



November 25, 2020

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

Members of the Board:

**Approval of an Intergovernmental Agreement Between
 City of Milwaukie and North Clackamas Parks and Recreation
 District for Funding Construction of Phase III of Milwaukie Bay Park**

Purpose/Outcome	Approval by the Board of County Commissioners acting as the Board of Directors of the North Clackamas Parks and Recreation District of an Intergovernmental Agreement (IGA) Between City of Milwaukie and North Clackamas Parks and Recreation District for Funding Construction of Phase III of Milwaukie Bay Park.
Dollar Amount and Fiscal Impact	Agreement allows NCPRD to accept transfer of up to \$1,000,000 from City of Milwaukie for construction. The total project cost is estimated at \$9,600,000.
Funding Source	The City of Milwaukie will transfer City funds of \$250,000 initially and then reimburse NCPRD from the City's local share of Metro's 2019 Bond Measure funds up to a combined maximum of \$1,000,000. The City funds transferred will only be utilized once the project is fully funded. Other project funds will include NCPRD System Development Charges, grants, and private donations.
Duration	If the IGA is approved, funds will be transferred to NCPRD and used for construction of the park in 2022. The Project is expected to be complete by the end of 2023.
Previous Board Action/Review	<ul style="list-style-type: none"> • May 21, 2020 Business Meeting: Resolution 2020-36 for exemption and authorization to use the Request for Proposals Method to Obtain a Construction Manager/General Contractor • March 19, 2020 Business Meeting: Board Orders approving submission of grant applications (Order 2020-18, Order 2020-19) • February 18, 2020 Policy Session: Milwaukie Bay Park Final Design Project Update
Strategic Plan Alignment	<ul style="list-style-type: none"> • Provide economic development, public spaces, and community enrichment services to residents, businesses, visitors, and partners so they can thrive and prosper in healthy and vibrant communities. • Promote a <i>Healthy and Active Lifestyle</i> by providing a park with recreational pathways, equipment and spaces • Designed with a lens of <i>Equity, Diversity and Inclusion</i>, engaging diverse audiences and maximizing park connections

	<ul style="list-style-type: none"> Promote <i>Carbon Neutrality</i> by providing higher quality natural areas and access by alternative modes of transportation
Counsel Review	Counsel review: October, 20, 2020 (JM)
Procurement Review	No. Item is an IGA.
Contact Person	Heather Koch, NCPRD Project Manager 503-742-4354
Contract No.	N/A

BACKGROUND:

The North Clackamas Parks and Recreation District (“NCRPD”) is requesting approval of an Intergovernmental Agreement between the City of Milwaukie (“City”) and NCPRD for transferring City funds to NCPRD for the construction of Phase III of Milwaukie Bay Park. This IGA is specifically to provide for transfer of funds that NCPRD, as project leader, will accept and utilize for Milwaukie Bay Park. It includes: (1) transfer of \$250,000 allocated by the City in their 2020-2022 biennium budget; and (2) future reimbursement of \$750,000 from the City Local Share funding (Metro Parks and Nature bond) to NCPRD for project construction costs.

NCPRD partnered with the City of Milwaukie ("City") in 2018-19 to develop a final design to complete three acres of undeveloped waterfront land at Milwaukie Bay Park. The design includes an amphitheater, nature play area, interactive water feature, plaza with picnic terrace, a permanent alignment for the trolley trail, pathways, natural areas, public art and restrooms. NCPRD has also engaged a broad and diverse range of over 1,300 community members throughout the District, 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. Construction is planned to begin in 2022.

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 Improvements Plan. NCPRD is partnering with the City to complete design and construction documents and construct the park. The City owns the park and NCPRD plans for, develops and manages the City's parks under an Intergovernmental Agreement. The District-City IGA was created as part of the formation of the District in 1990, and last amended in 2008. The District-City IGA will be revised in light of this new joint investment.

The total project cost is estimated at approximately \$9,600,000. This includes construction costs as well as preconstruction costs such as design, engineering, permitting and the CM/GC preconstruction services. The funding planned is a mix of NCPRD SDC funds, City funds, Metro Local Share funds, grants, and private donations, as detailed in the following table. The funds from the City addressed in this IGA are a critical piece of the overall funding package, and are the continuation of a long-standing financial investment that the City has made in acquisition, site preparation, planning and development of this site for recreational use over the last twenty years.

Funding Source	Amount	Approval Documents*	Estimated date
City of Milwaukie	250,000	20-22 Biennium Budget & IGA	November 2020
Metro City Local Share	750,000	City-Metro IGA	January 2021
Metro NCPRD Local Share	3,000,000	NCPRD-Metro IGA	March 2021
State grant (LWCF)	1,046,125	Grant Agreement	April 2021
NCPRD SDC Zone 1	2,600,000	21/22 and 22/23 NCPPD Budget	June 2021
State grant (LGGP)	750,000	Grant Agreement	TBD Summer 2021
Metro CIP Grant	750,000	Grant Agreement	TBD Fall 2021
ODOT Grant	405,000	Grant Agreement	TBD Fall 2021
Milwaukie Parks Foundation	50,000	Letter	TBD Fall 2021
TOTAL	\$9,601,125	<i>*This IGA for City funds transfer is the first approval document, with the rest pending execution of IGAs and grant agreements</i>	

RECOMMENDATION:

Staff respectfully recommends the Board of County Commissioners, acting as the governing body of the North Clackamas Parks and Recreation District, proceed with the approval of the Intergovernmental Agreement between the City and NCPRD for transferring City funds to NCPRD for the construction of Phase III of Milwaukie Bay Park.

ATTACHMENTS:

Intergovernmental Agreement for Milwaukie Bay Park funds transfer.

Respectfully submitted,



Laura Zentner, Director
Business and Community Services

**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 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:**

Milwaukie Bay Park IGA for transfer of funds

- 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. the District's Local Share allocation approved for the Park (funding from Metro 2019 bond measure);
 - d. System Development Charges from the District; and,
 - e. 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.
- 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 may be terminated prior to the construction of the Park by written notice provided, with or without cause, by either party no less than 90 days prior to the date of termination. 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 Beaver Creek 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.

