

**CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
Acting as the North Clackamas Parks and Recreation Board of Directors**

Policy Session Worksheet

Presentation Date: 5/18/2021 **Approx Start Time:** 3:30 pm **Approx Length:** 30 mins

Presentation Title: Milwaukie Bay Park Project Local Government Grant Program Agreement with Oregon Parks and Recreation Department

Department: Business and Community Services (BCS)

Presenters: Sarah Eckman, BCS Interim Director
Heather Koch, NCPRD Acting Planning and Development Manager

Other Invitees: Kandi Ho, NCPRD Acting Director
Elizabeth Gomez, NCPRD Finance Manager

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Staff will be providing an overview to the Board of County Commissioners acting as the North Clackamas Parks and Recreation District (“NCPRD”) Board of Directors (“Board”) on the Local Government Grant Program Agreement with Oregon Parks and Recreation Department for the Milwaukie Bay Park Project, and asking to put this agreement forward for approval on the June 3, 2021 Consent Agenda.

This overview is intended to provide an opportunity for discussion prior to seeking approval of the Local Government Grant Program (“LGGP”) Agreement between the Oregon Parks and Recreation Department (“OPRD”) and NCPRD as grantee at the June 3, 2021 Board Business Meeting.

The \$750,000 grant award to NCPRD announced by OPRD in March 2021 is an integral piece of project funding requiring a 50% (\$750,000) match (see “Funding Implications”). OPRD funds are specifically provided to develop the nature play area, extensive pathways, entry plaza, picnic terrace, restrooms, water supply, and storm sewer while preserving a mature redwood tree at Milwaukie Bay Park in Milwaukie, Oregon.

EXECUTIVE SUMMARY:

BACKGROUND:

NCPRD partnered with the City of Milwaukie (“City”) in 2018-19 to develop a final design to complete 3.6 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 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 and FY 21-22. Construction is planned to begin in 2022 pending NCPRD obtaining all permits and approvals, executing a Cooperative Intergovernmental Agreement (IGA) with the City, and securing all construction funding.

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 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). An update to this Cooperative IGA and a supplemental IGA specific to the Milwaukie Bay Park construction phase will be executed prior to construction.

RECENT WORK:

In 2019-20 and in 20-21 to date, NCPRD has taken the following steps:

- Worked with agencies to develop funding partnerships. This includes work with City, Metro regional government (Metro), Oregon Parks and Recreation Department (OPRD), and ODOT on grant planning, grant applications, grant approvals, and planning for processes to engage the public and develop an agreement on Metro Local Share funds. To date, NCPRD has received a grant recommendation for \$1,046,125 in funding from the Land and Water Conservation Fund (May 2020) and the \$750,000 award from LGGP (March 2021).
- Worked with the City and County Counsel to develop an Intergovernmental Agreement (IGA) to transfer up to \$1,000,000 in funds from the City to NCPRD; obtained approval from the Board on IGA.
- Worked with Clackamas County procurement and the Board to develop contracts that support a competitive and collaborative team of design and construction professionals. This includes work with procurement on a standard set of Construction Manager/General Contract ("CM/GC") procurement documents to be used as a template County wide, publication of the Milwaukie Bay Park Request for Proposals for CM/GC services on March 19, 2021, and publication of a Notice of Intent to Award on May 5, 2021.
- Worked within NCPRD and initiated discussion with City on process and timeline to update District-City Cooperative IGA and a Milwaukie Bay Park IGA specific to the construction phase prior to construction of Milwaukie Bay Park. Agency staff will work with County Counsel and the City Attorney to develop draft IGA information for input from the NCPRD Board and Milwaukie City Council. Staff will then prepare a final IGA for Board and Council Approval. Since a Cooperative IGA for Milwaukie Bay Park and an IGA for construction are needed prior to construction, the goal is to execute these IGAs to: (1) update all overarching aspects of City-District agreement; (2) focus the separate IGA for Milwaukie Bay Park construction only on matters specific to the construction project work.

NEXT STEPS:

Near-term next steps (FY 20/21) include:

- Present LGGP agreement for consideration by Board on June 3, 2021 Consent Agenda to obtain \$750,000 in grant funding. The agreement has been reviewed by NCPRD staff and County Counsel.
- Continue to secure funding from local, regional, state and other potential sources.
- Continue development Cooperative IGA. A Policy Session to discuss the IGA is scheduled for June 8, 2021.
- Continue work with Clackamas County procurement and the Board to secure contracts that support a competitive and collaborative team of design, construction and art professionals. A Policy Session on construction and design contracts is scheduled for June 15, 2021.
- Continue to keep the Board updated on the project.
- Discuss project and funding with the DAC; work with the DAC on a community engagement process to discuss and establish priorities for NCPRD local share allocation from the Metro Parks and Nature Bond.

