



**BUSINESS AND COMMUNITY SERVICES  
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**

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

Laura Zentner, BCS Director

December 3, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Resolution for North Clackamas Parks and Recreation District for Transfer of Appropriations for Fiscal Year 2020-2021

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| <b>Purpose/Outcome</b>                 | Approval of a resolution for a transfer of appropriations for North Clackamas Parks & Recreation District FY 2020-2021   |
| <b>Dollar Amount and Fiscal Impact</b> | There is no financial impact.  |
| <b>Funding Source</b>                  | System Development Charges   |
| <b>Duration</b>                        | July 1, 2020 through June 30, 2021   |
| <b>Previous Board Action/Review</b>    | <i>June 18, 2020 Business Meeting</i> – Resolution 2020-46 Adopting the North Clackamas Parks & Recreation District’s 2020-2021 Fiscal Year Budget and Making Appropriations and Imposing and Categorizing Taxes for the Period of July 1, 2020 through June 30, 2021  |
| <b>Strategic Plan Alignment</b>        | 1. This transfer aligns with the BCS/NCPRD Administration program purpose to provide financial services to the Board of Directors and District staff so they can make informed decisions and effectively provide services to District residents.<br><br>2. This transfer of appropriations ensures a legally compliant and transparent budget process, which aligns with the County strategic priority of Building Public Trust through Good Government. |
| <b>Counsel Review</b>                  | 1. <i>Date of Counsel review: 11.16.20</i><br>2. <i>Initials of County Counsel performing review. JM</i>   |
| <b>Procurement Review</b>              | 3. <i>Was the item processed through Procurement? yes <input type="checkbox"/> no X</i><br>4. <i>If no, provide brief explanation: Item is a budget transfer</i>   |
| <b>Contact Person</b>                  | Elizabeth Gomez, Financial Operations Manager, NCPRD, 503-407- 2527  |
| <b>Contract No.</b>                    | N/A  |

**BACKGROUND:**

Periodically during the fiscal year, it is necessary to transfer appropriations between the major categories (Administration, Park Maintenance, Recreation, Sports, Milwaukie Center, Aquatic Park, Marketing and Communications, Planning, Natural Resources, Nutrition, Transportation, Transfers, Special Payments, Materials & Service, Capital Outlay, and Debt Service) to more accurately reflect the changing requirements of the operating departments.

Transfers are a method of moving budgeted appropriations during the fiscal year as required by state budget law per ORS 294.463. There is no financial impact incurred as a result of transfers as appropriations have been accomplished through the initial budget process.

The attached resolution reflects the above-mentioned changes as required by the District in keeping with a legally accurate budget.

- The North Clackamas Parks and Recreation District System Development Charges Fund - Zone 1 is decreasing the *Capital Outlay* category and increasing the *Materials and Services* category, in the amount of \$20,000, to pay for additional expenditures related to the collection and accounting of SDC fees.

**RECOMMENDATION:**

Staff respectfully recommends the Board approve Resolution 2021-\_\_\_\_\_, including Exhibit A, in keeping with a legally accurate budget.

**ATTACHMENTS:**

1. Resolution 2021- \_

Respectfully submitted,



Laura Zentner, Director  
Business and Community Services

**BEFORE THE BOARD OF  
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT  
OF CLACKAMAS COUNTY, STATE OF OREGON**

A RESOLUTION OF THE CLACKAMAS COUNTY BOARD OF COMMISSIONERS ACTING AS THE GOVERNING BOARD OF THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT AND PROVIDING AUTHORIZATION TO TRANSFER APPROPRIATIONS WITHIN THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT FOR FISCAL YEAR 2020-21



Resolution No. 2021-\_\_\_\_\_

**Whereas**, during the fiscal year changes in appropriated expenditures may become necessary and appropriations may need to be increased, decreased or transferred from one appropriation category to another;

**Whereas**, transfer of appropriations for the period of July 1, 2020 through June 30, 2021, inclusive, is necessary to continue to prudently manage the distribution of those expenditures for the needs of District residents;

**Whereas**, the funds being adjusted are:

- North Clackamas Parks and Recreation District System Development Charges Fund – Zone 1

**NOW THEREFORE, the Clackamas County Board of County Commissioners acting as the Board of Directors of the North Clackamas Parks and Recreation District resolves as follows:**

Pursuant to its authority under ORS 294.463, the transfer of appropriations within the fiscal year budget is authorized as shown in the attached Exhibit A which by this reference is made part of this Resolution.

