

**INTERGOVERNMENTAL AGREEMENT BETWEEN:
THE CITY OF MILWAUKIE AND
THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT
FOR GRANT ADMINISTRATION, CONSTRUCTION, AND OPERATION OF PHASE III
OF MILWAUKIE BAY PARK**

THIS AGREEMENT (this "Agreement") is entered into and between North Clackamas Parks and Recreation District ("NCPRD" or the "District"), a county service district established pursuant to ORS Chapter 451, and the City of Milwaukie ("City"), an Oregon municipal corporation (collectively, the "Parties" and individually "Party").

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

This Agreement establishes roles and responsibilities between the City and NCPRD for funding, grant administration, and construction of Phase III of Milwaukie Bay Park (the "Project"), which is owned by the City and is intended to be operated and maintained by NCPRD.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall remain in effect until terminated or superseded.
2. **Grant Management.** NCPRD and City agree to the following Grant responsibilities under this Agreement:
 - A. **Grant Performance.** The District shall have primary responsibility for performance and completion of the Project, as it is described in the Oregon Community Paths Program and the Metro Local Share Grant Agreements. This includes, but is not limited to, project design, contractor selection and procurement, project management, compliance with all applicable laws and regulations, and payment pursuant to the Grant.
 - B. **Grant Administration.** The District shall administer and comply with all conditions and requirements set forth by the Grant awards to District. This includes, but is not limited to, requests for reimbursement, progress reports, final reports, inspection reports, completed site plan, project boundary map, project appraisals, digital images of the completed project, and representations and warranties. The District shall send copies of all grant deliverables and correspondence to the City.
 - C. **Recovery of Funds.** Any funds disbursed to the District under the Grant that are expended in violation or contravention of one or more of the provisions of the Grant or that remain unexpended on the earlier of termination or expiration of this Agreement must be returned to the Grantor by the District.

- D. **Responsibility for Grant Funds.** The District shall assume sole liability for City or District breach of the Grant. Upon City or District's breach of conditions that requires State to return funds to the federal government, hold harmless and indemnify State for an amount equal to the funds received under the Grant; or if legal limitations apply to the indemnification ability of the Grantees of Grant Funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under the Grant.
 - E. **Records Maintenance and Access.** The District shall make and retain proper and complete books of record and account and maintain all fiscal records related to the Grant and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations as identified in Exhibit A. The District shall send copies of all records and expenditures to the City.
 - F. **Audit Requirements.** The District shall adhere to all terms and conditions regarding auditing requirements set forth by the Grant.
3. **Project Management.** The District and City agree to the following responsibilities under this Agreement:
- A. Permits required for the initiation of construction will be secured by The District by March 31, 2024, and all construction must be completed by December 31, 2024, or such other dates as mutually agreed by the Parties.
 - B. City shall allow District to construct the park and offsite improvements on City property.
 - C. City shall delegate authority to District to act as the lead on development and construction.
 - D. District shall plan, design, engineer, and construct park improvements to District and City standards, and comply with conditions and requirements set forth by the Grants.
 - E. District shall develop construction plans, specifications, and estimates for park facilities, fixtures, open space, and offsite improvements in accordance with District procurement policies.
 - F. District shall advertise, bid, and award a contract for construction plans and specifications for park facilities, fixtures, open space, and offsite improvements in compliance with District procurement policies and State of Oregon public works contracting laws.

- G. District shall manage and administer contractor and subcontractor bonds, licenses, insurances and certified payrolls in compliance with District procurement policies and State of Oregon public works contracting laws.
 - H. District shall coordinate relocation and installation of utilities with existing utility providers.
 - I. District shall coordinate community outreach with City during design and construction, including quarterly project updates to Milwaukie City Council, Milwaukie Parks and Recreation Board, and District Advisory Committee.
 - J. District shall provide City with as-built construction plans upon completion of project.
4. **Other Terms and Conditions.** District and City agree to the following responsibilities under this Agreement:
- A. City shall retain ownership of park, offsite infrastructure and all other improvements that are not moveable and integral to the built out environment following completion of construction. For example, concrete pads, paths and walkways, sidewalk and curb improvements, striping, restroom facilities, shade structures, grading and scarifying of soils, imported fill material, trees, shrubs, grasses, and other landscaping materials .
 - B. District shall retain ownership of fixtures which are easily moveable and are not part of the permanent built out environment following completion of construction (i.e. picnic tables, signage, and waste receptacles) except for any portion of playground equipment paid for by the City or associated non-profit or Neighborhood District Association.
 - C. The District shall operate and maintain Milwaukie Bay Park as a High Maintenance Area as defined in the Master IGA between District and City. For any period of necessary construction or maintenance occurring at the park, portions or the entire park, may be closed consistent with District policy, practice, contract, ordinance, rule or law.
 - D. The District shall be responsible for scheduling of Milwaukie Bay Park programs with priority for District and City Events and activities. The District will manage and coordinate all District-led events and activities and District special use permits, including collection of appropriate fees.
 - E. The District shall offer structured recreational and community opportunities for youth and adults at Milwaukie Bay Park four days a week during the summer (mid-June – August), and as available the rest of the year. Programming shall reflect community interests, and be offered at times that meet attendance minimums. Programming may be impacted and reduced due to access, weather, conflicting events or health mandates.

