



June 15, 2023

BCC Agenda Date/Item: _____

North Clackamas Parks and Recreation District Board of Directors

Approval of an Updated Intergovernmental Agreement with Oregon City School District for Development and Ongoing Provision of Park Facilities at the Jennings Lodge Elementary School Property. The fiscal impact is minimum of \$166,784 for planning and design and up to \$2.9M total if future funds are identified for engineering and construction. No County General Funds are involved.

Previous Board Action/Review	<p>June 13, 2023 – Briefed at Issues.</p> <p>March 19, 2020 - Approval of an Intergovernmental Agreement between North Clackamas Parks and Recreation (NCPRD) and Oregon City School District (OCSD) for the development and Ongoing Provision of Park Facilities at Jennings Lodge Elementary School.</p> <p>March 12, 2020 - NCPRD District Advisory Board recommended the BCC, acting as NCPRD Board of Directors, approve the IGA.</p> <p>December 18, 2018 - Policy Session</p>		
Performance Clackamas	<ul style="list-style-type: none"> • Build public trust through good government • Honor, utilize, promote and invest in our natural resources • Ensure, safe, healthy and secure communities 		
Counsel Review	05/09/2023	Procurement Review	No
Contact Person	Heather Koch	Contact Phone	(971) 337-6867

EXECUTIVE SUMMARY:

In partnership with the Oregon City School District (“OCSD”), North Clackamas Parks and Recreation District (“NCPRD”) wishes to update its existing Intergovernmental Agreement (IGA) to cooperatively develop a neighborhood park and associated park amenities on land owned by OCSD at Jennings Lodge Elementary School. A portion of the Property located at 18521 SE River Road in Oak Grove is underutilized for school and community uses due to its unimproved or aging condition. This IGA combines the needs and resources of two public agencies serving the same community for a creative and positive solution that each party would be otherwise limited to accomplish.

For Filing Use Only

The existing IGA governs how to develop the park and associated amenities by NCPRD at Jennings Lodge Elementary School. It was executed in March of 2020, just before the Covid-19 pandemic shutdowns began. With ongoing uncertainties related to the pandemic, a project pause ensued. During the pandemic-related pause, the school and building use changed. It is currently occupied by Oregon City Community Education (“OCCE”), a program of OCSD that offers early childhood education, care of school-age children, and community education year round at the site. The project pause and school use change warranted a revision to the approved IGA. Summarized below are four key updates to the IGA from what NCPRD and OCSD jointly envisioned three years ago.

1. Allows for shared use of most of the 1.9-acre project area at all park hours, except for a smaller preschool play area with designated OCSD hours. The intent is to have a relatively small portion of the overall park be separate from the public during program hours, while the rest of the site remains accessible. In the existing IGA, public use is limited to non-school hours for the entire project area.
2. Changes the “start of construction by” date to 2027 (from 2024). The intent is to provide adequate time to proceed to construction given the delayed start of work.
3. Clarifies that NCPRD can collect fees for activities and park use, which are prohibited in the existing IGA. This helps NCPRD cover some operational costs.
4. Clarifies that work beyond developing a schematic design is contingent on funding becoming available, which is not explicit in the existing IGA.

The OCSD approved the updated IGA on June 6, 2023.

Upon approval of the updated IGA by the NCPRD Board of Directors, NCPRD in coordination with OCSD staff will engage the community in a public process to conduct planning and schematic design to determine the desired plan for a neighborhood park on the property.

The fiscal impact is minimum of \$166,784 for planning and design and up to \$2.9M total if future funds are identified for engineering and construction.

This IGA does not obligate NCPRD to fund full development if funding is not available, but states NCPRD has the responsibility to seek funding to develop the project. As of August 30, 2023, this project will be eligible for use of SDC funds; however, use of SDC funds is limited to 31.55% of project costs, so other funding would need to be identified.

RECOMMENDATION:

Staff recommends that the Board, acting as the NCPRD Board of Directors, approve an updated Intergovernmental Agreement with Oregon City School District for Development and Ongoing Provision of Park Facilities at the Jennings Lodge Elementary School Property.

