

WORK SESSION



MILWAUKIE CITY COUNCIL WORK SESSION

City Hall Conference Room
10722 SE Main Street
www.milwaukieoregon.gov

AGENDA
October 15, 2013

A light dinner will be served.

Page #

5:00 p.m. Executive Session – The City Council will meet in executive session pursuant to ORS 192.660(2)(e) to deliberate with persons designated by the governing body to negotiate real property transactions.

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|----|-----------|---|----------------|-----------|
| 1. | 5:30 p.m. | City Manager's Report | Bill Monahan | |
| | | A. Goals Update | Teri Bankhead | |
| | | B. Bertman House Lease | JoAnn Herrigel | 1 |
| 2. | 6:00 p.m. | Preliminary Survey Results and Summary of Stakeholder Conversations | Grady Wheeler | 31 |
| 3. | 6:45 p.m. | Adjourn Work Session | | |

Information

Executive Session: The City Council may meet in executive session pursuant to ORS 192.660(2). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

Public Notice

- The Council may vote in work session on non-legislative issues.
- The time listed for each discussion item is approximate. The actual time at which each item is considered may change due to the length of time devoted to the one previous to it.
- The Council requests that mobile devices be set on silent or turned off during the meeting.
- The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities Act. For special accommodations, please call 503-786-7502 or email ocr@milwaukieoregon.gov at least 48 hours prior to the meeting.



MILWAUKIE CITY COUNCIL
AGENDA ITEM SUMMARY

Agenda Item: WS 1. B.

Meeting Date: 10/15/13

Title: Bertman House Lease - NCUWC

Prepared By: JoAnn Herrigel, Parks and Sustainability Director

Department Approval: Steve Butler, Community Development Director

City Manager Approval: Bill Monahan

Approval Date:

ISSUES BEFORE COUNCIL

Approval of a resolution authorizing the City Manager to sign a lease with the North Clackamas Urban Watersheds Council for use of a portion of the City-owned Bertman House, located at 11022 SE 37th Ave.

STAFF RECOMMENDATION

Approve the proposed resolution.

KEY FACTS & INFORMATION SUMMARY

The Bertman House, owned by the City of Milwaukie, was historically used by the City's Fire Department and later, from 1992 to 2006, as an office by the North Clackamas Parks and Recreation District. In 2007, after the District relocated to the County offices, the City Manager signed a 5-year lease with the New Century Players, a local theater group, for use of the Bertman House as office and prop storage space. In 2012, the City signed a new 5-year lease with the New Century Players. Council is now being asked to approve a 4-year lease with the North Clackamas Urban Watersheds Council for use of a small portion of the Bertman House.

OTHER ALTERNATIVES CONSIDERED

None.

CITY COUNCIL GOALS

None.

FISCAL NOTES

Rent of less than \$195.30 a year will be paid to the City as part of this lease agreement.

ATTACHMENTS

1. Resolution
2. Draft Commercial Lease
3. NCUWC Flyer
4. Commercial Lease



MILWAUKIE CITY COUNCIL
STAFF REPORT

To: Mayor and City Council
Through: Bill Monahan, City Manager
Subject: Bertman House Lease for North Clackamas Urban Watersheds Council
From: JoAnn Herrigel, Parks and Sustainability Director
Date: October 15, 2013

ACTION REQUESTED

Approve a resolution authorizing the City Manager to sign a lease with the North Clackamas Urban Watersheds Council for use of a portion of the City-owned Bertman House, located at 11022 SE 37th Ave.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

Spring 2012: Council authorized the City Manager to sign a 4-year lease agreement with the New Century Players for use of the Bertman House at 11022 SE 37th Ave.

BACKGROUND

The Bertman House, owned by the City of Milwaukie, was historically used by the City's Fire Department and later, from 1992 to 2006, as an office by the North Clackamas Parks and Recreation District. In 2007, after the District relocated to the County offices, the City Manager signed a 5-year lease with the New Century Players, a local theater group, for use of the Bertman House as office and prop storage space.

In 2012, staff met with Council to review the use of the Bertman House and to discuss the potential of renewing a lease with the New Century Players. During this discussion, Council noted the benefits of having tenants in otherwise unused City-owned buildings to ensure building safety and upkeep and expressed an interest in supporting local non-profit organizations by providing affordable office space. Council further requested that the NCP lease stipulate that the theater group perform at least three of their annual productions in the City of Milwaukie. Finally, Council encouraged staff to welcome the use of the Bertman House by other local non-profit organizations.

Shortly after the 2012 lease was signed with the New Century Players, the City began discussions with the North Clackamas Urban Watersheds Council (NCUWC), a newly formed Watershed Council focusing on protection and enhancement of the Kellogg Creek Watershed, regarding a potential lease for a small portion of the upper floor of the Bertman House. Due to staffing changes at the City and the Watershed Council, the lease negotiations with NCUWC have taken almost a year to complete. However, in August 2013, the NCUWC Board voted in favor of moving forward with a lease with the City.

The elements of the proposed lease with NCUWC generally mirror those in the lease for the New Century Players. The two leases vary only in the following ways:

- The same charge per square foot is applied in both leases, however, the annual rent payment for NCUWC is lower due to the smaller space used.
- The length of the term for the NCUWC lease is one year shorter in order to synchronize the term ends of the two leases.
- Section 1.3, Renewal Option, has been modified to allow the City more discretion in considering renewal of the NCUWC lease.

Important lease elements that are in both agreements include:

- The City agrees to pay for water, storm and sewer utilities costs and weekly garbage collection and NCUWC splits the cost of the remaining utilities such as electric and gas, with New Century Players.
- NCUWC is required to obtain and maintain a stated amount of insurance.
- NCUWC is required to file appropriate paperwork with the County Tax Assessor's office, declaring their non-profit status and allowing the City to maintain its exemption from taxes on the Bertman House.
- NCUWC may not assign or sublet any portion of the space without the City's consent.

Tricia Sears, NCUWC's Coordinator, has obtained the required liability insurance and has delivered a certificate of insurance to the City. In addition, Ms. Sears has obtained the appropriate forms from the County Tax office and will file them at the appropriate time of year. City staff has facilitated communication between the two non-profits to ensure amicable division of utility costs.

CONCURRENCE

The City Attorney and the Finance Director concur with the lease elements.

FISCAL IMPACTS

Rent of \$195.30 a year will be paid to the City as part of this lease agreement.

WORK LOAD IMPACTS

Facilities Department staff will be responsible for any significant building repairs, not caused by the tenants, which are required during the term of the lease.

ALTERNATIVES

Deny approval of the resolution.

Approve the resolution conditioned on specific amendments of the proposed lease.