**DATED** this December 3, 2020

**BOARD OF COUNTY COMMISSIONERS ACTING AS THE BOARD OF DIRECTORS OF THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

**SUMMARY OF TRANSFER BETWEEN APPROPRIATIONS  
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**

**Exhibit A  
Transfer Request  
December 3, 2020**

Recommended items by revenue source:

**North Clackamas Parks and Recreation District**  
**System Development Charges Fund - Zone 1 - Fund 281**

Expenditures:

|                      |                 |
|----------------------|-----------------|
| Materials & Services | \$ 20,000       |
| Capital Outlay       | <u>(20,000)</u> |
| Total Expenditures   | <u>\$ -</u>     |

The North Clackamas Parks and Recreation District System Development Charges Fund - Zone 1 is decreasing the *Capital Outlay* category and increasing the *Materials and Services* category, in the amount of \$20,000 to pay for additional expenditures related to the collection and accounting of SDC fees.



**BUSINESS AND COMMUNITY SERVICES  
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**

Development Services Building  
150 Beavercreek Road, Oregon City, OR 97045

Laura Zentner, BCS Director

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

Members of the Board:

Approval of Contract between North Clackamas Parks and Recreation District and  
Shiels Obletz Johnsen for the Owner’s Representative Services for Milwaukie Bay Park

|  |  |
|--|--|
| <b>Purpose/Outcome</b>                 | Execution of the contract between NCPRD and Shiels Obletz Johnsen for the Owner’s Representative Services for Milwaukie Bay Park.  |
| <b>Dollar Amount and Fiscal Impact</b> | \$ 175,000 supports CM/GC solicitation and contracting to ensure more efficient and fiscally responsible project delivery and realize project savings  |
| <b>Funding Source</b>                  | System Development Charges (Zone 1)  |
| <b>Duration</b>                        | Until final completion of Milwaukie Bay Park.  |
| <b>Previous Board Action/Review</b>    | <ul style="list-style-type: none"> <li>• November 25, 2020 Business Meeting: Item scheduled for consideration and approval - IGA between City of Milwaukie and NCPRD for City funding contribution for park construction</li> <li>• 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</li> <li>• March 19, 2020 Business Meeting: Boards Orders approving submission of grant applications (Order 2020-18, Order 2020-19)</li> </ul>   |
| <b>Strategic Plan Alignment</b>        | <ul style="list-style-type: none"> <li>• 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.</li> <li>• Promote a <i>Healthy and Active Lifestyle</i> by providing a park with recreational pathways, equipment and spaces</li> <li>• Designed with a lens of <i>Equity, Diversity and Inclusion</i>, engaging diverse audiences and maximizing park connections</li> <li>• Promote <i>Carbon Neutrality</i> by providing higher quality natural areas and access by alternative modes of transportation</li> </ul> |
| <b>Counsel Review</b>                  | <ol style="list-style-type: none"> <li>1. Date of Counsel review: 11/23/2020</li> <li>2. Initials of County Counsel performing review: AN</li> </ol>   |
| <b>Procurement Review</b>              | 1. Was this item processed through Procurement? Yes.   |
| <b>Contact Person</b>                  | Heather Koch, 503-742-4354   |
| <b>Contract No.</b>                    | 3525   |

**BACKGROUND:**

The North Clackamas Parks and Recreation District (“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 Trolley Trail,

pathways, natural areas, public art and restrooms. NCPRD has engaged a broad and diverse range of over 1,300 District community members, and advanced a funding strategy to leverage local, regional, state and other funds. 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.