ATTACHMENTS:

1. Intergovernmental Agreement between Oregon City School District and North Clackamas Parks and Recreation District for the Development and Ongoing Provision of Park Facilities at Jennings Lodge Elementary School

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Bork". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping tail.

Michael Bork
NCPRD Director

**Intergovernmental Agreement between
Oregon City School District and
North Clackamas Parks and Recreation District
for the Development and Ongoing Provision of Park Facilities at
Jennings Lodge Elementary School**

This Intergovernmental Agreement (“**Agreement**”) is made effective as set forth below, between North Clackamas Parks and Recreation District (“**NCPRD**”), and Oregon City School District No. 62 (“**OCSD**”). NCPRD and OCSD are each referred to as a “**Party**” and, collectively, as the “**Parties**.”

AGREEMENT

I. Purpose

OCSD and NCPRD wish to cooperatively develop a neighborhood park and associated amenities on land owned by OCSD at Jennings Lodge Elementary School to benefit school district and community-based programs. NCPRD’s adopted ***Parks and Recreation Master Plan (2004)*** and ***Revised Draft Master Plan (2015)*** identify the need for additional neighborhood park opportunities in the portion of the District which Jennings Lodge Elementary School resides. Due to limited available open space in this area, NCPRD has been unable to accomplish this identified need. OCSD owns school property shown on Exhibit A (“**Property**”). A portion of the Property is underutilized for school and community uses due to its unimproved condition. NCPRD has identified funding sources to conduct planning and schematic design for a neighborhood park in this area. Should funds be identified in the future NCPRD will develop the design and complete construction. OCSD lacks resources to improve this area for school and community uses. Therefore, this Agreement will combine needs and resources of two public agencies serving the same community for a creative and positive solution that each party would be otherwise limited to accomplish.

II. Property

This Agreement applies to approximately 1.9 acres of undeveloped OCSD-owned property (the “**Project Area**”) at Jennings Lodge Elementary School, located at 18521 SE River Road, Oak Grove, OR 97267, as shown on the attached Exhibit A (the “**Property and Project Area Map**”).

III. Project Description

NCPRD will develop neighborhood park amenities within the Project Area as shown on the attached Exhibit A (the “**Property and Project Area Map**”). This will include an area of approximately 0.08 acres to 0.15 acres to be determined during design for a preschool play area that is separately fenced for primary use by the school and limited public access. The Final Project scope, including specific amenities, layout, size, and all other design specifications shall be determined through development of a community-based master planning and design process to be led by NCPRD in partnership with OCSD. Final and all earlier iterations of planned improvements as part of the Project (master plan) shall be subject to OCSD approval.

The Project may include, but is not limited to, grading, drainage, importation of top soil, installation of irrigation with a computerized central control system, installation of water and electric infrastructure to site, fencing, walkways, play structures, fixtures and other amenities related to development of a neighborhood park.

IV. Responsibilities

1. OCSD will be responsible to:

Make the Project Area available to NCPRD for community use at all park hours except for the preschool play area described in Section III. OCSD will also make the preschool play area available to NCPRD for community use during non-school use hours Monday through Friday before 8a and after 5p.

- A. Community use will be subject to both OCSD rules and NCPRD park rules; provided (i) the rule at issue is consistent with the rights of the parties under this Agreement and (ii) in the event of rule conflict, the rule that is more favorable to OCSD shall prevail. Each party at all times shall provide to the other a copy of its applicable then- current rules.
- B. Provide right of entry to NCPRD including to any consultants and contractors during construction; provide NCPRD contractor construction staging area as may be necessary, each in accordance with a separate written agreement between the parties. No NCPRD construction access or staging right shall exist absent such separate agreement. Prior to starting construction NCPRD staff and consultants may enter the Project Area with prior approval of OCSD.
- C. Provide any prior survey or other site information in OCSD's possession to NCPRD to aid in Project design.
- D. Participate in Project design and sign necessary permitting documentation as is acceptable to OCSD in its reasonable discretion; OCSD may reject any such documentation that places any cost, liability or obligation on OCSD.
- E. Allow NCPRD to install signage on the Project Area approved in advance by OCSD designating the Project Area as a neighborhood park for use during all park hours, with a preschool play area for use outside school hours; the park name and signage content also are both subject to OCSD approval.
- F. Maintain the existing parking and driveway located outside of Project area, that provide access to the Project Area, per OCSD maintenance and repair standards, as shown on Exhibit A; provided OCSD retains the right to relocate such facilities at OCSD's discretion.
- G. Maintain the existing storm water system.
- H. Pay for the cost of any improvements at or outside the Project Area desired by OCSD, as a result of changes in use by the community. For example, adding fencing or other fixtures to change the flow of students/OCSD staff to and from the Project Area and the school building.