ATTACHMENTS

- 1.NCUWC Flier
- 2.Resolution
- 3.Proposed lease
- 4.New Century Players' Lease



CITY OF MILWAUKIE
"Dogwood City of the West"

Attachment 1

Resolution No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN A 4 YEAR LEASE WITH THE NORTH CLACKAMAS URBAN WATERSHEDS COUNCIL (NCUWC) FOR USE OF A PORTION OF THE CITY-OWNED BERTMAN HOUSE, LOCATED AT 11022 SE 37TH AVE.

WHEREAS, the City of Milwaukie owns a building located at 11022 SE 37th Ave, called the Bertman House; and

WHEREAS, the Bertman House is currently leased by the New Century Players, a non-profit theater group; and

WHEREAS, there is adequate space in the Bertman House to accommodate another non-profit organization; and

Now, therefore, be it resolved that the City Manager is authorized to sign a 4 year lease, beginning November 1, 2013 and continuing through April 30, 2017, with the North Clackamas Urban Watersheds Council (NCUWC) for use of a portion of the City-owned Bertman House, located at 11022 SE 37th Ave .

Introduced and adopted by the City Council on October 15, 2013.

This resolution is effective on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Attachment 2

DRAFT COMMERCIAL LEASE

Date: October_____, 2013 (“Effective Date”)

Between: THE CITY OF MILWAUKIE, an Oregon municipal corporation (“Landlord”)
10722 SE Main Street
Milwaukie, OR 97222

And: North Clackamas Urban Watersheds Council, an Oregon
nonprofit corporation (“Tenant”)
1900 SE Milport Rd., Ste. C
Milwaukie, OR 97222

Landlord leases to Tenant and Tenant leases from Landlord the following described property (the "Premises") on a non-exclusive basis, on the terms and conditions stated below:

Approximately 271 square feet consisting of a room, a bathroom, and a hallway connecting the two, which are part of the top floor of the building (“Building”) located on the property located at 11022 SE 37th Ave, Milwaukie, Oregon, tax lot 1S1E36ADO2500 (“Property”), along with 2 parking spaces on the Property and access to the Building ,including the entryway and stairway as necessary to access the top floor of the Building.

Section 1. Occupancy.

1.1 Original Term. The term of this Commercial Lease (“Lease”) shall commence November 1, 2013, and continue through April 30, 2017, unless sooner terminated as hereinafter provided (“Original Term”).

1.2 Possession. Tenant's right to possession and obligations under the Lease shall commence on November 1, 2013.

1.3 Renewal. If this Lease is not in default, Tenant shall have the right to request renewal of this Lease for one (1) five (5) year term (“Renewal Term”) as follows:

(1) Renewal of the lease is discretionary, requiring approval of both Tenant and Landlord.

(2) If both parties decide to renew the lease, the renewal term shall commence on the day following expiration of the Original Term.

(3) Tenant shall request renewal by giving written notice to Landlord given not less than six (6) months prior to the last day of the Original Term. The giving of such notice

only invites the parties to discuss terms of a new agreement. One or more terms, including rent, may be negotiated once the notice of election to renew is received by Landlord.

Section 2. Rent

2.1 Tenant shall make an annual base rent payment in advance to the Landlord of \$195.30 due and payable to the Landlord by November 1 of each year of the Lease, beginning November 1, 2013. Subsequent base rent payments will be for the full annual amount and will be due on November 1 of 2014 and 2015. Rent paid on November 1, 2016 shall encompass a prorated payment of 4 months' rent

2.2 Maintenance. As specified in Section 4.2, Tenant agrees to maintain the Premises in the same condition as it was on the Effective Date of this Lease, except for ordinary wear and tear.

2.3 Utilities.

2.3.1 Landlord shall be responsible for paying the following utilities: water, sewer, storm drainage, routine weekly solid waste collection (not the cost of collection and disposal of materials by special request), general site security services and transportation fees. Original Tenant (defined below) has setup and maintained telephone, cable, data, internet, electrical and heating. Tenant shall be responsible for electrical and heating expenses, plus the cost of telephone, cable, data and/or internet, if Tenant uses such utilities. Tenant shall make separate contractual arrangements with Original Tenant to pay for tenant's proportional share of the electrical costs, the heating costs, and any other utilities Tenant wishes to share with Original Tenant. For these or any other utilities Tenant desires to have in the Premises, Tenant shall make separate contractual arrangements directly with the providers of those services and utilities.

2.3.2 Tenant must use all utilities in a commercially reasonable manner, so as not to negatively impact Original Tenant.

Section 3. Use of the Premises

3.1 Permitted Use. The Premises shall be used for office space and for no other purpose without the consent of Landlord, which consent shall not be withheld unreasonably. For the purposes of this Lease, "office space" is intended to include use of the facility for meeting rooms and conducting administrative work.

3.2 Restrictions on Use. In connection with the use of the Premises, Tenant shall:

(1) Conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use.

(2) Refrain from any activity that would make it impossible to insure the

Premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Landlord to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional cost of the insurance.

(3) Refrain from any use that would be reasonably offensive to owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the Premises.

(4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Landlord.

(5) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the premises without the written consent of Landlord. Tenant is permitted to hang artwork for display purposes on interior walls. Care should be taken to repair marks and nail holes on an ongoing basis to maintain a neat and clean appearance. Tenant is permitted to hang a temporary (e.g. "New Home of...") banner or sign for up to ninety (90) days from occupancy, provided the banner or sign is no larger than 16 square feet. Tenant is also permitted to display a permanent sign provided it is no larger than four square feet.

3.3 Protective Restrictions.

(1) Tenant shall not cause or permit use of herbicides or pesticides on the Premises without permission of Landlord. A written request for such use must be presented to Landlord at least forty-five (45) days in advance and reviewed by the City's Water Quality Control Coordinator and the Oregon Drinking Water Program Hydrologist. The request must contain the following information:

- a. Purpose of chemical use.
- b. Label name of product and copy of label and Material Safety Data Sheet (MSDS).
- c. Graphic depiction of area of use.
- d. Application rate and total use.

(2) Storage of Hazardous Substances (other than routine office cleaning supplies in less than one gallon containers) is prohibited. The term "Hazardous Substance" shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material organic or synthetic as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions. The term "Environmental Law" means any federal, state, or local laws, ordinances, codes, statutes, regulations, administrative rules, policies and orders, and other authority existing now or in the future that classify, regulate, list, or define Hazardous Substances.

(3) Parking. Vehicle parking is limited to paved areas only. There is no parking allowed in the first position next to north side of the water facilities located within the separate building located on the Property. All Tenant vehicles must be able to be moved on short notice to facilitate emergency repair to the water facilities or emergency operations.

3.4 Non-exclusivity; Co-Tenancy or Leasing of Portion of Premises by Landlord to Another Party. Landlord and Tenant acknowledge that Landlord leases the remainder of the Building and Property to New Century Players (“Original Tenant”).

Section 4. Obligations

4.1 Landlord’s Obligations. Landlord shall be responsible for all repairs and replacement except for those items of repair and maintenance set forth in Section 4.2 as Tenant’s obligations.

