

# REGULAR SESSION

# AGENDA

## MILWAUKIE CITY COUNCIL JANUARY 19, 2010

**MILWAUKIE CITY HALL**  
10722 SE Main Street

**2070<sup>th</sup> MEETING**

### REGULAR SESSION – 7:00 p.m.

1. **CALL TO ORDER**  
Pledge of Allegiance
2. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
  - A. **Milwaukie High School Student of the Month**
  - B. **US Census Bureau Partnership Program -- Pamela Whelden**
3. **CONSENT AGENDA** *(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.)*
  - A. **City Commitment to Partnering with US Census Bureau – Resolution**
4. **AUDIENCE PARTICIPATION** *(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.)*
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. **Continue Milwaukie Municipal Code Amendments 19.321.7 and 19.321.3 – Ordinance (Bill Monahan)**

**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.)*

- A. Temporary Surcharge on Wastewater Utility Rate Due to Clackamas County Termination of Service Contract – Resolution**  
Staff: Kenny Asher, Community Development and Public Works Director
- B. Application for Metro Construction Excise Tax Grant Funds for Urban Renewal Planning – Resolution**  
Staff: Alex Campbell, Resource and Economic Development Specialist
- C. Amendment to Intergovernmental Agreement with the Oregon Department of Transportation (ODOT) Regarding Federal Stimulus Project (Jackson Street Improvements) – Resolution**  
Staff: Alex Campbell, Resource and Economic Development Specialist
- D. Bid Award for City Hall Sculpture Garden Project – Resolution**  
Staff: Beth Ragel, Community Services Program Coordinator

**7. INFORMATION**

**8. ADJOURNMENT**

**Public Information**

- Executive Session: The Milwaukie City Council may meet in executive session 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](mailto: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.

3.

# CONSENT AGENDA

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, EXPRESSING THE CITY'S COMMITMENT TO PARTNERING WITH THE US CENSUS BUREAU TO HELP ENSURE A FULL AND ACCURATE COUNT IN 2010.**

**WHEREAS** an accurate census count is vital to our community and residents' well-being by helping planners determine where to locate schools, day care centers, roads and public transportation, hospitals and other facilities, and achieving an accurate and complete count of the nation's growing and changing population;

**WHEREAS** more than \$400 billion per year in federal and state funding is allocated to states and communities based, in part, on census data;

**WHEREAS** census data help determine how many seats each state will have in the U.S. House of Representatives and often is used for the redistricting of state legislatures, county and city councils and voting districts;

**WHEREAS** the 2010 Census creates jobs that stimulate economic growth and increase employment;

**WHEREAS** the information collected by the census is confidential and protected by law;

Now, therefore, be it resolved that the City Council of the City of Milwaukie of Oregon is committed to partnering with the U.S. Census Bureau to help ensure a full and accurate count in 2010.

As a 2010 Census partner, City Council will:

1. Support the goals and ideals for the 2010 Census and disseminate 2010 Census information to encourage those in our community to participate.
2. Encourage people in our community to place an emphasis on the 2010 Census and participate in events and initiatives that will raise overall awareness and ensure a full and accurate census.
3. Support census takers as they help our community complete an accurate count.
4. Create or seek opportunities to collaborate with other like-minded groups in our community by participating in Complete Count Committees and/or utilizing high-profile, trusted voices to advocate on behalf of the 2010 Census.

Introduced and adopted by the City Council on January 19, 2010.

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

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

ATTEST:

By: \_\_\_\_\_  
City Attorney

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

6.  
OTHER BUSINESS



**To: Mayor and City Council**

**Through: Mike Swanson, City Manager**

**From: Kenneth Asher, Community Development and Public Works Director**

**Subject: Temporary Surcharge on Wastewater Utility Rate Due to Clackamas County Termination of Service Contract**

**Date: January 6 for January 19, 2010 Regular Session**

### **Action Requested**

Adopt a temporary Wastewater Service Surcharge of \$2.00 per 100 feet of cubic water used (ccf) per Equivalent Dwelling Unit (EDU) until a new Wholesale Agreement is executed with Clackamas County. A typical household, which is 1 EDU, uses about 7 ccf of water per month. This would result in an increased utility bill of approximately \$14 per month for a typical water customer in Milwaukie.

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

**September 2009:** Staff briefed Council on various wastewater-related issues facing the City, including the County's decision to unilaterally terminate the longstanding wastewater treatment service contract with the City and demand that the City pay \$25 a month, per EDU, for wastewater treatment service. City customers have been paying approximately \$11 a month for this service.

### **Background**

The City of Milwaukie owns and operates a system of pipes that collect wastewater from Milwaukie homes and businesses. This wastewater is sent to the Kellogg Plant for treatment. The City jointly owns the plant with Clackamas County, but the County operates the treatment facility. Historically, Clackamas County has charged the City for the cost of treating Milwaukie's wastewater at the plant. These two costs – the cost of sending the wastewater to the plant, and the cost of treating that wastewater before

discharge into the Willamette River – make up the two parts of the wastewater utility rate that Milwaukie ratepayers pay (although these two parts are not split out explicitly on the utility bill, and the utility bill has other charges on it). The amount of water sent into the system by the individual household or business is factored into the rate charged.

Monies collected by the City for these two purposes (providing safe and dependable wastewater collection service and treatment service) are deposited in the City's Wastewater Fund and used to pay for personnel, repairs, testing and other expenses for both systems -- the collections system and the treatment system.

For reasons explained below, the Wastewater Fund is now in jeopardy of not being able to cover these costs.

#### Risk Factors for the Wastewater Fund

In the early 1970's, City of Milwaukie ratepayers paid more than \$1.5 million dollars to help construct the Kellogg Wastewater Treatment Plant. This entitled the City to 40 percent of the plant's capacity. Today, and through the years, the City has only used about 25 percent of that capacity.

Over time, City of Milwaukie ratepayers contributed more than \$11 million in upgrades to the Kellogg Plant. These contributions were made through Milwaukie's annual payment to Clackamas County Service District No. 1 (Clackamas County) for plant operations, which was governed by a contract between the two governments.

On June 25, 2009, the County Board of Commissioners (BCC) unanimously decided to terminate this contract. The BCC explained that it took this action because the BCC believes Milwaukie should pay Clackamas County for actual *District-wide* treatment expenses, not just expenses incurred for treating Milwaukie's wastewater as was provided in the contract. (The BCC's June 25 letter is Attachment 1).

On July 23, 2009, the BCC notified the City of new terms by which the County would treat Milwaukie's wastewater at Kellogg. The BCC stated that beginning August 1, 2009, it would begin charging Milwaukie \$25.31 per EDU (per month), a roughly 110 percent increase over what ratepayers currently pay for the service. Further, the BCC said that if Milwaukie did not agree to a new contract with the District by February 28, 2010, then Milwaukie should make arrangements to send its wastewater somewhere else, as "the District (BCC) makes no guarantees that it will be in a position to provide service to Milwaukie long-term." (The BCC's July 23 letter is Attachment 2).

Beginning in September 2009, the County starting sending the City monthly bills for wastewater service (for the prior month's service) in the amount of \$224,500 per month



(\$25.31 per EDU x 8870 Milwaukie EDUs = \$224,500). (See Attachment 3). Taken over the year, the total cost for treatment that the County is now imposing on the City is approximately \$2.5 million. The City's budget cannot handle this cost increase, nor does it have a sewer rate structure in place to raise this money.<sup>1</sup> In prior years, the equivalent service (which the City pays for from ratepayer utility payments), cost the City about \$1 million dollars less, or roughly \$1.4 million.

The Milwaukie City Council has not agreed to pay the County \$224,500 per month. The City budgeted approximately \$100,000 per month for treatment service, and is paying a little more than that (\$120,000) as a show of good faith to recognize that some cost escalation for the treatment service is understandable and acceptable. The County continues to bill the City at \$224,500 per month, and is now charging the City interest on the uncollected balance.

The City no longer has a contract that guarantees treatment cost, or provision of treatment service for that matter. The BCC's decision to unilaterally cancel the 1970 contract, which occurred after the current fiscal year budget was prepared, combined with the BCC's subsequent decision to more than double the cost of treatment for Milwaukie, is large risk to the Wastewater Fund. As nearly 100 percent of the Fund's revenue is from user fees (i.e. utility payments from ratepayers), there are very few options for cushioning the fund against this kind of potential cost escalation without raising additional revenue from Milwaukie customers.

The Milwaukie City Council has made attempts to protect its customers from this enormous cost increase, nonetheless.

#### Measures Taken to Protect Ratepayers and the Wastewater Fund

First and foremost, the City has not signed a new contract for treatment services with the County under the County's given terms. Doing so would have meant ratepayers would pay approximately \$14 per month over today's rates *with future rate hikes to be determined annually by the BCC*. This increase, and future increases, could be made to fund infrastructure improvements outside of Milwaukie to transmit and treat the wastewater of others. The City Council has not agreed to this.

Back in May 2009, the City did offer a compromise to the County. The City offered to charge all Milwaukie ratepayers an additional \$1.50 per month to help pay for a portion of the expansion of the TriCities Plant that would permanently lower the amount of

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<sup>1</sup> City of Milwaukie Resolution 52-2005 set a 6% increase for sewer rates for five years beginning on January 1, 2006, with a 3.75% increase in the sixth year, 2011. These rate increases were adopted to cover maintenance, inflation and reserves for participating in a regional wastewater agreement (Clearwater) and the percentages are on the entire sewer charge (treatment and collections), not just treatment.

wastewater going to Kellogg. The Council viewed this as a step toward downsizing or decommissioning the Kellogg Plant. This compromise was rejected by the County.

The Council is also examining past wastewater charges levied by the County against the City which may be in error. For example, the County is seeking an additional \$485,000 from Milwaukie for treatment costs incurred during the 2007-08 fiscal year. The City believes that among other things, the County may have incorrectly measured the proportional share of wastewater that Milwaukie sent to the Kellogg Plant. The City has not agreed to pay this amount, and is in discussions with the County about the past bill.

Finally, the City has expended revenue from the Wastewater Fund to establish Milwaukie's rights and verify the City's legal positions in the dispute with the County over wastewater treatment. This is a Wastewater Fund expense, but staff believes it is being done to protect the Wastewater Fund and Milwaukie ratepayers. Unanticipated professional and legal fees have been incurred to answer the following kinds of questions:

- Has the County been over-billing the City for treatment costs?
- What are the industry standards for wastewater utility rate-making, and is the County following these standards?
- How was the Kellogg Plant initially funded and do those facts give Milwaukie rights and powers in determining future rates and investments for Milwaukie customers?
- Do people in Milwaukie and elsewhere in Clackamas County understand the nature of this dispute, and how can the City best inform the public on the issues?
- What's the best way for the City to interact with the County, given the position that the County has taken?

The current state of disagreement has raised expensive legal and communication challenges. The County's decision to unilaterally cancel an almost 40-year old cost-sharing arrangement has undermined the City's ability to anticipate and decide on future utility costs for Milwaukians. To be prudent, the City must now prepare explanations of its positions -- whether these be for the County, the Milwaukie ratepayers, or a judge, as the issue may ultimately be decided in court. On a separate matter related to the Kellogg Plant, the County did in fact sue the City rather than work through differences. The County has since dropped the lawsuit; however the City incurred significant legal expenses defending itself. The possibility of additional legal action is another risk factor facing the Wastewater Fund. The Milwaukie Council has not yet raised a legal challenge, but retains this option.

*A summary of the disagreement with the County, as expressed in the current rate discussion and proposed action, is included as Attachment 4, "Where Would the Money Go?"*

### **Fiscal Impact**<sup>2</sup>

The Wastewater Fund began this fiscal year with a balance of \$1.1 million, projected user fee revenues of approximately \$3.5 million, and reserves of \$1.2 million, for a total revenue projection of \$5.8 million.

Expenditures in the Fund were budgeted at \$3.7 million, allowing for a projected balance at the end of the current fiscal year of approximately \$2.1 million.

As mentioned in the Background section of this report (top of page 3), at \$2.5 million, (the county's imposed rate), Milwaukie's wastewater service charges are now \$1.3 million more than the City budgeted for that specific expense.

Additionally, the County is seeking roughly \$500,000 for treatment service provided in fiscal year 2007-08, and the City expects to receive another "true-up" bill of \$100,000 for service provided in 2008-09.

Finally, the City has expended approximately \$200,000 for legal and professional fees to: examine the County's rate-setting methodology; review the historical file on Kellogg's construction financing; defend the City from a lawsuit brought by the County on a Kellogg permit issue; give legal advice about the City's rights to wastewater treatment at Kellogg; and consult on citizen communications based partially on a countywide survey on wastewater treatment issues.

Without a new agreement, the City may have to defend itself in another lawsuit, or take legal action to ensure that Milwaukians retain the right to use the plant that they helped pay for. While this would be an unfortunate turn of events, staff is required to alert the Council about risks to basic City services, and depletion of the Wastewater Fund is such a risk.

Thus, a worst case scenario facing the Wastewater Fund for the current fiscal looks like this:

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<sup>2</sup> Figures used in this section were provided by then Finance Director Ignacio Palacios in November 2009.

<b>FY 09-10 Revenue Available (Projected)</b>		<b>FY 09-10 Expenses (Worst Case)</b>	
Beginning Fund Balance	\$1.1m	Treatment for 2009-10	\$2.5m
User Fees (Rate Revenue)	\$3.5m	Treatment for Prior Years	\$0.6m
Reserves	\$1.2m	Other Operating Expenses <sup>3</sup>	\$2.8m
<b>Total</b>	<b>\$5.8m</b>	<b>Total</b>	<b>\$5.9m</b>
Ending Fund Balance	-\$0.1m		

Not only would the Fund end the current fiscal year with a negative balance, it would have had its entire reserve account wiped out – an account which had in it, at year’s start, over \$1 million dollars.

The temporary surcharge under Council consideration is projected to raise approximately \$800,000 before the end of the fiscal year. This would allow the Fund to cover all expenses and maintain roughly \$700,000 in reserves.

<b>FY 09-10 Revenue Available (Projected)</b>		<b>FY 09-10 Expenses (Projected)</b>	
Beginning Fund Balance	\$1.1m	Treatment for 2009-10	\$2.5m
User Fees (Rate Revenue)	\$3.5m	Treatment for Prior Years	\$0.6m
Reserves	\$1.2m	Other Operating Expenses <sup>4</sup>	\$2.8m
<b>Total</b>	<b>\$5.8m</b>	<b>Total</b>	<b>\$5.9m</b>
Ending Fund Balance	(\$0.1m)		
Additional Revenue from Surcharge	\$0.8m		
<b>Total with Surcharge</b>	<b>\$6.6m</b>		
Ending Fund Balance (with Surcharge)	\$0.7m		

In the worst case scenario, the Wastewater Fund will see all its existing revenues, including all reserves, exhausted by the end of May 2010. The proposed surcharge, assuming it remains in place through the end of the fiscal year (i.e. no new contract with the County), would allow the Fund to carry a positive balance with reserves into fiscal year 2010-11.

The importance of reserves in a utility account cannot be overstated. Best practices for wastewater utilities, which (usually) have a fairly stable and predictable rate revenue stream is a forty-five day reserve or just over 12% of cash operating expenses. This would be about \$360,000 for Milwaukie’s Wastewater Fund. Wastewater utility reserves have historically also covered the “true-up” obligation to the County for actual treatment costs (these are not known until after the fiscal year has ended), and perhaps most

<sup>3</sup> Includes ongoing professional and legal fees for negotiations and/or litigation concerning new contract.

<sup>4</sup> Includes ongoing professional and legal fees for negotiations and/or litigation concerning new contract.

importantly, capital improvement and maintenance projects in the City-owned collections system. (See Attachment 5 for Engineering Department memo on risks to the collections system). Finally, the Wastewater Fund, like all the city's utility funds, transfers some of its revenue to support the Engineering and Community Development Departments, Public Works management and the Streets Department.

The proposed surcharge is a temporary measure, to be replaced by a permanent rate increase as agreed to by the City and County under a to-be-negotiated contract. When the agreement is executed, the surcharge will be dropped and a new rate will be established for wastewater service in the City. Monies collected under the surcharge are proposed to be retained by the City for Fund expenses as described above.

As proposed, the resolution exempts low-income Milwaukie customers, many of whom are already identified as such in the billing system. For others seeking the low-income utility exemption, the process to apply is on the City's web page and requires income verification.

### **Concurrence**

On November 4, 2009, the Citizens Utility Advisory Board (CUAB) met and discussed the financial health of the City's wastewater utility, given current uncertainties caused by the County's actions. At that meeting, the CUAB recommended Council increase wastewater rates. The actual rate proposed was \$13 per EDU (the City's compromise offer to the County in May 2009). The CUAB has not taken action on the temporary surcharge as proposed in this report.