Mid-term next steps (FY 21/22) needed prior to construction include:

- Develop construction documents
- Seek necessary approvals/permits
- Confirm all funding sources and execute funding agreements
- Confirm a Guaranteed Maximum Price (GMP)
- Execute a Cooperative IGA with the City of Milwaukie and a Milwaukie Bay Park IGA specific to the construction phase.

Completion of these steps will enable construction in FY 22-23.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the cost?

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.

What are the funding sources?

This \$750,000 LGGP grant requires a 50% match of \$750,000. In March 2020, the Board approved submission of the grant application, which indicated NCPRD would match LGGP funds with SDC funds. SDC funds are available and applicable to fund this development as a District-wide amenity. LGGP funds are provided on a reimbursement basis, therefore funds will be provided to NCPRD as reimbursement of construction costs. These costs are expected to be incurred starting as early as June 2022 when construction is estimated to start.

The draft funding plan for full funding includes NCPRD SDC funds, City funds, Metro Local Share funds, grants, and private donations, as detailed in the following table. Once the new District Advisory Committee is formed and conducting business, additional discussions are planned regarding funding sources. Discussions on use of SDC Zone 1 funds will inform the amount of such funds proposed for use in the project in NCPRD’s annual budget proposal each year. NCPRD’s annual budget is subject to approval by the Budget Committee and NCPRD Board. Public discussions on the use of Metro Local Share for this and other projects are planned by NCPRD and are also part of Metro’s community engagement requirement prior to finalizing an intergovernmental agreement between Metro and NCPRD on use of Local Share funds.

Draft Funding Plan

Funding Source	Proposed	Agreements*	Status	Est. Date
City of Milwaukie	250,000	20-22 Budget, IGA	IGA signed	Dec 2020
NCPRD SDC Zone 1	2,541,875	NCPRD Budgets	Annual budgeting	Jun 21+
State grant (LGGP)	750,000	Grant Agreement	Agreement pending	May 2021
State grant (LWCF)	1,046,125	Grant Agreement	Agreement pending	July 2021
Metro-City Local Share	750,000	City-Metro IGA	2021 City engagement	Aug 2021
Metro-NCPRD Local Share	3,000,000	NCPRD-Metro IGA	2021 DAC/public process	Aug 2021
Transportation funding	423,525	Agreement	Planning with partners	Aug 2021
Milwaukie Parks Found.	40,000	Letter	Fundraising underway	Fall 2021
NCPRD Gen Fund	48,475	NCPRD Budgets	Annual budgeting	Jun 2022
Metro CIP grant	750,000	Grant Agreement	2021 solicitation	21/22
TOTAL (hard & soft costs)	9,600,000	<i>*Other than City funds, approvals and execution of agreements are pending</i>		

STRATEGIC PLAN ALIGNMENT:

- **How does this item align with your Department’s Strategic Business Plan goals?**
 - 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.
- **How does this item align with the County’s Performance Clackamas goals?**
 - *Honor, Utilize, Promote, and Invest in our Natural Resources.* The park development will increase tree canopy, increase natural areas on site, better utilize on-site stormwater to support plantings, and increase floodplain resilience. It will also be required to follow City of Milwaukie code as it supports the City’s climate action goals.

- *Build a Strong Infrastructure.* The park, with a new Trolley Trail segment and supporting amenities, supports access to safe, affordable active transportation and access to nearby public transportation.
- *Build Public Trust through Good Government.* The process for designing, constructing and funding the project has relied on a more inclusive engagement process and extensive partnership building to attract local region and state funding that leverages our local dollars.
- *Grow a Vibrant Economy:* By improving the park and this segment of the 6-mile regional Trolley Trail as recreational amenities, it provides local economic development potential, both in terms of business opportunities relevant to the site in nearby commercial/retail areas and through increased visitation in the area to attract more people to the surrounding retail and commercial areas that are located within Clackamas County.

LEGAL/POLICY REQUIREMENTS:

- Present LGGP agreement for Board consideration on the 6/3/21 Consent Agenda in order to obtain \$750,000 in funding from OPRD. OPRD prefers projects are completed prior to May 21, 2023 but understands that complex projects may need an extension. OPRD requests a minimum 30-day notice for such requests.
- January 21, 2021 Business Meeting: the Board approved submission of a grant application to the Oregon Community Pathways Program.
- December 3, 2020 Business Meeting: The Board approved agenda item for an IGA between the City of Milwaukie and NCPRD for transfer of city funds for the construction phase.
- December 3, 2020 Business Meeting: The Board approved agenda item for a personal services contract between NCPRD and Shiels Obletz Johnsen for Owner’s Representative Services to be provided during preconstruction and construction phases.
- May 21, 2020 Business Meeting: The Board approved 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: The Board approved two Orders approving submission of grant applications to LGGP and to the Land and Water Conservation Fund, both administered by OPRD (Order 2020-18, Order 2020-19).
- June 28, 2018 Business Meeting: The Board approved the Consent Agenda item for a professional services contract between NCPRD and 2.ink Studio Landscape Architecture for Milwaukie Bay Park Final Design Services.