NCPRD is working to build a preconstruction and construction services team in FY20-21. The Owner's Representative is a pivotal member of the team to help coordinate contracts, schedule, budget, design reviews and ongoing team coordination. This Owner's Representative is particularly important to the Construction Manager/General Contractor alternative delivery method that the Board has approved for this project, as the Representative can maximize coordination throughout the team and the life of the project and help the NCPRD realize savings from efficiencies in budgeting, scheduling and processes. Additionally, the Owner's Representative provides a level of knowledge and oversight that ensures maximum fiscal responsibility for NCPRD and Procurement on a large complex project.

**PROCUREMENT PROCESS:**

This project was advertised in accordance with ORS 279B and LCRB Rules on August 27, 2020. Proposals were opened on October 6, 2020. The District received nine (9) proposals from Cornerstone Management, Inc.; Day CPM; Inici Group, Inc.; JLL; Kloth Group, Inc.; Mears CPM, Inc.; Plan B Consultant; Shiels Oblatz Johnsen; and Wenaha Group. An evaluation committee of three (3) NCPRD personnel scored all proposals and interviewed the top 3 rankings firms. Upon completion of the interviews, Shiels Oblatz Johnsen was the highest scoring proposal. Upon Contract award, the final Scope of Work was negotiated and finalized.

**RECOMMENDATION:**

Staff recommends the Board approve the Contract with Shiels Oblatz Johnsen for the Owner's Representative Services with Milwaukie Bay Park.

Respectfully submitted,



Laura Zentner, CPA  
Director, North Clackamas Parks and Recreation District  
Director, Business and Community Services

Placed on the \_\_\_\_\_ Agenda by the Procurement Division.



**NORTH CLACKAMAS PARKS AND RECREATION DISTRICT  
PERSONAL SERVICES CONTRACT  
Contract #3525**

This Personal Services Contract (this “Contract”) is entered into between **Shiels Obletz Johnsen, Inc.** (“Contractor”), and North Clackamas Parks and Recreation District, a political subdivision of the State of Oregon (“District” or “NCPRD”).

**ARTICLE I.**

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **June 30, 2023**.
- 2. Scope of Work.** Contractor shall provide the following personal services: Owner Representative Services for the Milwaukie Bay Park CMGC (“Work”), further described in **Exhibit A**.
- 3. Consideration.** The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed **one hundred seventy-five thousand dollars (\$175,000.00)**, for accomplishing the Work required by this Contract. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit B. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit B.
- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made in accordance with ORS 293.462 to Contractor following the District’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the District will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall reference the above Contract Number and be submitted to: Heather Koch.

- 5. Travel and Other Expense.** Authorized:  Yes     No  
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
- 6. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, and Exhibit B.

**7. Contractor and District Contacts.**

| Contractor  | District  |
|---|---|
| Administrator: Kim Knox<br>Phone: 503-807-5177<br>Email: <a href="mailto:knox@sojpd.com">knox@sojpd.com</a> | Administrator: Heather Koch<br>Phone: 503-742-4354<br>Email: <a href="mailto:hkoch@ncprd.com">hkoch@ncprd.com</a> |

Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

## **ARTICLE II.**

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 2. AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the District in its sole administrative discretion.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between District and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the District of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.
- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend Clackamas County and the District, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors,



omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of District or any department of District, nor purport to act as legal representative of District or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for District, nor shall Contractor settle any claim on behalf of District without the approval of the Clackamas County Counsel's Office. District may, at its election and expense, assume its own defense and settlement.

- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirements outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the District and Clackamas County as an additional insureds on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or [procurement@clackamas.us](mailto:procurement@clackamas.us).

|   |
|---|
| Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.  |
| <input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.        |
| <input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts. |
| <input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.   |

The policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it. Any obligation that District agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to District, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or [procurement@clackamas.us](mailto:procurement@clackamas.us). Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during District's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, District shall have no rights in any pre-existing Contractor intellectual property provided to District by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for District use only.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to District that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16, 21 and 27, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the District's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract 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 the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the District, which shall be granted or denied in the District's sole discretion. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor

were the Contractor. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** . This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the District (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the District fails to receive funding, appropriations, or other expenditure authority as solely determined by the District; or (B) if contractor breaches any Contract provision or is declared insolvent, District may terminate after thirty (30) days written notice with an opportunity to cure.  
  
Upon receipt of written notice of termination from the District, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to District all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research, objects or other tangible things needed to complete the Work
- 20. REMEDIES.** If terminated by the District due to a breach by the Contractor, then the District shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the District, less any setoff to which the District is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract 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 Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither District nor Contractor shall be held responsible for delay or default caused by events outside the District or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to

remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**25. WAIVER.** The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.

**26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes (“ORS”) Chapter 279B.220 through 279B.235, Contractor shall:

- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
- c. Not permit any lien or claim to be filed or prosecuted against District on account of any labor or material furnished.
- d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling District to terminate this Contract for cause.
- f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

**27. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys’ fees and expenses.

**28. KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the District is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the District is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the District provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the District with such Key Person's services unless the District provides prior written consent to such reassignment or transfer.

**29. MERGER.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Sheils Oblatz Johnsen, Inc.

North Clackamas Parks and Recreation District

DocuSigned by:  
Francesca Gambetti      11/23/2020  
717625156628475

\_\_\_\_\_  
Chair      Date

Francesca Gambetti  
Name / Title (Printed)

Executive Vice President

\_\_\_\_\_  
Recording Secretary

728435-85  
Oregon Business Registry #

Approved as to Form:

DBC/Oregon  
Entity Type / State of Formation

  
\_\_\_\_\_  
County Counsel      Date

**EXHIBIT A  
PERSONAL SERVICES CONTRACT  
SCOPE OF WORK**

**Contractor's Owner's Representative services include, but are not limited to:**

**Design and Construction Contracts**

- Review and provide comments on Construction Manager/General Contractor (“CMGC”) Request for Proposals (“RFP”) prior to issuance. Recommend specific technical information to be provided by proposers.
- Review critical elements of the general contractor proposals. Evaluate proposals as a member of selection committee, including independent review and scoring according to the criteria published in the RFP, meeting with selection committee to discuss and revise scores, and interviews with top proposers and final scoring.
- Lead CMGC contract negotiations to obtain a scope of work, schedule and fee within the established budget and timeframe; ensure that wage rates and contract benefits NCPRD.
- Review and comment on landscape architect contract amendment for design development through construction work phases to ensure alignment with Contractor contract.
- Lead effort to create a scope of work and contract (to be held by NCPRD) for a public artist; ensure alignment with CMGC and design team contracts.
- In coordination with landscape architect and general contractor, assist and advise NCPRD with evaluation of subcontractor bids and negotiation of the final guaranteed maximum price (“GMP”) proposal.
- Work with the landscape architect, general contractor and selected artist to ensure project priorities and expectations are met. Track contract commitments and provide scope and cost review from initial commitments through project completion.
- Assist staff to hire and manage third party independent review of inspection and testing services (contracts to be held by NCPRD).

**Project Schedule**

- Develop a preliminary schedule in the initial work phase by reviewing priorities with NCPRD representatives
- Develop a more detailed project schedule once the full design/construction team is assembled and design development work begins. Clearly indicate milestones and dates when decisions are necessary to maintain schedule.
- Monitor the schedule to confirm that milestones are met as design and construction progress. Consider the process and time required for staff and stakeholder input at various stages throughout the design phase, as well as long lead times for certain equipment and materials.
- During construction, review and track the detailed general contractor-generated construction schedule as a best practice to maximize value to NCPRD.