The Budget Committee has not met to discuss the temporary surcharge. The Council has the option to convene the Budget Committee to seek input on the requested action. The surcharge as proposed is expected to raise approximately \$125,000 per month. Each month's delay will reduce the amount available (through the end of the fiscal and calendar year) by \$125,000.

The Wastewater Utility Supervisor and Operations Director concur with the proposed action. The City's wastewater consultant also concurs.

### **Work Load Impacts**

Work load for implementing rate changes in the City falls on the Finance Department, which is currently short-staffed without a Director. Nevertheless, the surcharge could take effect as soon as the February billing cycle, which is based water usage as measured by meter readouts from December through February for half the City's customers. The second group of utility customers would see the surcharge for the first time on their March bill, which would reflect water usage from January through March.

There are no other workload impacts associated with the action; however there are considerable workload impacts in achieving a new agreement with the County. Significant staff time has been spent, and will continue to be spent on the issue, by the Community Development Department, Community Services Department, City Manager and City Attorney.

### **Alternatives**

The Council has several alternatives to consider:

1. The Council can adopt the temporary surcharge as proposed.
2. The Council can adopt a temporary surcharge, but modify the methodology used.
  - a. The proposed surcharge is based on water usage, so high-usage businesses and households would pay proportionately more. An alternative is to apply the surcharge as a fixed amount so everyone pays the same. The same amount of money, or more or less, could be raised, depending on the fixed charge selected.
  - b. The Council can elect to raise more or less money by changing the per ccf value. At \$1/ccf, the temporary surcharge would raise approximately \$400,000 for example (by fiscal year end), leaving an ending fund balance of an estimated \$300,000 (worst case scenario).
3. The Council can adopt the surcharge, but delay its implementation in the hopes of reaching a new agreement with the County. Similarly, the proposed surcharge extends into the first six months of the next fiscal year (absent a new agreement with the County). Council may elect to drop this extension, or to change the length of time the surcharge is proposed to remain in place.
4. The Council can reject the proposal, seeking instead to cut costs in the Wastewater Fund next fiscal year. The utility expects to spend roughly \$100,000 a year on maintenance projects. The utility also receives approximately \$200,000 a year from the general fund through 2012 in repayment for the Cash Spot acquisition. This schedule could be accelerated. Personnel cuts to either the wastewater utility division or the supporting departments would cause important city services to suffer, but do offer another alternative to the proposal.

5. The Council can reject the proposal and enact a permanent wastewater rate increase that could be modified by a new wholesale agreement, or one which could attempt to anticipate the cost of service under a new agreement so as to avoid another modification.

Staff recommends the Council adopt the temporary surcharge as proposed. The alternatives leave the Wastewater Fund and the city's utility at greater risk, and although it is difficult to pass higher costs on to Milwaukians, there are even higher costs ahead if action isn't taken now. As importantly, the surcharge is intended for the Council to use as it best sees fit for the future of the utility and the City. This is a vastly different kind of charge than is proposed by the County, which would result in Milwaukie dollars leaving the City for use in other places, and at the discretion of others.

### **Attachments**

1. BCC June 25, 2009 Letter Terminating Service
2. BCC July 23, 2009 Letter Imposing New Rate and Possible Cutoff
3. August 2009 Monthly Billing Invoice
4. Summary Table Rate Discussion and Differences, "Where Would the Money Go"
5. Engineering Department Memo on Fiscal Risks to the Collections System
6. Resolution

ATTACHMENT 1



Beyond clean water.

CLACKAMAS  
COUNTY SERVICE DISTRICT  
No. 1 (CCSD #1)

Water Quality Protection  
Surface Water Management  
Wastewater Collection & Treatment

Steve Wheeler  
Acting District Administrator

June 25, 2009

**CCSD #1  
Governing Board**

Lynn Peterson  
*Chair*

Bob Austin

Jim Bernard

Charlotte Lehan

Ann Lininger

**River Health  
Advisory Board**

Juliana Andrade  
*District Resident*

Marlo Dean  
*City of Damascus*

Markley Drake  
*City of Happy Valley*

Eric Hofeld  
*Chair, District Resident*

Steve Kennett  
*District Resident*

Ron Weigel  
*District Resident*

Jeff Winner  
*District Resident*

Mayor Jeremy Ferguson  
Michael Swanson, City Manager  
City of Milwaukie, City Hall  
10722 SE Main Street  
Milwaukie, OR 97222

**RE: Wastewater Service Agreement Termination**

Dear Mayor Ferguson and Mr. Swanson:

Clackamas County Service District No. 1 (the "District") provides wastewater treatment service to the City of Milwaukie (the "City") pursuant to the intergovernmental agreement entered into on November 25<sup>th</sup>, 1970, as amended and updated from time to time (the "1970 IGA"). The terms on which the District would continue to provide service to the City have been the subject of intense negotiations, beginning in the fall of 2007, and continuing during that nearly two year period through now.

As you know, the Board of County Commissioners, acting as the governing body of the District (the "Board"), determined in an October 2007 study session that a change in the 1970 IGA was necessary. The District has been ordered by the Oregon Department of Environmental Quality ("DEQ") to undertake the Phase I capital program to relieve the overburdened Kellogg Plant, which has been releasing untreated sewage into the Willamette River during major storm events. The majority of this new investment is being used to construct additional treatment capacity at the Tri-City Plant in Oregon City and new conveyance infrastructure to deliver the wastewater there for treatment. As I'm sure you know, the District could have constructed the capacity at the Kellogg Plant for a higher overall cost but at a lower cost to District ratepayers since the City, under the 1970 IGA, would have been obligated for approximately 30-35% of the costs of all Kellogg Plant improvements. The construction at the Tri-City Plant represented the lowest-cost option available and shows the District's good faith in dealing with the City. Since the construction would not primarily be at Kellogg, the 1970 IGA did not provide a mechanism for the City to contribute its equitable share toward this lowest-cost option known as the Phase I, Capital Program. Therefore, the Board directed staff to negotiate a new agreement with the City that allowed for all parties, both within and outside the District, to contribute equitably.

The Board asked staff to conclude an agreement with Milwaukie based on two policies that the District reaffirms here. New development and growth must pay its own way, and all existing ratepayers must pay an equitable and fair share of the actual costs of District operations. This is distinct from the 1970 IGA's methodology that Milwaukie will pay for the actual cost of a specific treatment asset. Instead,

Serving North Clackamas County, Damascus, Happy Valley, Johnson City and Milwaukie.

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[www.RiverHealth.org/feedback.cfm](http://www.RiverHealth.org/feedback.cfm)



Wastewater Service Agreement Termination

June 25, 2009

Page 2

Milwaukie is being asked to pay for actual District-wide treatment expenses, since the District is now providing treatment services through more than one facility. The importance of this policy to the City of Milwaukie and its aspirations to recover its waterfront should be unmistakable. Absent the principle of a regional cost sharing for all District capital costs, the future expense of downloading and replacing the Kellogg Plant will fall squarely upon the roughly 8,800 Milwaukie customers.

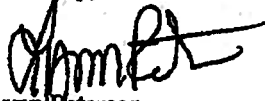
The District and the City have not been able to reach agreement on mutually acceptable terms for a new IGA over the last 18 months of discussion. As a result of the City's lack of financial contribution towards the Phase I capital program costs, District customers are faced with a rate increase of approximately 18% this fiscal year. This is in contrast to the planned 8% increase if the City was equitably participating in the District-wide rate necessary to support the DBQ-required capital improvements at multiple facilities. This puts the District and its ratepayers in a difficult position.

To remedy this revenue shortfall, to spur negotiations, and to make clear the Board's position that the 1970 IGA is no longer a viable framework for the relationship between the parties, the Board has unanimously agreed to terminate the 1970 IGA. Therefore we hereby provide notice under the 1970 IGA, specifically as amended by the July 1987 Agreement extending the 1970 IGA to June 30, 1988, and thereafter by month-to-month, that the District is terminating the 1970 IGA. In light of the month-to-month relationship, the termination of the 1970 IGA will be effective as of July 31, 2009.

To be clear, the District does not intend to cut off treatment of the City's wastewater. We recognize the difficulties in making any transition in wastewater infrastructure and guarantee that the District will continue to provide the best wastewater treatment service possible at the most equitable rate. However, the financial terms of the 1970 IGA are terminated, and if the City continues to deliver wastewater to the District for treatment after the termination date, the District will charge the City a reasonable market wholesale treatment rate that will compensate for the actual cost of providing the service. The District will provide a more specific breakout of the intended rate in the next few weeks, as well as a timeline for how long the City can expect to continue to receive service, for your consideration.

It is our hope that this action will help move the parties forward into a new relationship based on community values and goals and the establishment of a new wholesale rate that more accurately reflects the District's actual costs of providing service.

Sincerely,



Lynn Peterson  
Chair, CCSD#1 Governing Board

cc: CCSD#1 Board  
Riverhealth Advisory Board, CCSD#1

ATTACHMENT 2



Beyond clean water.

CLACKAMAS  
COUNTY SERVICE DISTRICT  
No. 1 (CCSD #1)

Water Quality Protection  
Surface Water Management  
Wastewater Collection & Treatment

Steve Wheeler  
Acting District Administrator

July 23, 2009

**CCSD #1  
Governing Board**

Lynn Peterson  
*Chair*

Bob Austin

Jim Bernard

Charlotte Lehan

Ann Lininger

**River Health  
Advisory Board**

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*District Resident*

Marlo Dean  
*City of Damascus*

Markley Drake  
*City of Happy Valley*

Eric Hofeld  
*District Resident*

Steve Kennett  
*District Resident*

Ron Weigel  
*District Resident*

Jeff Winner  
*District Resident*

Mayor Jeremy Ferguson  
City of Milwaukie, City Hall  
10722 SE Main Street  
Milwaukie, OR 97222

**RE: Future Relationship Between CCSD#1 and Milwaukie**

Dear Mayor Ferguson:

We write this letter to you in the hopes of establishing a framework for resolving the outstanding issues between us and moving the conversation forward. We also want to make clear our expectations in any interim period until such a resolution is reached.

How We Got Here

The Kellogg Creek wastewater treatment plant ("Kellogg Plant") located in Milwaukie and serving both Clackamas County Service District No. 1 ("CCSD#1" or "District") and the City of Milwaukie ("Milwaukie"), has for several years been experiencing difficulty in treating wastewater during major rain events, leading to the discharge of raw sewage into the Willamette River on a frequent basis during the rainy winter seasons. The District, as the regulated entity under environmental law, was ordered by the Oregon Department of Environmental Quality ("DEQ") to construct additional capacity to stop the pollution of our waterways. The District chose, as the most cost-effective option available, to construct such additional capacity at the Tri-City wastewater treatment plant ("Tri-City Plant") located in Oregon City. Moreover, the district is aware of Milwaukie's desire to eliminate use of the Kellogg Plant, and expansion of the Tri-City Plant rather than the Kellogg Plant furthers that goal.

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July 23, 2009  
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The District recognizes that under the previous agreements between Milwaukie and CCSD#1, Milwaukie is not under any contractual obligation to pay for additional capacity constructed at any site other than the Kellogg Plant. Therefore, the Board of County Commissioners, acting as the governing body of the District (the "Board"), directed staff to renegotiate the terms of Milwaukie's wastewater treatment service agreement to reflect Milwaukie's proportionate share of the actual costs the District is incurring in providing the capital improvements and wastewater treatment services to all of its customers. Staff made initial presentations to Milwaukie staff and its City Council to begin the negotiations in the fall of 2007. In the nearly two years since, we have made no substantial progress in resolving the issue of Milwaukie contributing its proportionate share to cover the District's costs of providing service to all of its customers. Given the fact that negotiations with Milwaukie had stalled, the revenue obligations necessary to finance the initial portion of the capital improvements were being issued, District rate increases were being implemented and Milwaukie was not paying its fair and equitable share of the costs of providing services, the Board unanimously agreed to terminate the service contract between CCSD#1 and Milwaukie. This termination was effective July 31, 2009, as stated in the letter to you dated June 25, 2009.

#### Community Rate Offer

It is the District's hope that Milwaukie will enter into a mutually acceptable agreement setting forth the terms and conditions for receiving wastewater treatment service from the District. The District has previously provided Milwaukie with proposed terms (the "Community Rate Offer") and that offer remains available to Milwaukie during this interim period. The availability of the Community Rate Offer is conditioned on Milwaukie pursuing good faith negotiations with the District.

#### Decision Timeline

Milwaukie has been presented with the opportunity to consider whether it desires to continue receiving wastewater treatment services from the District. The District is willing to offer Milwaukie until February 28, 2010, to reach an agreement on the terms for continued service. Failing that date, CCSD#1 requests that Milwaukie begin implementing efforts to find another wastewater treatment provider, with the obligation that Milwaukie cease delivering wastewater for treatment to the Kellogg Creek Plant by June 30, 2015. If Milwaukie seeks to reach an agreement after the February 2010 deadline, the District makes no guarantees that it will be in a position to provide service to Milwaukie long-term.

Mayor Jeremy Ferguson

July 23, 2009

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#### Current Amounts Due

To conclude the terminated 1970 agreement, the District expects prompt payment from Milwaukie for the outstanding true-up amounts for Fiscal Year 2007-2008 in the amount of \$485,456. As usual, the District will invoice Milwaukie for the true-up amounts for Fiscal Year 2008-2009 after a full review of accrued costs is completed this fall. The month of July 2009 will be billed under the now-terminated 1970 Agreement, and will be trued up when the appropriate costs are known.

#### Terms for Future Service

CCSD#1 understands the practical impossibility of Milwaukie reordering its wastewater conveyance system and making alternate arrangements for service in the short term. The District's mission is to create community value by providing sustainable wastewater services, and consistent with that will continue to provide wastewater treatment services in the interim until a formal agreement is reached or Milwaukie ceases delivering wastewater for treatment as contemplated in this letter.

During the interim, however, the District must recover the reasonable cost of providing treatment services (a "District Cost Recovery Rate"). To arrive at an appropriate rate, the District has calculated the total cost of providing service to its customers and the per equivalent dwelling unit ("EDU") per month rate necessary to support these costs at the completion of the current capital program, which includes operations and maintenance, debt service for issued obligations, retail operations, and prefinancing of growth infrastructure. From that rate of \$43.67, the District subtracted the retail component of its total costs since Milwaukie would only require wholesale service. This calculated a District wholesale rate of \$33.35 per EDU per month, representing the cost of service that current District ratepayers will pay.

The District, although not under any obligation to do so, also chose to subtract from any rate calculation the costs associated with that portion of the debt service associated with the prefinancing of infrastructure for future customer needs, since the District recognizes that Milwaukie is at near build-out from a customer perspective. This reduced the wholesale service rate by an additional \$8.04 per customer per month, arriving with a District non-growth wholesale rate of \$25.31. This calculation for the

Mayor Jeremy Ferguson  
July 23, 2009  
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District Cost Recovery Rate as reasonable compensation for its services would be stated thus:

- Gross stand alone revenue requirement: \$43.67 per District EDU
- Less District retail costs: (\$10.32)
- Equals District Wholesale Rate \$33.35 per EDU
- Less cost of debt service related to growth: (\$8.04)
- No finance fee, per District's last offer: \$0.00
- Wholesale Cost Recovery Rate: \$25.31

Therefore, beginning August 1, 2009, the District will charge Milwaukie a rate of \$25.31 per EDU per month to recover the actual and reasonable costs of the provision of service. The District is not seeking to impose any risk premium for the short-term nature of Milwaukie's obligation to pay related to the obligations of the related debt financing. Milwaukie has stated that its current EDU count is 8,870, and the District is willing to accept this calculation. The District will invoice Milwaukie at the end of each such month.

Please remit this cost of service amount within 30 days from the end of the month in which service is utilized. For example, payment for service in the month of August will be due on September 30, 2009. Any amounts outstanding after such due dates shall accrue interest at the District's cost of interim borrowing to cover the cash flow deficiency, including recovery of related loan fees and administrative costs.

The District hopes that this reset of the relationship will help bring clarity to both parties' long-term plans, whether to establish a new service agreement going forward or to make arrangements for Milwaukie's disconnection from the District's system. We look forward to reaching that clarity with you in the near future.

