

**INTERGOVERNMENTAL AGREEMENT BETWEEN
CITY OF MILWAUKIE AND NORTH CLACKAMAS PARKS AND RECREATION
DISTRICT FOR FUNDING CONSTRUCTION OF PHASE III OF MILWAUKIE BAY PARK**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into by and between the City of Milwaukie ("City"), a municipal corporation, and the North Clackamas Parks and Recreation District ("District"), a county service district formed under ORS Chapter 451, effective as of the last date of signature indicated below ("Effective Date").

RECITALS

- A.** Milwaukie Bay Park ("Park") is a city park in downtown Milwaukie owned by the City and operated and maintained by the District; and
- B.** City and District are in the process of finalizing the design of major improvements to the Park to be constructed as Phase III; and
- C.** The District Board has approved (May 2020) solicitation of a Construction Manager/General Contractor ("CMGC") for preconstruction and construction of Phase III; and
- D.** Construction of Phase III in accordance with the final design is a substantial endeavor and when completed, will transform the Park into a regional asset; and
- E.** In order to facilitate such an endeavor, funds from several sources are required. If any portion of the funding is not received, Phase III of the Park will not be completed as currently envisioned.

NOW THEREFORE, it is agreed by and between City and District as follows:

TERMS OF AGREEMENT

- 1. Description of Agreement for transfer of existing City funds.** Upon the execution of a CMGC contract, the City shall transfer within 30 days \$250,000 approved by City Council for the Park to the District for its use in constructing Phase III of the Park. Upon the City's execution of an intergovernmental agreement with Metro for City Local Share (funding from Metro 2019 bond measure), the City shall reimburse NCPRD within 60 days of each NCPRD reimbursement request for expenses incurred in the construction of Phase III of the Park, up to the total amount designated for the Park in the City's Local Share IGA. The funds shall only be used as a portion of the funding to construct Phase III of the Milwaukie Bay Park. Should the additional funding described below not be received by the District in the amounts necessary to construct the full plan, or the modified plan after value engineering, by December 31, 2023, the funds shall be returned to the City and construction of Phase III of Milwaukie Bay Park will not begin.

2. The City and District agree funding for construction of Phase III of Milwaukie Bay Park shall consist of the following:

- a. City funds of \$250,000 as described above;
- b. \$750,000 of the City's Local Share allocation approved for the Park (funding from Metro 2019 bond measure);
- c. Local Government Grant Program Agreement committed to the Park of \$750,000 plus and additional amount of \$1,046,125 recommended by OPRD from the Land and Water Conservation Fund;
- d. Grants and other sources to reach full project funding based on the estimated project cost refined during design development. The estimated total project cost is \$9.6 million; this will be updated as the design is refined and funding agreements are executed, with a Guaranteed Maximum Price (GMP) to be set before the final set of Construction Documents is approved.
- e. The District agrees to commit minimum additional \$5,600,000 from NCPRD controlled fund sources to include but not limited to Local Share Grant funds, System Development Charges, and the District's general fund.
- f. If adequate funds are not received or committed by December 31, 2023 to construct the full plan the City and District will work together to value engineer the park construction and build the park with the funding identified in this Agreement.

3. Effective Date, Duration, and Termination. This Agreement shall become effective on the date all required signatures are obtained ("Effective Date") and shall continue until all funding is secured and the District is able to begin the Construction of Phase III of Milwaukie Bay Park or this Agreement is terminated. This Agreement can also be terminated by mutual written agreement by the City and District. The indemnity obligations set forth in Paragraph 7 shall survive termination.

4. Amendment Provisions. The terms of this Agreement may be amended by mutual agreement of the parties. Any amendment shall be in writing, shall refer specifically to this Agreement, and shall be executed by the parties.

5. Compliance with Applicable Law. City and District will comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the services provided under this Agreement. Without limiting the generality of the foregoing, City and District expressly agree to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V or the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) the Fair Labor Standards Act; (v) the Occupational Safety and Health Act of 1970; (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

- 6. Indemnification.** Subject to the Oregon Constitution and the limits of the Oregon Tort Claims Act, each party agrees to indemnify, defend and hold harmless the other party and its officers, agents, employees and elected officials from any and all liability, loss, and cost, except for attorney's fees as described in paragraph 8 below, arising out of or resulting from the acts of their officers, agents, employees, and elected officials, including intentional or willful misconduct, in the performance of this Agreement.
- 7. Notice.** Any notice required or permitted to be given shall be given in writing, shall be effective when actually received, and may be given by email, hand delivery, or by mail delivery addressed to the parties as follows:

Milwaukie:

City Liaison
Kelly Brooks
10722 SE Main Street
Milwaukie, Oregon 97222
Email: brooksk@milwaukieoregon.gov

District:

District Liaison
Heather Koch
150 Beavercreek Road
Oregon City, OR 97045
Email: HKoch@ncprd.com

These addresses may be changed by written notice to the other parties.

- 8. Attorney Fees.** In the event an action, lawsuit or proceeding, including appeal therefrom, is brought for failure to fulfill or comply with any of the terms of this Agreement, each party shall be responsible for their own attorney fees, expenses, costs and disbursements for said action, lawsuit, proceeding or appeal.
- 9. No Waiver.** The failure by any party to enforce any provision of this Agreement shall not constitute a waiver by that party of that provision or of any other provision of this Agreement.
- 10. Severability.** Should any provision or provisions of this Agreement be construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall affect only the provision or provisions so construed, and shall not affect, impair or invalidate any of the other provisions of this Agreement which shall remain in full force and effect.

- 11. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.
- 12. Merger.** This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.
- 13. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 14. Binding Effect.** This Agreement constitutes the entire agreement between City and District on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of the terms of this Agreement will bind either party unless in writing and signed by all parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instances and for the specific purpose given. This Agreement is personal to City and District and is not intended to confer upon any other person or entity any rights or remedies whatsoever.

The parties by execution of this Agreement, hereby acknowledge that each has the authority to sign and bind City and District respectfully and that each party shall be bound by its terms and conditions.

City of Milwaukie:

_____	_____
Mayor Mark Gamba	Date

North Clackamas Parks and Recreation District:

_____	_____
Chair Tootie Smith	Date