2. NCPRD will be responsible to:

- A. Seek full funding for the project. If funding is secured, fund all development costs related to the Project including any applicable permitting fees and charges.

- B. Design, engineer, permit, bid, and oversee construction of the Project, and pay for the same. If full funding is secured, NCPRD shall commence construction not later than September 1, 2027, diligently and continuously prosecute construction to completion, and complete construction not later than twelve (12) months after commencement. The schedule for construction shall be subject to OCSD prior approval and OCSD may require that construction occur only during summer months, school breaks, or weekends. NCPRD shall cause OCSD to be included in its contractor's indemnity (as additional indemnitee), insurance (as additional insured) and warranty (as additional warranty beneficiary) provisions in their contracts, and shall provide to OCSD an additional insured certificate from the contractor before the contractor's entry onto the site. Contractor entry while school is in session (if permitted by OCSD) shall be subject to OCSD access and security rules.
- C. Provide year-round maintenance of the improved Project Area in accordance with the better of NCPRD requirements and schedules or the conditions specified below. The maintenance schedule and program shall be subject to the prior written approval of OCSD; provided such approval shall not render OCSD responsible for maintenance standards or failure to follow maintenance standards. OCSD approves NCPRD personnel and contractors to be on the Project Area site during school hours. OCSD will notify NCPRD in writing of times of school use that will conflict with the activities below:
- a. Mowing turf during the months of March through October, or during typical turf growing season;
 - b. Aerating, fertilizing, pruning, and providing weed and pest control;
 - c. Collecting and disposing of park garbage in a NCPRD-provided trash can at Jennings Lodge Elementary School at a location approved by OCSD.
 - d. Maintain and repair the grounds and all furnishings, fixtures, irrigation systems and structures at the Project Area during the terms of this agreement, including without limitation cleaning, repainting or recoating, graffiti removal, and repair of turf areas and replacement of foliage.
 - e. Construct and maintain any required modifications or additions to the existing storm water system required due to Project construction or use; and perform any repairs to the storm water system required for park use or by law.
- D. Install and maintain signage indicating school and neighborhood park rules, and listing availability of use by community during non-school use times as described in Section VII. In particular NCPRD agrees to include in the park rules a no alcohol policy consistent with OCSD's rules for district property.
- E. Pay for 100% of the cost of water for field irrigation, and electricity for field irrigation and lighting (if any). NCPRD shall have sole control of irrigation system, watering schedules, and access.

F. Schedule Project Area use for NCPRD or community programs consistent with Article VII. OCSD will be notified in advance of any scheduled uses of the Project Area.

3. Upon completion of the Project, NCPRD will calculate its third-party costs to complete the Project (including planning, design, permitting, and construction costs), and submit its calculation to OCSD for its review and approval, not to be unreasonably withheld ("Original Development Costs"). Upon OCSD's approval, NCPRD and OCSD will sign a document confirming the Original Development Costs, and may attach a signed copy of the Original Development Costs as Exhibit B (provided any failure to attach such exhibit does not affect this Agreement).

V. Ownership of Property

OCSD will retain ownership of the Property. NCPRD shall own and have the option to remove its fixtures, furnishings, and structures during the term, provided the same are replaced with facilities of the same quality and utility.