Sincerely,



Lynn Peterson, Chair  
Board of County Commissioners  
Acting as the Governing Body of CCSD#1

C: Mike Swanson, Milwaukie City Manager  
Milwaukie City Council  
CCSD#1 Riverhealth Advisory Committee

ATTACHMENT 3



**Water Environment Services**  
 A Department of Clackamas County  
 150 Beavercreek Rd.  
 Oregon City, OR 97045  
 503-742-4567 - Billing Inquiries  
 503-742-4565 - Fax  
 www.clackamas.us/wes



ACCOUNT NO.	DUE DATE
14-01774-02	9/30/2009

CUSTOMER NAME	BILL DATE	BALANCE FORWARD	INCLUDES PAYMENTS RECEIVED BY
CITY OF MILWAUKIE CURRENT	9/01/2009	0.00	8/31/2009
SERVICE ADDRESS		SERVICE FROM	SERVICE TO
10722 MAIN ST		8/01/2009	8/31/2009
DESCRIPTION OF SERVICES	UNITS	AMOUNT	
11M SANITARY SEWER	<b>PAYMENT AUTHORIZATION</b>		224,499.70
	VENDOR#		
	PO #		
	GL A/C #		
	AMOUNT \$		
SIGNATURE			
<b>PLEASE PAY THIS AMOUNT →</b>			224,499.70

Detach and Return The Remittance Coupon Below With Your Payment



**Water Environment Services**  
 A Department of Clackamas County  
 150 Beavercreek Rd.  
 Oregon City, OR 97045

DUE DATE	AMOUNT DUE
9/30/2009	224,499.70
ACCOUNT NO.	AMOUNT PAID
14-01774-02	

check for change of address  
 (see back of stub for details)



CITY OF MILWAUKIE CURRENT  
 10722 MAIN ST  
 MILWAUKIE OR 97222



Remit To: Water Environment Services  
 PO Box 6940  
 Portland, OR 97228-6940

ATTACHMENT 4

# WHERE WOULD THE MONEY GO?

Rate Changes Under Consideration → Rate Details ↓	Old Wholesale Contract (Existing Condition for Ratepayers <sup>1</sup> )	Temporary Surcharge	Current County Positions	New Wholesale Contract (to be negotiated)
Cost per Typical Water-Consuming Household	\$11/month	Additional \$14/month (\$25 total)	\$20-\$25/month	To be determined
Enacted by	Milwaukie City Council	Milwaukie City Council	Clackamas County Board of Commissioners (BCC)	To be determined
Paid To	Clackamas County	City of Milwaukie	Clackamas County	Clackamas County
Pays For	Cost of treating Milwaukie's wastewater at the Kellogg Plant only	Higher treatment costs, wastewater-related professional/legal costs, capital improvement and maintenance costs	Cost of expanding infrastructure to treat wastewater produced and treated outside of Milwaukie	To be determined
Stays In Place	Already expired. Agreement terminated by Clackamas County on 7/31/09	Until execution of a new Wholesale Contract, or December 31, 2010	Until BCC adjustment, to be considered annually "based on all factors...(concerning) the District's system"	To be determined
Contributes to Kellogg's Downsizing or Decommissioning	No	Yes	No	To be determined

<sup>1</sup> City of Milwaukie Resolution 52-2005 set a 6% increase for sewer rates for five years beginning on January 1, 2006, with a 3.75% increase in the sixth year, 2011. These rate increases were adopted to cover maintenance, inflation and reserves for participating in a regional wastewater agreement (Clearwater) and the percentages are on the entire sewer charge (treatment and collections), not just treatment.



## Interoffice Memorandum

To: Kenny Asher, Director of Community Development and Public Works

From: Gary Parkin, Engineering Director  
Jason Rice, Associate Engineer

Date: January 11, 2010

Re: Fiscal Risk Effects to the City's Wastewater CIP and CMP Priorities

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Were Wastewater Funds not available for Capital Improvement/Capital Maintenance Projects (CIP and CMP Projects) as of July 1, 2010, the system would not appear to suffer at first. The City would move forward over the next few years and more than likely not notice a difference in service.

CIP Projects at this point are further apart and fewer in number than in the past because the City of Milwaukie's sewer infrastructure is almost built out, with the exception of the federally supported Northeast Sewer Extension Project. Of the projects planned over the next 10 years, most are scheduled for when the City can afford to do them under our current rate schedule. Not completing these projects would not only extend the staff time used to maintain the infrastructure, but would also increase capital needs as the system ages. By dedicating more of the Sewer utility crews' time to these issues, under current staff loads, we would be decreasing the amount of time spent elsewhere in the City. Daily tasks may become weekly and so on. A failure of a CIP pipe would cost the City an exorbitant amount of money to fix.

The goal in developing the CMP was to reduce unnecessary staff time spent on issues that could be fixed relatively easily. Not funding CMP Projects would be much more noticeable to staff since more time is already being devoted to these areas. Again, there would be less time for other issues within the City under the current staffing levels. A failure of a CMP pipe would still cost more than the preventative maintenance would have, but since the scope of these projects is so much smaller, there would be less of an impact as compared to a CIP failure.

All of this is somewhat speculative. We can guess when a pipe or pump may fail, but the truth is that such events are unpredictable. CIP/CMP projects are planned with the understanding that the City should spend a dime to save a dollar. Examples are included below:

### **Brookside Force Main Extension**

The affects of not completing this project will be felt as the NE Milwaukie Sewer Extension Project completes. As properties connect to the newly installed main south of Johnson Creek the flow will enter the Brookside Pump Station and ultimately need to be pumped out. This pumping is done through a force main which empties into a main that is currently undersized. The City could potentially face some sewage backups into homes along Filbert Street as flows increase.



### **Master Plan (and every 5 years thereafter)**

The impact of not completing a Master Plan is low. Without an up-to-date master plan, it's difficult to have an accurate rate schedule and plan an accurate schedule for capital projects. Our Stormwater Fund is an example of what happens when there is no master plan (or accurate rate structure) to work from.

### **Jefferson Street Siphon**

Found to be undersized 16+ years ago, this project has been delayed simply because of the difficulty in constructing it. Over half of Milwaukie's flow comes through this pipe which needs to be upsized (or duplicated leading into the Kellogg Treatment Plant). Not completing this project would increase project cost and allow backups at the plant to continue to occur.

### **Johnson Creek Siphon**

Found during the development of the Master Plan, the sewer main (siphon) under Johnson Creek is exposed to the creek itself. Staff is concerned about the concrete encasement around this pipe becoming damaged by debris floating downstream to the Willamette River. We aren't sure when or if a failure of this line may occur, but a failure would be catastrophic. Raw sewage entering the river would incur large fines and high construction costs associated with the emergency repair.

Deferring CMP Project Funding (\$100,000 annually in the Master Plan) comes at a cost, as in higher maintenance costs, increased risk of catastrophic failure, and less time to perform preventative maintenance activities as more time is devoted to unfixed problem areas.

ATTACHMENT 6  
RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON ADOPTING A TEMPORARY SURCHARGE FOR WASTEWATER TREATMENT SERVICE DUE TO UNILATERAL TERMINATION OF THE CITY'S SERVICE CONTRACT BY CLACKAMAS COUNTY SERVICE DISTRICT NO. 1.**

**WHEREAS**, the Board of County Commissioners (BCC), acting as the governing body of Clackamas County Service District No. 1 (the District), is a decision-making body on matters regarding the use and operation of the Kellogg Wastewater Treatment Plant; and

**WHEREAS**, the City of Milwaukie has, over time, paid several million dollars for construction and operation of the Kellogg Plant in exchange for treatment of Milwaukie's wastewater; and

**WHEREAS**, this arrangement between the City and the District, initially formed through an Intergovernmental Agreement entered into by the parties in November 1970 and amended several times thereupon, constituted a contract for wholesale treatment service (Wholesale Contract); and

**WHEREAS**, in 2007, the BCC determined that the City of Milwaukie must pay a share of the actual cost of the entire District operations, which was not a term in the Wholesale Contract; and

**WHEREAS**, the estimated cost of District operations includes large capital costs associated with the expansion of pipelines and treatment facilities that do not serve the City of Milwaukie, but which are required because of residential and commercial growth that Clackamas County and others permitted outside the City of Milwaukie; and

**WHEREAS**, the City of Milwaukie has repeatedly communicated to the BCC that charging the City of Milwaukie for the cost of past growth in the District is unfair and that accepting such charges would be fiscally irresponsible for the City; and

**WHEREAS**, in 2009, the BCC unanimously voted to unilaterally terminate the Wholesale Contract; and

**WHEREAS**, on July 23, 2009, the BCC notified Milwaukie that the City had until February 28, 2010, to agree to the District's terms for continued wastewater treatment service, which included a new rate of \$25.31 per EDU per month (approximately \$14.00 per month more than the historical cost per month per EDU); and

**WHEREAS**, the BCC's imposed rate of \$25.31 per month equates to a treatment charge to the City of approximately \$2.5 million per year, a service charge the City has neither accepted nor budgeted for; and

**WHEREAS**, the City of Milwaukie is currently receiving wastewater treatment services from the District without a contract to fix the price for those services, which has created instability in the Wastewater Fund budget; and

**WHEREAS**, the City of Milwaukie received wastewater treatment services during fiscal year 2007-08 and 2008-09 at a total cost that is still being reconciled by the City and the District, but which will require a “true-up” payment to the District from the City for an amount that could exceed \$500,000; and

**WHEREAS**, the BCC’s unilateral action to cancel the Wholesale Contract, and related actions have caused the Wastewater Fund to incur significant legal and professional consulting expenses; and

**WHEREAS**, the City of Milwaukie must maintain revenue in the Wastewater Fund sufficient for necessary capital improvement, maintenance projects, minimum working capital and inflation factors; and

**WHEREAS**, unanticipated expenses due to the BCC’s unilateral termination of the Wholesale Contract and related BCC actions threaten to deplete the City’s Wastewater Fund, including its reserve account, by May 2010; and

**WHEREAS**, in November 2009, the Citizens Utility Advisory Board, which is composed of residents tasked with advising the Council on wastewater and other utility issues, recommended a wastewater rate increase of approximately \$2.00 per month to maintain the financial health of the wastewater utility given the current crisis with treatment rates; and

**WHEREAS**, Milwaukie Municipal Code Section 13.12.070(A) authorizes the City Council to establish sewer service charges by resolution;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council that wastewater rates established by Resolution 52-2005 be amended as follows:

**SECTION ONE:** a Wastewater Service Surcharge of \$2.00/ccf (each 100 cubic feet of water used) is hereby adopted. A typical household uses 7 ccf of water per month. (This amounts to a \$14/month surcharge for a typical water customer in Milwaukie).

**SECTION TWO:** The surcharge will not be applied to low-income utility customers eligible for reduced rates under MMC section 13.2.010.

**SECTION THREE:** The Wastewater Service Surcharge shall remain in effect at least through the June/July 2010 billing cycle, but only until a new Wholesale Agreement is reached with the District. The Surcharge will terminate effective the first billing cycle after execution of a new Wholesale Agreement. Should a new Wholesale Agreement not be reached with the District by July 30, 2010, the Surcharge shall be extended through the December/January 2011 billing cycle, or until a new Wholesale Agreement is reached, whichever occurs first.

**SECTION FOUR:** Upon execution of a new Wholesale Agreement with the District, all funds collected by the City under this resolution shall remain in the Wastewater Fund to cover costs or contribute to reserve accounts associated with wastewater management.

**SECTION FIVE:** Previously adopted wastewater rates shall remain in effect until the new rate is in effect.

Introduced and adopted by the City Council on **January 19, 2009**.

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

ATTEST:

APPROVED AS TO FORM:

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

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



**To:** Mayor and City Council

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

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

**Subject:** Application for Metro CET Grant Funds for Urban Renewal Planning

**Date:** January 5, 2010 for January 19, 2010 Regular Session

### **Action Requested**

Authorization to seek grant funds from Metro to support urban renewal and economic development planning effort. Council's advice and direction on the approach included in the application.

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

**Nov. 2009:** Council received briefing on results of Tashman Johnson urban renewal feasibility study and directed staff to submit a letter of intent to apply for Metro Construction Excise Tax Planning grant.

**Sept. 2009:** Council approved amendment to Tashman Johnson contract to provide for additional study of downtown development standards and development feasibility (Res. No. 54-2009).

**April 2009:** Council provided background briefing on feasibility study and urban renewal mechanics.

**Feb. 2009:** Council approved urban renewal study contract with Tashman Johnson (Res. No 11-2009).

**Oct. 2008:** Council directed staff to develop an urban renewal work plan.

**June 2008:** Council directed staff to look into urban renewal to support critical public infrastructure investments in downtown.

**Dec. 2007:** Council directed staff to consider steps to re-balance the relative financial burden of downtown public area requirement (PAR)/streetscape improvements, as required under the 2000 Downtown and Riverfront Land Use Framework.

### **Background**

The key findings of the City's 2009 urban renewal feasibility study were:

- Focus urban renewal on areas with clear redevelopment opportunity sites.
- Strategically invest TIF revenues in projects that will generate additional private sector investment.
- Total borrowing capacity of a moderately-sized, downtown-focused urban renewal area is substantial (approximately \$60 million).
- Urban renewal planning or a parallel process should consider the total development costs implied by the existing public improvement standards in downtown.
- Rents anticipated for downtown Milwaukie commercial space in the foreseeable future, i.e., even absent the current economic downturn, do not justify market-driven new construction. City efforts should focus on incremental efforts to grow values over time.

Metro recently expanded its Construction Excise Tax (CET) Planning Grant Program to accept grant applications for planning projects within established urban areas. (Previously, the program had focused on funding projects in areas that were recently added to the urban growth boundary.) The program is funded by a construction excise tax that is collected throughout Metro's jurisdiction. The central goal of the program is to support efforts that will likely result in on-the-ground development activity in the near-term in centers and corridors.

City staff believes this funding source is perfect for addressing some of Milwaukie's most urgent planning needs. Staff has been encouraged by Metro staff to submit an application to fund not only creation of an Urban Renewal Plan, but also related projects that will be important for the community to understand and make the most of an urban renewal effort. Issues such as urban renewal, downtown development standards, and defining the development program for the Murphy/McFarland sites are inter-related and deserve to be addressed comprehensively. Attached to this staff report (Attachment 1) is the project narrative submitted with the City's letter of intent to apply, which details both the previous work that has laid the foundation for the next steps and describes the key activities CET funds could support urban renewal planning, opportunity site pre-development work, and a Downtown Plan/Code "re-fresh".

Staff anticipates requesting approximately \$250,000, which would be matched with roughly \$50,000 of staff time (an “in-kind” match), and \$30,000 in “hard” match.

### **Concurrence**

The Planning Director has been closely involved in development of the both the letter of intent and the overall scope of work conceptualized here. The Community Services Director has been consulted and will continue to assist in the design of the approach to public involvement.

### **Fiscal Impact**

Application for grant funds does not obligate the City to accept the funds. However, as noted above, staff anticipates that the City would provide some hard match to the project. This contribution is expected with grant programs of this kind and demonstrates the City’s commitment. Funds are anticipated to be drawn from the economic development line in the General Fund, and can be funded within the normal range of funds budgeted for such purposes by the City. (Project would commence in the next fiscal year with elements very likely extending into FY 2011-12.)

### **Work Load Impacts**

The proposed project would be a substantial undertaking. It can be completed within existing staffing structures, but would be a major focus for Planning and Community Development staff, in particular, in the coming fiscal year.

### **Alternatives**

Council input on the scope and direction of the proposed project is requested.

### **Attachments**

1. Project Narrative submitted as part of the City’s “Letter of Intent” to apply
2. Resolution authorizing City staff to apply for CET funds

**BACKGROUND**

*Project Purpose:* Catalyze direct private investment in redevelopment to revitalize parts of Milwaukie's Town Center. Establish funding mechanisms, appropriate land use plans, and development strategies to stimulate private investment.

This will be achieved through:

- Intensive public involvement to build support for the public steps necessary to revitalize downtown.
- Preparation of an Urban Renewal Plan for adoption by the Milwaukie City Council.
- Targeted site-specific development planning.
- Development code updates.
- Public infrastructure investment and carefully crafted public contributions to development costs, funded through urban renewal, City general funds, state and federal grants, etc.

*Project Need & Prior Planning Work:* The City of Milwaukie aspires to reinvigorate its downtown and central commercial district in ways that meet regional growth targets and enhance the community's quality of life. Several barriers stand in the way of this aspiration, including: outdated plans and regulations; inadequate infrastructure; and lack of local funding to encourage redevelopment. The proposed project addresses these barriers to allow the City to meet local and regional goals for development in the Milwaukie Town Center.