**Project Team Meetings**

- Clarify roles and responsibilities of all team members.
- Attend and facilitate regular design/construction team meetings, which are anticipated to occur bi-weekly during the design phase and weekly during the construction phase of work.
- Prepare thorough but concise meeting minutes to keep stakeholders informed of progress and focus team members on their responsibilities. Minutes will provide direction for all parties, provide a means to assign responsibility, and enable SOJ to track team members' responsibilities and hold members accountable for their tasks.
- Communicate with team members between regular meetings to track progress on action items to enhance meeting effectiveness.

- These meetings are the primary method for anticipating and securing the NCPRD’s input and priorities throughout the construction process. NCPRD staff will attend all regular (bi-weekly) pre-development Project Team meetings to ensure that they are well-informed throughout the design process, able to make well-reasoned decisions and remain satisfied with the direction of the project.

### **Establish, Monitor and Align Costs with Comprehensive Project Budget and Monthly Cost Tracking**

- Advise NCPRD on establishing a comprehensive project budget including “hard” and “soft” costs and Owner contingencies (part of base proposal)
- Prepare a comprehensive project budget in the pre-design phase and aligning projected costs with that budget in order to manage cost risks.
- Track comprehensive project budget expenses via monthly cost tracking.
- Organize budget and expense tracking to allow staff to track expenses consistent with capital grant agreements to be submitted to funders.
- Receive, review and recommend payment on all project invoices and incorporate other comprehensive project budget expenses as provided by NCPRD.

### **Construction Plan / Project Management Plan / Permitting**

- In coordination with landscape architect and general contractor, ensure timely submission of permit documents. Track changes and report to NCPRD, as necessary.
- Develop concise plans and build consensus around a process that defines clear lines of communication and addresses critical decision-making requirements. Include protocols for review and processing of change orders, reporting, and control of shop drawings, transmittals, submittals, substitutions, catalogs, project reports, field orders, test reports, inspections, operations and maintenance manuals, other construction documentation and other as necessary.
- Assist NCPRD in finding ways to minimize disruption to ongoing park activities to efficiently manage NCPRD staff and financial resources.

### **Design Package Reviews & Cost Estimates**

- In coordination with general contractor, landscape architect, and staff, review and provide feedback on existing 100% schematic design documents, cost estimate, and NCPRD feedback on schematic design. Provide direction for 50% design development.
- Review 50/100% design development and 50/95% construction documents design packages, track all requested design modifications and verify that changes are incorporated into the documents.
- At these points, carefully analyze both the general contractor’s estimates and constructability comments and NCPRD comments, particularly relative to functionality, constructability, budget conformance, operating and maintenance performance, and other criteria. Coordinate all feedback for NCPRD consideration and direction including value engineering, time and cost controls, scope reductions, design alternates, permitting packages.
- Should cost estimates exceed the project budget beyond what can be addressed through NCPRD contingencies, ensure that a value engineering (“VE”) and/or scope reduction process considers a broad range of criteria in order to identify design and construction efficiencies that can lower capital and/or operating costs without compromising quality, durability, sustainability or other project goals.
- Ensure the general contractor generates a VE/Scope Reduction Log that details proposed cost saving opportunities and summarizes the analysis and decision points, with an eye on the objective to meet quality, budget, and schedule objectives.
- Ensure timely submission and completeness of land use application materials.