VI. Term

1. This Agreement is effective on the date when the second party signs this agreement, and will have a term of 20 years from the Project completion date or, if earlier, until December 31, 2048. This Agreement may be extended for consecutive five-year terms if both Parties agree in writing.
2. OCSD may terminate this Agreement by notice to NCPRD, if construction has not commenced by September 1, 2027 or construction is not completed within 12 months of commencement. Should OCSD elect to terminate this agreement prior to the earlier of (i) September 1, 2027 or (ii) commencement of construction, other than for cause, OCSD shall be responsible only for NCPRD's reasonable planning and design costs as sole compensation to NCPRD for such termination. Otherwise, if OCSD desires to withdraw from this Agreement prior to the termination date, OCSD may elect to make a good-faith effort to relocate the displaced improvements to an alternate, mutually-agreeable location. If such relocation site is not made available, OCSD will compensate NCPRD as follows:
 - a. If 20 or more years have elapsed from the Project completion date, NCPRD will receive no compensation.
 - b. If construction is completed and fewer than 20 years have elapsed from the Project completion date, and the Agreement is terminated other than for NCPRD fault, OCSD will compensate NCPRD in an amount equal to NCPRD's Original Development Costs, as defined in Section IV.3, reduced by 5% of the total amount of such costs for each year of use.
3. This Agreement may be terminated by the District or NCPRD upon thirty (30) days written notice to the other party for one or more material breaches of this Agreement by the other party. This Agreement may be terminated upon at least 180 days' notice by NCPRD for any or no reason at any time after the third anniversary of completion of construction and opening of the park. This Agreement may be terminated upon notice by OCSD pursuant to Section 2 for any or no reason; if terminated after completion of construction, termination shall be on at least 180 days' notice to NCPRD.

4. On any termination of this Agreement, NCPRD shall leave the equipment and improvements at the Project Area in a good and operable condition and the same shall become the property of OCSD, and shall assist OCSD with transition of operations.

VII. Project Area Use

1. NCPRD use of the Project Area shall be limited to recreational use for a neighborhood park. It is the intent of OCSD and NCPRD that the completed Project will result in benefits for both school and non-school community-based use. Toward this end, OCSD and NCPRD agree that community park use may be scheduled for all areas except the preschool play area in accordance with NCPRD park rules and scheduling policies, consistent with section IV.2.F above. NCPRD rules prescribe park hours as 30 minutes before sunrise and 30 minutes after sunset, which hours shall not be changed without OCSD approval. NCPRD shall take appropriate action to enforce NCPRD rules. Community park use may be schedule for the preschool play area outside of normal school hours per Section VI.1. and in accordance with NCPRD park rules and scheduling policies.
2. OCSD will have first-priority use of the preschool play area during all school days during school hours. All Jennings Lodge Elementary School events (individual occurrences; rather than on-going, regular usage; annual events will be considered individual occurrences for this purpose) will have first-priority use of the preschool play area during after-school hours on school days, when scheduled in advance through NCPRD. Otherwise, NCPRD will have first-priority use of the Project Area (exclusive of the preschool play area), and OCSD programs will have second priority, followed by other user groups per NCPRD's scheduling policy consistently applied and made known to OCSD. With the exception of the priority field use stated herein, all other terms of facility use herein will apply to this Agreement. "First-priority" use means the exclusive right to use and occupy the Project Area during a particular period, unless the other party procures the advance written permission of the party entitled to first-priority use, for the other party to use the Project Area during that first-priority period.
3. Neither OCSD nor NCPRD will be charged for use of the Project Area.
4. OCSD reserves the right, but not the obligation, to apply and enforce school district rules at the Project Area, including without limitation, the right to eject from or limit use by persons of the Project Area, in accordance with the same standards OCSD applies to school grounds.

VIII. Miscellaneous

1. Equity. The parties intend to follow their policies, principles, and commitments on equity.

NCPRD's Board believes that equity is the principled commitment to ensuring the absence of visible and invisible barriers to fairness in representation, opportunity, and access in Clackamas County. NCPRD's Board affirms that as matters of principle the values of equity, diversity, and inclusion in every aspect of County governance, operations, and services rendered to County residents and the public at large. NCPRD's Board does not discriminate in public accommodations; the County welcomes all people to its places of work and service. Everyone should feel welcome at County public facilities and events, and Civil rights are a class of rights that protect individual freedom. They ensure one's ability to experience equality and opportunity in society and state without discrimination.