PUBLIC/GOVERNMENTAL PARTICIPATION:

- January 2021: Project Update to NCPRD Board
- May 2020: For approval of an exemption from standard contracting process and use of a Request for Proposals to solicit a Construction Manager/General Contractor partner, NCPRD worked with Procurement to publish findings in support and hold a public hearing to review with the Local Contract Review Board (LCRB).

- February 2020: Project Updates provided to NCPRD Board and the District Advisory Board (DAB), which met briefly for regular business between the time it was on hiatus and the time it worked to develop and approve new bylaws to create the District Advisory Committee (DAC).
- January 2019: Project Update to NCPRD Board
- 2018-19: NCPRD carried out an extensive public engagement process to develop the schematic design, reaching a diverse range of over 1,300 District residents
- October 2017: Project Update to NCPRD Board

OPTIONS:

1. Approve staff bringing this LGGP Agreement to the BCC, acting as the NCPRD Board of Directors, at the June 3, 2021 business meeting for approval on the Consent Agenda.
2. Ask for additional information before approving staff to bring this LGGP Agreement to the BCC, acting as the NCPRD Board of Directors.


RECOMMENDATION:

Staff respectfully recommends that the Board, acting as the NCPRD Board of Directors, approve Option 1 - Approve staff bringing this LGGP Grant Agreement to the BCC, acting as the NCPRD Board of Directors, at the June 3, 2021 business meeting for approval on the Consent Agenda.

ATTACHMENTS:

1. Local Government Grant Program Agreement for Milwaukie Bay Park Project
2. PowerPoint Presentation

SUBMITTED BY:

Division Director/Head Approval 
 Department Director/Head Approval _____
 County Administrator Approval _____

For information on this issue or copies of attachments, please contact Heather Koch at 503-742-4354.
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Oregon Parks and Recreation Department

Local Government Grant Program Agreement

THIS AGREEMENT (“Agreement”) is made and entered into by and between the State of Oregon, acting by and through its **Oregon Parks and Recreation Department**, hereinafter referred to as “OPRD” or the “State” and the **North Clackamas Parks and Recreation District**, hereinafter referred to as the “Grantee”.

OPRD Grant Number: LG20-005
Project Title: Milwaukie Bay Park Project
Project Type (purpose): Development
Project Description: The project will develop a nature play area, extensive pathways, entry plaza, picnic terrace, restrooms, redwood tree preservation, water supply, and storm sewer at Milwaukie Bay Park in Milwaukie, Oregon. The Project is further described in Attachment A - Project Description and Budget.

Grant Funds /
Maximum Reimbursement: \$ 750,000 (50%)
Grantee Match Participation: \$ 750,000 (50%)
Total Project Cost: \$1,500,000

Grant Payments / Reimbursements: Grant funds are awarded by the State and paid on a reimbursement basis, and only for the Project described in this Agreement, and the original Application included as Attachment B. To request reimbursement, Grantee shall use OPRD’s online grant management system accessible at oprdgrants.org. The request for reimbursement shall include documentation of all project expenses plus documentation confirming project invoices have been paid. Grantee may request reimbursement as often as quarterly for costs accrued to date.

Fiscal Year-End Request for Reimbursement: Grantee must submit a Progress Report and a Reimbursement Request to OPRD for all Project expenses, if any, accrued up to **June 30**, of each fiscal year. The Fiscal Year-End Reimbursement Request must be submitted to OPRD by **July 31**.

Reimbursement Terms: Based on the estimated Project Cost of **\$1,500,000**, and the Grantee’s Match participation rate of **50%**, **the reimbursement rate will be 50%**. Upon successful completion of the Project and receipt of the final reimbursement request, the State will pay Grantee the remaining Grant Funds balance, or **50%** of the total cost of the Project, whichever is less.

Matching Funds: The Grantee shall contribute matching funds or the equivalent in labor, materials, or services, which are shown as eligible match in the rules, policies and guidelines for the Local Government Grant Program. Volunteer labor used as a match requires a log with the name of volunteer, dates volunteered, hours worked, work location and the rate used for match, to be eligible.

Progress Reports: Grantee shall submit Progress Reports with each Reimbursement Request or, at a minimum, at **three month intervals**, starting from the effective date of the Agreement. Progress Reports shall be submitted using OPRD’s online grant management system accessible at oprdgrants.org.

