied to Mr. Parecki's property the requirements were reduced to about \$12,000 to \$15,000 in public improvements. He understood after talking with Mr. Parecki that the issue was that he did not believe they were appropriate or should be assessed. He used the example of the two new restaurants at North Main Village where he believed there was an advantage because the City had taken out a loan to do the public improvements. Mr. Swanson understood Mr. Parecki did not believe his development should be responsible for those. He discussed the transportation code amendments and the staff report which stated the existing code may be unconstitutional because they were not assessed proportionally. In the case of Mr. Parecki's property a proportionality test was applied for public area requirements.

Councilor Chaimov had asked a number of questions. The first had to do with process and steps the City would have to follow if someone wanted to change a decision that was part of an established process. Ms. Mangle had responded that Mr. Parecki's project was subject only to a staff level review of design review, public area requirements, and building codes. Mr. Parecki had not appealed any of these decisions and only appealed the director's interpretation of the code. One must perfect an appeal to have a decision changed, and that had not been done. If a decision was made that followed a process then in order to change that decision a subsequent process needed to be followed. There needed to be an appeal to this body that it did not wish to apply the particular standards. One exception in this case was that North Main Village needed to follow public area requirements. The City Council in a separate decision agreed the City would help fund the public area improvements in order to generate activity in the downtown. Nothing would prevent the City Council from doing that on another development as long as it applied the public area requirements.

City Attorney Monahan added the public area requirements pertained to both applications. The City made the determination on the North Main Village project that it wanted to contribute funds, but the public area requirements were applied in both cases. Staff did an individual rough proportionality analysis, but Mr. Parecki chose not to challenge it.

Mr. Swanson summarized Councilor Chaimov's second question. Was it appropriate to treat applicants in different ways? The answer was generally 'no.' Both North Main Village and Mr. Parecki were required to follow the code in regards to public area improvements. They were treated in a similar manner. In North Main Village the City applied for a state loan in the amount of \$738,000 to help fund the construction of those required improvements. That was not done in the case of Mr. Parecki's development. The law, however, was applied in a similar manner for both developments.

Councilor Chaimov said what was leading up to those questions was what the City Council had the authority to do. He understood the City Council did not have the authority to say that the public area improvements would not be completed on the Main/Monroe building. It could through some kind of appropriate process have the taxpayers fund those improvements instead of Mr. Parecki.

Mr. Swanson added when applying the code it must be done equally.

Councilor Loomis recalled on the North Main Village project there were negotiations and not simply that the City Council wanted to do it.

Mr. Swanson explained at some point the City Council was presented with the loan agreement, and in order to get the development the City had to contribute to the public area improvements. The payback appears in the general fund budget annually.

Councilor Loomis said it was not something he wanted to do, but the developer kept coming back. At some point the City had to help pay for it or the project died. He asked if that had been corrected in the code.

Mr. Swanson replied in talking with Mr. Parecki he got the sense he did not believe the code applied.

Councilor Stone recalled there was an issue about the code being constitutional. It seemed Ms. Mangle brought that up.

Mr. Swanson replied there were two issues. The transportation code was different from the downtown. The City applied the public area requirements in a constitutional manner by imposing a proportionality test on the public area improvements in concert with the Constitution.

City Attorney Monahan added it was an appropriate time to change the language in the code that talked about public improvements based on the value of the improvement. The language of that requirement seemed counter to being applied on a case-by-case basis, so it was corrected when the new transportation code language was adopted. When the Main/Monroe application came in staff did an individual proportionality analysis and required much less than a literal interpretation of the public area requirements would have required.

Mayor Ferguson understood the public area requirements were in line with the code. It was a question of whether Mr. Parecki or the taxpayers paid for the improvements.

Mr. Swanson read from Ms. Mangle's email on the matter. No matter who pays, the improvements must be done prior to occupancy. In the case of North Main Village the City chose to subsidize. In the case of Main/Monroe the City did not. Mr. Parecki continued through the land use and building permit processes. If the City wanted to subsidize Main/Monroe now it could do so, but it would not reduce the requirements related to the building permit. There were two issues: one was what was required and the other was how it was funded.

Councilor Stone understood the reason the amount was reduced was because Mr. Parecki eliminated an elevator from the project. It changed the math on the proportionality analysis.

Mr. Swanson replied that was part of the reason.