The District's Board policy is that the principle of equity goes beyond formal equality where all persons are treated the same. Instead, equity fosters an inclusive and barrier-free environment in which everyone will fully benefit. The District will apply this principle of equity to all policies,

programs, operations, practices, and resource allocations. The District's Board recognizes that school facilities are built and maintained using local tax dollars, and that schools are a focal point for community life, and it is the policy for the Board for school facilities to be available for use by the community. The District seeks to cooperate with community organizations and individuals who wish to use schools for worthy educational, cultural, social, recreational, and civic purposes. The District's Board prohibits discrimination and harassment on any basis protected by law, including but not limited to, an individual's perceived or actual race, color, relation, sex, sexual orientation, gender identity, national or ethnic origin, marital status, age, mental or physical disability or perceived disability, pregnancy, familial status, economic status, and veterans' status.

2. Funds Available. The parties represent to each other that each has sufficient funds available to meet the obligations set forth to complete schematic design and thereafter will seek funding to complete the park.
3. Audit. Either party shall have the right to review information and documentation supporting implementation of this Agreement upon reasonable notice at no cost to the requesting party.
4. Insurance. NCPRD represents and warrants that it is covered as a County Service District under and through Clackamas County's County Service District's self-insurance fund established and maintained pursuant to ORS 30.282 ("Fund Coverage"), and is covered under Clackamas County's excess coverage program with Oregon Public Entity Excess Pool ("OPEEP Coverage") according to the statutory limits set in the State of Oregon for any liability, property, and auto claims. NCPRD shall cause Clackamas County to include OCSD under Fund coverage and OPEEP Coverage, throughout the entirety of the Term and for two years thereafter, in accordance with Exhibit C ("Insurance Letter"), and shall provide the attached original Insurance Letter signed by an authorized representative of Clackamas County within two (2) business days of mutual execution of this Agreement. NCPRD, not later than July 1 of each calendar year, shall provide a letter in substantially the form of the Insurance Letter, executed by an authorized representative of Clackamas County, reaffirming continued coverage. The above coverage of OCSD and NCPRD under Fund Coverage and OPEEP Coverage is referred to as "County Coverage." So long as County Coverage remains in effect for both NCPRD and OCSD, County Coverage shall be acceptable coverage for all NCPRD-required insurance coverage under this agreement. NCPRD must either maintain County Coverage, or purchase and maintain insurance coverage as outlined below, continuously while this Agreement remains in effect. To the extent that NCPRD must or elects to purchase insurance coverage to meet any of its' obligations under this agreement the following paragraphs shall be effective:

General Liability. NCPRD shall maintain general liability insurance coverage of at least \$1,000,000 for each claim, incident, or occurrence, and at least \$2,000,000 annual aggregate coverage.

Additional Requirements. All insurance coverage shall be provided by an insurance company having an A.M. Best rating of at least A- and/or licensed to do business in Oregon. NCPRD alone is responsible for paying all deductibles and retentions. A cross-liability clause or separation of insureds condition shall be included in all general liability policies required by this Agreement. NCPRD's coverage shall be primary in the event of loss.

Certificate of Insurance. Prior to entry on the Property, NCPRD shall furnish to OCSD a current certificate of insurance for each of the above coverages within 48 hours of request. Each certificate must state the relevant deductible or retention level. For general liability coverage, the certificate must state that OCSD, its agents, officers, and employees are additional insureds. The certificate must specify an additional insured endorsement acceptable to OCSD, and NCPRD shall attach a copy of the endorsement to the certificate. If requested by OCSD, NCPRD shall also provide complete copies of insurance policies.