Agreement Period: The effective date of this Agreement is the date on which it is fully executed by both parties. Unless otherwise terminated or extended, the Project shall be completed by **May 31, 2023**. If project is completed before the designated completion date, this Agreement shall expire on the date final reimbursement payment is made by OPRD to Grantee.

Retention: OPRD shall disburse up to 90 percent of the Grant Funds to Grantee on a cost reimbursement basis upon approval of invoices submitted to OPRD. OPRD will disburse the final 10 percent of the Grant Funds upon approval by OPRD of the completed Project, the Final Progress Report and the submission of five to ten digital pictures of the completed project site.

Final Request for Reimbursement: Grantee must submit a Final Progress Report, a Final Reimbursement Request and five to ten digital pictures of the completed project site to OPRD within 45 days of the Project Completion Date.

Project Sign: When project is completed, Grantee shall post an acknowledgement sign of their own design, or one supplied by the State, in a conspicuous location at the project site, consistent with the Grantee's requirements, acknowledging grant funding and the State's participation in the Project.

Agreement Documents: Included as part of this Agreement are:

- Attachment A: Project Description and Budget
- Attachment B: Standard Terms and Conditions
- Attachment C: Inadvertent Discovery Plan

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents is as follows, listed from highest precedence to lowest precedence: this Agreement without Attachments; Attachment A; Attachment B; Attachment C.

Contact Information: A change in the contact information for either party is effective upon providing notice to the other party:

Grantee Administrator

Heather Koch
N Clackamas Parks and Rec Dist
150 Beaver Creek RD
Oregon city, OR 97045
503-742-4354
hkoch@ncprd.com

Grantee Billing Contact

Elizabeth Gomez
N Clackamas Parks and Rec Dist
150 Beaver Creek RD
Oregon city, OR 97045
503-742-4352
egomez@ncprd.com

OPRD Contact

Mark Cowan, Coordinator
Oregon Parks & Rec. Dept.
725 Summer ST NE STE C
Salem, OR 97301
503-951-1317
mark.cowan@oregon.gov

Signatures: In witness thereof, the parties hereto have caused this Agreement to be properly executed by their authorized representatives as of the last date hereinafter written.

GRANTEE

By: _____
Signature

Printed Name

Title

Date

Oregon Department of Justice (ODOJ) approved for legal sufficiency for grants exceeding \$150,000:

By: Kristen Gallino
ODOJ Signature or Authorization

Printed Name/Title

by email on March 24, 2021
Date

**STATE OF OREGON
Acting By and Through Its
OREGON PARKS AND RECREATION DEPT.**

By: _____
Daniel Killam, Deputy Director of Administration

Date

Approval Recommended:

By: _____
Michele Scalise, Grants Section Manager

Date

By: _____
Mark Cowan, Grant Program Coordinator

Date

Attachment A: Project Description and Project Budget

OPRD Grant Number: LG20-005
Project Title: Milwaukie Bay Park Project
Grantee Agency: North Clackamas Parks and Recreation District

Project Description:

The project will develop a nature play area, extensive pathways, entry plaza, picnic terrace, restrooms, redwood tree preservation, water supply, and storm sewer at Milwaukie Bay Park in Milwaukie, Oregon.

Project Budget

Nature play area equipment, surfacing and boulder wall	\$ 204,900
Restroom building with service and utility rooms	\$ 149,300
Pedestrian pathways (concrete, gravel, reinforced turf)	\$ 67,300
Pedestrian plaza and promenade	\$ 342,000
Plaza and picnic terrace retaining walls	\$ 230,600
Picnic Terrace	\$ 141,800
Stairs - Concrete and stone	\$ 168,500
Water supply	\$ 30,400
Storm sewer	\$ 120,200
Removal and salvage - existing boulders, sculptures, signage	\$ 25,000
Protection for existing trees and landscape	\$ 20,000
Total Project Cost	\$ 1,500,000

Source of Funding

North Clackamas Parks and Recreation District SDC Funds	\$ 750,000
Total Match	\$ 750,000

Summary

Total Project Cost	\$ 1,500,000
Total Match from Sponsor	\$ 750,000
Grant Funds Requested	\$ 750,000