City Attorney Monahan added it was based on actual impacts identified in the proportionality analysis.

Mr. Parecki stated the point of the discussion was that the actual exterior renovation had no impact until he had a tenant. There has been zero impact to the City or transportation to date. He spent \$500,000 on the project. He had been trying to impress upon the City Council and Planning Commission that an exterior renovation did not create any impact. The proportionality analysis should take place when there was a tenant to determine roughly what kind of impact there would be. If the new code were applied to the project right now there would not be any requirements. He had never said he would not do any public area improvements. The City spent \$738,000 to entice North Main Village, so how hard would it be for the City to do a \$15,000 improvement? There was a long list of what it could be if bulb-outs, lights, trees, extending the sidewalk a foot, and things of that nature were included.

Councilor Barnes read the list: 5 trees, 2 lights, 2 benches or trashcans, a bulb-out, and some landscaping.

Councilor Chaimov asked how Mr. Parecki would go about making a request for the citizens of Milwaukie to pay for the improvements if he wished to do so.

Mr. Swanson replied he could make the request through the City Council to change the policy. There could also be a ballot measure. The downtown standards were adopted in 2000. At that time the opinion was clear, so the code was written so the burden was on the developers. Since Mr. Parecki had not appealed, the list cannot be changed at this point. If Mr. Parecki wished to ask the City Council to consider funding those items the City Council would direct staff to find the funds and report back. The City Council cannot change what was being required, but it could budget funds. The requirements could be changed only if Mr. Parecki reapplied and went through the process.

Councilor Stone thought Mr. Parecki brought up an interesting point about not knowing the actual impacts without knowing who the tenants would be.

Mr. Swanson replied an applicant sometimes has a target business and has an idea of the range of public improvements, but not all applications have a business scheduled to occupy the vacant space.

Councilor Stone asked if there was anything specific in the code that said the public improvements were based on the tenant.

Mr. Swanson replied Milwaukie's code was based on the dollar amount.

Councilor Stone asked if the same list would be required today after the code amendment. She said Mr. Parecki was shaking his head that it would not.

City Attorney Monahan said the code was revised and was based on potential uses.

Mr. Asher explained there were two major changes to this section of the code. One was more explicit language regarding the proportionality analysis and the other was changing the trigger from permit value to impact based. In the case of this project there was a lengthy debate regarding zoning to predetermine impact. The zoning code now demanded retail rather than office, and the trip generation code determined the impacts of this project. The same thing would be done today if the project came in under the current code. He agreed the project was not complete until there was a tenant. The public area requirements will show up when the tenant improvement permit comes in. Staff considered the list the bare minimum.

Councilor Chaimov suggested that Mr. Parecki make a request to Mr. Swanson for the residents to pay for the improvements, and if he thought it was appropriate recommend where the money would come from in the budget. The City Council could make a decision based on the City Manager's recommendation.

Councilor Loomis was not in favor of paying for it. If the code was changed, and he did not have to do those improvements he might look at it. Now the City would have to do it for everyone. He recognized the code was hindering development. He applauded Mr. Parecki for his work downtown. He was in favor of a credit on some future development and asked for information on what the impact of that would be.

Councilor Chaimov suggested if that would be of value to Mr. Parecki then perhaps a recommendation that could be applied universally could be forwarded to the City Council. If he had been on Council during the North Main Village discussion there would probably have been no subsidy for the public area improvements. He was disinclined to spend taxpayers' dollars on other public improvements. It was fair that Mr. Parecki be allowed to state his case that taxpayers should pay for improvements now or through a credit.

CITY COUNCIL REGULAR SESSION – SEPTEMBER 1, 2009

DRAFT MINUTES

Page 8 of 9

Mr. Asher discussed the urban renewal feasibility study and funding for public area improvements.

Councilor Barnes suggested waiting for the urban renewal information. She understood the tenants would be paying for the improvements and not Mr. Parecki.

Mayor Ferguson asked that Mr. Parecki send his letter to Mr. Swanson with a follow-up at a future meeting.

Councilor Stone noted earlier in the meeting the Council spent \$150,000 of taxpayer money.

D. Council Reports

Councilor Chaimov had a discussion with Dick Jones regarding movement toward incorporation of the City of Oak Grove and watched the Elk Rock Island controlled burn.

Mayor Ferguson provided a number of announcements for upcoming City events.

