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Clackamas County
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OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

Billy J. Williams
County Counsel

October 1, 2026

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County as,
Board of Directors of the
North Clackamas Parks and
Recreation District

Scott C. Ciecko
Amanda Keller
Shawn Lillegren
Jeffrey D. Munns
Sarah Foreman
Caleb Huegel
Angela Hajihashemi
M. Creston Rice
Andrew Naylor
Paul Matthias-Bennetch
Assistants

**Approval of Intergovernmental Agreement Between: The City of Milwaukie and
The North Clackamas Parks and Recreation District
For the Contribution of District SDC and Grant Funding
for the Construction of Phase III of Milwaukie Bay Park.
Total contribution value \$4,858,027. (No County General Funds Involved)**

Previous Board Action/Review: June 2, 2026, Policy Session.

Performance Clackamas: Build Public trust through good government, and ensuring safe, healthy, and secure communities.

Counsel Review: JM; 9/23/2026

Contact Person: Jeffrey D. Munns

Procurement Review: N/A

Contact Phone: (503) 742-5984

EXECUTIVE SUMMARY: North Clackamas Parks and Recreation District (NCPRD or District). NCPRD has been working with the City of Milwaukie (City) since early 2025 on the negotiation of a separate IGA to provide funding to the City for the construction phase 3, and eventual operation, of Milwaukie Bay Park, boat ramp and dock.

The IGA provides \$4.2 million dollars of system development charge (SDC) funding, provided that a district-wide operations levy is passed by voters. NCPRD will also contribute \$658,027 of Metro grant funds for the trail enhancement and Trolley Trail connection improvements related to the project.

NCPRD was formed in 1990 by voters with a fixed permanent tax rate of \$0.5382 per \$1,000 of assessed value. With tax revenue growth averaging 3% annually, revenues are no longer keeping pace with expenses largely due to inflation.

Over the past two fiscal years, budget reductions of approximately \$1.7 million have been required. Even with budget reductions a fiscal cliff is

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anticipated in fiscal year 2031–32 that is anticipated to result in program eliminations, facility closures, and reduced or eliminated maintenance district-wide. NCPRD staff are working with the Trust for Public Land on the timing of a five-year local option levy. Support for this funding measure from the Milwaukie City Council and other community leaders will be critical to its passage, particularly since the cost of living is a concern for many residents.

By agreeing to use these funds for Milwaukie Bay Park the City acknowledges that the District is deferring the higher priority projects at North Clackamas Park identified in the District Strategic Plan to assist the City with their Project. This results in the District changing the North Clackamas Park Project to be considered as a mid-term priority (5-10 years) and the Milwaukie Bay Park Project to be considered as a short-term priority (0-5 years) within the NCPRD System Plan capital project list.

NCPRD will provide the City with the 50% complete planning and design drawings and specifications in support of the project.

RECOMMENDATION: Staff recommends approval of the attached IGA between NCPRD and the City of Milwaukie for contribution of NCPRD SDC and grant funds for the construction of phase 3 of Milwaukie Bay Park.

Respectfully submitted,



Jeffrey D. Munns
Assistant County Counsel

Attachments:

IGA between NCPRD and the City of Milwaukie for contribution of NCPRD SDC and grant funds for the construction of phase 3 of Milwaukie Bay Park.

**INTERGOVERNMENTAL AGREEMENT BETWEEN:
THE CITY OF MILWAUKIE AND
THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT
FOR CONTRIBUTION OF DISTRICT SDC AND GRANT FUNDING FOR THE
CONSTRUCTION OF PHASE III OF MILWAUKIE BAY PARK**

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

RECITALS

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

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

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

TERMS

1. **Term.** This Agreement shall be effective upon execution and shall remain in effect until the latest to occur, it is terminated, superseded, or 25 years from the completion of the Project.
2. **Project.** The City plans to design and construct a third phase of construction at Milwaukie Bay Park ("Project").
3. **Project Funding.** The District and City agree to the following funding parameters under this Agreement:
 - A. All funds contributed to the Project by District are subject to the programming requirements in Section 5.B below.
 - B. Upon passage by voters of a district-wide levy for additional operations funding the District will contribute Four Million Two-Hundred Thousand Dollars (\$4.2 Million Dollars) of District owned Zone 1 (City) SDC funds, collected from within the City after execution of this agreement. Should the entire \$4.2 million dollars of Zone 1 (City) SDC funds not be in the possession of the district at the time of levy passage, additional Zone 1 (City) SDC funds collected will be provided to the City as they are received until either 48 months has elapsed since levy passage, or a total of \$4.2 million has been provided. In no circumstance will more than \$4.2 million of Zone 1 (City) SDC funds be provided. City may request a reasonable accommodation to adjust the construction commencement date for reasons that occur beyond its

control.