The recent planning steps that have led to the City's decision to develop an urban renewal plan and plan for opportunity sites within the area include the following:

- A 2009 Urban Renewal Feasibility Study, which documented potential for development of key opportunity sites and substantial tax increment finance revenues (\$40-45 million in net present value) over a twenty-year horizon. Consultant team emphasized the importance of prioritizing early-year investments on activities to support immediate development opportunities, particularly the Murphy and McFarland sites (see Project Map). *Pro forma* development analysis demonstrated that expected rents in downtown are substantially below levels required to justify market-driven new construction.
- A 2009 Smart Development Code Assessment project, funded by a TGM grant, found that encouraging redevelopment of downtown will require revisions to the City's development regulations for the Downtown zones. The City Council identified this project as a high priority.
- Since 2008, the City has been engaged in detailed study of the potential for a public plaza and supportive adjacent development in the southern downtown, in close proximity to the planned light rail station. Key products of this work to date are a Pattern Language and Armature (aka the South Downtown Concept).
- An ODDA/SERA study in 2003 suggested urban renewal was a critical missing piece to move implement Milwaukie's Downtown and Riverfront Plan.
- Milwaukie's adopted 2000 Downtown and Riverfront Plan Land Use Framework Plan ("Downtown and Riverfront Plan") envisions mixed use development in downtown with a high level of public amenities, but implementation has been slow.
- The 1997 Town Center Master Plan envisions mixed use development on the Murphy and McFarland sites but is based on out-of-date assumptions, and current zoning on these sites is ineffective.

**PROJECT SCOPE OF WORK**

The study area is Milwaukie's designated Town Center area, which includes downtown Milwaukie, the "Historic Milwaukie" neighborhood, and several adjacent opportunity sites immediately to the east of Highway 224. The predominant land uses are high density residential and commercial.

This proposal assumes most technical work will be conducted by a carefully selected consultant team with expertise in land use planning, urban renewal area planning, real estate development, and community



engagement processes. City staff will participate by providing strategic direction, public involvement design assistance, outreach assistance, document review, and all necessary internal staff work in support of submissions to Planning Commission and City Council.

The key elements of the project are:

1. Project Initiation and Background Research

- a. Detailed project scope, which will align with the City’s final application for CET funds.
- b. Competitive public solicitation and selection of multi-disciplinary consultant team.
- c. Base data research: Review background materials, such as previous plans and studies, environmental, traffic, crime, and market analysis materials.

2. Public Involvement

The project will be conducted with a high degree of community and stakeholder involvement. The Consultants and staff will develop all land use plans in consultation with project stakeholders, Milwaukie citizens, participating agencies, and representatives from the development community. A key objective of this task is to address concerns about re-development and its impact on resident’s lifestyles.

- a. Identify key stakeholders, their issues, levels of involvement and strategies for outreach.
- b. Form a steering committee comprised of local stakeholders to advise the City Council and the City’s Urban Renewal Agency. Committee includes neighborhood leaders, business owners, elected and appointed officials, and overlapping taxing districts.
- c. Employ “visual preference” techniques and focus groups to elicit public input and engagement about the potential benefits and threats of urban style development.
- d. Hold public open houses/workshops at key decision points.
- e. Provide project briefings to Planning Commission and City Council at regular intervals.

3. Establish Dedicated Funding Mechanism

The project will result in a written urban renewal plan and accompanying report addressing all required elements, including: legal findings; land use/comp plan compatibility; project and program definitions; project cost estimates; maximum indebtedness; financial feasibility analysis; revenue projections based on market analysis; bond schedule; demographic information; and fiscal impact on taxing jurisdictions.

Plan adoption will allow the establishment of tax increment financing (TIF). TIF projects must focus on those public investments that most directly leverage private investment, i.e., build increment.

4. Opportunity Site Development Planning

- a. Develop strategic site master plans that define land uses, development form, and infrastructure requirements for 3 key areas (see Attachment 2 for details):
  - i) Central Milwaukie, including the Murphy and McFarland sites, east of Hwy 224.
  - ii) Kellogg Treatment Plant site.
  - iii) Downtown light rail station area.
- b. The purpose of the development planning task is to identify barriers to and strategies for implementation of the urban renewal plan on specific parcels. City staff will use the master plan process to build consensus around a vision and identify market, infrastructure, and regulatory roadblocks to implementing that vision. A key outcome will be the identification of actions (such as capital investments, zone changes, or code amendments) needed to successfully implement the Urban Renewal Plan.
- c. For each of the three areas, complete the following tasks:

- i) Needs, opportunities, and constraints. Based on a summary of stakeholder research, site research and analysis, feasibility studies, governing policies and standards, and economic, engineering, and environmental constraints.
  - ii) Preliminary Market Analysis.
  - iii) Evaluation of alternatives.
- d. For immediate development opportunity areas, i.e., Central Milwaukie and Milwaukie station area, complete the following additional tasks:
- i) Recommendations and implementation strategy, comp plan/zoning changes, changes to development standards, and transportation and other infrastructure projects, as necessary.
  - ii) Develop private partners for site development, particularly immediate opportunities in Central Milwaukie, including facilitating development agreements

5. Downtown Plan and Code Refresh

In 2000, the City adopted the Downtown and Riverfront Plan, which provides a framework for redevelopment that recognizes and builds upon the character and history of the downtown. To implement the Plan, the City Council adopted five downtown zones, specific use and development standards, public area requirements, and design standards to assure an active and attractive environment.

The City is committed to the vision outlined in the Downtown and Riverfront Plan. However, after implementing the Plan for nine years, staff has found that the specific and prescriptive code standards do not provide enough flexibility to accommodate a gradual transition between existing uses and buildings and the future vision. While the urban design vision of the plan is solid, the City may also want to incorporate lessons learned through the recent South Downtown Concept process.

- a. Review existing plans and policies with regard to the following objectives:
  - i) Ensure that the regulations implement the goals of the framework plan.
  - ii) Foster revitalization by protecting existing businesses and responding to the current marketplace.
  - iii) Define what is essential to Milwaukie’s urban design vision for downtown, and what standards are overly prescriptive or extravagant.
  - iv) Establish a design review process that is clear, reasonable, and effective.
- b. Analyze the cumulative impact of regulations on development feasibility.
- c. Propose better regulations, standards, and revisions to the Downtown and Riverfront Plan.

**EXPECTED DEVELOPMENT OUTCOMES**

Within two years of completion of the proposed planning work, there is a high probability for development activity at the Murphy and McFarland sites. Within five years of completion of planning work, there is a high probability for development activity at multiple locations in the core of downtown and surrounding areas.

City readiness and commitment is demonstrated by:

- Local and regional support for the Portland to Milwaukie Light Rail Transit (PMLRT) project (scheduled to open in 2015).
- Local funding for and completion of an Urban Renewal Feasibility Study (\$35,000, completed 2009).
- Phase I of Riverfront Park, a key component of the City’s downtown plans, is currently in the first phase of construction.
- Jackson Street Improvements, which will improve the major bus stop in downtown and implement the City’s downtown streetscape design from Main Street to 21<sup>st</sup> Avenue (\$1.4 million, bid let Feb. 2010).

- North Main Village, a mixed-use project in downtown Milwaukie, financed with direct support from the City, Metro TOD program, and numerous other public partners (\$14 million, completed 2007).
- McLoughlin Boulevard Streetscape project (\$4.7 million, completed 2006).

The City's 2009 Urban Renewal Feasibility Study demonstrated that the study area includes a critical mass of development opportunity sites. The Tashman Johnson team, with City assistance, identified sixteen opportunity sites within the study area (total area 1.75 million square feet) with the potential for development of 300,000 square feet of commercial uses, 575 housing units, and 200 lodging units. Two parcels in downtown Milwaukie are vacant and publicly-owned. The Murphy and McFarland sites are vacant and currently on the market.

### **REGIONAL SIGNIFICANCE & LOCATION**

The project area shares its boundary with the regionally-designated Milwaukie Town Center and includes the Portland to Milwaukie Light Rail Transit Milwaukie station area. Encouragement of re-development and new development within the project area is in close alignment with the Metro 2040 vision. The entire project area is generally characterized by commercial areas adjacent to medium-density residential neighborhoods. This project will help integrate those uses by encouraging strategic mixed-use development and making possible physical multi-modal connections.

### **LEVERAGE/MATCH/EQUITY**

The proposed project leverages several recent significant City of Milwaukie investments in planning, including: an urban renewal feasibility study (Tashman Johnson, \$35,000); South Downtown pattern language development (Center for Environmental Structures, \$170,000); the next phase of South Downtown planning (currently selecting consultant, budgeted at \$100,000); and a TGM-funded Smart Development Code audit (Angelo Planning Group, \$15,000). In addition, the City commits to providing both in-kind match and hard match (detailed in budget documents). Looking forward, this work will leverage tens of millions of dollars in private investment.

The City has recently committed to a \$5 million local contribution for light rail. The region as a whole, along with federal partners, will invest many times that amount. The establishment of urban renewal and the other planning activities described above will be critical to realize the full land use and travel behavior change potential of the light rail investment.

In regards to the equitable distribution of funds, the City has collected over \$50,000 in CET. The planning efforts described above represent major investments for the City. The City of Milwaukie operates under the same tax limitations as other jurisdictions, but due to the nature and timing of Measure 50 limitations, the taxable assessed value in the City is held at a very low level. As a result, the City struggles to find funds to pay for local match on grant opportunities and undertakes virtually no significant capital projects with exclusively local funds. The cost of the absolutely vital planning work described in this application is a very real barrier to realizing local planning objectives and fulfilling regional objectives for the Town Center.

### **PROGRAM PARTNERS AND MANAGMENT**

Staff is interested in exploring possible collaborations with TriMet, Northwest Housing Alternatives, the Clackamas County Main Street Program, and Metro TOD programs.

Lead City staff is Alex Campbell, Resource and Economic Development Specialist, working in close cooperation with Katie Mangle, Planning Director. City staff requested City Council support to apply for CET funds for this project on November 17, 2009, at a City Council work session. Council members clearly supported moving forward with this letter of intent.

ATTACHMENT 2

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DIRECTING CITY STAFF TO REQUEST GRANT FUNDS FROM METRO'S CONSTRUCTION EXCISE TAX PLANNING GRANT PROGRAM TO SUPPORT URBAN RENEWAL AND RELATED PLANNING EFFORTS.**

**WHEREAS**, City of Milwaukie is interested in exploring the possibility of urban renewal to support projects defined in the Milwaukie Downtown and Riverfront Plan and additional supporting efforts, such as re-balancing the costs of downtown Public Area Requirements between the public and private developers; and

**WHEREAS**, The City recently carried out a study, supported by the consultant firm Tashman Johnson, that demonstrated the feasibility of urban renewal as a development tool to support development within the Milwaukie Town Center; and

**WHEREAS**, The City recognizes the need for targeted site-specific planning for several opportunity sites and the need to update the development standards for downtown; and

**WHEREAS**, Metro has established a Construction Excise Tax Planning Grant Program to support efforts that will encourage on-the-ground development activity in the near future;

**NOW, THEREFORE, BE IT RESOLVED** that the City staff is directed to submit an application for a Construction Excise Tax Planning Grant.

Introduced and adopted by the City Council on January 19, 2010.

This resolution is effective on January 20, 2010.

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

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

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



**To:** Mayor and City Council

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

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

**Subject:** Grant Agreement and Budget Amendments for the Jackson Street Improvement Project

**Date:** January 8 for January 19, 2010 Regular Session

### **Action Requested**

1. Authorize the City Manager to sign amendments to the Intergovernmental Agreements (IGA) with ODOT concerning federal stimulus funding for the Jackson Street Improvement project and Linwood Ave. resurfacing project.
2. Authorize Budget Appropriation of \$100,000 in Fund 315 (Street Surface Maintenance) to contribute to the Jackson Street Improvement Project.

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

**January 2010:** Council discussed the project and asked staff to return with more detail related to tree removal and budget implications.

**November 2009:** Council approved a Resolution (No. 73-2009) authorizing an IGA with TriMet to govern Jackson Street Improvement project cooperation and cost share between the City and TriMet.

**April 2009:** Council approved a Resolution (No. 20-2009) authorizing original project IGA between ODOT and the City governing stimulus fund contribution to the project.

**March 2009:** Council approved a Resolution (No. 14-2009) providing for design funds to expand the Jackson Street bus shelter project to ensure project eligibility for federal stimulus funding.

## **Background**

The Jackson Street Improvement Project includes the following elements:

- Full reconstruction of Jackson Street and streetscape (Main to 21<sup>st</sup> Avenue).
- Utility under-grounding.
- New bus shelters, consolidating the existing scattered grouping of bus shelters along Jackson and 21<sup>st</sup> Avenue to two high-quality shelters on Jackson.
- Stormwater pre-treatment facilities (aka, rain gardens).
- “Bulb outs,” street furniture, street trees, trash cans, pedestrian-scale lighting, and City medallions, in conformance with the Public Area Requirements (PAR) element of the Downtown and Riverfront Land Use Framework.

The project, in combination with future TriMet service changes to reduce layovers and add new bus stops at Washington Ave., fulfills the highest priority transit project identified in the City’s Transportation System Plan:

The user amenities at the transit center in downtown Milwaukie are substandard according to TriMet’s Bus Stop Amenities Development Criteria and Bus Stop Classification Guidelines. Because the existing transit center sees over 4,800 weekly boardings and is a major transfer hub, the existing transit center should have a full range of both bus stop features and externally managed features (those not provided by TriMet). *Bus stop features in a high use location like downtown Milwaukie would include customized shelters, trash cans, real time (Transit Tracker) displays, freestanding benches, bike racks and lockers, public phones, art work elements and ticket vending machines. Externally managed features should include crosswalks, curb extensions, low maintenance landscaping, and public restrooms.*

The City and TriMet should work together to construct the complete set of bus stop features and externally managed features in downtown Milwaukie. The existing transit center would be effectively “dissolved” by adding these features, moving the downtown bus layover function out of the downtown core, and potentially disaggregating the location of the bus stops. In its place, *downtown Milwaukie would see continued bus transfer activity, but at high quality stops with new, state of the art facilities.* These capital improvements (a new bus layover facility and improved downtown user amenities) are *Milwaukie’s highest priority capital improvements for the transit system.* (emphasis added, pp. 7-9)

The most recent cost estimate for the project (at 100% plans) put the total cost of all elements of the project at \$1.49 million. In addition, ODOT requires a “bid risk” contingency to be available at the time of bid letting (i.e., the bid opening), currently scheduled for March 4, 2010. ODOT’s policy is to award a project if bids come in at up to 10% above the engineer’s estimate of construction cost (if the low bid exceeds 110%

of the estimate, the City would have the opportunity to alter and re-bid the project)<sup>1</sup>. The bid risk “contingency” is expected to be approximately \$71,725. Therefore, the combination of City, TriMet and ARRA funds that need to be available at the start of March 2010 is expected to be \$1.56 million, of which \$71,725 is the bid risk “contingency.” Currently available project resources are \$1.23 million.

Staff proposes resolving this gap by (1) shifting \$208,000 in ARRA funds from Linwood paving to Jackson; and (2) appropriating \$100,000 of Street Surface Maintenance Program monies for the Jackson Street project. After bid let (bid opening), the bid risk contingency is no longer necessary. However, staff believes it would be prudent to allow all SSMP funds to remain appropriated to provide additional contingency to the project.

#### *1. ARRA shift*

The consolidation of both ARRA grants on the Jackson Street project is proposed not only because of the need for additional resources for Jackson Street. As City staff negotiated with a selected consultant on the fee and level of effort to provide consultant support to assist with the federal-aid requirements for the Linwood Resurfacing project, it became clear that the cost of federalizing the Linwood Resurfacing project would absorb most (over 75%) of the ARRA funds. These increased costs, combined with the additional staff time necessary to manage a federally funded project, made for an inefficient use of the ARRA funds for the Linwood Resurfacing project, especially considering adequate SSMP funds were available to complete the project in a timely fashion.

Staff proposes a transfer of the Linwood Resurfacing ARRA funding to the funding gap in the Jackson Street project. The Linwood Resurfacing project will still be constructed using Milwaukie Street Surface Maintenance Program funds in 2010 (as planned).

As described in the staff report in November 2009, the project funding agreement with TriMet that Council approved (Resolution No. 73-2009) assumed the use of these funds on the Jackson Street project.

#### *2. SSMP budget amendment*

In addition, staff requests a budget amendment to allow expenditure of up to \$100,000 of SSMP funds on the project. The project includes over \$175,000 of street surface improvements. (Because of the high volume of bus traffic on the street, the plan includes a full re-construct of the street with concrete, rather than asphalt.) Jackson

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<sup>1</sup> The timeline requirements of ARRA funds would technically be met at this point, as the release of the initial bid has “obligated” the ARRA funds—the key milestone required in federal statute—even if it were to be re-bid.

Street is classified as a collector and is an eligible street under the SSMP program. It was rated at a PCI of 81 in 2004, but has had significant wear since that time.