ADJOURNMENT

It was moved by Councilor Chaimov and seconded by Mayor Ferguson 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 adjourned the regular session at 8:47 p.m.

Pat DuVal, Recorder

Councilor Barnes and Mr. Parecki were discussing different funding streams with regard to the missing testimony of December 18, 2007. Councilor Barnes was referring to the assumption of the loan to purchase the "Safeway property," and Mr. Parecki was referring to the \$738,000 Special Public Works Fund loan to complete public area improvements at and in the vicinity of North Main Village. Councilor Barnes is correct in stating that Main Street Partners "picked up the tab for \$650,000," which is the approximate balance due on the loan for purchase of the real property. Mr. Parecki is correct in stating that there is "a special public works fund loan taken out for \$738,000 that the City has 20 years to pay and that the City is paying it out of the general fund." The projects funded with the special public works fund loan are listed on Attachment A.

ATTACHMENT A

EXHIBIT B PROJECT DESCRIPTION

Recipient shall design and construct street, sidewalk, and utility improvements and related Project elements on Main Street from the north boundary of the former Safeway site to Jackson Street and on the north side of Harrison Street from Main Street to the 21st Avenue extension, including the following:

1. 13-foot wide scored concrete sidewalks and 12-inch curb on Main Street block faces, and 10-foot-wide, scored-concrete sidewalks and 12-inch curb on Harrison Street block face;
2. Utility (power and telephone) undergrounding on Main Street block faces (trenching and backfill);
3. Landscaped curb extensions at Harrison and Main Street, and at the new 21st Avenue extension and Harrison Street intersection;
4. 17-foot to 19-foot deep angled parking on a portion of Main Street block faces, 8-foot wide parallel parking spaces on a portion of Harrison Street block face, and dark gray scored parking zone on Main Street and Harrison Street;
5. Five-foot-wide bike lane on Harrison Street block face;
6. Traffic calming device such as roundabout, teardrops, or refuge at intersection at 21st Avenue and Harrison Street;
7. Canopy trees with radial tree grates on Main and Harrison Street block faces;
8. Street furnishings including Victorian-style benches made of wood with cast-iron frames, black "Hitchin' Post" bike racks, and black ornamental bollards (posts) at certain intersections;
9. Black twin ornamental streetlights on Main Street block faces, and black single ornamental streetlights on Harrison Street block face; and
10. Dark gray scored concrete crosswalks on Main Street and asphalt, or, tinted and/or scored concrete intersection on Main and Harrison Streets.

Recipient shall also remove and dispose of asphalt, curb, and concrete debris.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AFFIRMING THE APPOINTMENT OF LEDDING LIBRARY BOARD MEMBER TO SERVE AS THE CITY OF MILWAUKIE’S REPRESENTATIVE ON THE CLACKAMAS COUNTY LIBRARY DISTRICT ADVISORY BOARD.

WHEREAS, on November 4, 2008 the electors of Clackamas County approved creation of the Clackamas County Library District; and

WHEREAS, among the statements made in the ballot measure Explanatory Statement was the following: “Each of these libraries would be required to ensure representation of both city and unincorporated residents on their local library board, whose designated member will then serve and represent their library on the District Advisory Board;” and

WHEREAS, Section 1.2 of the Cooperative Intergovernmental Agreement between the Library District of Clackamas County and Member Cities (IGA) forth the process for appointment of District Advisory Board members as follows: “The District Board shall organize and appoint a District Advisory Committee consisting of one nominee from each Library City consistent with the policies and procedures of Clackamas County and/or the District for advisory committees. The District Board shall appoint the individual nominated by the Library City governing body to fill the service area’s seat;” and

WHEREAS, the Explanatory Statement requires appointment by the local library board of one of its members while the IGA requires appointment by the “Library City governing body” but is silent on the need for a local library board member; and

WHEREAS, the City of Milwaukie wishes to conform its process to comply with the conflict between the two processes while maintaining strict adherence to the will of the people as expressed in the ballot measure; and

WHEREAS, the Ledding Library Board appointed member Mark Docken to serve as the city of Milwaukie’s representative to the District Advisory Board.

NOW, THEREFORE, BE IT RESOLVED that the Milwaukie City Council pursuant to Milwaukie Municipal Code Section 2.28.020 affirms the Ledding Library Board’s appointment of member Mark Docken to represent the City of Milwaukie on the District Advisory Board of the Library District of Clackamas County

Introduced and adopted by the City Council on _____ .