5. Independent Contractor Status. By its signature on this contract, NCPRD certifies that the service or services to be performed under this Agreement are those of an independent agency as defined in ORS 670.600, and that NCPRD is solely responsible for the work performed under this Agreement. NCPRD represents and warrants that NCPRD, its subcontractors, employees, and agents are not "officers, agents, or employees" of OCSD within the meaning of the Oregon Tort Claims Act (ORS 30.260 and 30.300).
6. Subcontracts; Assignment. Neither party may subcontract, assign, or transfer (collectively, "Subcontract") any part of this Agreement without the prior written consent of the other party. If consent to a Subcontract is properly given, then in addition to any other provisions of this Agreement, the subcontracting party shall hold its subcontractor to all the terms and conditions of this Agreement that would otherwise bind the party to whom consent was given. The parties agree that any such Subcontracts shall have no binding effect on the consenting party to this Agreement.
7. Confidentiality; FERPA Re-disclosure. Family Education Rights and Privacy Act ("FERPA") prohibits the re-disclosure of confidential student information. Except in very specific circumstances, NCPRD shall not disclose to any other party without prior consent of the parent/guardian any information or records regarding students or their families that NCPRD may learn or obtain in the course and scope of its performance of this Agreement. Any re-disclosure of confidential student information must be in compliance with the re-disclosure laws of FERPA. NCPRD is not to re-disclose information without prior written notification and written permission of OCSD. If OCSD grants permission, NCPRD is solely responsible for compliance with the re-disclosure under §99.32(b). Consistent with FERPA's requirements, personally identifiable information obtained by NCPRD in the performance of this Agreement must be used only for the purposes identified in this Agreement.
8. Compliance with Applicable Law. NCPRD shall comply with all federal, state, and local laws applicable to public contracts and to the work done under this Agreement, and all regulations and administrative rules established pursuant to those laws. Without limitation, NCPRD is solely responsible for and shall comply with all laws regarding procurement or construction of any improvements or equipment at the Project Area, including without limitation bonding, prevailing wage, work hours, environmental, and erosion and drainage control.
9. OCSD Rights. OCSD may, but shall not be obligated to, make any payment or perform any obligation that NCPRD has failed to perform when required under this Agreement. All of OCSD's expenditures incurred to correct the failure to perform shall be reimbursed by NCPRD upon demand with interest from the date of expenditure at the rate of nine percent per annum. OCSD's right to correct NCPRD's failure to perform is for the sole protection of OCSD and the existence of this right shall not release NCPRD from the obligation to perform all the covenants herein required to be performed by NCPRD, or deprive OCSD of any other right OCSD may have by reason of nonperformance by NCPRD, whether or not OCSD exercises its rights under this Section. In addition, OCSD reserves the right, but not the obligation, to take any action it deems appropriate to enforce OCSD rules in effect with respect to the Project Area or the use thereof.

10. Mutual Indemnification.

- A. Subject to the limitations of the Oregon Constitution (Article XI, Section 7) and the Oregon Tort Claims Act (ORS 30.260 through 30.300), NCPRD shall indemnify and defend OCSD from and against all claims, liability, loss, and costs, except for attorney's fees, arising out of or resulting from (i) the acts or omissions of NCPRD, its officers, employees, and agents in the performance of this Agreement or (ii) NCPRD's noncompliance with applicable laws; except to the extent such claims are described in and indemnified by OCSD under clause (B).
- B. Subject to the limitations of the Oregon Constitution (Article XI, Section 7) and the Oregon Tort Claims Act (ORS 30.260 through 30.300), OCSD shall indemnify and defend NCPRD from and against all claims, liability, loss, and costs, except for attorney's fees, solely arising out of or solely resulting from (i) the negligent acts or omissions of OCSD, its officers, employees, and agents in the performance of this Agreement or (ii) OCSD's noncompliance with applicable laws; except to the extent such claims are described in and indemnified by NCPRD under clause (A).

11. Waiver; Severability. Waiver of any default or breach under this Agreement by either party does not constitute a waiver of any subsequent default or a modification of any other provisions of this Agreement. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held invalid.

12. Controlling Law; Venue. Any dispute under this Agreement or related to this Agreement shall be governed by Oregon law, and any litigation arising out of the Agreement shall be conducted in courts located in Clackamas County, Oregon.

13. Nature of Agreement. This Agreement grants NCPRD a license to improve and operate the Project Area on the terms hereof, but does not create a tenancy interest to NCPRD.

14. Entire Agreement. When signed by the authorized representatives of both parties, this Agreement and its attached exhibits is their final and entire agreement. As their final expression, this Agreement supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives. There are no representations, promises, terms, conditions, or obligations other than those contained herein.