5. Termination.

- A. Either NCPRD or the City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within twenty-one (21) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such twenty-one (21) day period, this provision shall be complied with if the breaching Party begins correction of the default within the twenty-one (21) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- B. NCPRD may terminate this Agreement without penalty or obligation to the City in the event NCPRD fails to receive expenditure authority, grant awards, or other funding sufficient to allow NCPRD, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Project under this Agreement is prohibited or NCPRD is prohibited from paying for such work from the planned funding sources.
- C. Unless otherwise provided in this Agreement, a defaulting party shall be treated as if that party terminated this Agreement.
- D. The District or City's "Development Costs" for the construction for Phase III of Milwaukie Bay Park shall include all costs incurred, funds contributed, work performed, consultants hired, debt incurred, if as a result of termination of this agreement penalties accrued through non-performance, and any other costs or obligations incurred.
- E. Prorated Development Costs and funds contributed by a party shall be the amount of money that represents that percentage of the Development Costs and funds contributed based upon the 25 year useful life of the park improvements. For example if the contract were to terminate after five years 80% of the useful life of the improvements would be remaining. The terminating party would pay 80% of the other party's development costs in that example.
- F. Should a party terminate the agreement and after termination the City assumes operation and maintenance of the park and does not operate Milwaukie Bay Park with access for all NCPRD residents on the same terms (equal use rights for district and city residents) for a period of 25 years from park completion City shall pay the prorated Development Costs of NCPRD, and return funds to any entity granting funds for the Project consistent with the grant agreement.
- G. Should the City be withdrawn from NCPRD, City will be deemed to have terminated the Agreement.

6. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the District agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the District or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the District has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the District, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

7. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

Milwaukie:

City Liaison

Peter Passarelli

10722 SE Main Street

Milwaukie, Oregon 97222

Email: passarellip@milwaukieoregon.gov

District:

District Liaison

Michael Bork

150 Beaver Creek Road

Oregon City, OR 97045

Email: Mbork@ncprd.com

8. **General Provisions.**

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas District without giving effect

to the conflict of law provisions thereof. Any claim between District and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas District for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the District of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. City, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** District shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. District shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, District shall permit the City's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.

- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- J. **No Third-Party Beneficiary.** City and District are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- K. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- L. **Survival.** All provisions in Sections 2, 4 (A-B), 6, and 8 (A), (C), (D), (F), (G-L), and (O) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- M. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- N. **Force Majeure.** Neither City nor District shall be held responsible for delay or default caused by events outside of the City or District's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, City and District shall make all reasonable efforts to remove or eliminate such a cause of

delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

- O. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

**North Clackamas Parks
and Recreation District**



Tootie Smith, Chair, Board of Directors

11/24/21
Date

City of Milwaukie



Ann Ober, City Manager

11/29/21
Date

COUNCIL RESOLUTION No. 56-2021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT (NCPRD) FOR MILWAUKIE BAY PARK PHASE III GRANT ADMINISTRATION, CONSTRUCTION, AND OPERATIONS.

WHEREAS the city wishes to fulfill the community's vision for Milwaukie Bay Park through the construction of a new play area, amphitheater, interactive water feature, picnic space, and plaza; and

WHEREAS the city has worked diligently since the 1990s to plan and construct multiple phases of improvements to the riverfront so that everyone can enjoy the beauty of the Willamette River; and in recognition of its unique position as a regional amenity offering unparalleled river access to the North Clackamas community and serving as a gateway to Clackamas County for visitors entering along highway 99E; and

WHEREAS the city wishes to finalize the grant administration, construction, and operational role commitments for the Milwaukie Bay Park project so that NCPRD can move forward and identify the final resources needed to construct Milwaukie Bay Park.

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that the city manager is authorized to sign an intergovernmental agreement between the City of Milwaukie and NCPRD for grant administration, construction, and operation of Milwaukie Bay Park Phase III.

Introduced and adopted by the City Council on **November 2, 2021**.

This resolution is effective immediately.



Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:



Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney



NORTH CLACKAMAS PARKS AND RECREATION DISTRICT

Development Services Building
150 Beaver Creek Road, Oregon City, OR 97045

Michael Bork, NCPRD Director

11/24/2021

Board of County Commissioners
Clackamas County
Board of North Clackamas Parks and Recreation District

Members of the Board:

**Approval of an Intergovernmental Agreement Between:
The City of Milwaukie and North Clackamas Parks and Recreation District
for Grant Administration, Construction, and Operation of Phase III of Milwaukie Bay Park**

Purpose/Outcome	Establish roles and responsibilities between the City and NCPRD for grant administration, construction, and operation of Phase III of Milwaukie Bay Park.
Dollar Amount and Fiscal Impact	\$32,000 annually estimated from NCPRD's operating budget for maintenance of new improvements after the park is constructed. No County General Funds are involved. (Details related to funding for indirect and direct costs of construction are under separate IGA.)
Funding Source	NCPRD General Fund
Duration	In effect until terminated or superseded.
Previous Board Action/Review	<ul style="list-style-type: none"> • June 28, 2018 Business Meeting: Board approved professional services contract between NCPRD and 2.ink Studio for Milwaukie Bay Park Final Design Services. • 2019-2021 Board approvals: grant submittals, grant agreement, IGA with City of Milwaukie to transfer City funds to NCPRD for project, contract for Owner's Representative Services, and authorization to obtain a Construction Manager/General Contractor. • 2017-2021 Board Updates (5)
Strategic Plan Alignment	<p>1. How does this item align with your department's Strategic Business Plan goals?</p> <ul style="list-style-type: none"> • Aligns with the NCPRD Asset Development Strategic result of completing 33% of NCPRD project phases in the annual Capital Improvement Plan • Supports the purpose of the Asset Development program by providing planning and development services to NCPRD residents • Supports the purpose of NCPRD overall by providing access to parks, natural areas, trails, recreation services and facilities <p>2. How does this item align with the County's Performance Clackamas goals?</p>

	<ul style="list-style-type: none"> • <i>Honor, Utilize, Promote, and Invest in our Natural Resources</i> by creating increased tree canopy, increased natural areas, better on-site stormwater utilization, increased floodplain resilience. • <i>Build a Strong Infrastructure</i> through improved recreation infrastructure, active transportation corridor and safe access public transportation, and improved stormwater management. • <i>Build Public Trust through Good Government</i> by design with inclusive engagement and partnership building to leverage funding. • <i>Grow a Vibrant Economy</i> by increasing visitation in the area and attracting more people to the surrounding retail and commercial areas within Clackamas County.
Counsel Review	<ol style="list-style-type: none"> 1. 10/7/2021 2. JM
Procurement Review	<ol style="list-style-type: none"> 1. No
Contact Person	Michael Bork, NCPRD Director, x4421 Heather Koch, NCPRD Acting Planning & Development Manager, x4358

SUMMARY

The Intergovernmental Agreement (IGA) establishes the roles and responsibilities between the City of Milwaukie (City) and the North Clackamas Parks and Recreation District (NCPRD) for grant administration, construction and operation of Phase III of Milwaukie Bay Park. The agreement is constructed to be similar to the most recent park development project agreement with the City for Wichita Park (2017). A termination clause protects both parties by ensuring that, if terminated, the terminating party would pay a prorated portion of the other party's development costs. Members of the NCPRD Board, City Council and respective legal staff and administrators negotiated this agreement.

On November 2, 2021, the City Council introduced and adopted Council Resolution 56-2021 to authorize the City Manager to execute the agreement.

An upcoming update to the 2020 Funding IGA between the City and NCPRD for the Milwaukie Bay Park Project will update funding commitments needed to construct the project. The current estimated Total Project Cost is \$9.6 million including construction costs, design costs and indirect costs.

BACKGROUND

NCPRD partnered with the City of Milwaukie in 2018-19 to develop a final design to complete Milwaukie Bay Park as a District-wide recreational waterfront. The design transforms 3.6 acres of underutilized and predominantly undeveloped land into places to play, rest and gather. Key features include: an amphitheater, nature play area, interactive water feature, plaza with picnic terrace, a permanent alignment for the regional Trolley Trail, pathways, natural areas, public art and restrooms. NCPRD engaged a broad and diverse range of over 1,300 community members in the District during the design phase, advanced a funding strategy to leverage local, regional, state and other funds, and developed a process to build a preconstruction and construction services team in FY20-21.

The park is identified as a high priority need in the 2004 NCPRD Master Plan and 2007 NCPRD Parks and Recreation System Development Charges (SDC) Update Methodology Report and Capital Improvement Plan. The City owns the park and NCPRD plans for, develops and manages the City's parks under a Cooperative IGA. The Cooperative IGA was created as part of the formation of the District in 1990, and last amended in 2020 to reflect the adoption of new bylaws for the District Advisory Committee (DAC).

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners, acting as the NCPRD Board of Directors, approve this Intergovernmental Agreement Between: The City of Milwaukie and North Clackamas Parks and Recreation District for Grant Administration, Construction, and Operation of Phase III of Milwaukie Bay Park.

ATTACHMENTS:

1. Intergovernmental Agreement Between: The City of Milwaukie and North Clackamas Parks and Recreation District for Grant Administration, Construction, and Operation of Phase III of Milwaukie Bay Park
2. Council Resolution 56-2021

Respectfully submitted,



Michael Bork, Director
North Clackamas Parks and Recreation District