If actual construction costs are below 110% of the engineer's estimate, the City will be automatically re-funded the difference, which would be returned to the SSMP. (The City can request this refund at the time of bid opening.) The final engineer's estimate includes a 3.5% project contingency, and bids are currently coming in below ODOT engineer's estimates. Therefore, staff is optimistic that most of this allocation will be refunded.

The increase in projected project cost since spring of last year was the result of several factors. First, the initial figures were developed under very short timelines in order to successfully secure ARRA funding within a political process. They were developed with no design completed. Much of the difference between those initial cost figures and the 100% estimates was due to a significant underestimate of the various costs associated with federal-aid projects. Federal requirements change constantly and it had been a number of years since the City had taken a federal-aid highway project all the way through completion. In addition, there was uncertainty about which environmental reviews would be necessary given the final project classification. Changes to the figures used in the City's initial ARRA request include:

- Several Preliminary Engineering efforts expanded beyond what was originally estimated (approximately \$30,000 in additional costs). These costs were necessary to complete federal environmental regulatory compliance.
- Approximately \$35,000 in ODOT administrative costs were not anticipated. Initial project planning did not recognize that ODOT staff time would be billed to the project.
- Construction Engineering (CE) will cost the equivalent of approximately 25% of construction, as opposed to the more typical 15% that was expected (a difference of \$87,000). ODOT standards for CE and reporting are extremely high. The City was provided a template from ODOT for CE services with very little flexibility. Staff negotiated out approximately \$30,000 from the original cost, but the final cost was still significantly higher than originally anticipated, and includes over \$20,000 in contingency items.

Several specific bid items increased between the 95% engineer's estimate and the 100% estimate (such as additional traffic control, Federal Migratory Bird Act compliance, additional excavation, and increased unit costs for paving surfaces), collectively totaling approximately \$60,000. There was a small right-of-way cost (\$7,000) due to the need for a temporary construction easement, which the City was initially told would be provided at no cost.

Finally, the original cost did not include the bid "risk" contingency required to be available at the time of bid, as described above, totaling over \$70,000.



At the January 4 Regular Session, Council members asked about possibilities for reducing project scope to minimize project cost. Staff mentioned one possibility: the use of an asphalt street cross-section. However, use of asphalt on the street is a decision the City would likely regret and is not fiscally prudent in the long run. In addition, due to the ARRA timing requirements, and the advanced stage of project review, it is not feasible to make the change as part of the base bid. Other parts of the project that could be eliminated would move away from the amenities and design features called for under the PAR or could potentially compromise the project's environmental clearances. (For instance, the stormwater management approach, which is based on the size and quantity of rain gardens planned, has been approved through multiple layers of federal review.)

Council also raised concerns about the City's liability for cost over-runs. Contingencies in the budget at this time include over \$20,000 in the Construction Engineering contract to cover change orders and any claims support needed, and \$35,000 in construction contingency. The very detailed and thorough environmental review required by FHWA provides a degree of insurance that potential issues have been identified. However, as with any project, the possibility of unforeseen issues remains. Ultimately, if the City is not willing to shoulder that risk, no other party can be reasonably expected to do so. Given that low bids are currently coming in well below engineer's estimates on ODOT projects, staff believes the risk is minimal.

At the January 5 Regular Session, Council members requested staff return with additional details on the type, age, and condition of the existing trees, particularly the more substantial trees on the south side of Jackson Street, and the proposed replacements. There are eleven existing street trees within the project area. The larger trees, on the south side of Jackson Street, are Red Oaks (the five towards Main Street, 12"-27" in diameter) and White Oaks (the two closest to 21<sup>st</sup> Avenue, 14"-20" diameter). Oak trees are not recommended street trees because of the sizes they reach. Three of the Red Oaks have been topped. The best specimen, at the corner of Main Street, is approximately 50' tall and in fair condition. The two White Oaks are both in fair health and could potentially live for a very long time, during which time they would almost certainly outgrow their tree wells and compromise the sidewalks.

Three Red Maples (4" – 7" diameter) on the north side of the street are in good condition with substantial life remaining. Staff is investigating the potential for salvage of these trees. The Cherry tree on Main, just north of Jackson, is in fair health with limited remaining life.

See Attachment 4 for a discussion by City Engineering staff on the preferred street trees for Jackson Street. Attachment 5 provides the applicable sections of PAR.

If the existing trees were unique specimens and in excellent health, it is conceivable that some might survive construction. The steps necessary to preserve the health of the trees would be extraordinary, likely substantially increasing construction costs. Because the Oaks are not a preferred species for street trees and the other trees are relatively recent plantings, this option was not considered. Attempting to preserve the trees would require a very significant redesign of the project, including elimination of the utility under-grounding and changing curb locations, tree well locations, etc. This level of change is not practical at this point. Even the most heroic steps would not guarantee survival of the larger trees. Substantial excavation is unavoidable and a significant portion of the root systems would be disturbed.

The replacement street trees specified in the plans are:

- One 3” caliper “Red Sunset” maple on Main Street tree, north of Jackson.
- Eight 3” caliper “Skyline Honeylocust” on Jackson Street (north and south sides)

The placement, number and distribution of the trees were driven by the spacing requirements of the PAR standards and the specific project constraints, such as driveway locations and shelter locations. The “Red Sunset” and “Skyline Honeylocust” species are specified in the PAR standards. The 3” caliper size was specified because of availability. Although 3” is a good size for a street tree and will provide good canopy, the landscape architect did consider 4” caliper trees as called for in the PAR document. However, the availability of the preferred species was very limited. In response to Council concerns raised on January 5, staff requested the HPR landscape architect investigate availability of larger trees again. He found only 1 larger Honeylocust at a regional supplier, and it had already been sold. Staff will direct the contractor to research the availability of the slightly larger street trees, and, if they become available, to use them.

Seven additional “accent” trees are included in the plans.

- Two 1.5” caliper “Flowering Dogwoods”, on either side of the entrance to the City Hall parking lot
- Three 1.5” caliper “Chinese Dogwoods”, in the large rain garden on Main Street, immediately north of Jackson
- Two 1.5” caliper “Pacific Crabapple,” in the smaller rain gardens

### **Concurrence**

Engineering has provided concurrence on the appropriateness of the use of SSMP funds on the Jackson Street project.

### **Fiscal Impact**

This decision does impact the fund balance within the SSMP, but will not significantly impact City's project planning and will not delay any projects that are time-critical.

### **Work Load Impacts**

Significant staff resources have been invested in this project over the preceding year. Continued staff support, particularly related to construction, is anticipated through summer 2010, and is within existing work plans.

### **Alternatives**

Staff does not believe there is any other City fund that would be an appropriate source of funding for the project with sufficient funds to cover the project need.

Council may wish to direct staff to return to Council immediately after the bid let to eliminate the appropriation of SSMP funds no longer necessary to cover bid risk .

### **Attachments**

1. Resolution for Grant Agreement changes
2. Budget Resolution
3. Total project costs and resources
4. Engineers memo on street tree types
5. Applicable PAR standards

ATTACHMENT 1

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,  
AUTHORIZING AMENDMENT OF AGREEMENTS WITH THE OREGON DEPARTMENT  
OF TRANSPORTATION FOR ECONOMIC STIMULUS PROJECTS.**

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

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

**WHEREAS**, the City requested consolidation of all City transportation ARRA stimulus funds on the Jackson Street improvement project;

**NOW, THEREFORE, BE IT RESOLVED** that the Council authorizes the City Manager to sign an amendment to the "Local Agency Agreement" for the Jackson Street improvements project, which is attached as Exhibit A, and an amendment terminating the "Local Agency Agreement" for the Linwood Avenue project, which is attached as Exhibit B.

Introduced and adopted by the City Council on January 19, 2010.

This resolution is effective immediately.

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

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

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

# EXHIBIT A

Misc. Contracts and Agreements  
No. 25498

AMENDMENT NO. 02  
LOCAL AGENCY AGREEMENT  
American Recovery and Reinvestment Act of 2009  
Jackson Street: Main Street - 21st Avenue Sidewalks  
City of Milwaukie

The State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "State", and the City of Milwaukie, acting by and through its elected officials, hereinafter referred to as "Agency", entered into Local Agency Agreement No. 25498 on April 17, 2009, and Amendment No. 1 on June 16, 2009. Said Agreement covers reconstruction of sidewalks and streetscape, including street trees, street furniture, curb extensions and utility undergrounding.

It has now been determined by State and Agency that the Agreement referenced above, shall be amended to add funds to cover an increase in estimated project costs due to changes in the scope of the project. The additional funds are made possible through cost savings from Agency's Linwood Avenue: Monroe Street – Railroad Avenue Resurfacing project. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**Terms of Agreement, Paragraph 2, Page 2, which reads:**

2. The Project shall be conducted as a part of the ARRA Program under Title 23, United States Code. The total Project cost is estimated at **\$765,000**, which is subject to change. ARRA Program funds for this Project shall be limited to **\$725,000**. The Project will be financed with ARRA funds at 100 percent of the maximum allowable federal participating amount. Agency will not be required to provide a match for the ARRA funds but will be responsible for any non-participating costs, including all costs in excess of the available federal funds. No ARRA funded invoices will be accepted and no ARRA funded payments will be made after September 30, 2015.

**Shall be deleted in its entirety and replaced with the following:**

2. The Project shall be conducted as a part of the ARRA Program under Title 23, United States Code. The total Project cost is estimated at **\$1,380,000**, which is subject to change. ARRA Program funds for this Project shall be limited to **\$933,000**. The Project will be financed with ARRA funds at 100 percent of the maximum allowable federal participating amount. Agency will not be required to provide a match for the ARRA funds but will be responsible for any non-participating costs, including all costs in excess of the available federal funds. No ARRA funded invoices will be accepted and no ARRA funded payments will be made after September 30, 2015.

**SPECIAL PROVISIONS, Paragraphs 8 through 14, shall be added and shall read as follows:**

8. Job Recruitment – In addition to normal recruitment processes on all ARRA funded projects, the contractor and all subcontractors shall also list job openings through “WorkSource Oregon” with the exception that job listings are not necessary when the contractor or subcontractor fills a job opening with a present employee, a laid-off former employee, or a job candidate from a previous recruitment.
9. Agency shall include the ARRA requirements in any contract it enters into, including consultant contracts, and subcontracts at any tier. Agency may modify language to match its own specifications, but such modifications shall be reviewed and approved by State prior to incorporation into any contract.
10. Agency shall comply with ARRA that provides the U.S. Comptroller General and his representatives with the authority: “(1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to the contract or subcontract; and (2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.”
11. Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this Agreement, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.
12. Agency shall comply with the ARRA requirements that provide authority for any representatives of the Inspector General to examine any records or interview any employee or officers working on this Agreement. Agency is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this Project. Section 1515(b) of the ARRA further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.
13. Whistleblower Protection – The Agency and its Contractor shall, and shall require its subcontractors to, comply with Section 1553 of ARRA, which prohibits all non-federal contractors of ARRA funds, including the State of Oregon, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee as a reprisal for the employee’s disclosure of information that the employee reasonably believes is evidence of: (a) gross mismanagement of a contract or grant relating to ARRA funds; (b) a gross waste of ARRA funds; (c) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (d) an abuse of authority related to implementation or use of ARRA funds; or (e) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. The

Contractor and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of ARRA.

14. False Claims Act – The Contractor shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor or other person has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

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

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

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

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

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

Agency/State  
Agreement No. 25486

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

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

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

Date \_\_\_\_\_

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

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

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

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

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

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

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

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

Date \_\_\_\_\_



## EXHIBIT B

Misc. Contracts & Agreements  
No. 25473

### AMENDMENT NUMBER 01

#### **TERMINATION**

American Recovery and Reinvestment Act of 2009  
1R-Paving

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

The State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "State", and the City of Milwaukie, acting by and through its elected officials, hereinafter referred to as "Agency", entered into an Agreement on April 15, 2009. Said Agreement covers paving of various streets and roads.

It has now been determined by State and Agency that the Agreement referenced above shall be terminated in its entirety. The reason for this termination is as follows:

**Agency is terminating the Linwood Avenue 1R Paving project and will be using the ARRA funds on another ARRA project.**

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

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

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

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

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

Agency/State  
Agreement No. 25473

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

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

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

Date \_\_\_\_\_

**Agency Contact:**

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

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

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

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

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

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

**State Contact:**

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

ATTACHMENT 2

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,  
AUTHORIZING BUDGET APPROPRIATION FOR THE JACKSON STREET PROJECT.**

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

**WHEREAS**, the City and TriMet have both previously committed funds, supplementing ARRA funds, to the Jackson Street Improvement Project; and

**WHEREAS**, available resources are anticipated to fall short of the funds necessary to complete the project; and

**WHEREAS**, approximately \$70,000 of the needed funds are only necessary as a “bid risk contingency” and are likely to not be expended; and

**WHEREAS**, Jackson Street is classified as a “Collector,” and is eligible for expenditure of City Street Surface Maintenance Program funds; and

**WHEREAS**, the preliminary ODOT engineer’s cost estimate for the project includes over \$175,000 of hard costs related to “curb to curb” street surface improvements; and

**WHEREAS**, the change in revenues, materials and services, capital outlay, contingencies and transfer appropriations across the affected funds do not exceed total fund appropriations by more than 10% pursuant to ORS 294.480 Supplemental Budgets;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Milwaukie establishes supplemental budget authority in the current fiscal year in the following amount:

Fund 315 Expenditures  
Expenditure of \$100,000 in Capital Outlay, JACKSON STREET  
Reduce contingency by \$100,000

Introduced and adopted by the City Council on January 19, 2010.

This resolution is effective on January 20, 2010.

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

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

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

### Attachment 3

#### TriMet Funds

Tot. TriMet funds	\$497,000
Art set-aside	-\$7,455
TriMet HHPR contract	-\$54,920
Reserve for shelter	-\$295,000
<b>Bal. avail for ODOT construction</b>	<b>\$139,625</b>

#### Total Funds Required to Award

Itemized bid items (per 100% eng. est.)	\$693,004
3.5% contingency	\$24,255
Sub-total	\$717,259
10% of sub-total (bid risk)	\$71,726
110% of sub-total	\$788,985
Construction Engineering (incl. conting. items)	\$196,500
<b>Total</b>	<b>\$985,485</b>

#### City Funds

City funds	\$40,000
HHPR contract expended	-\$24,775
TCE appraisal	-\$3,000
TCE payment	-\$3,800
Reserve for tree removal & electrical	-\$13,000
<b>Bal. avail for ODOT construction</b>	<b>-\$4,575</b>

#### Summary

Total Resources	\$1,470,000
Total Cost	-\$1,487,853
Total Cost+Bid risk	-\$1,559,579
All funds avail to construct	\$895,906
Total funds required to award	-\$985,485
<b>Gap (incl. bid risk)</b>	<b>-\$89,579</b>

#### ARRA funds

Tot. ARRA funds*	\$933,000
HHPR base contract	-\$131,114
HHPR conting. expected	-\$6,030
Possible ODOT billings*	-\$35,000
<b>Bal. avail for ODOT construction</b>	<b>\$760,856</b>

\*Assumes ARRA consolidation

\*\*PE at \$20K, constr at \$15K

## Interoffice Memorandum

To: City Council

From: Zach Weigel, Civil Engineer

CC: Kenny Asher, Community Development/Public Works Director

Date: January 11, 2010

Re: Jackson Street Bus Shelters Tree Replacement

---

The following is a response to the City Council's concern regarding the removal of the existing trees on Jackson Street as part of the Jackson Street Bus Shelters project. The City had two arborists and a staff engineer with forestry experience evaluate the 11 existing trees on Jackson Street between Main Street and 21<sup>st</sup> Avenue. All three experts agreed that the Red Oaks on the south side of Jackson Street are in fair to poor health and should be removed.

The Red and White Oak trees are too large to be accommodated within a small tree well restricted by an urban setting such as Jackson Street. The root systems are shallow, with large main roots extending away from the trunk of the trees. As the trees grow older and larger, the main tree roots increase in diameter, resulting in the lifting of the street and sidewalk, damaging those public facilities. This damage can be seen in the sidewalk adjacent to the Red Oak trees on the south side of Jackson Street and beginning to occur adjacent to the White Oak trees. Over time, the damage to these facilities will worsen as the trees grow larger.



Sidewalk damage to an urban street such as Jackson Street can cause serious concerns for pedestrian safety. The lifting of the sidewalk can cause tripping hazards and make passage for people with disabilities difficult, possibly violating the Americans with Disabilities Act (ADA). Repairing the sidewalk is not as simple as removing the lifted sidewalk panels, removing the shallow tree root, and repouring the sidewalk panels in place. Removal of the large tree roots associated with the lifting of sidewalk can cause a tree to become sickly, lose life expectancy and become unstable during high winds. Rebuilding the sidewalk over the roots cannot always be accommodated due to the maximum slope changes allowed by ADA.