Attachment B – Standard Terms and Conditions

Oregon Parks and Recreation Department Local Government Grant Program Agreement

1. **Compliance with Law:** Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to implementation of the Project, including without limitation, OAR chapter 736, Division 6 (the Local Government Grant Program administrative rules).
2. **Compliance with Workers Compensation Laws:** All employers, including Grantee, that employ subject workers who provide services in the State of Oregon shall comply with ORS.656.017 and provide the required Worker's Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included.
3. **Amendments:** This Agreement may be amended only by a written amendment to the Agreement, executed by the parties.
4. **Expenditure Records:** Grantee shall document, maintain and submit records to OPRD for all Project expenses in accordance with generally accepted accounting principles, and in sufficient detail to permit OPRD to verify how Grant Funds were expended. These records shall be retained by the Grantee for at least six years after the Agreement terminates. The Grantee agrees to allow Oregon Secretary of State auditors and State agency staff access to all records related to this Agreement for audit and inspection and monitoring of services. Such access will be during normal business hours, or by appointment. Grantee shall ensure that each of its subgrantees and subcontractors complies with these requirements.
5. **Equipment:** Equipment purchased with Local Government Grant Program funds must be used as described in the Project Agreement and Application throughout the equipment's useful life. The Grantee will notify the State prior to the disposal of equipment and will coordinate with the State on the disposal to maximize the equipment's ongoing use for the benefit of the Local Government Grant Program.
6. **Use of Project Property:** Grantee warrants that the land within the Project boundary described in the Application (Attachment B) shall be dedicated and used for a period of no less than 25 years from the completion of the Project. Grantee agrees to not change the use of, sell, or otherwise dispose of the land within the Project boundary, except upon written approval by OPRD. If the Project is located on land leased from the federal government, the lease shall run for a period of at least 25 years after the date the Project is completed. If the Project is located on land leased from a private or public entity, other than the federal government, the lease shall run for a period of at least 25 years after the date the Project is completed, unless the lessor under the lease agrees that, in the event the lease is terminated for any reason, the land shall continue to be dedicated and used as described in the Project Application for a period of at least 25 years after the date the Project is completed.

Land acquired using Local Government Grant funds shall be dedicated, by an instrument recorded in the county records, for recreational use in perpetuity, unless OPRD or a successor agency consents to removal of the dedication.

7. **Conversion of Property:** Grantee further warrants that if the Grantee converts lands within the Project boundary to a use other than as described in the grant application or disposes of such land by sale or any other means ("Converted Land"), the Grantee must provide replacement land acceptable to OPRD within 24 months of the date of the conversion or disposal or, if the conversion or disposal is not discovered by OPRD until a later date, within 24 months after the discovery of the

conversion or disposal.

If replacement land cannot be obtained within the 24 month period, the Grantee will provide payment of the grant program's prorated share of the current fair market value of the Converted Land to the State. The prorated share is measured by that percentage of the original grant (plus any amendments) as compared to the original Project cost(s). The replacement land must be equal to the current fair market value of the Converted Land, as determined by an appraisal. The recreation utility of the replacement land must also be equal to that of the Converted Land.

If conversion occurs through processes outside of the Grantee's control such as condemnation or road replacement or realignment, the Grantee must pay to the State a prorated share of the consideration paid to the Grantee by the entity that caused the conversion. The State's prorated share is measured by the percentage of the original grant (plus any amendments) as compared to the original Project cost(s).

The warranties set forth in Section 6 and this Section 7 of this Agreement are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. **Contribution:** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the Grantee (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Grantee in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the Grantee on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the Grantee is jointly liable with the State (or would be if joined in the Third Party Claim), the Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Grantee on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

Grantee shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Grantee's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

9. **Inspection of Equipment and Project Property:** Grantee shall permit authorized representatives of State, the Secretary, or their designees to perform site reviews of the Project, and to inspect all Equipment, real property, facilities, and other property purchased by Grantee as part of the Project.
10. **Public Access:** The Grantee shall allow open and unencumbered public access to the completed Project to all persons without regard to race, color, religious or political beliefs, sex, national origin or place of primary residence.
11. **Condition for Disbursement:** Disbursement of grant funds by OPRD is contingent upon OPRD having received sufficient funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OPRD, in the exercise of its reasonable administrative discretion, to make the disbursement and upon Grantee's compliance with the terms of this Agreement.
12. **No Third Party Beneficiaries.** OPRD and Grantee 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 or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as intended beneficiary of the terms of this Agreement.
13. **Repayment:** In the event that the Grantee spends Grant Funds in any way prohibited by state or federal law, or for any purpose other than the completion of the Project, the Grantee shall reimburse the State for all such unlawfully or improperly expended funds. Such payment shall be made within 15 days of demand by the State.
14. **Termination:** This Agreement may be terminated by mutual consent of both parties, or by either party upon a 30-day notice in writing, delivered by certified mail or in person to the other party's contact identified in the Agreement. On termination of this Agreement, all accounts and payments will be processed according to the financial arrangements set forth herein for Project costs incurred prior to date of termination. Full credit shall be allowed for reimbursable expenses and the non-cancelable obligations properly incurred up to the effective date of the termination.
15. **Governing Law:** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. In no event shall this section be construed as a waiver by the State of Oregon 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.
16. **Entire Agreement:** This Agreement 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 the specific instance and for the specific purpose given. There are no understandings, Agreements, or representations, oral or written, not specified herein regarding this Agreement. The Grantee, by signature of its authorized representative on the Agreement, acknowledges that the Grantee has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

17. **Notices:** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to Grantee contact or State contact at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may hereinafter indicate. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against State, such facsimile transmission must be confirmed by telephone notice to State Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received, or five days after mailing.
18. **Counterparts:** This agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.
19. **Severability:** 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 to be invalid.