This resolution is effective immediately upon adoption.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING DON WILEY TO THE PUBLIC SAFETY ADVISORY COMMITTEE AS THE LINWOOD NEIGHBORHOOD DISTRICT ASSOCIATION REPRESENTATIVE.

WHEREAS, a vacancy exists on the Public Safety Advisory Committee for a Linwood Neighborhood Association member; and

WHEREAS, Milwaukie Municipal Code Section 2.24.020(B) provides for appointment of members of the Milwaukie Public Safety Advisory Committee “by the council;” and

WHEREAS, Don Wiley possesses the necessary qualifications to serve on the Committee and has indicated his desire to serve.

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

SECTION 1: That Don Wiley is appointed to the Milwaukie Public Safety Advisory Committee as the Linwood Neighborhood District Association representative.

SECTION 2: That his term of appointment shall commence immediately and shall expire on June 30, 2011.

SECTION 3: This resolution takes effect immediately upon passage.

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

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



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To: Mayor and City Council

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

From: Paul Shirey, Operations Director

Subject: Agreement between City of Milwaukie and Clackamas River Water for Vehicle Maintenance

Date: October 16 for the November 3, 2009 City Council Meeting

Action Requested

Authorize the City Manager to execute a five-year Intergovernmental Agreement (IGA) between the City of Milwaukie (City) and Clackamas River Water (District) to provide Apparatus and Vehicle Maintenance Services.

History of Prior Actions and Discussions

None.

Background

For several years the Fleet Department has provided periodic vehicle maintenance services for CRW vehicles on an as-needed basis. Up to this point there has been no agreement between the parties for the services, just an informal understanding regarding scheduling and the cost of service. CRW recently suggested that an IGA for this service would be appropriate.

The proposed IGA formalizes the relationship between the parties and provides indemnity and other legal safeguards as well as standard provisions for any service contract, including:

- Five year term
- Fixed cost of labor at \$65.00/hour
- Parts cost add-on of 10%
- Scheduling and pick up/drop off protocol
- Language on arbitration for dispute resolution
- Termination and renewal provisions

The City has the right to adjust the labor cost annually at the anniversary of the IGA. If CRW objects, it has the right to terminate the agreement with notice as prescribed in the document.

The bulk of the city maintenance activity is performed on the District's service vehicles. The IGA calls for the City to bill the district on a monthly basis for services rendered. The District has 15 calendar days to make payment. The cost of parts is billed at 110% to cover City administrative expenses. The cost of labor is somewhat higher than the City's direct and indirect cost to operate the fleet shop.

This IGA is modeled on the City's agreement with Clackamas Fire District and generally conforms to that agreement. The IGA calls for the City to perform scheduled preventive maintenance on CRW's service fleet as well as other vehicles that may breakdown intermittently. Priority for servicing CRW's fleet is third in line behind Police, PW service vehicles and city staff vehicles. Of the five mechanics in the Fleet Department, three are assigned exclusively to maintain fire equipment. Two mechanics work on City vehicles and also work on contract vehicles such as the CRW fleet.

Concurrence

The Fleet Services Manager and Finance Director concur with this recommendation.

Fiscal Impact

None. The IGA is cost neutral. The City more than fully recovers its costs for providing vehicle maintenance services to the District. Providing maintenance services to CRW helps to even out the work load for the mechanics, maximizes the time of the mechanics and allows the City to recover the cost of personnel.

Work Load Impacts

Work load for the Fleet Department will not be affected by the formalization of this agreement. Work load capacity has been and is expected to continue to be available such that the City will be able to meet the obligations under the terms of this IGA.

Alternatives

Do not approve the IGA.
Amend the terms of the IGA.

Attachments

1. Resolution
2. IGA with Attachment

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A TWO-YEAR INTERGOVERNMENTAL AGREEMENT WITH CLACKAMAS RIVER WATER DISTRICT TO PROVIDE APPARATUS AND VEHICLE MAINTENANCE SERVICES TO THE DISTRICT.