4.2 Tenant’s Obligations. The following shall be the responsibility of Tenant:

(1) Maintenance of interior walls, ceilings, doors, windows, and related hardware, light fixtures, switches, and wiring and plumbing in the Premises and bathroom in the northeast portion of the Building top floor.

(2) Any repairs to any part of the Property necessitated by the negligence of Tenant, its agents, employees, and invitees, except as provided in Section 5.2 dealing with waiver of subrogation.

(3) As set forth in Section 3.2 (1), any repairs or alterations required under Tenant’s obligation to comply with laws and regulations as set forth in Section 3.2.

4.3 Landlord’s Interference with Tenant. In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall not cause unreasonable interference with use of the Premises by Tenant.

4.4 Reimbursement for Repairs Assumed. If Tenant either fails or refuses to perform maintenance or make repairs that are required by this Lease, after Landlord gives ten (10) days notice to commence such repairs or maintenance, Landlord may make the repairs and charge the actual cost of repairs or maintenance to Tenant. Such expenditures shall be reimbursed by Tenant within ten (10) days after demand by Landlord.

4.5 Inspection of Premises. Landlord shall have the right to inspect the Premises at any reasonable time with twenty-four (24) hour written notice to Tenant or upon shorter notice if necessitated by an emergency.

4.6 Limitation on Tenant Obligation to Make Repairs. If while performing maintenance or repairs, Tenant encounters unforeseen latent conditions in the Building that cause it to be unable to perform the requirements of Sections 2.2 and 4.2, Tenant shall inform Landlord to discuss the concern and Landlord and Tenant will need a mutual agreement as to how such obligation will be carried out.

Section 5. Insurance

5.1 Insurance Required. Landlord shall keep the Premises insured at Landlord's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Tenant shall carry similar insurance insuring the personal property of Tenant on the Premises against such risks.

5.2 Waiver of Subrogation. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

5.3 Liability Insurance. Before taking possession of the Premises, Tenant shall procure, and thereafter during the term of the Lease shall continue to carry, the following insurance at Tenant's cost: Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

Coverage	Limit
General Aggregate	1,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one fire)	50,000
Medical Expense (Any one person)	5,000

Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the premises. Such insurance shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant, and shall name Landlord as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring a 10-day written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant's taking possession of the Premises.

Section 6. Taxes

6.1 Personal Property Taxes. Tenant shall pay as due all taxes on its personal property located on the Premises.

6.2 Real Property Taxes. Landlord is exempt from paying real property taxes levied against the Premises for property that is in public use. It is the intent of the parties that the entire property continue to be exempt from taxation; provided, however, Tenant must establish and maintain tax-exempt status. The parties recognize that tax-exempt status will be determined by Clackamas County or the State of Oregon. Tenant shall be responsible for filing with Clackamas County an Application For Real and Personal Property Tax Exemption for the portion of the property under its control. If Tenant fails to qualify for tax exemption, Tenant shall pay, as due, the full tax obligation. As used herein, real property taxes includes any fee or charge relating to the ownership, use, or rental of the Premises, other than taxes on the net income of Landlord or Tenant or personal property.

Section 7. Liability and Indemnity

7.1 Liens.

(1) Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent which shall be payable within thirty (30) days of demand. Such action by Landlord shall not constitute a waiver of any right or remedy that Landlord may have on account of Tenant's default.

(2) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien, bond around the lien as provided under Oregon law, or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

7.2 Indemnification by Tenant. Indemnification By Tenant: Tenant agrees to indemnify, defend (with counsel reasonably acceptable to Landlord), and hold Landlord and its directors, officers, representatives, agents, property managers, and employees harmless from and against all liabilities, damages, claims, losses, judgments, charges, and expenses (including reasonable attorneys' fees and court costs) arising from or in any way related, directly or indirectly, to (i) Tenant's or its directors, officers, members, managers, agents, employees, subtenants, or

invitees (“Tenant Parties”) use of the Premises or the Building, (ii) the conduct of Tenant's business, (iii) from any activity, work or thing done or permitted by Tenant or a Tenant Party in or about the Premises or Building, (iv) in any way connected with the Premises or with the improvements or personal property therein, including, but not limited to, any liability for injury to person or property of Tenant, Tenant Parties, or third party persons, and/or (v) Tenant's failure to perform any covenant or obligation of Tenant under this Lease. Tenant's agreement to indemnify Landlord pursuant to this Section 7.2 is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease. Tenant agrees that the obligations of Tenant herein shall survive the expiration or earlier termination of this Lease.

Section 8. Quiet Enjoyment; Mortgage Priority

Landlord’s Warranty. Landlord warrants that it is the owner of the Premises and has the right to lease the Premises free of all encumbrances. Landlord will defend Tenant’s right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term, subject to the provisions of Section 3.4.

Section 9. Assignment and Subletting

Tenant may not assign, mortgage, or sublease the whole or any part of the Premises, nor may Tenant grant a right of use of any portion of the Premises to any third person by any other means, without the prior written consent of Landlord which Landlord may withhold in its sole and absolute discretion. This provision shall apply to all transfers by operation of law. Landlord may withhold or condition such consent in its sole and arbitrary discretion.

Section 10. Tenant Termination. Notwithstanding any other provision of this Lease, Tenant may terminate this Lease, prior to the Expiration Date, by providing thirty (30) days prior written Notice to Landlord.

Section 11. Default

The following shall be events of default:

11.1. Default in Rent. Failure of Tenant to perform its obligations as stated in Section 2.

11.2. Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of the Lease (other than Section 2) within fifteen (15) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the fifteen (15-) day period, this provision shall be complied with if Tenant begins correction of the default within

the fifteen (15-) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

11.3. Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within ten (10) days shall constitute a default. If Tenant consists of two or more individuals or business entities, the events of default specified in this Section 10.3 shall apply to each individual unless within ten (10) days after an event of default occurs, the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the Lease.

11.4. Abandonment. Failure of Tenant for thirty (30) days or more to occupy the Premises for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease.

Section 12. Remedies of Default

12.1. Termination. In the event of a default, the Lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the Lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant of the default, and Landlord may reenter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

12.2. Reletting. Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purpose other than that specified in the Lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant that Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

Section 13. Surrender at Expiration

13.1. Condition of Premises. Upon expiration of the lease term or earlier termination

of the Lease on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises broom clean and in the same condition as at the commencement of the Lease. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Tenant is responsible shall be completed to the latest practical date prior to such surrender.

13. 2. Fixtures.

(1) All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.

(2) Prior to expiration or other termination of the lease term Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within ten (10) days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Landlord.

13. 3. Holdover.

(1) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month-to-month, subject to all of the provisions of this Lease except the provisions for base rent, term and renewal, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Base rent during every holdover period shall be 125% of the base rent in effect at the time the applicable Lease term expires or is terminated. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this Lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

(2) If a month-to-month tenancy results from a holdover by Tenant under this Section 12.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than sixty (60) days prior to the termination date that shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law

with respect to a month-to-month tenancy.