### **Construction Administration**

- Work with the general contractor to help ensure all local and state contracting requirements are met, including bidding and BOLI requirements.
- Work with general contractor to ensure it meets prevailing wage requirements and advise on complaints of noncompliance.
- Provide special inspections administration
- Provide pay application review
- Provide construction cost tracking log
- Coordinate change orders
- Ensure general contractor payroll documentation is submitted and reviewed by landscape architect
- Review and notify NCPRD and general contractor in writing of any work not in conformity with the construction documents as identified by landscape architect.
- Lead efforts to coordinate with public and private utilities including electricity, water, sewer, and storm sewer

### **Project Close-Out**

- Coordinate landscape architect's efforts to provide project inspection for substantial completion, punch list inspections, and final acceptance.
- Ensure that all close-out tasks are completed to NCPRD's satisfaction prior to authorizing final payment, including but not limited to:
  - Analysis and recommendation regarding general contractor claims, if any, and their resolution.
  - Review and compilation of all closeout materials provided by general contractor and landscape architect including as-built drawings and as-built survey, operations and maintenance manuals, trainings, copies of and documentation that all permits have been satisfactorily closed, consent of surety and release of all liens and waivers, cost certifications, warranties, and obtain keys and related items.
- Review final payment and retainage release requests.
- Submit to staff all observation reports, photos, weekly meeting minutes, and other construction project management documents.
- Coordinate and attend one year warranty inspection and verify completion of warranty work by the general contractor.



**EXHIBIT B  
FEE SCHEDULE**

**Shiels Oblatz Johnsen, Inc.**

|                                    |             | Initial Work      |          | Design Development & Construction Documents |          | Permitting, GMP, Construction & Project Closeout |           |                  |
|------------------------------------|-------------|-------------------|----------|---|----------|--|-----------|------------------|
| <b>Estimated Dates</b>             |             | 11/2/20 - 2/28/21 |          | 2/1/21 - 1/31/22                            |          | 12/1/21 - 4/1/23                                 |           |                  |
| <b>Estimated Duration</b>          |             | 4 months          |          | 12 Months                                   |          | 16 months  |           |                  |
| <b>Average Hours / Month</b>       |             | 35                |          | 26  |          | 39   |           |                  |
| <b>SOJ Staff</b>                   | <b>Rate</b> | <b>Hours</b>      |          | <b>Hours</b>                                |          | <b>Hours</b>                                     |           | <b>TOTAL FEE</b> |
| Kim Knox, Sr Project Manager       | \$190       | 130               | \$24,700 | 24  | \$4,560  | 30   | \$5,700   | \$34,960         |
| Vanessa Robinson, Project Manager  | \$150       | 8                 | \$1,200  | 289   | \$43,350 | 588  | \$88,200  | \$132,750        |
| <b>Subtotal - Fee for Services</b> |             | 138               | \$25,900 | 313   | \$47,910 | 618  | \$93,900  | <b>\$167,710</b> |
| <b>Est Reimbursable Expenses</b>   |             |                   | \$100    |   | \$200    |  | \$750     | <b>\$1,050</b>   |
| <b>CONTRACT AMOUNT - SUBTOTAL</b>  |             |                   | \$26,000 |   | \$48,110 |  | \$94,650  | <b>\$168,760</b> |
| <b>CONTINGENCY SERVICES</b>        |             |                   |          |   |          |  | \$6,240   | <b>\$6,240</b>   |
| <b>CONTRACT AMOUNT - TOTAL</b>     |             |                   | \$26,000 |   | \$48,110 |  | \$100,890 | <b>\$175,000</b> |



**BUSINESS AND COMMUNITY SERVICES  
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**

Development Services Building  
150 Beavercreek Road, Oregon City, OR 97045

Laura Zentner, BCS Director

December 3, 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**

|  |  |
|--|--|
| <b>Purpose/Outcome</b>                 | 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.   |
| <b>Dollar Amount and Fiscal Impact</b> | 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.  |
| <b>Funding Source</b>                  | 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 may include NCPRD System Development Charges, grants, and private donations.   |
| <b>Duration</b>                        | 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.   |
| <b>Previous Board Action/Review</b>    | <ul style="list-style-type: none"> <li>• 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</li> <li>• March 19, 2020 Business Meeting: Board Orders approving submission of grant applications (Order 2020-18, Order 2020-19)</li> <li>• February 18, 2020 Policy Session: Milwaukie Bay Park Final Design Project Update</li> </ul>   |
| <b>Strategic Plan Alignment</b>        | <ul style="list-style-type: none"> <li>• 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.</li> <li>• Promote a <i>Healthy and Active Lifestyle</i> by providing a park with recreational pathways, equipment and spaces</li> <li>• Designed with a lens of <i>Equity, Diversity and Inclusion</i>, engaging diverse audiences and maximizing park connections</li> </ul> |