15. Dispute Resolution.

- A. Should any dispute arise between the parties to this Agreement, NCPRD and OCSD will submit the dispute to a mediator, agreed to by both parties, as soon as such dispute arises, and in any event prior to the commencement of arbitration or litigation. Should the parties fail to agree upon a mediator within 30 days of either party's request, the mediator shall be selected pursuant to the rules and procedures of the Arbitration Service of Portland. Both parties agree to exercise their best efforts in good faith to resolve all disputes in mediation and to share equally the fees and costs of the mediator. If mediation fails to resolve any dispute, the dispute shall be settled in the Clackamas County Circuit Court.

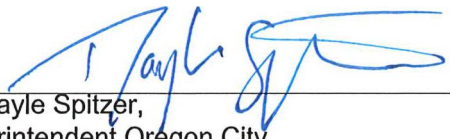
- B. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its costs, and expenses, except for attorney's fees, actually incurred and reasonably necessary in connection therewith as allowed by law. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator.
16. No Third-Party Beneficiaries. NCPRD and the 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.
17. Representations and Warranties. Each party represents and warrants to the others that it has the power and authority to enter into and perform this Agreement and this Agreement when executed and delivered, shall be a valid and binding obligation of the party. In addition, each party represents and warrants that it has and will maintain personnel with the skill and knowledge possessed by well-informed members of its industry and profession and those personnel shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed, if required, to perform the services of this Agreement.
18. Severability. If any term or provision of this Agreement is declared to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
19. Waiver. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision.
20. Amendments. This Agreement may be amended only in writing executed by both parties. The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever, except by written instrument signed by the parties. Notices. All notices to the respective parties shall either be personally delivered or sent certified mail to the addresses given to the other party for such notice, addressed to the NCPRD Director or District Assistant Superintendent.
21. Right of First Negotiations. So long as this Agreement remains in effect and NCPRD is not in default of this Agreement, if OSCD decides to sell the Site, before closing the sale, OCSD shall first propose to negotiate with NCPRD for a period of up to sixty days (the Negotiation Period") for NCPRD to acquire the Site, on terms acceptable to the parties in their sole mutual discretion. If either NCPRD does not within 10 days after such proposal notify OCSD in writing of its intent to negotiate, or OCSD and NCPRD do not, during the Negotiation Period, enter into a letter of intent with respect to a sale of the site to NCPRD, OCSD shall be free to convey the Site to a third party. If OCSD and NCPRD do enter into a letter of intent within the Negotiation Period, the terms of any such potential sale shall be governed by such letter of intent and this paragraph shall no longer apply.

Dated effective as of the last date set forth below.