- C. By agreeing to use these funds for Milwaukie Bay Park the City acknowledges that the District is deferring the higher priority projects at North Clackamas Park identified in the District Strategic Plan to assist the City with their Project. This results in the District changing the North Clackamas Park Project to be considered as a mid-term priority (5-10 years) and the Milwaukie Bay Park Project to be considered as a short-term priority (0-5 years) within the NCPRD System Plan capital project list.
- D. The District will reassign Metro Grant of Six Hundred Fifty-Eight Thousand and Twenty-Seven Dollars (\$658,027 Dollars) for trail improvements planned for the Project.
- E. The District shall have no further financial responsibility or obligation for the Project.

4. **Project Management.**

- A. The City will be solely responsible for park design and construction, and upon the start of construction, or 24 months from passage of the district-wide levy described in section 3.B above, whichever is sooner, will be solely responsible for maintenance, operations, programming and scheduling of Milwaukie Bay Park.
- B. Project Delivery: Consistent with Section 1: Term above the Project will have substantial progress occurring no later than 36-months from passage of the district-wide levy described in section 3.B above. Substantial progress includes agreement of all proposed changes in design, completion of finalized construction documents, completed and approved plan review, permit issuance, and initial physical construction activities for the Project (i.e., onsite grading, earth moving, framing, masonry, plumbing, electrical work, etc.). Should the Project not be completed by 48 months after passage of the district-wide levy described in section 3.B above, any of the District's funds contributed to the Project as described in Section 3 above and not used by the City to pay for design or construction, shall be returned to the District for use on other eligible projects.
- C. The District will transfer all design drawings and specifications for work completed in support of the Project completed by District.

5. **Other Terms and Conditions.** District and City agree to the following responsibilities under this Agreement:

- A. City shall retain ownership of park, offsite infrastructure and all other improvements that are not moveable and integral to the built-out environment following completion of construction. For example, concrete pads, paths and walkways, sidewalk and curb improvements, striping, restroom facilities, shade structures, grading and scarifying of soils, imported fill material, trees, shrubs, grasses, and other landscaping materials.

- B. The City shall be responsible for scheduling Milwaukie Bay Park programs with priority for District and City events and activities. The City will manage all special use permits, including collection of appropriate fees. Permission for District events and activities will not be unreasonably withheld by the City.

6. Termination.

- A. Either the District or the City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within twenty-one (21) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such twenty-one (21) day period, this provision shall be complied with if the breaching Party begins correction of the default within the twenty-one (21) day period and thereafter proceeds with reasonable diligence and in good faith to affect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- B. The District may terminate this Agreement without penalty or obligation to the City in the event the District fails to receive expenditure authority, grant awards, or other funding sufficient to allow the District, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Project under this Agreement is prohibited or the District is prohibited from paying for such work from the planned funding sources.
- C. Unless otherwise provided in this Agreement, a defaulting party shall be treated as if that party terminated this Agreement.
- D. Should City terminate the Agreement prior to 10 years from Project completion, City shall return \$902,000 of the Zone 1 City SDC funds as described in Section 3.B to District.
- E. Should the City terminate the agreement and attempt to withdraw pursuant to the provisions of ORS Chapter 222 the City agrees the SDC funds contributed to the Project would be treated as a pre-payment already received or a credit paid by the District of the City's proportionate share of District assets, if any, depending on the legal method for City withdrawal from the District.
- F. Should the City be withdrawn from the District, City will be deemed to have terminated the Agreement.

7. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the District agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or

property caused by the negligent or willful acts of the District or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the District has a right to control.

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

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

Milwaukie:

City Liaison
Joseph Briglio
10501 SE Main Street
Milwaukie, Oregon 97222
Email: briglioj@milwaukieoregon.gov

District:

District Liaison
Kia Selley
3811 SE Concord Rd
Milwaukie, OR 97267
Email: kselley@ncprd.com

9. **General Provisions.**

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas District without giving effect to the conflict of law provisions thereof. Any claim between District and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas District for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court

for the District of Oregon. In no event shall this section be construed as a waiver by the District of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. City, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** The Parties shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of twenty-five (25) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. The Parties shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, either Party shall permit the other Party's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act and is contingent upon appropriation of funds. Any provisions herein that conflict with the above-mentioned laws are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect, and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in

writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- J. **No Third-Party Beneficiary.** City and District are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- K. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- L. **Survival.** All provisions in Sections 2, 4 (A-B), 6, and 8 (A), (C), (D), (F), (G-L), and (O) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- M. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- N. **Force Majeure.** Neither City nor District shall be held responsible for delay or default caused by events outside of the City or District's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, City and District shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- O. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

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

**North Clackamas Parks
and Recreation District**

City of Milwaukie

Craig Roberts, Chair, Board of Directors

Emma Sagor, City Manager

Date

Date