|                           |  |
|---------------------------|--|
|                           | <ul style="list-style-type: none"> <li>Promote <i>Carbon Neutrality</i> by providing higher quality natural areas and access by alternative modes of transportation</li> </ul> |
| <b>Counsel Review</b>     | Counsel review: October, 20, 2020 (JM)   |
| <b>Procurement Review</b> | No. Item is an IGA.  |
| <b>Contact Person</b>     | Heather Koch, NCPRD Project Manager 503-742-4354<br>Laura Zentner, BCS Director 503-742-4351   |
| <b>Contract No.</b>       | 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 NCRPD for transferring City funds to NCRPD for the construction of Phase III of Milwaukie Bay Park. This IGA is specifically to provide for transfer of funds that NCRPD, 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 NCRPD for project construction costs.

NCRPD 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. NCRPD 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 NCRPD Master Plan and 2007 NCRPD Parks and Recreation System Development Charges (SDC) Update Methodology Report and Capital Improvements Plan. NCRPD is partnering with the City to complete design and construction documents and construct the park. The City owns the park and NCRPD 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 2010. 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 draft funding plan includes NCRPD SDC funds, City funds, Metro Local Share funds, grants, and private donations, as detailed in the following table. Once the District Advisory Committee is conducting meetings, there will be additional discussions 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. NCPRD's annual budget is then 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 on use of Local Share funds. 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.

| <b>Funding Source</b>      | <b>Proposed Amount</b> | <b>Approval Documents*</b>  | <b>Estimated date</b> |
|----------------------------|------------------------|---|-----------------------|
| 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   | May 2021              |
| State grant (LWCF)         | 1,046,125              | Grant Agreement   | April 2021            |
| NCPRD SDC Zone 1           | 2,600,000              | 21/22 and 22/23 NCPRD Budgets   | 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         |
| <b>TOTAL</b>               | <b>\$9,601,125</b>     | <i>*This IGA for City funds transfer is the first approval document; other approvals and execution of agreements are pending.</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](mailto:brooksk@milwaukieoregon.gov)

District:

District Liaison

Heather Koch

150 Beaver Creek Road

Oregon City, OR 97045

Email: [HKoch@ncprd.com](mailto:HKoch@ncprd.com)

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

8. **Attorney Fees.** In the event an action, lawsuit or proceeding, including appeal therefrom, is brought for failure to fulfill or comply with any of the terms of this Agreement, each party shall be responsible for their own attorney fees, expenses, costs and disbursements for said action, lawsuit, proceeding or appeal.
9. **No Waiver.** The failure by any party to enforce any provision of this Agreement shall not constitute a waiver by that party of that provision or of any other provision of this Agreement.
10. **Severability.** Should any provision or provisions of this Agreement be construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall affect only the provision or provisions so construed, and shall not affect, impair or invalidate any of the other provisions of this Agreement which shall remain in full force and effect.
11. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.
12. **Merger.** This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.



**13. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**14. Binding Effect.** This Agreement constitutes the entire agreement between City and District on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of the terms of this Agreement will bind either party unless in writing and signed by all parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instances and for the specific purpose given. This Agreement is personal to City and District and is not intended to confer upon any other person or entity any rights or remedies whatsoever.

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

**City of Milwaukie:**



\_\_\_\_\_  
Mayor Mark Gamba    Date

11-20-2020

**North Clackamas Parks and Recreation District:**

\_\_\_\_\_  
Chair Jim Bernard

\_\_\_\_\_  
Date