NORTH CLACKAMAS PARKS AND RECREATION DISTRICT

OREGON CITY SCHOOL DISTRICT NO. 62

Tootie Smith, Chair
Clackamas County Board of
County Commissioners



Dr. Dayle Spitzer,
Superintendent Oregon City
School District

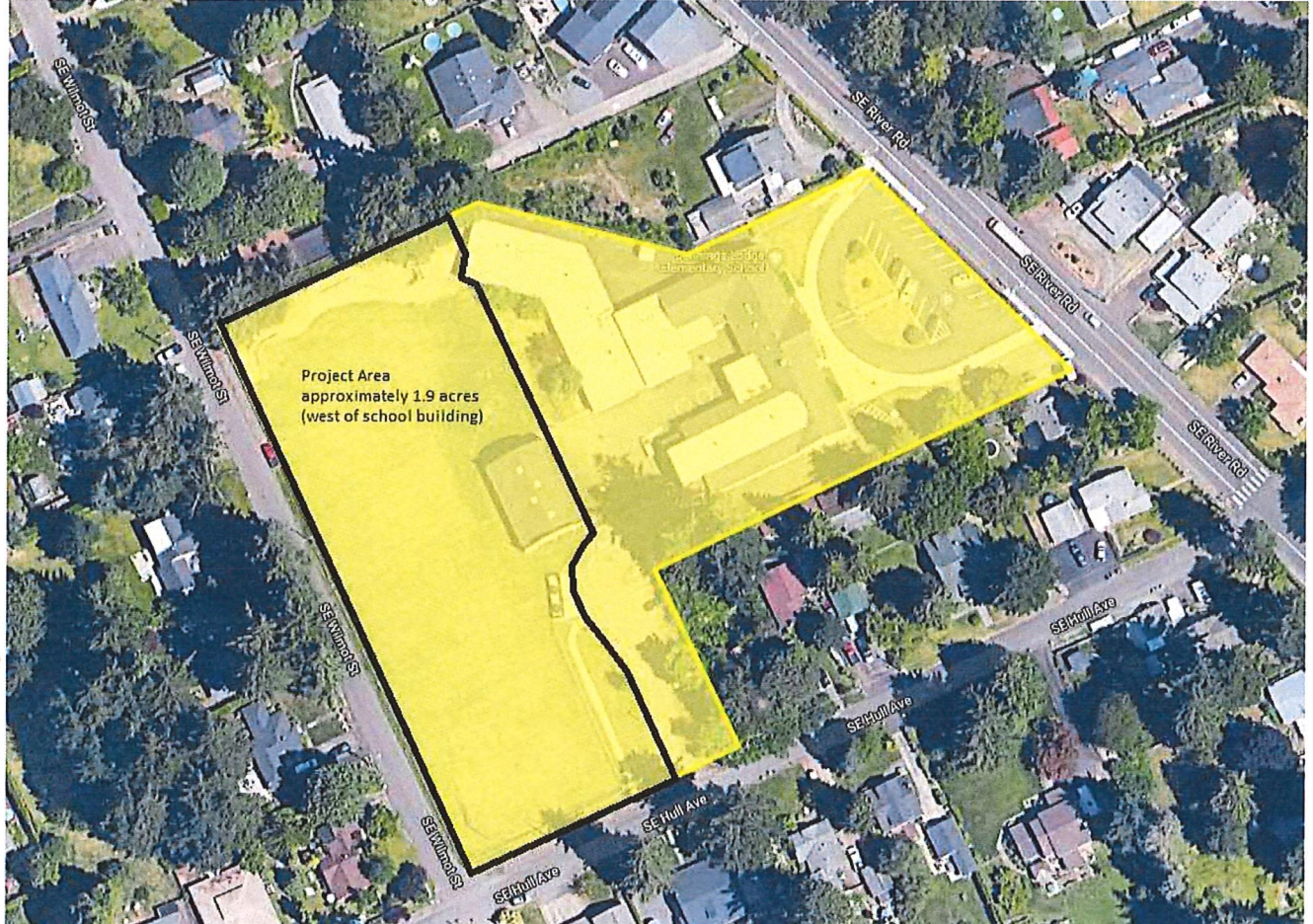
Date

Date

6 June 23

EXHIBIT A

PROPERTY AND PROJECT AREA MAP



Property and Project Area Details	
Address	18521 SE River Rd, Oak Grove, OR 97267
Tax Lots	22E19BB01200
Property Area	3.81 acres
Approx. Project Area	1.9 acres

DESIGNATE PARKING AND DRIVEWAY COVERED BY LICENSE

EXHIBIT B

ORIGINAL DEVELOPMENT COSTS

[To be inserted upon mutual agreement of the parties following incurring of costs; provided any failure to attach such exhibit does not affect this Agreement]



EXHIBIT C

Evelyn Minor-Lawrence
Director

DEPARTMENT OF HUMAN RESOURCES
PUBLIC SERVICES BUILDING
2051 Kaen Road | Oregon City, OR 97045

June 13, 2023

Dr. Dayle Spitzer, Superintendent
Oregon City School District No. 62
1417 12th St.
Oregon City, OR 97045

RE: Letter of Insurance OCSD/Development and Ongoing Provision of Park Facilities at Jennings Lodge Elementary School

To Whom It May Concern:

This is to certify that pursuant to ORS 30.282, Clackamas County has established a self-insurance program against tort liability for the public body, its officers, employees and agents. Under ORS 30.272, as of July 1, 2022, the current limitations per occurrence is \$806,100, and \$1,612,000 for multiple claims from a single occurrence.

Claims arising from facilities and/or operations that are controlled by the County will be administered through this program.

Clackamas County has elected under ORS 656 to self-fund and administer its Workers' Compensation benefits for all claims filed by its employees.

Sincerely yours,

Eric Machado, ARM, RIMS-CRMP
Risk Manager

CC: File
Kallie Guentner- Clackamas County