Reviewed by ODOJ 3/18/21 MC

ATTACHMENT C

ARCHAEOLOGICAL INADVERTENT DISCOVERY PLAN (IDP)

Archaeological materials are the physical remains of the activities of people in the past. This IDP should be followed should any archaeological sites, objects, or human remains be found. Archaeological materials are protected under Federal and State laws and their disturbance can result in criminal penalties.

This document pertains to the work of the Contractor, including any and all individuals, organizations, or companies associated with the project.

WHAT MAY BE ENCOUNTERED

Archaeological material may be found during any ground-disturbing activity. If encountered, all excavation and work in the area **MUST STOP**. Archaeological objects vary and can include evidence or remnants of historic-era and pre-contact activities by humans. Archaeological objects can include but are not limited to:

- **Stone flakes, arrowheads, stone tools, bone or wooden tools, baskets, beads.**
- Historic building materials such as **nails, glass, metal** such as cans, barrel rings, farm implements, **ceramics, bottles, marbles, beads.**
- Layers of **discolored earth** resulting from hearth fire
- Structural remains such as **foundations**
- **Shell Middens** (mounds)
- **Human skeletal remains** and/or **bone fragments** which may be whole or fragmented.

If in doubt call it in.

DISCOVERY PROCEDURES: WHAT TO DO IF YOU FIND SOMETHING

1. Stop ALL work in the vicinity of the find
2. Secure and protect area of inadvertent discovery with 30 meter/100 foot buffer—work may continue outside of this buffer
3. Notify Project Manager and Agency Official
4. Project Manager will need to contact a professional archaeologist to assess the find.
5. If archaeologist determines the find is an archaeological site or object, contact SHPO. If it is determined to *not* be archaeological, you may continue work.

HUMAN REMAINS PROCEDURES

1. If it is believed the find may be human remains, stop ALL work.
2. Secure and protect area of inadvertent discovery with 30 meter/100 foot buffer, then work may continue outside of this buffer with caution.
3. Cover remains from view and protect them from damage or exposure, restrict access, and leave in place until directed otherwise. **Do not take photographs. Do not speak to the media.**

4. Notify:
 - Project Manager
 - Agency Official
 - Contracted Archaeologist (if applicable)
 - Oregon State Police - **DO NOT CALL 911** 503-378-3720
 - SHPO (State Historic Preservation Office) 503-986-0690
 - LCIS (Legislative Commission on Indian Services) 503-986-1067
 - Appropriate Native American Tribes (as provided by LCIS)
5. If the site is determined not to be a crime scene by the Oregon State Police, do not move anything! The remains should continue to be *secured in place* along with any associated funerary objects, and protected from weather, water runoff, and shielded from view.
6. Do not resume any work in the buffered area until a plan is developed and carried out between the State Police, SHPO, LCIS, and appropriate Native American Tribes, and you are directed that work may proceed.

CONFIDENTIALITY

The Agency and employees shall make their best efforts, in accordance with federal and state law, to ensure that its personnel and contractors keep the discovery confidential. The media, or any third-party member or members of the public are not to be contacted or have information regarding the discovery, and any public or media inquiry is to be reported to the Agency. Prior to any release, the responsible agencies and Tribes shall concur on the amount of information, if any, to be released to the public.

To protect fragile, vulnerable, or threatened sites, the National Historic Preservation Act, as amended (Section 304 [16 U.S.C. 470s-3]), and Oregon State law (ORS 192.501(11)) establishes that the location of archaeological sites, both on land and underwater, shall be confidential.

From: [CLEARANCE ORSHPO * OPRD](#)
To: [COWAN Mark * OPRD](#)
Subject: RE: LG20-005 Milwaukie Bay Park - N Clackamas Parks and Rec Dist.
Date: Tuesday, March 23, 2021 6:42:32 AM
Attachments: [image002.jpg](#)

THIS E-MAIL CONFIRMS RECEIPT OF AN ELECTRONIC SUBMISSION FOR SHPO REVIEW. Thank you.

The assigned SHPO Case Number is 21-0418. Refer to this case number on any future correspondence.