Species such as Oak Trees also grow a large tree canopy. Although a tree canopy is desirable, such a large canopy in an urban area can interfere with the façade of buildings, which may necessitate severe tree pruning. Such pruning can decrease the quality of tree and reduce its life expectancy. This reduction in tree quality and life expectancy can be seen in the major pruning that has occurred due to the overhead utilities with the Red Oak trees on Jackson Street.

The three Red Maple trees on the north side of Jackson Street are fairly young, in good health, and have a substantial remaining life expectancy. Unfortunately, the design of the bus shelters cannot accommodate these trees at their current location. Staff is continuing to work with an arborist to determine if these trees can be relocated. If so, staff will find an appropriate location to transplant the red maples as part of the Jackson Street project. The existing cherry tree on the northeast corner of Jackson Street and Main Street is only in fair condition and has a limited expected remaining life, less than 10 years. The cherry tree would be replaced with a larger tree, a red maple as part of the Jackson Street project.

Eleven street trees will be removed as part of the Jackson Street project. Those removed trees will be replaced with 16 trees of varying species, suitable for the type of urban environment experienced on Jackson Street. The proposed street trees on Jackson Street and Main Street consist of Honey Locust and Red Maple respectively. These trees are required by the Milwaukie Downtown and Riverfront Plan and were selected based on ease of maintenance, protection of sight lines, and limited impacts to sidewalk and adjacent buildings (See Attachment 5). The eight Honey Locust trees proposed on Jackson Street are a medium sized tree with an upright form and light branching patterns that will not obstruct view corridors to the Willamette River. The Red Maple tree that is proposed on Main Street provides a broad canopy with fall color that will match street trees installed as part of recent projects along Main Street. Bulb outs at each corner will include of smaller flowering ornamental trees, such as Chinese Dogwood and Pacific Crabapple, with the crabapple tree being necessary for storm water facilities.

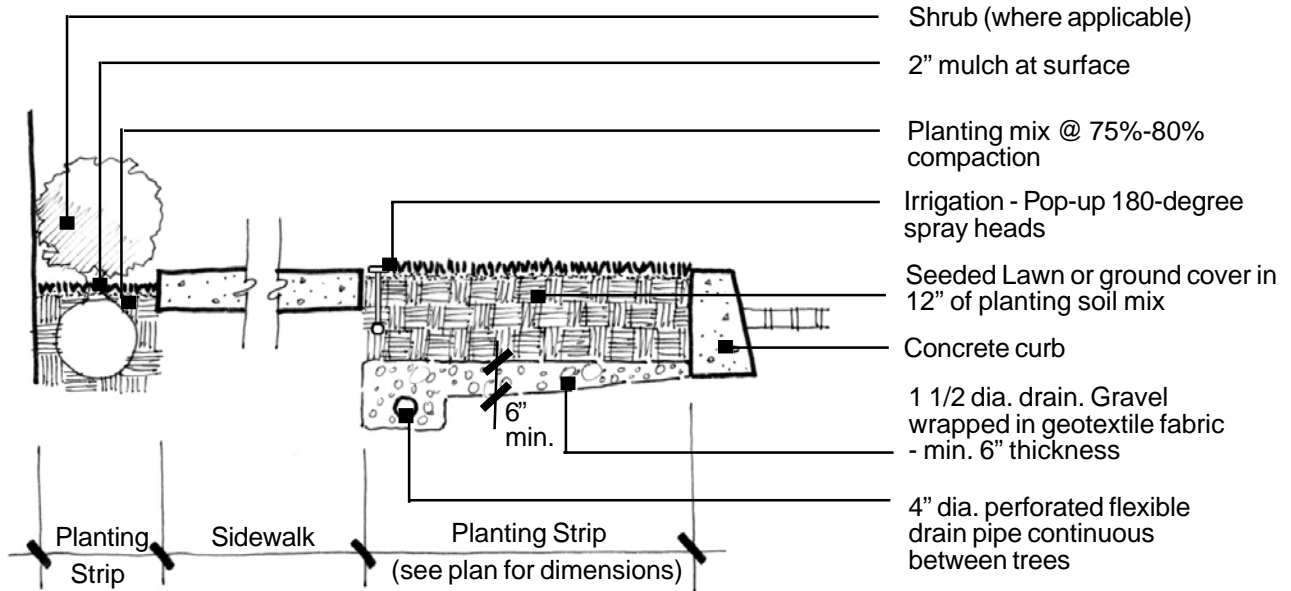
The changes to the City Hall driveway entrance and parking lot create a large planting area that can accommodate larger flowering trees. The landscape architect has selected two flowering dogwood trees for this area.

In addition to the proposed street trees being selected based on their size, shape, and root structure for an environment such as Jackson Street, each tree well will be installed with a root barrier and irrigation drip system. The root barrier will keep shallow roots contained within the tree well and help prevent future damage to adjacent street and sidewalk facilities. The drip irrigation system will ensure the soil around the trees will have adequate moisture and encourage the root system to grow deeper into the soil.

## Design Details

### 3.3 Landscape

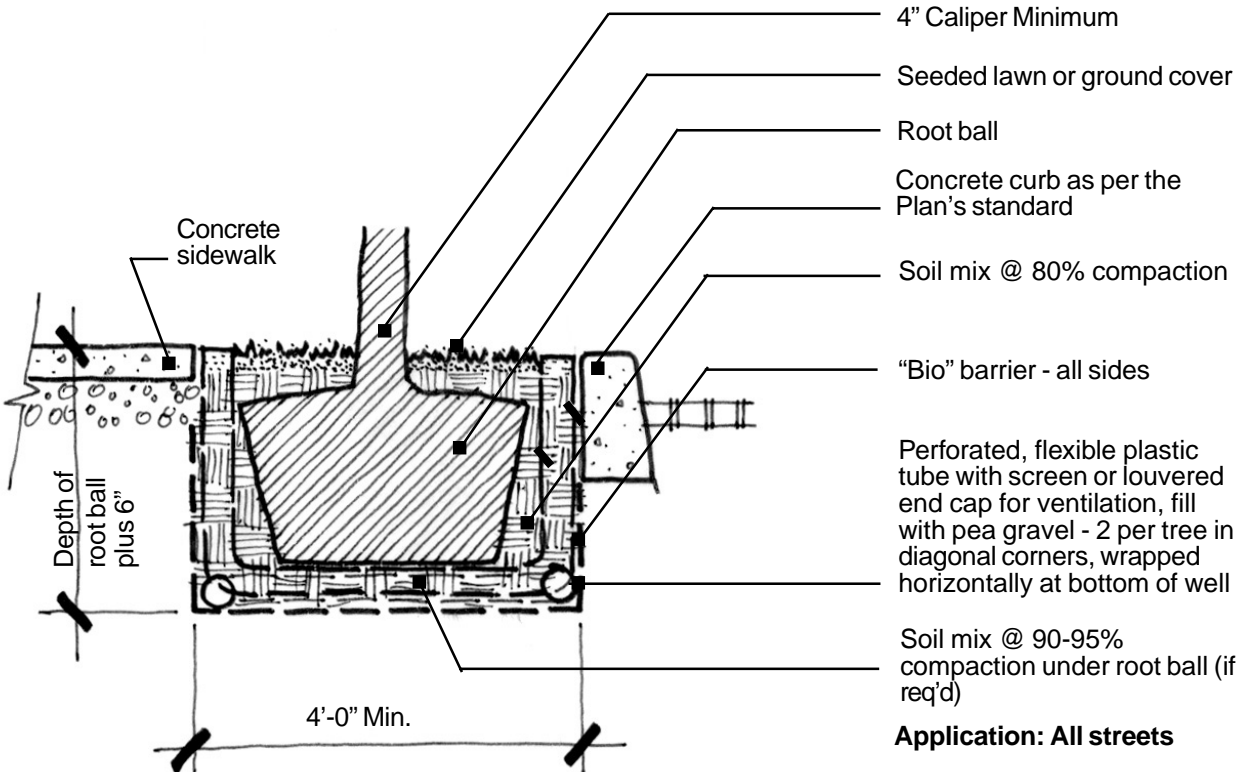
#### A. Pervious Continuous Landscape Strip



- Shrub (where applicable)
- 2" mulch at surface
- Planting mix @ 75%-80% compaction
- Irrigation - Pop-up 180-degree spray heads
- Seeded Lawn or ground cover in 12" of planting soil mix
- Concrete curb
- 1 1/2 dia. drain. Gravel wrapped in geotextile fabric - min. 6" thickness
- 4" dia. perforated flexible drain pipe continuous between trees

**Application: All streets**

#### B. Tree Well Section @ Landscape Strip



- 4" Caliper Minimum
- Seeded lawn or ground cover
- Root ball
- Concrete curb as per the Plan's standard
- Soil mix @ 80% compaction
- "Bio" barrier - all sides
- Perforated, flexible plastic tube with screen or louvered end cap for ventilation, fill with pea gravel - 2 per tree in diagonal corners, wrapped horizontally at bottom of well
- Soil mix @ 90-95% compaction under root ball (if req'd)

**Application: All streets**

## Design Details

### 3.3 Landscape

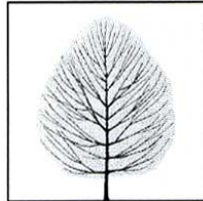
#### C. Plant Materials

##### Canopy Tree Planting

###### Sunset Red Maple (*Acer rubrum*)

The canopy street tree has attractive, bright red flowers that appear before the leaves. Its fall foliage ranges from orange-red to scarlet.

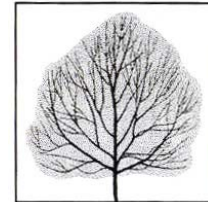
Height: 45'  
Spread: 35'  
Shape: Upright branching, oval  
Foliage: Dark green, glossy  
Fall Color: Brilliant orange-red to scarlet



###### Red Oak (*Quercus rubra*)

A fast-growing tree for big spaces. The leaves, which are lustrous dark green in the summer, turn a beautiful red in the fall.

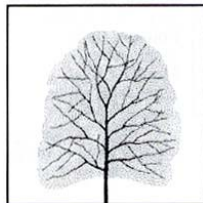
Height: 50'  
Spread: 45'  
Shape: Rounded  
Foliage: Dark green  
Fall Color: Red



###### Skyline Honeylocust (*Gleditsia triacanthos* 'Skycole')

Irregular branching pattern provides interest during winter seasons. The small leaflets create a filtered, dappled light on streetscape.

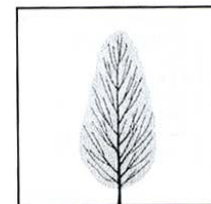
Height: 45'  
Spread: 35'  
Shape: Broadly Pyramidal  
Foliage: Fine textured, medium green  
Fall Color: Golden



###### Chanticleer Pear (*Pyrus calleryana* 'Chanticleer')

Full of white blossoms in the spring and colorful red foliage in the fall. Fruit is insignificant and does not pose a litter problem

Height: 60'  
Spread: 20'  
Shape: Upright, narrowly pyramidal  
Foliage: Green, glossy  
Fall Color: Reddish  
Flower: White, in clusters





## Design Details

### 3.3 Landscape

#### C. Plant Materials

##### Canopy Tree Planting

##### Giant Sequoia (*Sequoiadendron giganteum*)

Large, slow-growing and extremely long-lived tree. Their formal pyramidal form creates a distinctive skyline, such as the one formed along McLoughlin Blvd. just north of downtown Milwaukie.

Height: 100' (est.)  
 Spread: 50' (est.)  
 Shape: Upright, narrowly pyramidal  
 Foliage: Dark green  
 Fall Color: No change



##### Incense Cedar (*Calocedrus decurrens*)

Large, slow-growing and extremely long-lived tree. Their formal columnar form will not encroach into railroad right-of-way significantly.

Height: 100' (est.)  
 Spread: 30' (est.)  
 Shape: Columnar  
 Foliage: Dark green  
 Fall Color: No change

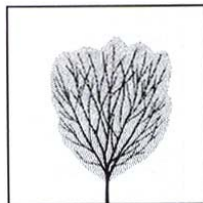


##### Ornamental Accents

##### Kwanzan Cherry (*Prunus serrulate* 'Kwanzan')

This Japanese Cherry tree has beautiful pink spring blossoms and insignificant fruit that does not pose a litter problem. It is appropriate for intersection accents.

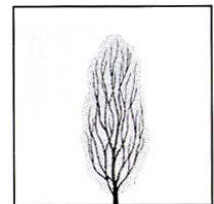
Height: 30'  
 Spread: 20'  
 Shape: Stiffly vase shaped  
 Foliage: Dark green  
 Fall Color: Bronze-orange to orange-red  
 Flower: Double, rosy pink in clusters



##### Frans Fontaine Hornbeam (*Carpinus betulus* 'Frans Fontaine')

The tree has a dense upright branching pattern. With glossy dark green foliage, it is appropriate for boulevard medians.

Height: 35'  
 Spread: 15'  
 Shape: Narrow, columnar  
 Foliage: Dark green  
 Fall Color: Yellow





To: Mayor and City Council

Through: Mike Swanson, City Manager  
JoAnn Herrigel, Community Services Director

From: Beth Ragel, Community Services Program Coordinator

Subject: Bid Award for City Hall Sculpture Garden Project

Date: January 19, 2010

#### Action Requested

Award a contract, not to exceed \$25,000, to **Gardens by Rebecca** for the design and construction of the City Hall Sculpture Garden and landscaping work in front of City Hall.

#### History of Prior Actions and Discussions

- Council approved Resolution 14-2009 on March 3, 2009 to award a contract to Harper Houf Peterson Righellis for the design of Jackson Street and Resolution 20-2009 on April 7, 2009, entering into an IGA with Metro to move forward with the expanded Jackson Street Project using additional funds from the American Recovery and Reinvestment Act (stimulus).
- During the October 20, 2009 work session Council received an update from City Staff regarding the proposed Sculpture Garden project and indicated support for moving forward with a Request for Proposals for design and/or design-build for the garden project to be coordinated with the Jackson Street improvement project.

#### Background

In the spring of 2009, the City of Milwaukie was awarded funds from the American Recovery and Reinvestment Act (commonly known as "stimulus") to expand upon plans to improve Jackson Street in downtown Milwaukie, adjacent to City Hall. The Jackson

Street Improvement Project will beautify, modernize and consolidate the City of Milwaukie's long neglected on-street landscape and bus facilities. .

As part of this project, several ideas were discussed for mitigating loitering on the adjacent City Hall lawn near the new bus facilities. Among these ideas was the installation of a sculpture garden with associated landscaping. The Sculpture Garden will maintain public access to the area, which is a requirement of the City Hall block, but will eliminate the open lawn which is used for loitering by members of the public.

The project will convert the south lawn of City Hall along Jackson Street into a landscaped sculpture garden with 6 permanent sculpture pedestals. The pedestals will display a rotating sculpture collection—half of the sculptures will be new every year.

On October 10, 2009 the City published a request for proposals (RFP) for the design and/or design and construction for this project. The RFP was for the landscape design and pedestal selection/placement. The City received four proposals in response.

Beth Ragel, staff liaison to the City's Arts Committee and project lead, invited three members of the City's Arts Committee and two members of the Main Street program to be part of a team to review the four submittals. The individuals were selected because they all had a background in the arts and/or design and all shared a common knowledge and interest in downtown development. The group met, reviewed the proposals, and agreed to interview two of the proposing designers.

On Tuesday November 17, 2009 the committee interviewed both designers. The committee agreed unanimously that they preferred the design submitted by Gardens by Rebecca.

The committee preferred the design concept submitted by Gardens by Rebecca because it is a natural and open concept. Her proposal includes the placement of basalt boulders around and within the garden, installation of native plants and trees, and a winding gravel pathway that mimics the looks of the region's rivers. Ms. Ives' design demonstrated an excellent vision for tying together the Sculpture Garden with Milwaukie's history as well as the Riverfront Park currently being planned. She was also the only local business that submitted a proposal.

The Sculpture Garden will include accent lighting and decomposed granite for the pathway beds—which is attractive and compliant with the Americans with Disabilities Act. Beth Ragel is also working with the City's facilities department to determine the feasibility of adding an additional security camera on the south side of City Hall to deter vandalism within the garden. She plans to advertise a call for sculptures this winter.

Tryon Creek Landscape firm will be constructing the project under Ms. Ives' management in conjunction with supervision by City staff.