WHEREAS, the City has provided vehicle maintenance for the District from time to time without benefit of a formal agreement; and

WHEREAS, the District and City wish to formalize the agreement for the City to continue to provide vehicle maintenance services; and

WHEREAS, the City and District have negotiated an intergovernmental agreement that provides for the City to provide maintenance services for the period from January 1, 2010 through December 31, 2014; and

WHEREAS, the new intergovernmental agreement identifies the services to be provided by City, the terms and conditions of service, the level of compensation, and other relevant terms; and

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie authorizes the City Manager to execute the Intergovernmental Agreement for Vehicle and Apparatus Maintenance with Clackamas River Water District for the term January 1, 2010 through December 31, 2014.

Introduced and adopted by the City Council on November 3, 2009

This resolution is effective on November 3, 2009.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat Duval, City Recorder

City Attorney

INTERGOVERNMENTAL AGREEMENT FOR APPARATUS AND VEHICLE MAINTENANCE

THIS AGREEMENT authorized by ORS 190.010 is made this ___ day of October, 2009 by and between the CITY OF MILWAUKIE, an Oregon municipal corporation hereinafter referred to as "CITY," and CLACKAMAS RIVER WATER, an Oregon municipal corporation, hereinafter referred to as "DISTRICT." The promises and agreements of each are in consideration of the promises and agreements of the other.

The parties agree as follows:

1. Term. The term of this Agreement is five (5) years, beginning on the ___ day of January, 2010, ending on the 31st day of December, 2014.
2. Scope of Services.
 - A. The CITY agrees to provide apparatus and vehicle maintenance to the DISTRICT. In providing these services the CITY shall:
 - 1) Provide apparatus and vehicle maintenance to DISTRICT in a manner consistent with this Agreement between the parties. Included within the maintenance is DEQ testing, preventative maintenance, and repairs as requested by the DISTRICT.
 - 2) Maintain, for the DISTRICT, adequate maintenance and service records of each vehicle that the CITY provides service to. The records maintained shall only be for service provided by the CITY.
 - B. The CITY agrees to provide the DISTRICT with reports of apparatus and vehicle maintenance as requested by the DISTRICT.
3. Compensation. The DISTRICT agrees to pay the CITY based on billings provided by the City according to terms agreed upon by the parties. Payment shall be made in accordance with the following:
 - A. The initial cost to provide service shall be based on an hourly rate of \$65.00. Terms may be adjusted in each following year of this Agreement beginning July 1, 2010. CITY may provide notice of a rate adjustment annually by August 31 to be effective on January 1 of the following year. DISTRICT may object to the rate by exercising its right to terminate in accordance with Section 6 of this Agreement.
 - B. The DISTRICT is responsible for paying the cost of service provided by mechanics and other CITY public works personnel assigned to service District apparatus and vehicles. The CITY will calculate the cost of this service and bill the DISTRICT for the service. When preparing estimates of the cost of the CITY providing this service, the CITY shall account for

its cost associated with assigning mechanics and other personnel to tasks. Compensable tasks include obtaining parts from vendors, DEQ testing, apparatus and vehicle maintenance and repairs.

- C. The DISTRICT intends to appropriate funds during the term of this Agreement sufficient to provide the payments required to be made to the CITY during this Agreement.
 - D. The CITY shall invoice the DISTRICT on a monthly basis for service provided during the prior month. The DISTRICT shall make payment for services within fifteen (15) calendar days of receipt of invoice.
 - E. It is understood and agreed by the parties that no board member, officer, or other representative of the DISTRICT shall be individually liable for any payments due to the CITY.
 - F. None of the provisions of this Agreement shall be construed to create in the DISTRICT any right, interest, or ownership in any real or personal property of the CITY used for the performance of this Agreement.
4. Operational Coordinating, Scheduling Protocol, and Supervision.

- A. The DISTRICT will provide a liaison to coordinate with the CITY'S Fleet Manager. The Fleet Manager will ensure the day-to-day provision of high quality apparatus and fleet maintenance services that are approved by both the CITY and the DISTRICT. All issues will be resolved at the liaison level. However, if an issue is not able to be resolved in this manner it will be taken to the CITY Operations Director and DISTRICT Manager for resolution. In the event the parties cannot agree on a resolution to the issue a mutually agreeable third-party arbitrator will be contacted. Such arbitration shall not be binding but shall be the basis for the parties meeting to finalize agreement on operational and supervision issues.
- B. The DISTRICT acknowledges that the CITY has a responsibility to provide priority service first to the Clackamas River Water and CITY departments. Recognizing this, the CITY shall provide a reasonable estimate on a case by case basis of the timeframe in which work can be completed so the DISTRICT can determine if alternative arrangements for service are needed to meet the DISTRICT'S needs.