Section 14. Miscellaneous.

14.1. Nonwaiver. Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

14.2. Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

14.3. Notices. Any notice required or permitted under this Lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this Lease or to such other address as may be specified from time to time by either of the parties in writing.

14.4. Succession. Subject to the above-stated limitations on transfer of Tenant's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

14.5. Recordation. This Lease shall not be recorded without the written consent of Landlord.

14.6. Time of Essence. Time is of the essence of the performance of each of Tenants obligations under this Lease.

14.7. No Third Party Rights. This Lease shall not create any rights in or inure to the benefit of any parties other than Landlord and Tenant.

14.8. Modification. Any modification of the provisions of this Lease shall be reduced to writing and signed by the parties.

14.9. Governing Laws; Venue. This Lease shall be governed by the laws of the State of Oregon. Venue shall be in the Circuit Court for Clackamas County, Oregon.

14.10. Entire Agreement. This Lease contains the entire agreement between the parties and supersedes all prior written or oral discussions, leases, or agreements regarding the premises described herein.

14. 11. Severance. If any provision of this Lease is held to be invalid, it will not affect the validity of any other provision. This Lease will be construed as if the invalid provision had never been included.

14. 12. Counterparts. This Lease may be executed in counterparts, each of which, when taken together, shall constitute fully executed originals.

Section 15. Arbitration

Dispute Resolution. Except as set forth in Section 15, the Parties agree that it is in their respective best interests to attempt to resolve disputes that arise under this Lease in a quick and inexpensive manner. To that end, the Parties commit to use their best efforts to resolve disputes informally. For all disputes that arise pursuant to this Lease, the Parties shall negotiate with one another in good faith in an effort to reach resolution of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) days after the commencement of negotiations, the Parties shall submit the issue to a qualified mediator in good faith to attempt to resolve the dispute and the cost of the mediator shall be shared equally by the Parties. If the dispute cannot be resolved through mediation within ninety (90) days, then the dispute shall be submitted to and resolved by binding arbitration. The arbitration shall be held in the Portland, Oregon metropolitan area, consistent with the rules of the Arbitration Services of Portland, Inc. Cost of the arbitrator will be shared equally by the Parties. Except as otherwise required by law, the arbitrator's final award shall be final, binding, and non-appealable; and no Party may seek any amendment to or reconsideration of the arbitrator's final award except for correction of non-substantive scrivener's or administrative errors. Judgment upon the arbitration award may be entered in any court having jurisdiction. Notwithstanding the foregoing, the Parties may resort to a court of competent jurisdiction for any matter in which injunctive relief is an appropriate remedy.

Section 16 Rent Arbitration.

16. 1. Disputes to Be Arbitrated. If any dispute arises between the parties regarding the base rent to be paid during any Renewal Term under the Lease, either party may request arbitration and appointment as an arbitrator an independent commercial real estate appraiser having knowledge of valuation of rental properties comparable to the Premises. The other party shall also choose an arbitrator with such qualifications, and the two arbitrators shall choose a third. If the choice of the second or third arbitrator is not made within ten (10) days of choosing the prior arbitrator, then either party may apply to the presiding judge of the county where the Premises are located to appoint the required arbitrator.

16. 2. Procedure for Arbitration. The arbitrators shall proceed according to the Oregon statutes governing arbitration, and the award of the arbitrators shall have the effect therein provided. The arbitration shall take place in Clackamas County. The parties shall share costs of the arbitration equally, but each party shall pay its own attorney fees incurred in connection with the arbitration.

THE CITY OF MILWAUKIE, an Oregon
Municipal Corporation

By: _____
Name: _____
Its: _____

NORTH CLACKAMAS URBAN
WATERSHEDS COUNCIL, an Oregon
non-profit corporation

By: _____
Name: _____
Its: _____

North Clackamas Urban Watersheds Council



About Our Watersheds

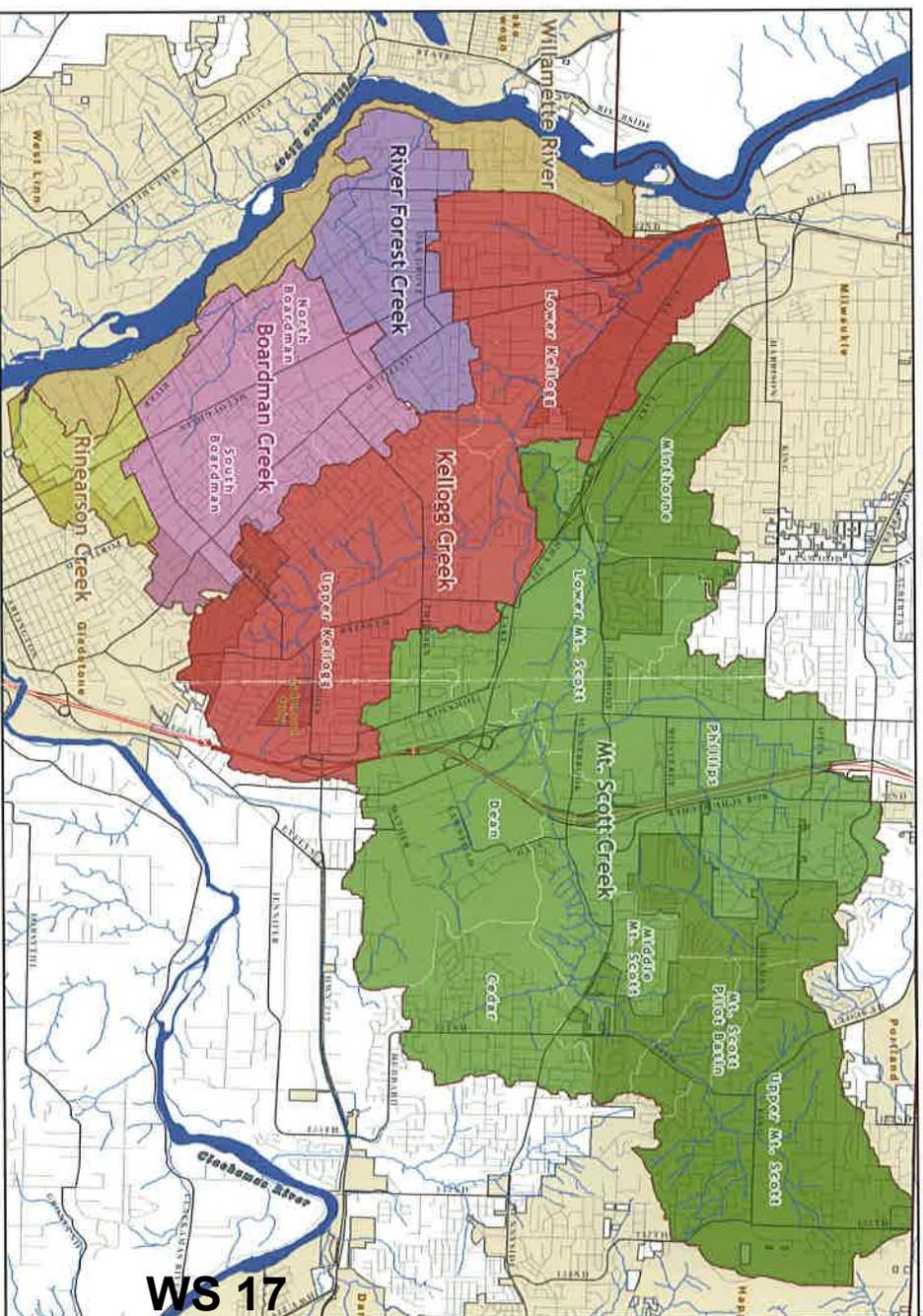
Kellogg/Mt Scott Watershed (KMS) encompass about 16 square miles (10,300 acres). It is home to an amazing array of wildlife including salmon, steelhead, cutthroat trout, brook lamprey, great blue heron, coyote, deer, Northwestern salamander, red-legged frogs, pileated woodpecker, wood duck, beaver and more. The basin's headwaters begin in Happy Valley and Johnson City and extend to the Willamette River in downtown Milwaukie.