In order to assist with the funding of this proposal, City of Milwaukie staff applied for and was awarded an \$18,000 grant from the Clackamas County Tourism and Cultural Affairs Commission (CCTCAC). The project will also receive \$7,400 from TriMet's 1.5% for art that is included in the Jackson Street Improvement Project construction budget. Additionally, staff is proposing that the design scope include the re-landscaping of the front of City Hall so that the site is more aesthetically whole. The Community Development Department will allocate \$2,000 to do some initial re-landscaping on the front of City Hall near the "triangle". Gardens by Rebecca will integrate a design plan for the re-landscaping of City Hall grounds as part of this project.

A breakdown of the funding sources follows:

- \$18,000 from CCTCAC: Covers the design and bulk of construction costs for the Garden.
- \$7,400 from TriMet: Of this \$4,000 will be used to install the pedestals and the balance of \$3,400 will be used to cover the cost of installing the first round of sculpture pieces and pay artist honorariums.
- \$2,000 from Community Development: Covers re-landscaping of front of City Hall to tie the two design concepts together.

### Concurrence

This report has been reviewed by the following: Public Works and Community Development Director; Planning Director; Operations Supervisor; Facilities Manager; and Community Services Director.

### Fiscal Impact

The City received a \$18,000 grant from the County Tourism and Cultural Affairs Commission (CCTCAC) and the project expects to receive approximately \$7,400 from TriMet's Jackson Street Improvement Project. These funds together cover the entire cost of the Sculpture Garden. In order to tie the landscaping of the Sculpture Garden together with the front of City Hall the Community Development Department is allocating \$2,000.

In the long run the Arts Committee will work to raise funds to cover future installation costs and artist honorariums. One note to that end: It is typical for galleries to take a commission when a piece is sold while on display in their gallery, and in Lake Oswego's "Gallery without Walls", the Lake Oswego Arts Council retains 20% if a piece they are displaying is sold. The Arts Committee intends to include this provision in the artist contracts. Along with fundraising efforts, the committee is confident that future honorariums and installation costs will be covered in one or both ways.

### Work Load Impacts

This project will have moderate work load impacts as staff manages the project and takes the project through the City's land use process. Because the project is located downtown and involves a minor alteration of a property, it will be subject to the following administrative reviews: Type 1 design review, Type I Historic review, and Type I Minor Modification of a CSU.

### Attachments

- A: Resolution to award bid to Gardens by Rebecca.
- B: Public Improvement Contract with scope of work.
- C: Initial City Hall Sculpture Garden design concept from Gardens by Rebecca and additional photos.

ATTACHMENT A

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AWARDED A CONTRACT, NOT TO EXCEED \$25,000, TO GARDENS BY REBECCA FOR THE DESIGN AND CONSTRUCTION OF THE CITY HALL SCULPTURE GARDEN AND LANDSCAPING WORK IN FRONT OF CITY HALL.**

**WHEREAS**, the City was awarded \$18,000 from the Clackamas County Tourism and Development commission and \$7,400 from TriMet’s capital budget for the Jackson Street Project to use towards public art adjacent to Jackson Street;

**WHEREAS**, the City advertised a request for proposals for the design of the City Hall Sculpture Garden in October of 2009;

**WHEREAS**, the concept submitted by Gardens by Rebecca was the unanimously preferred design by the review committee;

**NOW, THEREFORE, BE IT RESOLVED** that the City enter into a public improvements contract for the design and construction of the City Hall Sculpture Garden with Gardens by Rebecca for an amount no to exceed twenty five thousand dollars (\$25,000.00)

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

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

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

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

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



**PUBLIC IMPROVEMENT CONTRACT  
WITH THE CITY OF MILWAUKIE  
FOR THE CITY HALL SCULPTURE GARDEN**

**THIS CONTRACT**, made and entered into this second day of January, 2010, by and between the City of Milwaukie, a municipal corporation of the State of Oregon, hereinafter called "City" and Gardens by Rebecca 122223 SE 41<sup>st</sup> Ct. Milwaukie OR 97222 hereinafter called "Contractor", duly authorized to perform such services in Oregon.

**RECITALS**

**WHEREAS**, the City requires services which Contractor is capable of providing, under terms and conditions hereinafter described; and

**WHEREAS**, time is of the essence in this contract and all work under this contract shall be completed within the time period stated in the Bid;

**THEREFORE**, in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

**1. Services**

Contractor may have some contact with the public in the course of performing this contract. Contractor shall maintain good relations with the public. Failure to maintain good relations with the public shall constitute a non-curable material breach allowing the City to terminate under Section 14A and to disqualify Contractor from future work for the City.

Contractor's services under this Agreement shall consist of the following:

The design and construction of the City Hall Sculpture Garden. This shall include construction documents for the re-landscaping of the south lawn of City Hall and the design and installation of 6 engineered pedestals to display sculpture.

**2. Prevailing Wage**

The provisions of ORS Chapter 279C and all other Oregon and Federal provisions pertaining to minimum salaries and wages are incorporated herein by reference as if fully set forth. The Contractor agrees that the workmen in each trade or occupation required for the work to be done pursuant to the contract, employed in the performance of the Contract, either by the Contractor or Subcontractor or other person doing or contracting to do any part of the work contemplated by the Contractor shall be paid not less than the prevailing, minimum hourly rate of wage specified by the Commissioner of the Bureau of Labor, and attached hereto.

ATTACHMENT B

For contracts \$50,000 or greater, City shall pay a fee to the Bureau of Labor and Industries and shall be mailed or otherwise delivered to the Bureau at the following address:

Bureau of Labor and Industries  
Wage and Hours Division  
Prevailing Wage Unit  
800 NE Oregon Street, # 32  
Portland, Oregon 97232

3. **Contract Documents**

The Contractor is hereby bound to comply with all requirements of this agreement, the Contractor's proposal, the detailed specifications and requirements, the drawings, and the special conditions and modifications in conditions as set forth in the documents prepared by the City Engineer and the performance pertaining to this contract, in the City of Milwaukie, Oregon, and by this reference made a part hereof to the same legal force and effect as if set forth herein in full.

4. **City's Representative**

For purposes hereof, the City's authorized representative will be the City Program Coordinator 10722 SE Main St., Milwaukie, Oregon 97222 Telephone 503-786-7568.

5. **Contractor's Representative**

For purpose hereof, the Contractor's authorized representative will be Ms. Rebecca Ives.

6. **Contractor Identification**

Contractor shall furnish to the City the Contractor's employer identification number, as designated by the Internal Revenue Service, or Contractor's social security number, as City deems applicable.

7. **Compensation**

A. **Progress Payments:** City agrees to pay Contractor twenty-two thousand dollars (\$25000.00) for performance of those services provided hereunder, which payment shall be based upon the following applicable terms:

Payment shall be based upon the unit prices bid by the Contractor, as listed in attached bid. Contractor shall prepare and submit each month to the City Program Coordinator Beth Ragel at 10722 SE Main St Milwaukie OR 97222, a statement of services rendered, (indicating the description of each service used in the bid and the dollar amount of each service completed through the stated date), together with a request for payment duly verified by the Contractor's Representative.



ATTACHMENT B

Payment by the City shall release the City from any further obligation for payment to Contractor for services performed or expenses incurred as of the date of the statement of services. Payment of installments shall not be considered acceptance or approval of any work or waiver of any defects therein. City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

Contractor shall include proof of payment to any and all subcontractors and suppliers with each statement submitted to the City. The City shall retain the right to withhold payments if required proof of payment to subcontractor and suppliers is not included with a statement.

- B. Timing of Payments:** Progress payments, less a five percent retainage as authorized by ORS 279C.555, shall be made to the Contractor within twenty (20) days of the City's receipt of the statement of services. The Contractor agrees that the "Time of Completion" is defined in the Bid, and agrees to complete the work by said date. The Contractor and City agree that the City will suffer damages each day the work remains uncompleted after the Time of Completion and that the amount of those damages are difficult to calculate. Contractor and City agree that a reasonable amount of damages for late completion is \$25 per calendar day and Contractor agrees to pay damages in that amount if the work is not completed by the Time of Completion.
- C. Final Payment:** The Contractor shall notify the City in writing when the Contractor considers the project complete, and the City shall, within 15 days after receiving the written notice, either accept the work or notify the Contractor of work yet to be performed on the contract.

Upon acceptance by the City, the entire balance due to the Contractor, including the retained percentage, shall be paid to the Contractor, by the City within 30 days after the date of said final acceptance.

The City shall pay to the Contractor interest at the rate of one and one-half percent per month on the final payment due the Contractor, to commence 30 days after the work under the Contract has been completed and accepted and to run until the date when final payment is tendered to the Contractor. If the City does not, within 15 days after receiving written notice of completion, notify the Contractor of work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run 30 days after the end of the 15-day period.

As a further conditions of final acceptance, the City may require the Contractor to submit evidence, satisfactory to the City's Representative, that all payrolls, material bills, and other indebtedness connected with the project have been paid, except that in case of any disputed indebtedness or

liens, the Contractor may submit in lieu of evidence of payment, a surety bond satisfactory to the City guaranteeing payment of all such disputed amounts when adjudicated in cases where such payment has not already been guaranteed by surety bond.

8. **Status Of Contractor As Independent Contractor**

Contractor certifies that:

- A. Contractor acknowledges that for all purposes related to this Agreement, Contractor is and shall be deemed to be an independent Contractor as defined by ORS 670.600 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of said finding.
- B. The undersigned Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.
- C. If this payment is to be charged against Federal funds, Contractor certifies that he or she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.
- D. Contractor and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
- E. Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- F. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

**9. Subcontracts - Assignment & Delegation**

Contractor shall submit a list of Subcontractors for approval by the City, and Contractor shall be fully responsible for the acts or omissions of any Subcontractors and of all persons employed by them, and neither the approval by City of any Subcontractor nor anything contained herein shall be deemed to create any contractual relation between the Subcontractor and City.

This agreement, and all of the covenants and conditions hereof, shall inure to the benefit of and be binding upon the City and the Contractor respectively and their legal representatives. Contractor shall not assign any rights nor delegate any duties incurred by this contract, or any part hereof without the written consent of City, and any assignment or delegation in violation hereof shall be void.

**10. Contractor - Payment of Benefits - Hours of Work**

A. The Contractor shall:

- 1) Make payment promptly, as due, to all persons supplying to such Contractor labor or material for the prosecution of the work provided for in this contract;
- 2) Pay all contributions or amounts due the under the Worker's Compensation Law from such Contractor or Subcontractor incurred in the performance of this contract;
- 3) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 4) Not permit any lien or claim to be filed or prosecuted against the City of Milwaukie, on account of any labor or material furnished;

B. The Contractor or the Contractor's Surety and every Subcontractor or the Subcontractor's Surety shall file certified statements with the City in writing in form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage, which certificate and statement shall be verified by the oath of the Contractor or the Contractor's Surety or Subcontractor or the Subcontractor's Surety that the Contractor or Subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the Contractor's or Subcontractor's knowledge.

- 1) The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid.

ATTACHMENT B

- 2) Each certified statement required herein shall be delivered or mailed by the Contractor or Subcontractor to the City. A true copy of the certified statements shall also be filed at the same time with the Commissioner of the Bureau of Labor and Industries. Certified statements shall be submitted as follows:
  - a) For any project 90 days or less from the date of the award of the contract to the date of completion of work under the contract, the statements shall be submitted once before the first payment is made, and once before final payment is made of any sum due on account of the contract.
  - b) For any project exceeding 90 days from the date of the award of the contract to the date of completion of work under contract, the statements shall be submitted once before the first payment is made, at 90 day intervals thereafter, and once before final payment is made of any sum due on account of the contract.
  - c) Each Contractor or Subcontractor shall preserve certified statements for a period of three years from the date of completion of the contract.
- C. The Contractor agrees that if the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with this contract as such claim becomes due, the proper office of the City of Milwaukie may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of such contract. Payment of a claim in this manner shall not relieve the Contractor or the Contractor's Surety from obligation with respect to any unpaid claims.
- D. Contractor agrees that no person shall be employed for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency or where the City of Milwaukie absolutely requires it, and in such cases the laborer shall be paid at least time and a half pay for all overtime in excess of ten (10) hours a day and for work performed on Saturday and on any legal holiday as specified in ORS 279C.540.
- E. No City employee shall be required to work overtime or on a Saturday, Sunday or holiday in the fulfillment of this contract except where the Contractor agrees to reimburse the City in the amount of money paid the employee for such work as determined by state law, the City's personnel rules or union agreement. The Contractor shall require every Subcontractor to comply with this requirement.

**11. Drug Testing Program**

ORS 279C.505 requires that all public improvement contracts contain a provision requiring contractors to demonstrate that an employee drug-testing program is in place. The Contractor demonstrates that a drug-testing program is in place by signing of the contract. The drug testing program will apply to all employees and will be maintained for the duration of the Contract awarded. Failure to maintain a program shall constitute a material breach of contract.

**12. Contractor's Employee Medical Payments**

Contractor agrees to pay promptly as due, to any person, co-partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention incident to sickness or injury to the Contractor's employees, all sums which the Contractor agreed to pay for such services and all money and sums which the Contractor collected or deducted from employee wages pursuant to any law, contract or agreement for providing or paying for such service.

**13. Early Termination**

A. This agreement may be terminated without cause prior to the expiration of the agreed upon term by mutual written consent of the parties and for the following reasons:

- 1) If work under the Contract is suspended by an order of a public agency for any reason considered to be in the public interest other than by a labor dispute or by reason of any third party judicial proceeding relating to the work other than a suit or action filed in regard to a labor dispute; or
- 2) If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Contract.

B. Payment of Contractor shall be as provided by ORS 279C.660 and shall be prorated to and include the day of termination and shall be in full satisfaction of all claims by Contractor against City under this Agreement.

C. Termination under any provision of this paragraph shall not affect any right, obligation, or liability of Contractor or City which accrued prior to such termination.

**14. Cancellation with Cause**

A. City may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase

ATTACHMENT B

- of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds,
- 2) If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement,
  - 3) If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed, or
  - 4) If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.
  - 5) If Contractor fails to maintain reasonable relations with the public. Verbal abuse, threats, or other inappropriate behavior towards members of the public constitutes grounds for termination.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

**B.** City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:

- 1) If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (b), Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall be those allowed by

Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

**15. Access to Records**

City shall have access to such books, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts.

**16. Work is Property of City**

All work performed by Contractor under this Agreement shall be the property of the City.

**17. Adherence to Law**

A. Contractor shall adhere to all applicable laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning workers' compensation, and minimum and prevailing wage requirements.

B. To the extent applicable, the Contractor represents that it will comply with Executive Order 11246 as amended, Executive Order 11141, Section 503 of the Vocational Rehabilitation Act of 1973 as amended and the Age Discrimination Act of 1975, and all rules and regulations issued pursuant to the Acts.

C. As provided by ORS 279C.525, all applicable provisions of federal, state or local statutes, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the work under this contract are by reference incorporated herein to the same force and effect as if set forth herein in full. If the Contractor must undertake additional work due to the enactment of new or the amendment of existing statutes, ordinances or regulations occurring after the submission of the successful bid, the City shall issue a Change Order setting forth the additional work that must be undertaken. The Change Order shall not invalidate the Contract and there shall be, in addition to a reasonable extension, if necessary, of the contract time, a reasonable adjustment in the contract price, if necessary, to compensate the Contractor for all costs and expenses incurred, including overhead and profits, as a result of the delay or additional work.

**18. Changes**

City may at any time, and without notice, issue a written Change Order requiring additional work within the general scope of this Contract, or any amendment thereto, or directing the omission of or variation in work. If such Change Order results in a material change in the amount or character of the work, an equitable adjustment in the Contract price and other provisions of this Contract as may be affected may be made. Any claim by Contractor for and adjustment under this

section shall be asserted in writing within thirty (30) days from the date of receipt by Contractor of the notification of change or the claim will not be allowed. Whether made pursuant to this section or by mutual agreement, no change shall be binding upon City until a Change Order is executed by the Authorized Representative of City, which expressly states that it constitutes a Change Order to this Contract. The issuance of information, advice, approvals, or instructions by City's Representative or other City personnel shall not constitute an authorized change pursuant to this section. Nothing contained in this section shall excuse the Contractor from proceeding with the prosecution of the work in accordance with the Contract, as changed.

**19. Force Majeure**

Neither City nor Contractor shall be considered in default because of any delays in completion of responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the party so disabled, including, but not restricted to, an act of God or of a public enemy, volcano, earthquake, fire, flood, epidemic, quarantine, restriction, area-wide strike, freight embargo, unusually severe weather or delay of Subcontractor or suppliers due to such cause; provided that the party so disabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the causes of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under Contract.