If no response is received from the SHPO within 30 calendar days from receipt of this submittal, it means reviewers did not have any concerns and your responsibilities under ORS 358.653 are fulfilled and the project may proceed as it appears in the submitted scope of work. If your submission was a project review, a requirement of a County permit process, or other similar request, you may consider this email as SHPO approval once the 30-day review period has ended and you have not received any other responses. The 30-day SHPO response period for this project ends after 3/30/2021.

Please retain this email for your records.

In the event an archaeological object or site (i.e., historic [circa 1800-1945] or prehistoric) is encountered, all project activities at the location of the find should cease immediately until a professional archaeologist can be contacted to document and assess the discovery. Under state law (ORS 358.920 & ORS 97.745) archaeological sites, objects and human remains are protected on both public and private land in Oregon.

From: COWAN Mark * OPRD
Sent: Monday, March 1, 2021 10:24 AM
To: CLEARANCE ORSHPO * OPRD <ORSHPO.Clearance@oregon.gov>
Subject: LG20-005 Milwaukie Bay Park - N Clackamas Parks and Rec Dist.

SHPO review is requested for the following Local Government Grant Program project:

LG20-005 Milwaukie Bay Park - N Clackamas Parks and Rec Dist.

Attachments typically include:

- Submittal Form
- Clearance Form
- Maps
- Site Plan / Construction Plan
- Photos

Thanks,



Request for Reimbursement Guide

All **Progress Reports** and **Reimbursement Requests** must be submitted using OPRD's online grant application and management system. An account with OPRDgrants.org is required for access.

For detailed instruction on how to submit Progress Reports and Reimbursement Requests, see the ***Grant Reporting and Reimbursement Instructions*** at:

- > oprdrants.org
- > Grant Programs
- > Local Government
- > Management & Reporting Requirements
- > ***Grant Reporting and Reimbursement Instructions***

All files for projects benefiting from Oregon Parks and Recreation Department administered grant funds must be able to pass a State audit. When preparing to submit a Request for Reimbursement, plan on submitting the following documentation:

- Progress Report**
- Project Bills / Invoices**
- Bill Payment Confirmation** – Please submit documentation confirming that all project bills/invoices have indeed been paid. The best way to document this is with some type of **Accounts Paid Report** or **Check Ledger Report** for the project that lists **Payments, Payee, Payment Date** and **Check Number**. (This is different from an Accounts Payable Report which would only list payments pending.) If an Accounts Paid Report is not available, please submit copies of canceled payment checks (with account numbers blocked out).

Once the project is completed . . .

- Project Pictures** – Please plan to submit 5-10 digital pictures of the completed project site, for the project file. Digital pictures can be attached to any Progress Report or Request for Reimbursement. For **Planning Projects**, rather than pictures, please submit a digital copy of the final **Planning Document**.

- Acknowledgement Sign** - Is there any type of signage on site acknowledging OPRD grant support for the project? If not, we will send you one.

If you have questions, please contact:

Mark Cowan
Grant Program Coordinator
mark.cowan@oregon.gov
503-951-1317
<https://www.oregon.gov/oprd>

Milwaukie Bay Park Project

NCPRD Project Update: Grant Agreement

NCPRD Board of Directors

May 18, 2021



CITY OF MILWAUKIE



NORTH CLACKAMAS¹⁸
PARKS & RECREATION DISTRICT

Today's Update

Background Review

Timeline

- *June LGGP OPRD grant agreement*

Funding



Previous Updates & Approvals

Board of County Commissioners

- **October 2017 Update:** Launch collaboration with City
- **June 2018 Approval:** Contract for design and engineering
- **January 2019 Update:** Preferred Alternative
- **Feb 2020 Update (Board & DAB):** Status, Funding, Timeline
- **March 2020 Approval:** Grant submittals
- **May 2020 Approval:** CM/GC contracting method and RFP
- **December 2020 Approval:** IGA for transfer of City funds
- **December 2020 Approval:** Contract for owner's rep services
- **January 2021 Update & Approval:** Grant submittal

Policies & Plans

NCPRD

- 2004 Master Plan (2004)
- 2007 SDC CIP (2007)
- Adopted Annual Budgets

City of Milwaukie

- Riverfront Master Plan (2010)
- Downtown & Riverfront Land Use Framework Plan (2015)
- Milwaukie Vision Action Plan (2017)
- Milwaukie City Council's Goals & Budget (2017-19)





MILWAUKIE BAY PARK FINAL DESIGN

AERIAL VIEW

Recent Work

- **Leveraging funds through partnerships**

- Grant agreement: LGGP \$750,000

- Grant agreement pending: LWCF \$1,046,125 (recommended in 2020)