River Forest watershed covers about 800 acres and consists of 10 miles of creek in pipe and about 3 miles of open stream. A small man-made lake marks its confluence with the Willamette. Significant habitat improvements are underway in Risley Park, thanks to North Clackamas Parks & Recreation District and the Oak Lodge Sanitary District.

Boardman is the largest of the basins that make up the Oak Lodge area. This basin covers about 1,300 acres and is a tributary to the Willamette River. This basin consists of 21 miles of creek in pipe and 4 miles of open stream. The watershed is impacted by development, but there are great opportunities for restoration partnerships with public and private landowners to continue improving conditions.



Rinearson originates in the Boardman Wetland, spends about half of its journey piped underground, but emerges periodically to pass through areas of high habitat potential including the Olson Property and the Meldrum Bar Park Natural Area. This is the smallest tributary in the area, but the 20 acres at the confluence with the Willamette in Meldrum Bar Park is designated as a natural area and is being restored.



WS 17

Restore your creekside property with NCUWC!

NCUWC is proud to offer, with it's partners, the Streamside Stewards Program! This program helps private landowners reduce long-term soil erosion and improve the ecological health of their streamside property and includes financial assistance with project implementation.

This program is available in select areas of our watersheds.

Please contact restoration@ncuwc.org or 503-550-9282 to get more information.



Who is NCUWC?



About the Council

The North Clackamas Urban Watersheds Council (NCUWC) is one of Oregon's newest councils! NCUWC was formally recognized by the Clackamas County Board of Commissioners in June, 2009.

The Council includes representation from multiple citizens, businesses, non-profit organizations, county community planning organizations (CPO), city recognized neighborhood groups and government agencies including: the Friends of North Clackamas Parks, Clackamas County Urban Green, North Clackamas Parks & Recreation District, Clackamas County Service District #1, Water Environment Services, the Rinearson Coalition, the Tsunami Crew, Friends of Kellogg and Mt. Scott Creeks, Oak Lodge Sanitary District, and McFarlane's Bark and the cities of Happy Valley, Milwaukie and Gladstone.

Our Programs

NCUWC organizes educational exhibits at community events, volunteer work parties, educational tours and community presentations. To find out more about what we do, contact info@ncuwc.org or 503-550-9282.

Get Involved!

- Call us to assess your streamside property and help you restore the beauty and function of your streamside area.
- Check out our website and sign up for our quarterly newsletter at www.ncuwc.org
- Find us on **facebook**
- Join NCUWC at restoration work parties
- Attend annual events such as Earth Day and the Watershed Wide Tour!
- Inquire about volunteer opportunities for your classroom, youth group, office or family.
- Attend a board or a subcommittee meeting.
- Invite us to participate in your upcoming community event!



Special thanks to WES and Clackamas County Soil and Water Conservation District for providing support for this brochure.
Photo credit: Steve Berliner



People and Nature Flourishing in a Healthy Ecosystem

Our mission is to advocate for the protection and enhancement of the watersheds' fish and wildlife habitat and improve water quality through partnerships with public and private entities, habitat restoration projects, community education and outreach, and strategic planning.



North Clackamas Urban Watersheds Council
1900 SE Milport Rd., Suite C
Milwaukie, OR 97222
503-550-9282 info@ncuwc.org www.ncuwc.org

Printed on 100% post-consumer recycled paper.
Please recycle.

Attachment 4

COMMERCIAL LEASE

Date: May 1, 2012 ("Effective Date")

Between: THE CITY OF MILWAUKIE, an Oregon municipal corporation ("Landlord")
10722 SE Main Street
Milwaukie, OR 97222

And: NEW CENTURY PLAYERS, an Oregon nonprofit corporation ("Tenant")
11022 SE 37th Ave.
Milwaukie, OR 97222

Landlord leases to Tenant and Tenant leases from Landlord the following described property (the "Premises") on a non-exclusive basis, on the terms and conditions stated below:

The property located at 11022 SE 37th Ave, Milwaukie, Oregon, tax lot 1S1E36ADO2500, including the building Tenant currently occupies ("Building") and excepting the separate building co-located on the property containing Landlord owned water system facilities (the separate building and water system facilities are collectively, the "Water Facilities"). The total square footage leased to Tenant is 3,350 square feet.

Section 1. Occupancy.

1.1 Original Term. The term of this Commercial Lease ("Lease") shall be for five (5) years, commencing May 1, 2012, and continuing through April 30, 2017, unless sooner terminated as hereinafter provided ("Original Term").

1.2 Possession. Tenant's right to possession and obligations under the Lease shall commence on May 1, 2012.

1.3 Renewal Option. If this Lease is not in default, Tenant shall have the right and option to renew this Lease for one (1) five (5) year term ("Renewal Term") as follows:

(1) The renewal term shall commence on the day following expiration of the Original Term.

(2) If exercised, the renewal option shall be exercised by written notice to Landlord given not less than six (6) months prior to the last day of the Original Term. The giving of such notice shall be sufficient to make the Lease binding for the Renewal Term without further act of the parties, other than that the Landlord and Tenant shall then be bound to negotiate the Renewal Term base rent. The rent will be negotiated once the notice of election to renew is

received by Landlord. The terms and conditions of the Lease for the Renewal Term shall be identical with the Original Term except for rent.

(3) If the parties do not agree on the base rent within sixty (60) days after notice of election to renew, the rent shall be determined by arbitration as provided in Section 15.

Section 2. Rent

2.1 Tenant shall make an annual base rent payment in arrears to the Landlord of \$3,000 due and payable to the Landlord by April 30 of each year of the Lease, beginning April 30, 2013 for the first year of occupancy (May 1, 2012 through April 30, 2013). Subsequent base rent payments will be due on April 30 of 2014, 2015, 2016 and 2017.

2.2 Additional Rent. As additional rent, Tenant agrees to stage at least three productions within the City of Milwaukie during the term of the Lease. For these three productions, Landlord will assist Tenant in securing a facility or negotiating terms for facility use that are reasonably acceptable to the Tenant. Tenant understands that Landlord will undertake reasonable efforts to secure a facility or negotiate terms for facility use that are acceptable to Tenant, but the failure of Landlord to succeed in these undertakings will not give rise to a breach of lease claim. As specified in Section 4.2, Tenant also agrees to maintain the Premises in the same condition as it was on the Effective Date of this Lease, except for ordinary wear and tear. The Tenant shall also make available in the Premises, meeting space and wall space for other local artists, arts organizations or city-sponsored events. Availability shall be determined at the sole discretion of the Tenant.

2.3 Utilities. Landlord shall be responsible for paying the following utilities: water, sewer, storm drainage, routine weekly solid waste collection (not the cost of collection and disposal of materials by special request), general site security services and transportation fees. Tenant shall be responsible for the cost of telephone, cable, data, internet, electrical, and heating expenses; Tenant shall make separate contractual arrangements with the providers of these services and utilities.

Section 3. Use of the Premises

3.1 Permitted Use. The Premises shall be used for office space and for no other purpose without the consent of Landlord, which consent shall not be withheld unreasonably. For the purposes of this Lease, "office space" is intended to include use of the facility for meeting rooms and art display.

3.2 Restrictions on Use. In connection with the use of the Premises, Tenant shall:

(1) Conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use.

(2) Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Landlord to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional cost of the insurance.

(3) Refrain from any use that would be reasonably offensive to owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the Premises.

(4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Landlord.

(5) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the premises without the written consent of Landlord. Tenant is permitted to hang artwork for display purposes on interior walls. Care should be taken to repair marks and nail holes on an ongoing basis to maintain a neat and clean appearance. Tenant is permitted to hang a temporary (e.g. "New Home of...") banner or sign for up to ninety (90) days from occupancy, provided the banner or sign is no larger than 16 square feet. Tenant is also permitted to display a permanent sign provided it is no larger than four square feet.

3.3 Protective Restrictions.

(1) Tenant shall not cause or permit use of herbicides or pesticides on the Premises without permission of Landlord. A written request for such use must be presented to Landlord at least forty-five (45) days in advance and reviewed by the City's Water Quality Control Coordinator and the Oregon Drinking Water Program Hydrologist. The request must contain the following information:

- a. Purpose of chemical use.
- b. Label name of product and copy of label and Material Safety Data Sheet (MSDS).
- c. Graphic depiction of area of use.
- d. Application rate and total use.

(2) Tenant may use only small amounts of low nitrate organic fertilizer in landscape areas and only with prior approval of the City's Water Quality Control Coordinator.

(3) Storage of Hazardous Substances (other than routine office cleaning supplies in less than one gallon containers) is prohibited. The term "Hazardous Substance" shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material organic or synthetic as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions. The

term "Environmental Law" means any federal, state, or local laws, ordinances, codes, statutes, regulations, administrative rules, policies and orders, and other authority existing now or in the future that classify, regulate, list, or define Hazardous Substances.

(4) **Parking.** Vehicle parking is limited to paved areas only. There is no parking allowed in the first position next to north side of Water Facilities located on the site. All tenant vehicles must be able to be moved on short notice to facilitate emergency repair to Water Facilities or emergency operations.

3.4 Non-exclusivity; Co-Tenancy or Leasing of Portion of Premises by Landlord to Another Party. Landlord and Tenant agree that Landlord may, at any time, enter into a lease with another nonprofit, tax-exempt entity ("New Tenant") to lease a portion of the Premises. In such a case, Landlord will provide Tenant with notice of the new tenancy at least thirty (30) days before the commencement date of New Tenant's lease. Landlord, at its option, may negotiate a co-tenancy agreement with Tenant and New Tenant to share a portion of the Premises, or Landlord may enter into a separate lease with New Tenant, in which case the Premises under this Lease will automatically be reduced by the size of the premises being leased to New Tenant. The repair and maintenance obligations of Sections 2.2 and 4.2 will not apply to the area leased to New Tenant. All other provisions of the Lease with Tenant will remain in full force and effect. Any lease between Landlord and New Tenant will include a provision requiring New Tenant to act in a commercially reasonable manner with regard to utility usage and maintenance, and to require the New Tenant to reimburse Tenant for New Tenant's appropriate share of utility and maintenance expenses. If Tenant finds that some action of New Tenant negatively impacts Tenant, then Tenant may ask the Landlord for assistance in resolving the issue. Landlord agrees to cooperate with Tenant to resolve the situation in an expeditious manner, possibly to include termination of New Tenant's lease; however, Landlord's failure to resolve such situation shall not give rise to any legal claim against Landlord, including, but not limited to, a breach of contract claim. The notice to Tenant required in this section will contain the size and location of the premises under the lease with New Tenant.

Section 4. Obligations

4.1 Landlord's Obligations. Landlord shall be responsible for all repairs and replacement except for those items of repair and maintenance set forth in Section 4.2 as Tenant's obligations.

4.2 Tenant's Obligations. The following shall be the responsibility of Tenant:

(1) Maintenance of interior walls, ceilings, doors, windows, and related hardware, light fixtures, switches, and wiring and plumbing from the point of entry to the Premises.

(2) Any repairs necessitated by the negligence of Tenant, its agents, employees, and invitees, except as provided in Section 5.2 dealing with waiver of subrogation.

(3) Ordinary maintenance of the heating and air conditioning system and any repairs necessary because of improper maintenance.

(4) As set forth in Section 3.2 (1), any repairs or alterations required under Tenant's obligation to comply with laws and regulations as set forth in Section 3.2.

4.3 Landlord's Interference with Tenant. In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall not cause unreasonable interference with use of the Premises by Tenant.

4.4 Reimbursement for Repairs Assumed. If Tenant either fails or refuses to perform maintenance or make repairs that are required by this Lease, after Landlord gives ten (10) days notice to commence such repairs or maintenance, Landlord may make the repairs and charge the actual cost of repairs or maintenance to Tenant. Such expenditures shall be reimbursed by Tenant within ten (10) days after demand by Landlord.

4.5 Inspection of Premises. Landlord shall have the right to inspect the Premises at any reasonable time with twenty-four (24) hour written notice to Tenant or upon shorter notice if necessitated by an emergency.

4.6 Limitation on Tenant Obligation to Make Repairs. If while performing maintenance or repairs, Tenant encounters unforeseen latent conditions in the Building that cause it to be unable to perform the requirements of Sections 2.2 and 4.2, Tenant shall inform Landlord to discuss the concern and Landlord and Tenant will need a mutual agreement as to how such obligation will be carried out.

Section 5. Insurance

5.1 Insurance Required. Landlord shall keep the Premises insured at Landlord's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Tenant shall carry similar insurance insuring the personal property of Tenant on the Premises against such risks.

5.2 Waiver of Subrogation. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

5.3 Liability Insurance. Before taking possession of the Premises, Tenant shall procure, and thereafter during the term of the Lease shall continue to carry, the following insurance at Tenant's cost: Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	1,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one fire)	50,000
Medical Expense (Any one person)	5,000

Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the premises. Such insurance shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant, and shall name Landlord as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring a 10-day written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant's taking possession of the Premises.

Section 6. Taxes

6.1 Personal Property Taxes. Tenant shall pay as due all taxes on its personal property located on the Premises.

6.2 Real Property Taxes. Landlord is exempt from paying real property taxes levied against the Premises for property that is in public use. It is the intent of the parties that the entire property continue to be exempt from taxation; provided, however, Tenant must establish and maintain tax-exempt status. The parties recognize that tax-exempt status will be determined by Clackamas County or the State of Oregon. Tenant shall be responsible for filing with Clackamas County an Application For Real and Personal Property Tax Exemption for the portion of the property under its control. If Tenant fails to qualify for tax exemption, Tenant shall pay, as due, the full tax obligation. As used herein, real property taxes includes any fee or charge relating to the ownership, use, or rental of the Premises, other than taxes on the net income of Landlord or Tenant or personal property.

Section 7. Liability and Indemnity

7.1 Liens.

- (1) Except with respect to activities for which Landlord is responsible, Tenant

shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent which shall be payable within thirty (30) days of demand. Such action by Landlord shall not constitute a waiver of any right or remedy that Landlord may have on account of Tenant's default.

(2) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien, bond around the lien as provided under Oregon law, or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

7.2 Indemnification by Tenant. Indemnification By Tenant: Tenant agrees to indemnify, defend (with counsel reasonably acceptable to Landlord), and hold Landlord and its directors, officers, representatives, agents, property managers, and employees harmless from and against all liabilities, damages, claims, losses, judgments, charges, and expenses (including reasonable attorneys' fees and court costs) arising from or in any way related, directly or indirectly, to (i) Tenant's or its directors, officers, members, managers, agents, employees, subtenants, or invitees ("Tenant Parties") use of the Premises or the Building, (ii) the conduct of Tenant's business, (iii) from any activity, work or thing done or permitted by Tenant or a Tenant Party in or about the Premises or Building, (iv) in any way connected with the Premises or with the improvements or personal property therein, including, but not limited to, any liability for injury to person or property of Tenant, Tenant Parties, or third party persons, and/or (v) Tenant's failure to perform any covenant or obligation of Tenant under this Lease. Tenant's agreement to indemnify Landlord pursuant to this Section 7.2 is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease. Tenant agrees that the obligations of Tenant herein shall survive the expiration or earlier termination of this Lease.

Section 8. Quiet Enjoyment; Mortgage Priority

Landlord's Warranty. Landlord warrants that it is the owner of the Premises and has the right to lease the Premises free of all encumbrances. Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term, subject to the provisions of Section 3.4.

Section 9. Assignment and Subletting

Tenant may not assign, mortgage, or sublease the whole or any part of the Premises, nor may Tenant grant a right of use of any portion of the Premises to any third person by any other means, without the prior written consent of Landlord which Landlord may withhold in its sole and absolute

discretion. This provision shall apply to all transfers by operation of law. Landlord may withhold or condition such consent in its sole and arbitrary discretion. "Assignment and subletting" shall not be construed to include those times when Tenant, consistent with the requirements stated in Section 2.2 of this Lease, makes space available to other local artists, arts organizations or city-sponsored events for meeting space and wall space for limited duration purposes.

Section 10. Tenant Termination. Notwithstanding any other provision of this Lease, Tenant may terminate this Lease, prior to the Expiration Date, by providing thirty (30) days prior written Notice to Landlord.

Section 11. Default

The following shall be events of default:

11.1. Default in Rent. Failure of Tenant to perform its obligations as stated in Section 2.

11.2. Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of the Lease (other than Section 2) within fifteen (15) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the fifteen (15-) day period, this provision shall be complied with if Tenant begins correction of the default within the fifteen (15-) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

11.3. Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within ten (10) days shall constitute a default. If Tenant consists of two or more individuals or business entities, the events of default specified in this Section 10.3 shall apply to each individual unless within ten (10) days after an event of default occurs, the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the Lease.

11.4. Abandonment. Failure of Tenant for thirty (30) days or more to occupy the Premises for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease.

Section 12. Remedies of Default

12. 1. Termination. In the event of a default, the Lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the Lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant of the default, and Landlord may reenter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

12. 2. Reletting. Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purpose other than that specified in the Lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant that Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

Section 13. Surrender at Expiration

13. 1. Condition of Premises. Upon expiration of the lease term or earlier termination of the Lease on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises broom clean and in the same condition as at the commencement of the Lease. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Tenant is responsible shall be completed to the latest practical date prior to such surrender.

13. 2. Fixtures.

(1) All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.

(2) Prior to expiration or other termination of the lease term Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within ten (10) days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal,

transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Landlord.

13.3. Holdover.

(1) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month-to-month, subject to all of the provisions of this Lease except the provisions for base rent, term and renewal, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Base rent during every holdover period shall be 125% of the base rent in effect at the time the applicable Lease term expires or is terminated. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this Lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

(2) If a month-to-month tenancy results from a holdover by Tenant under this Section 12.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than sixty (60) days prior to the termination date that shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

Section 14. Miscellaneous.

14.1. Nonwaiver. Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

14.2. Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

14.3. Notices. Any notice required or permitted under this Lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this Lease or to such other address as may be specified from time to time by either of the parties in writing.

14.4. Succession. Subject to the above-stated limitations on transfer of Tenant's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

14.5. Recordation. This Lease shall not be recorded without the written consent of Landlord.

14. 6. Time of Essence. Time is of the essence of the performance of each of Tenants obligations under this Lease.

14. 7. No Third Party Rights. This Agreement shall not create any rights in or inure to the benefit of any parties other than City and Consultant.

14. 8. Modification. Any modification of the provisions of this Agreement shall be reduced to writing and signed by the parties.

14. 9. Governing Laws; Venue. This Agreement shall be governed by the laws of the State of Oregon. Venue shall be in the Circuit Court for Clackamas County, Oregon.

14. 10. Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the services described herein.

14. 11. Severance. If any provision of this Agreement is held to be invalid, it will not affect the validity of any other provision. This Agreement will be construed as if the invalid provision had never been included.

14. 12. Counterparts. This Agreement may be executed in counterparts, each of which, when taken together, shall constitute fully executed originals.