**20. Nonwaiver**

The failure of the City to insist upon or enforce strict performance by Contractor of any of the terms of this contract or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

**21. Warranties**

All work shall be guaranteed by the Contractor for a period of one year after the date of final acceptance of the work by the Owner. Contractor warrants that all practices and procedures, workmanship, and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve Contractor from liability under warranties contained in or implied by this contract.

**22. Attorney's Fees**

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the Court may adjudge reasonable attorney's fees and court costs including attorney's fees and court costs on appeal.



23. **Governing Law**

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any questions arising under this Agreement must be brought in the appropriate court of the State of Oregon.

24. **Conflict Between Terms**

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid of the Contractor, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said bid conflicting herewith.

25. **Indemnification**

Contractor warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a contractor's work by City shall not operate as a waiver or release.

Contractor agrees to indemnify and defend the City, its officers, agents and employees and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except liability arising out of the sole negligence of the City and its employees. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

26. **Insurance**

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is primary insurance with respect to the interests of City and that any other insurance maintained by City is excess and not contributory insurance with the insurance required hereunder.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverages:

- A. **Commercial General Liability Insurance:** Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1986 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	\$2,000,000
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

- B. Commercial Automobile Insurance: Contractor shall also obtain, at contractor's expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.
- C. Workers' Compensation Insurance: The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not to obtain such coverage." This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 each accident.
- D. Additional Insured Provision: The City of Milwaukie, Oregon, its officers, directors, and employees shall be added as additional insureds with respect to this contract. All Liability Insurance policies will be endorsed to show this additional coverage.
- E. Notice of Cancellation: There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The 30 days notice of cancellation provision shall be physically endorsed on to the policy.

ATTACHMENT B

F. Insurance Carrier Rating: Coverage provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

G. Certificates of Insurance: As evidence of the insurance coverage required by the contract, the contractor shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

Certificates of Insurance should read "Insurance certificate pertaining to contract for City Hall Sculpture Garden. The City of Milwaukie, its officers, directors and employees shall be added as additional insureds with respects to this contract. Insured coverage is primary" in the description portion of certificate.

H. Independent Contractor Status: The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.

I. Primary Coverage Clarification: All parties to this contract hereby agree that the contractor's coverage will be primary in the event of a loss.

J. Cross-Liability Clause: A cross-liability clause or separation of insureds clause will be included in general liability, policy. .

Contractor's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

Finance Office  
City of Milwaukie  
10722 SE Main St.  
Milwaukie, Oregon 97222

Business Phone: 503-786-7522  
Business Fax: 503-786-7528  
Email Address: Palaciosl@ci.milwaukie.or.us

Such policies or certificates must be delivered prior to commencement of the work. Ten days cancellation notice shall be provided City by certified mail to the name at the address listed above in event of cancellation or non-renewal of the insurance.

The procuring of such required insurance shall not be construed to limit contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

**27. Method and Place of Giving Notice, Submitting Bills and Making Payments**

All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as follows:

<b>City of Milwaukie</b>		<b>Gardens by Rebecca:</b>	
Attn: Accounts Payable		Attn: Rebecca Ives	
10722 SE Main St., Milwaukie, Oregon 97222		Address: 122223 SE 41 <sup>st</sup> Ct. Milwaukie OR 97222	
Phone: 503-786-7524		Phone: 503-522-0579	
Fax 503-786-7528		Fax:	
Email	Address:	Email	Address:
finance@ci.milwaukie.or.us		info@rebeccasgardens.com	

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

**28. Hazardous Materials**

Contractor shall supply City with a list of any and all hazardous substances used in performance of this Agreement. That list shall identify the location of storage and use of all such hazardous substances and identify the amounts stored and used at each location. Contractor shall provide City with material safety data sheets for all hazardous substances brought onto City property, created on City property or delivered to City pursuant to this Agreement. For the purpose of this section, "hazardous substance" means hazardous substance as defined by ORS 453.307(4). Contractor shall complete the State Fire Marshall's hazardous substance survey as required by ORS 453.317 and shall assist City to complete any such survey that it may be required to complete because of substances used in the performance of this Agreement.

**29. Hazardous Waste**

If, as a result of performance of this Agreement, Contractor generates any hazardous wastes, Contractor shall be responsible for disposal of any such hazardous wastes in compliance with all applicable federal and state requirements. Contractors shall provide City with documentation, including all required manifests, demonstrating proper transportation and disposal of any such hazardous wastes. Contractor shall defend, indemnify, and hold harmless City for

any disposal or storage of hazardous wastes generated pursuant to this Contract and any releases or discharges of hazardous materials.

**30. Severability**

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected or invalidated thereby.

**31. Complete Agreement**

This Agreement and attached exhibits constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor, by the signature of its authorized representative, hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

**IN WITNESS WHEREOF**, the City has caused this agreement to be executed by its duly authorized undersigned officer, acting pursuant to authorization of the City Council, duly passed at the regular meeting held on the (Day) day of (Month), (Year), and the Contractor has executed this agreement on the date herein above first written.

**CITY OF MILWAUKIE**

**CONTRACTOR**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
Enter Name Here  
*Printed Name & Title*

\_\_\_\_\_  
*Printed Name & Title*

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

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

**CITY OF MILWAUKIE, OREGON  
PUBLIC WORKS CONTRACT PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS**, that we,

\_\_\_\_\_

*(Official Name & Form of Organization)*

Whose address is: \_\_\_\_\_

*(Street Address)*

\_\_\_\_\_

*(City)*

\_\_\_\_\_

*(State)*

\_\_\_\_\_

*(Zip)*

as Principal, and,

\_\_\_\_\_

*(Name of Surety)*

\_\_\_\_\_

*(Street Address of Surety)*

*(City)*

*(State)*

*(Zip)*

\_\_\_\_\_

*(Print - Agent / Contact Name)*

*(Phone Number)*

a corporation duly authorized to conduct a general surety business in the State of Oregon, as Surety, are jointly and severally held and bound unto the City of Milwaukie, Oregon, a municipality of the State of Oregon, hereinafter called Obligee, in the sum of

\_\_\_\_\_ and \_\_\_\_/100 DOLLARS (\$\_\_\_\_\_),

*(The Bare Contract Price, Both in Words & Figures)*

lawful money of the United State of America, for the payment of which we, as Principal, and as Surety, jointly and severally bind ourselves, our successors and assigns firmly by these presents,

**TERMS AND CONDITIONS**

On the (Day) day of (Month), (Year),

\_\_\_\_\_

*(Name of Contractor)*

Principal, entered into a contract with the City of Milwaukie, Oregon, Obligee, to construct certain public improvements and to provide material, labor and equipment for the construction of those improvements. The public improvements and work to be

performed by Principal are more fully described in the contract documents between Principal and Oblige. Those contract documents are incorporated herein by reference

In the event that Principal fails to complete the work as required under the contract, Surety shall either complete the work or pay Oblige the costs of completion of the work. Work is only complete when it meets the standards required by the Contract and applicable City standards. Surety's obligation shall remain in effect until the work is accepted by Oblige, but shall terminate on acceptance by Oblige.

The total amount of the Surety's liability to Oblige under this bond shall in no event exceed the amount stated above.

Surety agrees that no change, extension of time, alternation, or addition to the terms of the contract, or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the work or the specifications.

**IN WITNESS WHEREOF**, the parties hereto have caused this Bond to be executed in \_\_\_\_\_, Oregon, this (Day) day of (Month), (Year).

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Principal Signature

\_\_\_\_\_  
Principal Printed Name

Witnesses:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Surety

(A true copy of the Power of Attorney must be attached to the original of this bond)

\_\_\_\_\_  
Surety Attorney of Fact

Countersigned:  
\_\_\_\_\_  
Resident Agent

**CITY OF MILWAUKIE, OREGON  
PUBLIC WORKS CONTRACT PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS**, that we,

\_\_\_\_\_ *(Official Name & Form of Organization)*

Whose address is: \_\_\_\_\_  
*(Street Address)*

\_\_\_\_\_ *(City)* \_\_\_\_\_ *(State)* \_\_\_\_\_ *(Zip)*  
as Principal, and,

\_\_\_\_\_ *(Name of Surety)*

\_\_\_\_\_ *(Street Address of Surety)* \_\_\_\_\_ *(City)* \_\_\_\_\_ *(State)* \_\_\_\_\_ *(Zip)*

\_\_\_\_\_ *(Print - Agent / Contact Name)* \_\_\_\_\_ *(Phone Number)*

a corporation duly authorized to conduct a general surety business in the State of Oregon, as Surety, are jointly and severally held and bound unto the City of Milwaukie, Oregon, a municipality of the State of Oregon, hereinafter called Obligee, in the sum of

\_\_\_\_\_ and \_\_\_\_/100 DOLLARS (\$\_\_\_\_\_),  
*(The Bare Contract Price, Both in Words & Figures)*

lawful money of the United State of America, for the payment of which we, as Principal, and as Surety, jointly and severally bind ourselves, our successors and assigns firmly by these presents,

**TERMS AND CONDITIONS**

On the (Day) day of (Month), (Year),

\_\_\_\_\_ *(Name of Contractor)*

Principal, entered into a contract with the City of Milwaukie, Oregon, Obligee, for the construction of certain public improvements. As part of the contract, Principal is required to furnish materials, labor, and equipment to construct the improvements. The



ATTACHMENT B

contract documents between Principal and Obligees are incorporated herein by this reference.

In the event that Principal fails to make payments when due to suppliers of labor, equipment or materials, Surety shall pay the suppliers the amounts they are due. In the event that Obligees pay any amounts to suppliers that Principal was required to pay, Surety shall reimburse Obligees for those payments. In the event that Principal permits any lien or claim to be filed or prosecution against the City on account of any labor or material furnished, Surety shall take such steps as are necessary to clear the lien, claim or prosecution. In the event that Principal fails to (1) promptly pay all contributions or amounts due the State Unemployment Compensation Trust Fund incurred to the performance of the contract, (2) promptly, as due, make payments to the person, co-partnership, association, or corporation entitled thereto of the money and sums mentioned in Section 279C.600 of the Oregon Revised Statutes, or (3) promptly pay to the Oregon State Tax Commission all sums required to be deducted and retained from wages of employees of the Principal and his sub-Contractors, pursuant to the Section 316.711, Oregon Revised Statutes, Surety shall make the required payments. Surety's obligations under this bond shall terminate when all payments required of Principal described in this paragraph are made in full.

The total amount of the Surety's liability under this bond both to the Obligees and to the persons furnishing labor or materials, provisions and goods to any person or persons, shall in no event exceed the amount stated above. .

Surety agrees that no change, extension of time, alternation, or addition to the terms of the contract, or to the work to be performed there under or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the work or the specifications.

**IN WITNESS WHEREOF**, the parties hereto have caused this Bond to be executed in \_\_\_\_\_, Oregon, this (Day) day of (Month), (Year).

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Principal Signature

\_\_\_\_\_  
Principal Printed Name

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Surety

ATTACHMENT B

(A true copy of the Power of Attorney must be attached to the original of this bond)

Countersigned:

\_\_\_\_\_  
Surety Attorney of Fact

\_\_\_\_\_  
Resident Agent

**ENGINEER'S SIGNATURE AND SEAL**

The Special Provisions contained herein have been prepared by or under the direction of the following Registered Engineer.

### **Scope of Work for contract with Gardens by Rebecca:**

1. Design plans for converting the south lawn of City Hall into a Sculpture Garden and design plans for the re-landscaping of front of City Hall to tie the two together.
2. Removal of a small portion of the current concrete driveway in front of City Hall to slightly widen the space.
3. Installation of a winding natural stone path through the garden for viewing purposes.
4. Installing two or three benches for seated contemplation of the art.
5. Landscaping the remaining garden space with native shrubs and trees to compliment the art and reduce loitering.
6. Installation of minimal irrigation which could be removed once the plants are established.
7. Maintaining/not removing the evergreen tree currently in use as the City's holiday tree.
8. Installation of lights to illuminate the artwork.
9. Re-landscaping of the front of City Hall—work not to exceed \$2,000.

The pedestals must be made of a durable material that can accommodate various types and sizes of sculpture. For example, pedestals could be made of steel with mounting system that can be easily adjusted. Pedestals can vary in height, and at least one should be tall enough to display smaller works of art. Given the limited budget for the project, the City anticipates that the pedestals will be sourced from an existing supplier, although pedestal designs engineered specifically for this project will be considered. For engineering specifications contact Beth Ragel, Project Coordinator.

Pedestals and landscaping should be in proportion to the features of the site and specific locations within the garden. The context of the site, including historic City Hall and the new modern bus shelters should also be considered.

#### Timeline:

January 2010: Contract and scope of work finalization.

February 2010: Finalize design; land use/permitting process begins.

April 2010: Present plan to Design and Landmarks Committee and Planning Commission.

May-June 2010: Construction of City Hall Sculpture Garden and contracting for selected artwork.

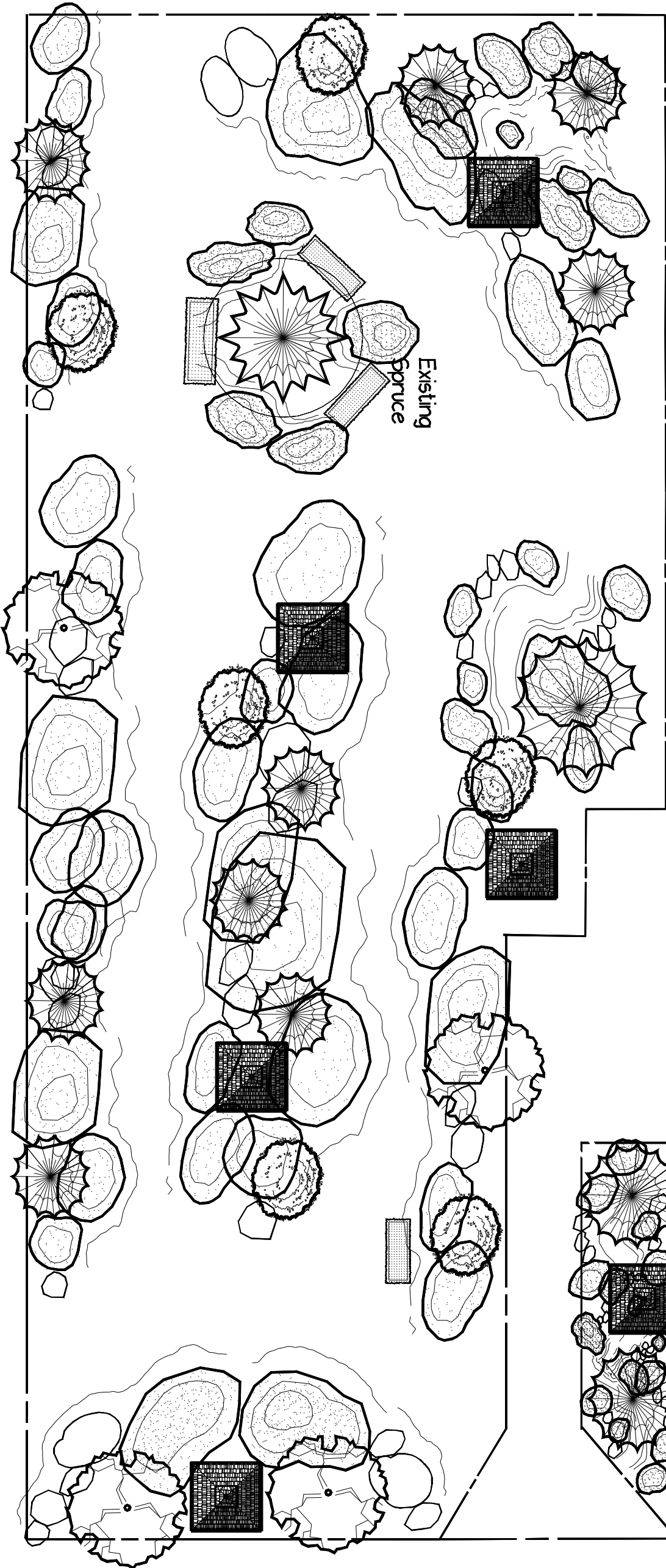
ATTACHMENT C

KEY

	Sculpture Pedestals
	Tsuga mertensiana (12)
	Cornus kousa (4)
	Acer circinatum (7)

		
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City Hall

Sculpture Garden  
City of Milwaukee

SCALE 1" = 10'  
DATE 10.23.09  
DRAWING #

Gardens by Rebecca

[www.gardensbyrebecca.com](http://www.gardensbyrebecca.com)

503.522.0579





## ATTACHMENT C

Possible Pedestal location.  
Mt. Hemlocks and boulders



Original discussions included removal of concrete to create more bed areas and soften the hard surfaces.