5. Hold Harmless.

- A. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, the CITY shall hold harmless and indemnify the DISTRICT, its Directors, employees, and volunteer agents against any and all claims, damages, losses, and expenses (including all attorney(s) fees and costs), arising out of or

resulting from the CITY'S performance of this Agreement where the loss or claim is attributable to the acts or omissions of the CITY.

- B. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, the DISTRICT shall hold harmless and indemnify the CITY, its Councilors, employees, and volunteer agents against any and all claims, damages, losses, and expenses (including all attorney(s) fees and costs), arising out of or resulting from the DISTRICT'S performance of this Agreement where the loss or claim is attributable to the acts or omissions of the DISTRICT.
6. Termination. This Agreement may be terminated by either party as of the 31st day of December of any year during the term of this Agreement by giving written notice to the other party by September 30 of that year.
 7. Renewal. The DISTRICT agrees to give three (3) months' notice to the CITY prior to the expiration of this Agreement if the DISTRICT intends to renegotiate the Agreement.
 - A. If the DISTRICT has notified the CITY of its intent to renegotiate this Agreement, the parties agree that prior to the termination of this Agreement they will negotiate in good faith concerning the possible renewal of this Agreement or the making of a new Agreement.
 - B. If the DISTRICT has notified the CITY of its intent to renew or renegotiate this Agreement and renewal or successful renegotiation has not been completed before the end of this contract period, this Agreement shall be automatically extended for ninety (90) days to allow continuing negotiations. This Agreement may be extended further by mutual agreement for additional increments up to ninety (90) days each.
 8. Discrimination. The parties agree not to discriminate on the basis of race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, or source of income in the performance of this Agreement.
 9. Waiver of Breach. A waiver of any breach of any provision of this Agreement by either party shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.
 10. Applicable Laws. At all times during the term of this Agreement the DISTRICT and the CITY shall comply with all applicable laws, ordinances, rules, and regulations of the United States of America, the State of Oregon, including all agencies and subdivisions thereof.
 11. General Provisions. Unless otherwise specifically prescribed in this Agreement, the following provisions shall govern its interpretation and construction:

- A. When not inconsistent with the context words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number.
 - B. Time is of the essence of this Agreement. Neither the DISTRICT nor the CITY shall be relieved of its obligation to comply promptly with any provisions of this Agreement by any failure of the other party to enforce prompt compliance with any of its provisions.
 - C. Unless otherwise specified in this Agreement, any action authorized or required to be taken by the CITY shall be taken by the Council or by the CITY Manager.
 - D. Every duty and every act to be performed by either party imposes an obligation of good faith on the party to perform such.
12. Notice. All notices, reports, or demands required to be given in writing under this Agreement shall be deemed to be given when delivered personally to the person designated below or when five (5) days have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid, or on the next business day if sent by express mail or overnight air courier to the party to which the notice is being given, as follows:

For CITY:
 Mike Swanson
 City Manager
 10722 SE Main
 Milwaukie OR 97222

For DISTRICT:
 Lee Moore, Sr.
 General Manager
 16770 SE 82nd Dr
 Clackamas OR 97015

Such addresses may be changed by either party upon written notice to the other party given as provided in this section

13. Captions. The paragraph captions and headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
14. Time Computation. Where the performance or doing of any act, duty, matter, payment, or thing is required hereunder and the period of time or duration for the performance is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

CITY OF MILWAUKIE, an Oregon
municipal corporation

CLACKAMAS RIVER WATER, an Oregon
special district

By: _____
Mike Swanson, City Manager

By: _____
Cyndi Lewis-Wolfram, President

Approved as to form:

City Attorney

Clackamas River Water Attorney

APPENDIX 'A'

The CITY agrees to provide the services listed below. It is understood that this is not an all inclusive list but is intended to display intent and to meet the expectations of the DISTRICT.

1. Provide a schedule for once a year preventative maintenance on all DISTRICT service vehicles. An agreed upon checklist will be utilized.
2. Provide maintenance on DISTRICT small power equipment as needed.
3. Provide reports on labor, parts, and expenses, as requested.