Section 15. Arbitration

Dispute Resolution. Except as set forth in Section 15, the Parties agree that it is in their respective best interests to attempt to resolve disputes that arise under this Lease in a quick and inexpensive manner. To that end, the Parties commit to use their best efforts to resolve disputes informally. For all disputes that arise pursuant to this Lease, the Parties shall negotiate with one another in good faith in an effort to reach resolution of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) days after the commencement of negotiations, the Parties shall submit the issue to a qualified mediator in good faith to attempt to resolve the dispute and the cost of the mediator shall be shared equally by the Parties. If the dispute cannot be resolved through mediation within ninety (90) days, then the dispute shall be submitted to and resolved by binding arbitration. The arbitration shall be held in the Portland, Oregon metropolitan area, consistent with the rules of the Arbitration Services of Portland, Inc. Cost of the arbitrator will be shared equally by the Parties. Except as otherwise required by law, the arbitrator's final award shall be final, binding, and non-appealable; and no Party may seek any amendment to or reconsideration of the arbitrator's final award except for correction of non-substantive scrivener's or administrative errors. Judgment upon the arbitration award may be entered in any court having jurisdiction. Notwithstanding the foregoing, the Parties may resort to a court of competent jurisdiction for any matter in which injunctive relief is an appropriate remedy.

Section 16 Rent Arbitration.

16.1. Disputes to Be Arbitrated. If any dispute arises between the parties regarding the base rent to be paid during any Renewal Term under the Lease, either party may request arbitration and appointment as an arbitrator an independent commercial real estate appraiser having knowledge of valuation of rental properties comparable to the Premises. The other party shall also choose an arbitrator with such qualifications, and the two arbitrators shall choose a third. If the choice of the second or third arbitrator is not made within ten (10) days of choosing the prior arbitrator, then either party may apply to the presiding judge of the county where the Premises are located to appoint the required arbitrator.

16.2. Procedure for Arbitration. The arbitrators shall proceed according to the Oregon statutes governing arbitration, and the award of the arbitrators shall have the effect therein provided. The arbitration shall take place in Clackamas County. The parties shall share costs of the arbitration equally, but each party shall pay its own attorney fees incurred in connection with the arbitration.

THE CITY OF MILWAUKIE, an Oregon
municipal corporation

NEW CENTURY PLAYERS, an
Oregon nonprofit corporation

By: 
Name: William A. Monahan
Its: CITY MANAGER

By: 
Name: KEILEY MARCHANT
Its: ARTISTIC DIRECTOR

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MILWAUKIE CITY COUNCIL
AGENDA ITEM SUMMARY

Agenda Item: **WS 2.**
Meeting Date: **10/15/13**

Title: **Bond Measure Update: Preliminary Survey Report and Stakeholder Conversation Summary**

Prepared By: Grady Wheeler, Public Affairs Coordinator

Department Approval: Teri Bankhead, Assistant to the City Manager

City Manager Approval: Bill Monahan, City Manager

Approval Date: October 8, 2013

ISSUES BEFORE COUNCIL

Council is considering placing a bond measure on the May 2014 ballot that would refinance the City's debt and potentially fund additional capital projects.

STAFF RECOMMENDATION

None. Staff will provide City Council an update on the public opinion survey that was conducted Oct. 4 through Oct. 7, 2013, and an update on the stakeholder interviews staff and the City's consultants have conducted.

KEY FACTS & INFORMATION SUMMARY

The public opinion poll gauged voters' interest in supporting a bond measure that would refinance the City's debt and other additional capital projects. The poll tested not only voters' appetite to support various projects at different costs, but also various arguments that might be made in support or opposition to the measures.

The subcommittee comprised of Counselors Gamba and Miller and one the Public Affairs Coordinator developed a list of stakeholders for the City's consultant team to contact to have a more detailed conversation about the potential measure and projects.

Both tools are designed to provide information that will help Council decide whether or not to go out for a bond in May 2014, and if so, which projects should be included. The information will also inform any education efforts the City undertakes.

OTHER ALTERNATIVES CONSIDERED

n/a

CITY COUNCIL GOALS

Goal 1. Funding to prevent loss of services. Options could include:
a. Bond

FISCAL NOTES

n/a



MILWAUKIE CITY COUNCIL
STAFF REPORT

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Bond Measure Update: Preliminary Survey Report
and Summary Stakeholder Conversations**

From: Grady Wheeler, Public Affairs Coordinator

Date: October 7, 2013

ACTION REQUESTED

None. Staff will provide City Council a progress report on the public opinion survey that was conducted Oct. 4 through Oct. 7, 2013 and an update on the stakeholder interviews staff and the City's consultants have conducted in the past several weeks.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

- April 16, 2013, Work Session: City Staff provided Council with an overview of the process that lead to the recommendation of hiring DHM Research Inc. to conduct a public opinion research poll.
- May 23, 2013, Study Session: DHM Research provided Council with a draft of the survey and gained Council's input.
- June 5, 2013, Work Session: City Staff and DHM Research provided City Council with a report of the poll results.
- July 16, 2013, Work Session: Subcommittee (Public Affairs Coordinator, Councilor Mark Gamba, Councilor Mike Miller) delivered recommendation to target May 2014 for any potential bond measure.
- August 6, 2013, Work Session: Staff and Council discussed the potential capital projects, the tax effects, and a revised scope of work for the communications consultant, Barney & Worth.
- August 20, 2013, Work Session: Council finalized the scope of work with Barney & Worth.
- Sept. 3, 2013, Work Session: Staff described the stakeholder interview process and outlined the poll question review process to gain Subcommittee and Council input.
- Sept. 17, Work Session: Staff summarized progress of poll question review process, suggested early November as the point to determine bond composition, and outlined future education efforts.

BACKGROUND

The City's communications consultant has conducted a second public opinion poll and a series of stakeholder interviews to provide Council additional information to inform its decision on whether or not to go out for a bond in May 2014, and if so, which project or projects would garner the most support from voters.

The survey provides quantitative data measuring voters' support for a bond refinancing the City's debt for the light rail project, and a bond that includes other capital projects - the construction of four Neighborhood parks, expanding Ledding Library, and completing Riverfront Park. Key to this poll is associating costs with these projects and bond packages. This poll further evaluates arguments that might be made in support and opposition of the different bond measures and independently tests the support for the different capital projects. Staff will provide Council with an update on public opinion survey.

The stakeholder interviews provide qualitative data from representatives of the City's different stakeholder groups about perceptions of the City and its government, the capital projects, and the level of support for each. Stakeholder groups included:

- Opinion Leaders
- Recognized community leaders
- Longtime / newer residents
- Business leaders
- Former elected officials
- Age diversity
- City Council
- Management
- Boards and Commissions

Twenty conversations were documented, and Staff will provide Council with an update of the stakeholder interview process.

CONCURRENCE

n/a

FISCAL IMPACTS

n/a

WORK LOAD IMPACTS

n/a

ALTERNATIVES

n/a