- NCPRD-City IGA to transfer funds: \$1,000,000

- NCPRD-Metro Bond Local Share Process

- **Contracting**

- Competitive process for a collaborative design and construction team

- Design team contract amendment underway

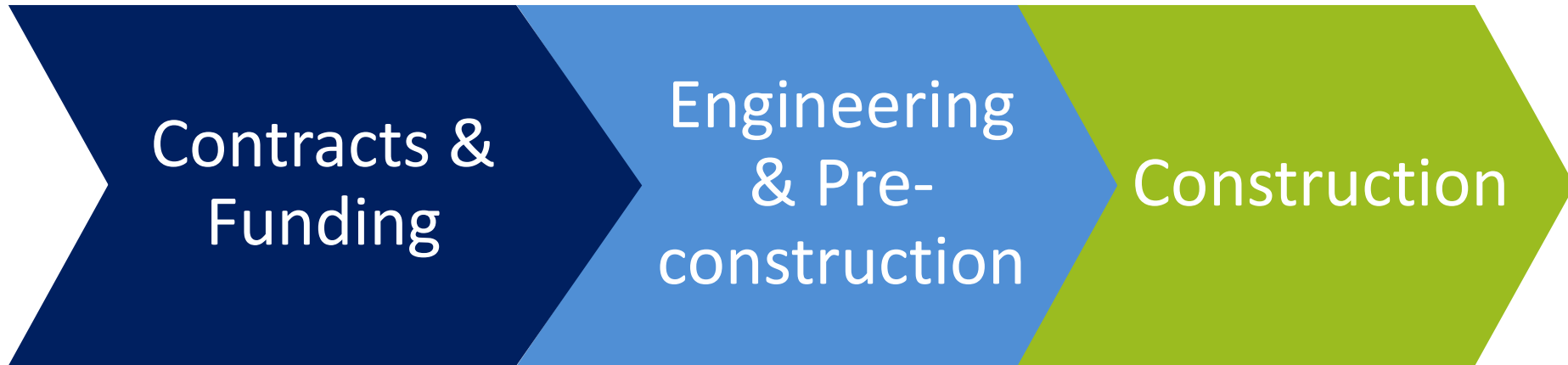
- CM/GC Notice of Intent to Award May 5

- Partnership with Procurement to develop County-wide templates for CM/GC approach

LGGP Contract

- **Amount \$750,000 + \$750,000 NCPRD match**
- **Standard LGGP Contract**
 - Supports key elements of development: nature play area, extensive pathways, entry plaza, picnic terrace, restrooms, redwood tree preservation, water supply, and storm sewer
 - Funds provided as reimbursement, with progress reports
 - Through May 31, 2023 and can be extended
 - Requires land to be in recreation for 25 years; City agrees as owner
- **County Counsel:** approved 4/19/21
- **Provides certainty:** Agreement allows NCPRD to
 - guide the design development and construction document preparation prior to construction in 2021
 - further confirm draft budget plan for construction phase beginning in 2022

Timeline



Through July '21

Grant agreements

Funding discussions with DAC, public, and Board

Contract approvals for design and preconstruction

July '21 – July '22

Design engineering

Permits & approvals

Construction document preparation

Funding agreements

Setting max. price

IGAs (Cooperative and construction)

July '22+ start

Contract approval for construction phase

12-16 month construction period

Next Steps

- **May-June** – execution of grant agreement
 - *Requires Board approval*
- **Ongoing** – continue work on IGA
 - *Board Update in June*
- **June-July** – execute CM/GC contract and amend design contract
 - *Requires Board approval*
- **July-Aug** - funding discussions with DAC, public, and Board



Draft Funding Plan

Working with partners to fund a \$9.6 district-wide amenity

Funding Source	\$ Proposed	Agreements*	Status	Est'd date
City of Milwaukee	250,000	20-22 Budget, IGA	IGA signed	Dec 2020
NCPRD SDC Zone 1	2,541,875	NCPRD Budgets	Annual budgeting	Jul 21+
State grant (LGGP)	750,000	Grant Agreement	Agreement pending	May 2021
State grant (LWCF)	1,046,125	Grant Agreement	Agreement pending	Jul 2021
Metro City Local Share	750,000	City-Metro IGA	2021 City engagement	Aug 2021
Metro NCPRD Local Share	3,000,000	NCPRD-Metro IGA	2021 DAC/public process	Aug 2021
Transportation funding	423,525	Agreement	Planning with partners	Aug 2021
Milwaukee Parks Found.	40,000	Letter	Fundraising underway	Fall 2021
NCPRD Gen Fund	48,475	NCPRD Budgets	Annual budgeting	Jun 2022
Metro CIP grant	750,000	Grant Agreement	2021 solicitation	21/22
TOTAL (hard & soft costs)	9,600,000	<i>*Other than City funds, approvals and execution of agreements are pending or in future</i>		