To: Mayor Ferguson and Milwaukie City Council
Through: Mike Swanson, City Manager
From: Bob Jordan, Chief of Police
Date: October 15, 2009
Subject: **O.L.C.C. Application – Mustafa, Inc. – 4140 S.E. Harrison Street**

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Mustafa, Inc. – 4140 S.E. Harrison Street.

Background:

We have conducted a background investigation and find no reason to deny the request for liquor license.

6.
OTHER BUSINESS



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: Ignacio Palacios, Finance Director
Subject: Supplemental Budget Resolution
Date: October 26, 2009 for November 3, 2009 Council Meeting

Action Requested

Approve the attached resolution approving a supplemental budget for fiscal year 2009-2010.

Background

The City has an intergovernmental agreement with Clackamas County to complete pedestrian crossing and sidewalk improvements at Oak Street and 37th Avenue and Ardenwald Street as part of that project the Union Pacific Rail Road (UP) was contracted to complete some of the pedestrian crossing improvements at the railroad crossing. That project was completed in the 2008-09 Fiscal Year but the invoicing for the amount due of \$55,879 was not reconciled until this current fiscal year. In addition, the Stormwater Department budgeted \$80,000 in the 2008-09 Fiscal Year of that amount \$40,000 was appropriated but the improvements were not completed by the end of the fiscal year – approximately \$26,000 is needed to complete the project (well within the original budgeted amount).

Concurrence

The Budget Officer, Finance and Engineering.

Fiscal Impact

There will be no adverse fiscal impact due to the payment and completion of these projects. The balances not appropriated in the 2008-09 Fiscal Year were carried forward as a portion of each of the perspectives fund's beginning fund balance. The amounts requested in the supplemental budget had previously been appropriated in each of the funds (Fund 327 – Streets Capital & Reserve and Fund 575 – Stormwater SDC, respectively).

Alternatives

Deny request or approve with modifications.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, AUTHORIZING BUDGET APPROPRIATION FOR THE PURPOSE OF COMPLETING THE UNION PACIFIC RAILROAD AND KING ROAD STORMWATER IMPROVEMENT PROJECTS.

WHEREAS, the City Council of the City of Milwaukie had previously adopted the 2008-2009 Budget which included the \$55,000 and \$80,000 appropriation in the Street Capital and Reserve and Stormwater SDC Funds for capital improvement projects, and

WHEREAS, the unappropriated amounts were carried forward in the affected funds beginning fund balance; and

WHEREAS, the change in beginning fund balance and materials and services appropriations do not change the total fund appropriation by more than 10% pursuant to ORS 294.480 Supplemental Budget(s); and

WHEREAS, due to time constraints amounts owed the Union Pacific Rail Road (UPRR) were not reconciled until the current fiscal year and the storm water improvements could not be completed before the end of the 2008-2009 Fiscal Year;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milwaukie, Oregon, as follows:

Section 1. The City Council authorizes the appropriation of \$55,900 to be charged to the Streets Capital and Improvements – Capital for the payment to UPRR with the offset to Streets Capital and Improvements – Beginning Fund Balance and further authorizes the appropriation of \$26,000 to be charged to Stormwater SDC – Capital for the completion of King Road storm water improvements with the offset to Stormwater SDC – Beginning Fund Balance.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon, on November 3, 2009.

Mayor Jeremy Ferguson

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:

Jordan, Schrader, Ramis, PC

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE SUPPORTING THE CLACKAMAS COUNTY COMMUNITY COVENANT AND THE COMMITMENTS MADE TO VETERANS, MEMBERS OF THE MILITARY, AND THEIR FAMILIES

WHEREAS, the City of Milwaukie recognizes the commitments and sacrifices made by veterans, members of the military, and their families; and

WHEREAS, the strength of our military depends upon the strength of their families; and

WHEREAS, veterans, military members, and their families find strength from citizens, employers, educators, and civic and business leaders in their communities; and

WHEREAS, the Community Covenant fosters and sustains effective state and local community partnerships with all branches of the military, and their veterans, members, and families.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milwaukie, Oregon that the City of Milwaukie supports the Clackamas Community Covenant and is committed to:

- Creating a welcoming transition for those returning from active duty and their families.
- Identifying and implementing a program of support by the community for a unit serving on active duty.
- Working with other partners to connect our veterans and their families with critical information for support and assistance throughout the deployment cycle.

BE IT FURTHER RESOLVED that this Resolution shall take effect upon passage.

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

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney