



CITY OF OREGON CITY URBAN RENEWAL COMMISSION WORK SESSION AGENDA

**Commission Chambers, Libke Public Safety Facility, 1234 Linn Ave, Oregon City
Tuesday, February 11, 2025 at 6:00 PM**

Typically there are no public comments at work sessions, but written comments are accepted by:

- Email recorderteam@orc.city.org (deadline to submit written testimony via email is 3:00 PM on the day of the meeting)

- Mail to City of Oregon City, Attn: City Recorder, P.O. Box 3040, Oregon City, OR 97045

- You may also attend this meeting by watching the livestream on the City's YouTube Channel:

<https://www.youtube.com/user/CityofOregonCity>

1. CALL TO ORDER AND ROLL CALL

2. DISCUSSION ITEMS

- a. Urban Renewal Commission Discussion of Section 59 of the Oregon City Charter

3. ADJOURNMENT

PUBLIC COMMENT GUIDELINES

Complete a Comment Card prior to the meeting and submit it to the clerk. When the Chair calls your name, proceed to the speaker table, and state your name and city of residence. Each speaker is given 3 minutes to speak. As a general practice, the committee does not engage in discussion with those making comments. Complaints shall be addressed at the department level prior to addressing the committee.

ADA NOTICE

The location is ADA accessible. Hearing devices may be requested from the City Recorder prior to the meeting. Individuals requiring other assistance must make their request known 48 hours preceding the meeting by contacting the City Recorder's Office at 503-657-0891.

Agenda Posted at City Hall, Pioneer Community Center, Library, City Website.

Video Streaming & Broadcasts: The meeting is streamed live on the [Oregon City's website](#) and available on demand following the meeting. The meeting can be viewed on Willamette Falls Television channel 28 for Oregon City area residents as a rebroadcast. Please contact WFMC at 503-650-0275 for a programming schedule.



CITY OF OREGON CITY

625 Center Street
Oregon City, OR 97045
503-657-0891

Staff Report

To: Urban Renewal Commission
From: Tony Konkol, City Manager

Agenda Date: February 11, 2025

SUBJECT:

Item 2.a. - Urban Renewal Commission Discussion of Section 59 of the Oregon City Charter

STAFF RECOMMENDATION:

Urban Renewal Commission discussion - no action will be taken.

EXECUTIVE SUMMARY:

N/A

BACKGROUND:

In 2012, the voters of Oregon City approved a ballot measure that added Section 59 to the City Charter and, in 2016, in another ballot measure, the voters added subsection (E) to Section 59. All of Section 59, including subsection (E), address the power and authority of the City's Urban Renewal Agency (the "OCURA"), which is a separate entity from the City of Oregon City. Subsequently, the Clackamas Circuit Court and Oregon Court of Appeals held that Section 59(E) was preempted by State law (ORS Chapter 457) and was of no effect. The decision stated:

"We readily conclude that, with respect to URC, section 59E is expressly preempted by ORS chapter 457. Section 59E purports to direct the actions of URC with respect to tax increment financing, property acquisition, and use of existing revenue in a manner that is incompatible with ORS chapter 457. Under ORS chapter 457, URC is a separate entity from the city, is required to carry out the approved urban renewal plan, and expressly is conferred the powers '[t]o acquire real property, by condemnation if necessary, when needed to carry out the plan,' ORS 451.170(3), to acquire funds to carry out urban renewal projects, ORS 457.190, and, as long as the provisions in ORS chapter 457 are met, to use tax increment financing in the plan to fund urban renewal projects, ORS 457.190, ORS 457.220 to 457.470. Section 59E directly conflicts with ORS chapter 457 by purporting to restrict the powers of URC conferred by statute to meet its statutory obligation to carry out the approved urban renewal plan."

Recently, the Urban Renewal Commission updated the Urban Renewal Plan and in May 2024 placed on the ballot the question of authorizing the agency to assume debt. The measure failed. The following provides the Urban Renewal Commission with options to discuss concerning the future of the district.

OPTIONS:

The following options have been identified as discussion topics for the Urban Renewal Commission:

1. Place a new measure on the ballot requesting approval to take on a certain amount of debt to complete one of more projects.
2. Place a measure on the ballot to rescind the entirety of Section 59 of the Oregon City Charter.
3. Close the district. The district currently generates approximately \$3.2M per year. Closing the district would reallocate the revenue generated to all the taxing districts and would result in approximately \$900,000 in new revenue to the City of Oregon City general fund.
4. Close the district and create a new district. This process would reset the existing frozen base and increment being collected. This method would not address the existing requirements of Section 59 of the Oregon City Charter.
5. The Urban Renewal Agency could sue the City of Oregon City seeking a declaratory judgment that the remainder of Section 59 of the Oregon City Charter is preempted and unenforceable. (Please see attached memorandum for additional details.)
6. The Urban Renewal Agency could take an action and then file a validation suit which would commence a proceeding in court and ask the court to examine and judge the regularity and legality of the action. (Please see the attached memorandum for additional details).
7. The Urban Renewal Agency could act contrary to the terms of Section 59 of the Oregon City Charter. This would not address Section 59, would not provide clarity on the issue and is not recommended. (Please see the attached memorandum for additional details).
8. Other options identified based on the discussion.

Staff will be available to answer any questions during the discussion.

BUDGET IMPACT:

N/A

MEMORANDUM

TO: Oregon City Urban Renewal Commission
FROM: William Kabeiseman, City Attorney
DATE: February 6, 2025
RE: Methods to Seek Clarity on Ongoing Validity of Section 59 of the Oregon City Charter

I. INTRODUCTION

In 2012, the voters of Oregon City approved a ballot measure that added Section 59 to the City Charter and, in 2016, in another ballot measure, the voters added subsection (E) to Section 59. All of Section 59, including subsection (E), address the power and authority of the City's Urban Renewal Agency (the "OCURA").

Subsequently, the Clackamas Circuit Court and Oregon Court of Appeals held that Section 59(E) was preempted by ORS Chapter 457 and was of no effect. *Urban Renewal Comm. Of Oregon City v. Williams*, 322 Or App 615 (2022). However, the courts did not address the remainder of Section 59 and whether, under the arguments of the *Williams* case, Section 59 had any further validity. This memorandum is intended to identify options for addressing that question.

II. DISCUSSION

Section 59 of the Oregon City Charter provides as follows:

Section 59 – Urban Renewal Agency.

The urban renewal agency of the city (the "Agency") shall not issue bonded indebtedness after the effective date of this section unless the bonded indebtedness complies with the restrictions of this section. The commission shall not approve any amendment to an urban renewal plan after the effective date of this section unless the plan requires that bonded indebtedness issued to carry out the plan be issued in compliance with the restrictions of this section.

A. Bonded indebtedness issued by the Agency after the effective date of this section shall either:

(i) Be approved by the voters of the city;

(ii) Be issued to refund lines of credit, bonds or other borrowings that were executed before the effective date of this section; or,

(iii) Be issued to finance written commitments of the Agency that were entered into before the effective date of this section.

B. Each urban renewal plan of the Agency that exists on the effective date of this section is hereby amended to add the following provision: "No bonded indebtedness shall be issued under this plan except in compliance with the requirements of the Charter of the City of Oregon City. Any amendment of the preceding sentence must be approved by a non-emergency ordinance of the city."

C. For purposes of this section "bonded indebtedness" has the meaning defined for that term in ORS 310.140(3), as that section of the statutes exists on the date this section of the charter is approved by the voters of the city. That statute defines "bonded indebtedness" to mean "any formally executed written agreement representing a promise by a unit of government to pay to another a specified sum of money, at a specified date or dates at least one year in the future."

D. This section shall not limit the Agency's rights or obligations under any lines of credit, bonds brother borrowings that were executed prior to the effective date of this section.

E. After June 30, 2016, the City of Oregon City, the Urban Renewal Agency of the City of Oregon City, or any agency created in whole or in part by the city, whether acting alone or in concert with other persons, entities or agencies:

(i) Shall not finance, or authorize the financing of, any urban renewal plan or project, in whole or in part, with tax increment financing revenues.

(ii) Shall not borrow or spend, or authorize the borrowing or spending of, money to buy land or property for the purpose of urban renewal, or the development of property not owned by the city.

(iii) Shall use any and all existing tax increment revenues solely for the purpose of retiring existing Urban Renewal Agency debt.

By its terms, Section 59 places significant restrictions on the actions of the OCURA, such as limiting the ability of the OCURA to issue bonds, as well as purports to amend the urban renewal plan adopted by the OCURA. Section 59(E) went further and prohibited the OCURA from financing any project with tax-increment revenues, prohibited the purchase or development of property not owned by the city, and required that all tax-increment revenue be used to retire existing debt.

Shortly after subsection (E) was added to Section 59, the OCURA filed a declaratory judgment action seeking to have the circuit court declare subsection (E) ineffective, but that lawsuit did not directly affect the ongoing validity of the remainder of Section 59. The lawsuit was successful and the Oregon Court of Appeals held that subsection 59(E) is preempted by state law and unenforceable:

“We readily conclude that, with respect to URC, section 59E is expressly preempted by ORS chapter 457. Section 59E purports to direct the actions of URC with respect to tax increment financing, property acquisition, and use of existing revenue in a manner that is incompatible with ORS chapter 457. Under ORS chapter 457, URC is a separate entity from the city, is required to carry out the approved urban renewal plan, and expressly is conferred the powers ‘[t]o acquire real property, by condemnation if necessary, when needed to carry out the plan,’ ORS 451.170(3), to acquire funds to carry out urban renewal projects, ORS 457.190, and, as long as the provisions in ORS chapter 457 are met, to use tax increment financing in the plan to fund urban renewal projects, ORS 457.190, ORS 457.220 to 457.470. Section 59E directly conflicts with ORS chapter 457 by purporting to restrict the powers of URC conferred by statute to meet its statutory obligation to carry out the approved urban renewal plan.”

Given the Court of Appeals’ reasoning in the *Williams* case, it is also likely that the remainder of Section 59 is also preempted and ineffective, as it places additional limits on the activities of the OCURA; however, the Court of Appeals did not rule on that question as it was not before the court.

Accordingly, the question remains as to the continued vitality of Section 59(A) – (D) and there are several methods that could be used to reach a final conclusion.

- First, the OCURA could simply act contrary to the terms of Section 59 by, e.g., entering into a contract with a promise to pay at some point more than a year in the future without seeking voter approval. This would have the benefit of being simple and straightforward; however, it could be subject to challenge later and, while this approach might work for smaller matters, the continued uncertainty may well prove a stumbling block in larger deals.
- The OCURA could sue the City seeking a declaratory judgment declaring that the remainder of Section 59 is preempted and unenforceable. That was the approach used in the *Williams* case that went to the Court of Appeals. This would result in a court decision that finally resolved this particular question between the parties, but could be bogged down in additional issues should some other party intervene in the matter.
- Finally, the OCURA could take an action and then file what is known as a “validation” suit under ORS 33.710. That statute allows public bodies to commence a proceeding in court and ask the court to “examine[] and judge[] the regularity and legality” of certain actions. The validation lawsuit would require notice to be published and would allow interested persons to intervene, but the statute requires the matter to be “tried forthwith and judgment rendered as expeditiously as possible,” likely resulting in a quicker resolution than in a declaratory judgment suit.

Oregon City Urban Renewal Commission
February 6, 2025
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The validation proceeding has been used by a number of different local governments, including the City of Milwaukie (seeking review of its ability to withdraw from the North Clackamas Parks and Recreation District), Columbia County (seeking a review of the validity of an initiative that approved a “Second Amendment Sanctuary Ordinance”), and Metro (seeking review of the validity of its actions in developing the Convention Center hotel in Portland).

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

In the Matter of the Petition of Adam
Khosroabadi; Lisa Batey; Desi Nicodemus;
Kathy Hyzy; and Mark Gamba, as the City
Council of the CITY OF MILWAUKIE; an
Oregon Municipality,

Case No.

VALIDATION PETITION

(Pursuant to ORS 33.710 and 33.720)

For the Judicial Examination and Judgment of
the Court as to the Validity of a City to
Withdraw From a Service District Pursuant to
an Intergovernmental Agreement.

**Fee Authority: ORS 21.259 (exempt from
filing fee)**

I. PETITION

1.

Pursuant to ORS 33.710 and ORS 33.720, the Milwaukie City Council, as the governing
body of the City of Milwaukie, hereby petitions for judicial examination and judgment of the
Court as to the authority and validity of the City of Milwaukie (“City”) to withdraw from the
North Clackamas Parks and Recreation District (“District”), a county service district formed
under ORS Chapter 451, pursuant to Section VI(4) of the Intergovernmental Agreement
(“Agreement”) entered by and between both parties.

II. OREGON VALIDATION STATUTES

2.

The Oregon Validation Statutes, ORS 33.710 to 33.720, provide for an in rem proceeding
brought by a governing body, as defined in ORS 33.710(1)(a), for the purpose of having judicial
examination and judgment of the court as to the regularity and legality of, among other matters:

- a. The proceedings in connection with the establishment or creation of the municipal
corporation, including any action or proceedings proclaiming the creation of the
municipal corporation. ORS 33.710(2)(a);

- 1 b. The proceedings of the governing body and of the municipal corporation providing
2 for and authorizing the issue and sale of bonds of the municipal corporation, whether
3 the bonds have or have not been sold or disposed of. ORS 33.710(2)(b);
4
5 c. The authorization of any contract and as to the validity of the contract, whether or not
6 it has been executed. ORS 33.710(2)(d);
7
8 d. Any decision of the governing body that raises novel or important legal issues that
9 would be efficiently and effectively resolved by a proceeding before the decision
10 becomes effective and would significantly affect the lives or businesses of a
11 significant number of persons within the boundaries of the governing body. ORS
12 33.710(2)(e);
13
14 e. The authority of the governing body to enact a resolution. ORS 33.710(2)(f); and,
15
16 f. Any resolution enacted by the governing body. ORS 33.710(2)(g).

17
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19 **3.**

20 ORS 33.720(3) directs the proceeding be tried forthwith and judgment rendered as
21 expeditiously as possible.

22
23 **III. JURISDICTION**

24
25 **4.**

26 This Petition is filed pursuant to ORS 33.710 and 33.720 in the nature of a proceeding in
rem. Jurisdiction and venue in this Court is appropriate for the following reasons:

- 27 a. The City is a municipal corporation in the State of Oregon and formed and operated
28 pursuant to the City Charter of the City of Milwaukie.
29
30 b. The City is a “municipal corporation” as that term is defined by ORS 33.710(1)(b).
31
32 c. The City is located entirely within Clackamas County, in the State of Oregon.

- 1 d. Petitioners are the duly elected and acting members of the City Council of the City as
2 of the time of the filing of this Petition.
3 e. The City Council is the “governing body” as that term is defined by ORS
4 33.710(1)(a).
5 f. Notification of this Petition will be published in Clackamas County as required by
6 ORS 33.720(2) to establish jurisdiction and the City will personally serve the
7 Clackamas County Board of Commissioners as the governing board of the District.
8 g. Jurisdiction shall be complete within 10 days after the date of completing publication
9 of the notice as required under ORS 33.720(2).
10

11 **IV. BACKGROUND**

12 5.

13 The City was formally incorporated in 1903 and formed under the Constitution and laws
14 of the state of Oregon in the corporate boundaries of Clackamas County.

15 6.

16 The District was established in 1990 by a vote of the Clackamas County residents under
17 the authority of ORS Chapter 451. As a county service district, the District maintains and
18 operates regional parks and recreation facilities in the North Clackamas area for the benefit of
19 City residents.

20 7.

21 In 1990, the District and the City contractually agreed through an intergovernmental
22 agreement (“IGA”) that the District would be responsible for the maintenance of all new indoor
23 and outdoor park facilities constructed by the District and the City would continue to maintain
24 ownership of the parks currently under its jurisdiction. The City reserved the right to further
25 contract with the District to maintain some or all of the facilities maintained and operated by the
26 City. The 1990 IGA is attached hereto as Exhibit 1 and incorporated herein by reference. The

1 Clackamas County Commissioners wanted to form the District and have the City participate.
2 That was accomplished by consent, rather than by annexation and the City was, as a result, a
3 founding participant of the District. As a condition of providing its consent, the City ensured that
4 it would be able to “choose at any time to withdraw entirely from the service district.” *See* Ex. 1
5 at F(4)

6
7 8.

8 In 2008, the District and the City signed an intergovernmental agreement “Agreement”
9 attached hereto as Exhibit 2 and incorporated herein by reference. The parties desired to revise
10 the prior IGA to better clarify the roles and relationships of the parties regarding the provision of
11 park and recreation services. Section VI of the Agreement provides for the process for removal
12 of city parks and recreation facilities from district maintenance responsibility. Again, the
13 Agreement preserves the City’s right to “choose at any time to withdraw entirely from the
14 District” and the parties specifically agreed that it would be completed consistent with the “ORS
15 222.524” process. *See* Ex. 2 at VI(4).

16
17 9.

18 The City is considering a departure from the District and wishes to do so utilizing its
19 authority pursuant to Section VI(4) of the Agreement and withdraw entirely from the District.
20 The District opposes the City’s withdrawal procedures pursuant to the Agreement and ORS
21 222.524 and instead argues that the City must withdraw in accordance with ORS 198.870. The
22 Agreement between the parties does not contemplate the City’s withdrawal pursuant to ORS
23 198.870.

24
25 10.

26 ORS 222.524 provides that if the governing body of the city elects to withdraw from a
district incorporated in or annexed to the city, it shall hold a public hearing on the question of
such withdrawal. At the hearing, the governing body of the city shall hear objections to such
withdrawal and shall determine whether withdrawal is for the best interest of the city.

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11.

ORS 198.870 provides that owners of land included in a district or electors of an area within a district may petition the county board for withdrawal of the property from the district. Notice of the petition for withdrawal must be in writing and within five days after the petition is filed, petitioners shall furnish the secretary with a copy of the petition as filed. The county board may approve the petition as presented or it may adjust the boundaries and approve the petition. The petition shall be denied if it appears that it is, or would be, feasible for the territory described in the petition to receive service from the district.

**V. AUTHORITY TO WITHDRAW UNDER SECTION VI(4) OF THE
INTERGOVERNMENTAL AGREEMENT**

12.

Petitioners seek a judgment of this Court declaring the authority of the City to withdraw pursuant to Section VI(4) of the intergovernmental agreement (“Agreement”) entered by and between the City of Milwaukie (“City”) and the North Clackamas Parks and Recreation District (“District”). This Agreement was entered into and agreed upon by the parties on October 21st, 2008. Section VI(4) of the Agreement states the City may choose at any time to withdraw entirely from the District pursuant to ORS 222.524 or its successor statute.

13.

The City and the District expressly agreed to the applicable statute in the event of a withdrawal. Section VI(4) of the Agreement *specifically* provides that the City may choose at any time to withdraw entirely from the District pursuant to ORS 222.524 or its successor statute. Ex. 2 at VI(4). The availability to withdraw pursuant to ORS Chapter 198 was not contemplated by the parties nor was it provided for in any of the IGAs throughout the years. *See generally* Ex. 1; Ex. 2.

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14.

Under ORS 190.010, a unit of local government has the freedom to enter into written agreements with other units of local government for the performance of any or all functions and activities within its authority to perform. Cities are thus granted authority to freely enter into these IGAs.

15.

Generally, municipal entities have significant authority over local matters. *City of La Grande v. Pub. Employees Ret. Bd.*, 281 Or 137, 156, 576 P2d 1204, *aff'd on rehearing*, 284 Or 173, 586 P2d 765 (1978) (“When a statute is addressed to a concern of the state with the structure and procedures of local agencies, the statute impinges on the powers reserved by the amendments to the citizens of local communities.”). Furthermore, ORS 221.410 provides that “a city may take all action necessary or convenient for the government of its local affairs.” This remains true so long as the action is not limited by express provision or necessary implication of general law. *Id.*

16.

Absent any statutes specifically prohibiting the local conduct, municipal cities have authority to govern that conduct through contracting IGAs. Nothing in ORS Chapter 198 expressly prohibits the City’s ability to withdraw pursuant to ORS 222.524. Accordingly, the City—particularly where expressly stipulated to by the District—should have the authority to withdraw in accordance with the terms provided for in the validly executed Agreement.

17.

Oregon law provides the City with the authority to shape its own business conduct regarding local matters. The City exercised its authority to conduct its business over local matters when it entered into several IGAs with the District. Nothing in ORS Chapter 198 prohibits the conduct at issue in this Petition. The City should have the authority to exercise the withdrawal option pursuant to Section VI(4) of the Agreement.

1
2 **VI. AUTHORITY TO WITHDRAW UNDER ORS 222.524**

3
4 18.

5 If this Court finds that the City's contractual provision does not provide the City authority
6 to withdraw, then in the alternative, Petitioners seek a judgment declaring that the City's
7 authority to withdraw from the District under ORS 222.524 is proper and in accordance with
8 Oregon law.

9 19.

10 Because the District is a county service district organized under ORS Chapter 451, the
11 City is therefore required by ORS 451.585(4) to withdraw from the District in the manner set
12 forth in ORS 222.524. ORS 222.524 provides:

13 If as authorized by ORS 222.520 the governing body of the city
14 elects to cause the withdrawal from a district named in ORS
15 222.510 of that part of such district theretofore incorporated in or
16 annexed to the city, it shall hold a public hearing on the question of
17 such withdrawal. At the hearing, the governing body of the city
18 shall hear objections to the withdrawal and shall determine
19 whether such withdrawal is for the best interest of the city.

20 20.

21 The applicable statutory scheme, whether ORS Chapter 222 or ORS Chapter 198, for
22 when a City wishes to withdraw from a special district was heavily litigated in *Clackamas*
23 *County Assessor, et al. v. City of Happy Valley*, Clackamas County Circuit Court Case No.
24 18CV30439. In *Clackamas County Assessor*, the City of Happy Valley and the North Clackamas
25 Parks and Recreation District ("NCPRD") had participated in a formal process to annex the City
26 of Happy Valley into the NCPRD before the lawsuit was filed. *See* Pl.'s Mo. for Summary
Judgment at 4:6-24. Both the City of Happy Valley and the NCPRD entered into an Annexation

1 and Service Agreement to that effect. *Id.* The City approved Resolution No. 05-28 proposing
2 annexation in accordance with ORS Chapter 198 and it was later voted on by the public and
3 passed as Ballot Measure No. 3-209. *Id.* Thereafter, the city complied with the requirements
4 provided in ORS 198.866 and ORS 198.967 to formally annex into the district. *Id.*

5
6 21.

7 The *Clackamas County Assessor* case involved specific steps taken to annex City
8 property to the special district. This is not the case here. In this context, there was no formal
9 process to annex the City into the District. There was no formal agreement between the parties
10 entitled “Annexation and Service Agreement”. The contractual agreement between the parties
11 created the division of roles and responsibilities and there contained no provisions relating to
12 annexation pursuant to ORS Chapter 198. *See generally* Ex. 1; Ex. 2. As such, the City did not
13 follow a procedural process under ORS Chapter 198 to annex City property to the District.

14 22.

15 At formation, the 1990 IGA provided that certain Milwaukie parks were to be maintained
16 and operated by the District. Ex. 1 at 9. The later 2008 Agreement provides that the City may
17 choose at any time to withdraw from the District or remove some or all of the Joint Parks from
18 the District’s maintenance responsibility. Ex. 2 at 6. This is not the case where “[t]he text of
19 Chapter 198 by its terms applies to the method by which the City became part of the District.”
20 *See* Order on Pl.’s Mo. for Summary Judgment at Ex. 1 page 2.

21 23.

22 Furthermore, in *Clackamas County Assessor*, the City of Happy Valley was annexed into
23 the District pursuant to ORS 198.867 and then decided by a vote of its city council, to withdraw
24 from the District under ORS Chapter 222. *See* Pl. Mo. for Summary Judgment at 5:1. This is not
25 a situation where a City is annexed into a District pursuant to ORS Chapter 198 and the City then
26 subsequently wishes to withdraw pursuant to a different statutory scheme. These are clear

1 distinctions from the *Clackamas County Assessor* case and thus the holding in that case cannot
2 be accurately applied here.

3
4 24.

5 The City and the District had a validly executed Agreement which provided expressly for
6 the withdrawal process pursuant to ORS 222.524. Municipal entities can shape their own
7 business conduct through IGAs and thus the ability to withdraw from the District ought to be
8 subject to Section VI of the Agreement. Furthermore, the City did not annex into the District
9 pursuant to ORS Chapter 198 nor were there express provisions in the intergovernmental
10 agreements providing for the annexation of City property to the District, such facts are clearly
11 distinguishable from *Clackamas County Assessor*.

12 **VII. JUSTICIABLE CONTROVERSY**

13 25.

14 A justiciable controversy is established by the in rem procedures spelled out in the
15 Oregon validation statutes, ORS 33.720(2). Jurisdiction of the municipal corporation is obtained
16 by publishing notice to the municipal corporation, the City of Milwaukie. Jurisdiction of the
17 electors of the municipal corporation is obtained by publishing notice directed to all electors,
18 freeholders, taxpayers, and other interested persons in a newspaper of general circulation in
19 Clackamas County. "Any person interested" may contest the validity of this proceeding by
20 timely appearing within ten (10) days after the date of completion of publication. ORS
21 33.720(3). The District is affected by these proceedings and as such this Petition will be served
22 on its governing body, the Board of County Commissioners of Clackamas County.

23 26.

24 Invoking in rem jurisdiction in accordance with the procedures of ORS 33.710 to 33.720
25 establishes a justiciable controversy because (1) the City has determined that it may seek to
26 withdraw from the District pursuant to Section VI of the Agreement and the District opposes
withdrawal arguing that ORS 222.524 is inapplicable; (2) the City's withdrawal process from the

1 District would significantly affect the lives or businesses of a significant number of persons
2 within the City's jurisdiction; and, (3) pursuant to filing this validation proceeding, service by
3 publication will be provided to the municipal corporation and to all electors, freeholders,
4 taxpayers, and other interested persons, including those who may be opposed to the validity of
5 Section VI of the Agreement, and who may appear as parties and timely file opposition to the
6 validation proceeding.

7 **WHEREFORE**, Petitioners pray:

- 8 1. That the Court judicially examine and validate the regularity and legality of:
- 9 a. the City's authority to withdraw from the District pursuant to Section VI(4) of the
10 2008 intergovernmental agreement entered into and executed between the City
11 and the District.
- 12 b. the City's authority under ORS 222.524 to withdraw from the District.
- 13 2. That these proceedings be tried forthwith, and judgment rendered as expeditiously as
14 possible.
- 15 3. And such further relief as the Court finds to be just and proper.
- 16

17 DATED: July 7, 2022.

18 CABLE HUSTON, LLP

19
20 s/ Casey M. Nokes
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25 1455 SW Broadway, Suite 1500
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Attorneys for Petitioners

90 - 504

COOPERATIVE AGREEMENT BETWEEN
THE CITY OF MILWAUKIE AND CLACKAMAS COUNTY
MAY 1, 1990

The following agreement is conditioned on the approval of the proposed North Clackamas Regional Parks and Recreation District tax base on November 6, 1990.

Regarding the formation of a parks and recreation service district for the North Clackamas area (henceforth referred to as the Service District), the City of Milwaukie and Clackamas County agree to the following:

A. PARKS CAPITAL IMPROVEMENTS

SERVICE DISTRICT

- 1) The Service District will acquire land and develop regional parks and recreation facilities for the North Clackamas area. These regional facilities (and their anticipated year of completion) include:
 - A State-of-the-Art Aquatics Complex (fy 93-94)
 - 4 Lighted Softball Fields (fy 93-94)
 - 2 Lighted Soccer Fields (fy 93-94)
 - 2 Multipurpose Fields (fy 93-94)
 - 2 Riverfront Parks (In Oak Grove and Gladstone) (fy 91-92)
 - Approximately 75 Acres of Natural Areas (fy 91-92)
 - Walking Trails Linking North Clackamas Park, the Southern Pacific Property, and Mount Talbert
- 2) Between 1991 and 1996, the Service District will expend a total of between \$500,000 and \$800,000 (in 1990 dollars) in funding and resources for land acquisition and the development of neighborhood parks facilities within the City of Milwaukie.
- 3) Between 1991 and 1996, the Service District will expend within each of four other subareas of the district funding and resources equivalent to a total of \$500,000 to \$800,000 (in 1990 dollars) for land acquisition and the development of neighborhood parks facilities.
- 4) The Service District may undertake improvements to parks currently under the jurisdiction of the City of Milwaukie. These improvements are subject to the approval of the Milwaukie City Council, with the advice of the Milwaukie Parks Commission.

CITY OF MILWAUKIE

- 1) The City of Milwaukie, with the advice of the Milwaukie Parks Commission, will decide how the total \$500,000 to \$800,000 in neighborhood facilities funding, provided by the Service District between 1991 and 1996, will be allocated. This funding may be used to do one or more of the following:

- Acquire land for neighborhood or mini-parks
- Build neighborhood parks (5-6 acres each)
- Build mini-parks or vest parks (1-2 acres each)
- Improve or rehabilitate existing parks facilities
- Expand existing parks facilities
- Improve school district ballfields or play facilities within the area
- Build walking and biking trails within the area
- Other similar capital improvements for parks purposes
- Improvements to and/or expansion of senior centers

- 2) The City of Milwaukie will retain the deeds to all parks facilities currently under the City's jurisdiction. These parks and facilities are listed in Attachment #1.

The Milwaukie City Council, under the advisement of the Milwaukie Parks Commission, must approve all capital improvements to these facilities undertaken by the Service District before such improvements can be made.

All proposed name changes to these parks are also subject to the approval of the Milwaukie City Council, under the advisement of the Milwaukie Parks Commission.

All parks and facilities owned by the City of Milwaukie, but maintained and operated by the Service District will have signage explaining this dual relationship. Signs within these parks would make statements along the lines of: "This park built by the City of Milwaukie and maintained by the North Clackamas Regional Parks and Recreation District".

- 3) The City of Milwaukie may construct new parks or make improvements to parks currently under its jurisdiction over and beyond the \$500,000 to \$800,000 allocation described above. These improvements will be at the City's own expense and will not be covered by Service District funds.

Within budget constraints, the Service District may maintain such parks if the City of Milwaukie so desires.

B. MAINTENANCE OF PARKS FACILITIES

SERVICE DISTRICT

- 1) The Service District will be responsible for the maintenance of all new indoor and outdoor park facilities constructed by the district (see #1 and #2 under capital improvements).
- 2) Between fiscal years 1991-92 and 1994-95, the Service District will provide the City of Milwaukie with sufficient funding to maintain and operate those parks facilities currently under the City's jurisdiction.

This "pass-through" of funding will be equivalent at a minimum to the current, 1990 City of Milwaukie budget allocation for parks and recreation (\$174,795) plus a 6% annual increase for inflation.

- 3) In fiscal year 1995-96, the Service District will assume responsibility for the maintenance of City of Milwaukie parks facilities. These facilities are listed in Attachment #1.
- 4) Upon assuming maintenance of City of Milwaukie parks facilities in fiscal year 1995-96, the Service District will guarantee employment for City of Milwaukie parks staff at equal or greater pay and according to the guidelines established in ORS Chapter 236.

CITY OF MILWAUKIE

- 1) The City of Milwaukie will continue to maintain those parks currently under its jurisdiction through June 30, 1995. The funding "passed through" to the City of Milwaukie by the Service District during fiscal years 1991-92 through 1994-5 shall be used exclusively for the maintenance and operations of parks facilities.
- 2) As of July 1, 1995 the City of Milwaukie will transfer maintenance responsibility of its parks to the Service District. This transfer will include a complete transfer of parks and recreation staff according to ORS Chapter 236. If the City desires to sell any parks and recreation associated equipment, including mowers, tractors, and vehicles, to the District and the District is interested in purchasing these items, this equipment will be sold at fair market value.

C. RECREATIONAL PROGRAMMING

SERVICE DISTRICT

- 1) The Service District will provide extensive aquatics programming, coordination and scheduling of fields services, and summer youth recreation programs for the entire North Clackamas area. Some recreational classes to supplement existing recreation programs may also be provided by the Service district.
- 2) As of July 1, 1995, the Service District will provide City of Milwaukie residents with a Summer Youth Recreation Program equal or better than the program currently operated by the City's Parks Department.
- 3) As of July 1, 1995, the Service District will assume responsibility for the scheduling and management of all sports fields (such as soccer, softball, and baseball) located on parks currently under the jurisdiction of the City of Milwaukie.

CITY OF MILWAUKIE

- 1) The City of Milwaukie will continue to provide recreational programs as it sees fit through June 30, 1995. These programs may be funded with parks maintenance and operations funds provided by the Service District.
- 2) The City of Milwaukie may provide recreation programs in addition to those provided by the Service District. These programs will be at the City's own expense and will not be covered by Service District funds.

D. MILWAUKIE CENTER

SERVICE DISTRICT

- 1) Between fiscal years 1991-92 and 1994-95 (i.e., through June 30, 1995), the Service District will provide the City of Milwaukie with funding to maintain and operate the Milwaukie Center.

This "pass-through" of funding will be equivalent at a minimum to the current, 1990 City of Milwaukie budget allocation for the Milwaukie Center (\$165,955) plus a 6% annual increase for inflation.

The Service District will also provide the City of Milwaukie with an additional "pass-through" of funding of \$98,000 to maintain and operate the Milwaukie Center upon completion of

PARKS DISTRICT INTERGOVERNMENTAL AGREEMENT WITH
THE CITY OF MILWAUKIE,
5/1/90. PAGE 4

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the Center's expansion by the City of Milwaukie.
Subsequently, this sum will also increase annually by at least 6%.

- 2) In fiscal year 1995-96, the Service District will assume responsibility for the maintenance and operation of the Milwaukie Center.
- 3) Upon assuming maintenance and operation of the Milwaukie Center in fiscal year 1995-96, the Service District will guarantee employment at equal or greater pay for the Milwaukie Center staff in accordance with ORS Chapter 236.
- 4) Under the jurisdiction of the Service District, the Milwaukie Center will continue to administer and provide a combination of educational, recreational, and social services to the community.

These programs will continue to be primarily geared towards the needs and interests of older residents in the North Clackamas area.

- 5) The Service District and the City of Milwaukie may use the Milwaukie Center facilities for such activities as public meetings consistent with building policies.

CITY OF MILWAUKIE

- 1) The City of Milwaukie will continue to maintain and operate the Milwaukie Center through June 30, 1995.
- 2) As of July 1, 1995 the City of Milwaukie will transfer maintenance and operations responsibility of the Milwaukie Center to the Service District.
- 3) At the time of transfer (July 1, 1995) all Milwaukie Center policies developed by the Milwaukie Center Community Advisory Board will be adopted by the Service District. This Board will also continue its present role as primary policy advisor with regards to the activities and operations of the Milwaukie Center.
- 4) As of July 1, 1995, half (9) of The Milwaukie Center Community Advisory Board's members will be appointed by the Service District Board and half (9) will be appointed by the Milwaukie City Council.

Milwaukie Center Community Advisory Board decisions regarding capital improvements, programs policies, and maintenance and operations policies will have to be approved by both the Milwaukie City Council (deed holders to the property and facilities) and the Service District Boards.

PARKS DISTRICT INTERGOVERNMENTAL AGREEMENT WITH
THE CITY OF MILWAUKIE,
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Milwaukie Center Community Advisory Board will also provide the Service District Board with budget recommendations.

- 5) The City of Milwaukie will make major capital improvements to the Milwaukie Center and its parks, as designated in its Capital Improvement Plans, by December 31, 1994 using its Neighborhood Parks Allocation funds and/or a portion of the City General Fund.
- 6) The City of Milwaukie will continue retain the deed to the Milwaukie Center and all subsequent capital improvements or name changes by the Service District must be approved by the City Council, under advisement of the Milwaukie Center Community Advisory Board.

E. ADMINISTRATIVE ISSUES

- 1) The Board of County Commissioners will serve as the governing body (referred to as the "Service District Board" in this document) of this County service district, which will be officially called the North Clackamas Regional Parks and Recreation District.
- 2) An Urban Parks Advisory Board (UPAB), composed of 6 members (1 from each of 5 subareas of the district and 1 from each senior center) will advise the Board of County Commissioners on all capital improvements, maintenance and operations, and recreational programming activities to be undertaken by the Service District. The Milwaukie City Council will appoint the individual representing the Milwaukie parks subarea. The Milwaukie City Council will also appoint the Milwaukie Center Board member during the 4 year transitional period between 1991-2 and 1994-5. As of July 1, 1995, the Milwaukie Center Board will designate one of its members to serve on the UPAB.
- 3) Each of the seven subareas of the District will also have its own Neighborhood Parks Advisory Board to make recommendations on the allocation of the \$500,000 to \$800,000 in neighborhood facilities funds.

The approval of both the Neighborhood Parks Advisory Board and the Service District Board will be necessary before neighborhood facilities funds are allocated. All Neighborhood Parks Advisory Boards will hold public meetings within their subareas in order to receive input from the public concerning the allocation of neighborhood park funds.

The Milwaukie City Council, with the advice of the Milwaukie Parks Commission, will serve as Milwaukie's Neighborhood Parks Advisory Board.

F. WITHDRAWAL OF THE CITY OF MILWAUKIE FROM THE SERVICE DISTRICT

- 1) The City of Milwaukie may choose at any time to withdraw those parks currently under its jurisdiction (as of November 1, 1990) and the Milwaukie Center from the Service District. (Parks are listed in Attachment #1.)

In this case, where the City withdraws its parks and senior facilities, no reduction in the tax rate will be provided to City of Milwaukie residents. City of Milwaukie residents will continue to receive all of the benefits of in-district residents (lower user fees, priority use of facilities, etc.).

- 2) If the City of Milwaukie chooses to withdraw those parks currently under its jurisdiction and the Milwaukie Center after improvements have been made to these facilities using Service District funds, a pass-through of funds (i.e. rebate) will be provided by the Service District to the City for maintenance and operations.

For parks, this pass-through would be equivalent to one-fifth of the Service District's neighborhood facilities maintenance and operations budget minus the amount expended by the Service District in the City of Milwaukie subareas on District-owned facilities.

For the Milwaukie Center, this pass-through would be equivalent to the portion of the District's senior center funding allocated to maintenance and operations of the senior facilities built after 1990-91 plus 6% annually.

- 4) The City of Milwaukie may choose at any time to withdraw entirely from the service district subject to legal restrictions established in the Oregon Revised Statutes and Boundary Commission regulations, provided that the City's share of any outstanding bonded indebtedness has been retired or is paid off.

IN WITNESS WHEREOF, the respective parties have cause to be signed in their behalf to make and enter into this agreement this 24 day of May, 1990.

CITY OF MILWAUKIE

CLACKAMAS COUNTY
BOARD OF COMMISSIONERS

By Roger A. Hall

Darlene Hooley
Darlene Hooley, Chair

ATTEST:

Ed Lindquist
Ed Lindquist, Commissioner

By Jim Widner

Dale Harlan
Dale Harlan, Commissioner

ATTACHMENT #1

MILWAUKIE PARKS TO BE MAINTAINED AND OPERATED BY
THE SERVICE DISTRICT

<u>SITE</u>	<u>ACRES</u>
Lewelling Tennis Courts	0.31
Rowe Tennis Courts	0.31
Dogwood Lodge Park	0.96
Jefferson Street Park	2.10
Spring Park	6.32
Stanley Park	1.97
Century Park	0.50
Water Tower Park	0.92
Furnberg Park	4.00
North Clackamas Park	45.00
Dogwood Park	0.75
Well #8	0.25
Wichita Water	0.95
Fire Min/Historical Society	1.22
Monroe/Washington Triangles	0.02
Lions Club	0.25
Scott Park/Library	3.08
Pioneer Cemetery	1.77
Spring Creek Park	0.80

MILWAUKIE OPEN SPACES TO BE MAINTAINED AND OPERATED BY THE
CITY OF MILWAUKIE

Old Shop	1.00
Police Dept. Grounds	1.00
City Hall Grounds and Parking Lot	0.96

If the City of Milwaukie so chooses, it may contract with the Service District to maintain the three facilities listed above. The Service District would charge the City a fee that would allow the District to cover (but not exceed) its maintenance costs.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON

JUN 1 1990

In the Matter of Entering Into
an Agreement With the City of
Milwaukie Regarding Parks

JOHN F. KAUFFMAN, County Clerk

ORDER NO. By 90-504 JF Deputy

This matter coming before the Board
at this time, and it appearing that this Board has this day initiated
the formation of the "North Clackamas Regional Parks and Recreational
District"; and

It further appearing that the City
of Milwaukie has indicated that it is willing to have the property
within city boundaries included in such a district; and

It further appearing that it is in
the public interest to have the city area included within the
district on terms that have been agreed to between the County and the
City;

NOW THEREFORE, IT IS HEREBY ORDERED
that Clackamas County enter into the attached "Cooperative Agreement
between the City of Milwaukie and Clackamas County May 1, 1990", with
the understanding that the city may have to reaffirm this agreement
with the Board of the Park District after that district is formally
established.

DATED this 24th day of May, 1990.

BOARD OF COUNTY COMMISSIONERS

Darlene Hooley
Darlene Hooley, Chair

Ed Lindquist
Ed Lindquist, Commissioner

Dale Harlan
Dale Harlan, Commissioner

M. J.

165 482

Amendment #1

**2008 Cooperative Intergovernmental Agreement
Between City of Milwaukie and North Clackamas
Parks and Recreation District**

1) The District shall maintain the areas of the Parks listed below as described in this amendment:

Riverfront Park - from McLoughlin Blvd to the River and between southern edge of Log dump property and Johnson Creek) -- NOTE: Parking strip on west side of McLoughlin and lawn area adjacent must be maintained at a high level. All other areas can be moderate to low -- unless there is a specific need or event preparation. As the Park or portions of the Park are improved, a high maintenance level will be applied to the improved portion(s). (The median strip in the center of McLoughlin Blvd will be maintained by the City of Milwaukie.)

Scott Park -- from north edge of sidewalk along north end of library building. Includes natural area within split rail fence but excludes pond. City covers lawn area south of Library and front landscape

40th and Harvey -- NCP areas only (NCP will maintain the grounds inside its fenced shop area including beds next to building. NCP will maintain the grounds inside the entire fenced area where the NCP vehicles are parked. NCP will maintain the unfenced grounds from the access road on the south of the building to the south property line and up to the west edge of the sidewalk on the east in front of the NCP shop.

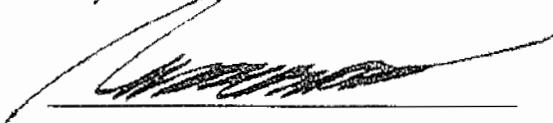
Robert Kronberg Park (including City-owned parcels to north and south)

2) "Minthorne North" shall be added to Attachment #1, under the header:

A. Milwaukie Parks to Be Maintained and Operated by the Service District

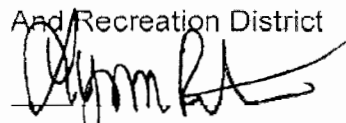
3) Minthorne North" shall also be added to the list of sites in Attachment #2, listed under the header: "Natural Resource Areas"

City of Milwaukie



By:
Date:

North Clackamas Parks
And Recreation District



By: Lynn Peterson, Chair
Date: 1-21-2010 II, 1.

10/28/2008

COOPERATIVE INTERGOVERNMENTAL AGREEMENT

This Cooperative Intergovernmental Agreement (this "Agreement"), made this 21st day of October 2008, is entered by and between North Clackamas Parks and Recreation District, a county service district formed under ORS Chapter 451 hereinafter referred to as "District," and the City of Milwaukie, hereinafter referred to as "City," pursuant to the provisions of the Intergovernmental Cooperation Act, ORS 190.003-190.250.

WHEREAS, City is part of the District; and

WHEREAS, the District provides park services for the benefit of City residents; and

WHEREAS, the parties desire to revise that certain intergovernmental agreement dated August 20, 1992 to better clarify the roles and relationship of the parties regarding the provision of park and recreation services; and

WHEREAS, when the District was established in 1990 by a vote of the Clackamas County residents, the District agreed to acquire land and develop regional parks and recreation facilities for the North Clackamas area including:

- A State-of-the Art Aquatics Complex;
- 4 Lighted Softball Fields;
- 2 Lighted Soccer Fields;
- 2 Multi-purpose fields;
- 1 Riverfront Park in Oak Grove;
- Approximately 75 Acres of Natural Areas;
- Walking Trails Linking North Clackamas Park, the Southern Pacific Property (now called North Clackamas District Park), and Mount Talbert; and

WHEREAS, the City maintained and operated the Milwaukie Center through August 31, 1992; and

WHEREAS, during the fiscal year 1991-92, the District provided the City of Milwaukie with the funding to maintain and operate the Milwaukie Center; and

WHEREAS, this "pass-through" of funding was equivalent at a minimum to the 1990 City of Milwaukie budget allocation for the Milwaukie Center (\$165,955) plus a 6% annual increase for inflation. Upon transition the Milwaukie Center's budget increased each year by at least 6% per year until June 30, 1995; and

WHEREAS, the District also provided the Milwaukie Center's budget with an additional funding of \$98,000 to maintain and operate the Milwaukie Center upon completion of the Center's expansion by the City of Milwaukie. Subsequently, this sum was increased annually by at least 6% per year until June 30, 1995; and

WHEREAS, as of September 1, 1992, the City transferred maintenance and operations responsibility of the Milwaukie Center to the District and the District assumed responsibility for the maintenance and operation of the Milwaukie Center; and

WHEREAS, upon assuming maintenance and operation of the Milwaukie Center, the District accepted and assigned employees for the Milwaukie Center staff in accordance with ORS 236 under which employees were to perform to District standards and abide by District personnel regulations; and

WHEREAS, at the time of transfer (September 1, 1992) all Milwaukie Center policies developed by the Milwaukie Center Community Advisory Board ("C/CAB") were adopted by the District. This Board continues its role as primary policy advisor with regards to the activities and operations of the Milwaukie Center; and

WHEREAS, The Board of County Commissioners is the governing body (referred herein as the "BCC") of the District.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements set forth herein, the City and District hereby agree:

I. PARKS CAPITAL IMPROVEMENTS

A. DISTRICT

- 1) While the City continues to support the development of the parks and recreation facilities listed here it acknowledges that parks and recreation facility development priorities continue to grow and change. To this end, the District shall coordinate closely with City staff and its citizens when developing its annual budget, its capital improvement plan, when amending and reviewing its master plan and modifying its System Development Charges ("SDC"). Notices of all District Advisory Board (or subcommittees thereof) or BCC meetings pertaining to the District's budget, Capital Improvement Plan, Master Plan or SDC changes will be sent to the City Manager or his or her designee.
- 2) The District may undertake improvements to parks owned by the City. These improvements are subject to the approval of the Milwaukie City Council, or its designee.

B. CITY

- 1) The City will retain the deeds to all parks and facilities owned by the City and operated and maintained by the District as listed in Attachment #1 ("Joint Parks").

All proposed name changes to parks and facilities within the City of Milwaukie will be reviewed according to the City's naming policy.

All parks and facilities owned by the City, but maintained and operated by the District, will have signage explaining this dual relationship. Signs within these parks shall state: "This park owned by the City of Milwaukie and maintained by the North Clackamas Parks and Recreation District."

- 2) The City may, at any time, construct new parks or make improvements to parks currently under its jurisdiction. These improvements will be at the City's own expense unless the District agrees to provide funding for these improvements. The District shall have no obligation to maintain or operate such parks unless otherwise agreed in writing. City staff will coordinate with District staff on any proposed park modifications to ensure ease of maintenance and operation.
- 3) For any parks other than Joint Parks, the City and the District will negotiate a level of service to be provided and any additional compensation owed by the City to the District. In those cases where the District denies the City's request to enhance, operate or maintain parks or facilities, the City will have the exclusive right to the option to enhance, maintain and operate these facilities at the City's own expense.
- 4) The City's requests for District enhancement, maintenance or operation of new City facilities will be made in writing and addressed to the Director of the District. The District Director shall review the request with the District Advisory Board ("DAB") and respond to the City with a decision within two months of the City's request.

II. MAINTENANCE OF PARKS FACILITIES

A. DISTRICT

- 1) The District will maintain and operate all Joint Parks.
- 2) The District will maintain all Joint Parks at a level equal to or better than the Milwaukie maintenance standards as set forth on Attachment #2.
- 3) Joint Parks may be shifted among maintenance standard levels at the mutual agreement of the City and the District.

B. CITY

- 1) City shall maintain all parks owned by the City unless otherwise agreed to herein.

III. RECREATIONAL PROGRAMMING

A. DISTRICT

- 1) The District will provide aquatics and recreational programming including programs for all ages and differing abilities, coordination and scheduling of fields services, and summer youth recreation programs for the entire North Clackamas area.
- 2) Except for North Clackamas Park (and the Milwaukie Center), use of all City parks and recreation facilities will be on a first come, first served basis. The District will be responsible for scheduling and management of all North Clackamas Park and Milwaukie Center facilities.

B. CITY

- 1) The City may provide recreation programs in addition to those provided by the District. These programs will be at the City's own expense and will not be covered by District funds. The City will coordinate its recreational programs with the District in order to avoid scheduling or service conflicts.

IV. MILWAUKIE CENTER

A. DISTRICT

- 1) Under the jurisdiction of the District, the Milwaukie Center continues to administer and provide a combination of educational, recreational, and social services to the community. These programs shall be primarily geared towards the needs and interests of older residents in the North Clackamas area.

B. JOINTLY, CITY AND THE DISTRICT

- 1) The District and the City may use the Milwaukie Center facilities for such activities as public meetings consistent with building policies. All other governmental users will pay a fee consistent with building use policies approved by the BCC.
- 2) From September 1, 1992 to October 2008, half (9) of the C/CAB members were appointed by the BCC and half (9) were appointed by the Milwaukie City Council.
- 3) Effective on the signing of this agreement, the C/CAB will reorganize and consist of a minimum of twelve (12) members who live or work within the District boundaries.

Of the twelve C/CAB members, there will be representation of one member each appointed by the City and the City of Happy Valley. The C/CAB and DAB and agree to recommend to the BCC for approval the individuals nominated by the City and City of Happy Valley city councils to fill the City representative seats. The BCC agrees to appoint the individuals nominated by the city councils unless there is good cause for rejecting the nomination. All other C/CAB applications for any of the remaining at-large board positions may be made directly to the C/CAB.

The C/CAB members will be recommended by the C/CAB and DAB and appointed by the BCC. C/CAB members will be appointed to staggered three-year terms with terms ending in October of each year. Current members will continue to serve until their term ends.

- 4) During the annual budget process the C/CAB will provide budget recommendations for the operation and maintenance of the Milwaukie Center, and in addition, the C/CAB will identify and prioritize necessary capital projects and provide project recommendations to the DAB. The recommendations for maintenance and operations, and capital improvements shall be reviewed by the DAB, who will then forward their recommendations to the District Budget Committee. The Budget Committee will then submit recommendations to the BCC for final decision.
- 5) The City will continue to retain the deed to the Milwaukie Center and all name changes made by the District to parks and facilities within the City must be approved by the City Council, under advisement of the C/CAB.

V. ADMINISTRATIVE ISSUES

A. DISTRICT ADVISORY BOARD

- 1) The DAB currently consists of an eleven-member board with representation allocated as follows:
 - 3 members from east of I-205 (one of which may reside in the City of Happy Valley), with one member term expiring in 2009;
 - 3 members from west of I-205 (one of which may reside in the City of Milwaukie), with one member term expiring in 2009;
 - 1 member from the City of Happy Valley;
 - 1 member from the City of Milwaukie;
 - 1 member from the Milwaukie Center; and
 - 2 members at large (one from east of I-205 and one from west of I-205).
- 2) District agrees to appoint the individual nominated by the City Councils to fill the City's representative seat unless there is good cause for rejecting the nomination.
- 3) DAB composition will be revisited and adjusted, in the event of significant District boundary changes or major population changes.
- 4) DAB members will be appointed to staggered four-year terms and may be removed at will by the BCC.
- 5) Effective July 1, 2009, representation on the DAB shall change to a nine member board. As of July 1, 2009, composition will include two members each from east and west of I-205, one member from the City of Happy Valley, one member from

the City of Milwaukie, one member from the Milwaukie Center and two members at large (one from east of I-205 and one from west of I-205).

- 6) Any subsequent substantive changes to the composition of the DAB will be reviewed by the City Council.

B. The District Director or their designee will provide the City Council with an annual report describing District operations and maintenance of facilities and programs within the City.

VI. REMOVAL OF CITY PARKS AND RECREATION FACILITIES FROM DISTRICT MAINTENANCE RESPONSIBILITY

- 1) The City may choose at any time to remove some or all of the Joint Parks or the Milwaukie Center from the District's maintenance responsibility.

If the City removes one or more of the Joint Parks and/or senior facilities, no reduction in the District tax rate will be provided to City residents. City residents will continue to receive all of the benefits of in-District residents (e.g., lower user fees, priority use of facilities). Further, District residents will continue to receive all of the benefits (e.g., scheduling, priority use of facilities, equal or lower fees) of the removed facilities and will be treated equally with residents of the City.

- 2) If the City chooses to remove those parks currently under its jurisdiction and/or the Milwaukie Center, a pass-through regarding operations and maintenance support will be negotiated at that time.
- 3) Employees of the District primarily responsible for the operations or maintenance of these facilities will be transferred to the City per ORS 236. Contracts entered into by the District for operations and maintenance support for the subject facilities will be assigned, either in part or in whole depending on the scope of project, to the City for the remainder of the contract term. The Parties agree to enter into any additional agreements or documents necessary to effectuate such transfers and/or assignments.
- 4) The City may choose at any time to withdraw entirely from the District pursuant to ORS 222.524 or its successor statute.

VII. ADDITIONAL PROVISIONS

A. HOLD HARMLESS

Each party agrees to release, defend, indemnify and/or hold harmless the other, its officers, commissioners, councilors, employees, and agents from and against all damages, claims, injuries, costs or judgments which may in any manner arise as a result of such party's performance under this Agreement, subject to Oregon Tort claims limitations.

B. DISPUTES

- 1) Disputes/Attorney Fees. If a dispute arises between the parties regarding breach of this Agreement or interpretation of any term of this Agreement, the parties shall first attempt to resolve the dispute by negotiation followed by mediation if negotiation fails to resolve the dispute.
 - a) Step One. The City Manager and the District Director, or other persons designated by the governing bodies, will negotiate on behalf of the entities they represent. The nature of the dispute shall be reduced to writing and shall be presented to each representative who shall then meet and attempt to resolve the issue. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each party's representative and ratified by each governing body, which shall be binding upon the parties.
 - b) Step Two. If the dispute cannot be resolved within ten (10) days at step one, the parties shall submit the matter to non-binding mediation. The parties shall attempt to agree on a mediator. If they cannot agree, the parties shall request a list of five potential mediators from an entity or firm providing mediation services that is mutually acceptable to the parties. The parties will attempt to mutually agree on a mediator from the list provided, but if they cannot agree, the parties shall submit the matter to the Presiding Court of Clackamas County and the Presiding Judge shall appoint such a mediator from the list of mediators submitted by the mediation entity or firm. The mediator's fees shall be borne equally by the parties and the parties shall each bear their own costs, attorney fees and fees associated with the mediation. If the issue is resolved at this step, a written determination of such resolution shall be signed by each representative and approved by the respective governing body.

C. GOVERNING LAWS

This Agreement shall be construed and governed in all respects in accordance with laws of the State of Oregon without giving effect to the conflict of law provisions thereof.

D. SEVERABILITY

Should any portion of this Agreement or amendment thereto be adjudged by a Court of appropriate final jurisdiction to be in violation of any local, state or federal law, then such portion or portions shall become null and void, and the balance of this Agreement shall remain in effect. Both parties agree to immediately renegotiate any part of this Agreement found to be in such violation by the Court and to bring it into compliance with said laws.

E. NOTICES

All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To the City: City Manager
 10722 SE Main Street
 Milwaukie, OR 97222

To the District District Director
 150 Beavercreek Road
 Oregon City, Oregon 97045

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the party for whom it is intended.

F. TERM

This Agreement shall remain in effect to the end of the fiscal year in which both parties have signed and will be automatically renewed for successive one (1) year periods effective on July 1 of each year unless written notice of cancellation is given by either party to the other at least 180 days prior to the beginning of the next fiscal year.

G. REVIEW

Formal review of this Agreement shall take place either:

- 1) At any time during the term of this Agreement, at the request of either party the Agreement may be formally reviewed by either or both parties and amended as agreed;
- 2) Beginning on July 1 of 2013, and each five years after that date, the City will formally review the IGA and meet with the DAB to discuss potential amendments; or
- 3) At such time as the District Master Plan is amended, the City will review the IGA and propose amendments to the District within one year of the effective date of the amended master plan.

H. CONSTITUTIONAL LIMITS

This Agreement is subject to any applicable constitutional debt limitations and is contingent upon funds being appropriated thereof.

I. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and supersedes any and all other agreements, written or oral, expressed or implied, pertaining to the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by the duly authorized officers on the dates hereinafter written.

CITY OF MILWAUKIE

Pat Duval / AIC

By: Pat Duval

Date: 10/28/08

NORTH CLACKAMAS PARKS AND
RECREATION DISTRICT

Lynn Peterson

By: Lynn Peterson

Date: December 18, 2008

ATTACHMENT #1

A. MILWAUKIE PARKS TO BE MAINTAINED AND OPERATED BY THE SERVICE DISTRICT

SITE

Ardenwald Park
Jefferson Street Boat Ramp
Spring Park (enhanced)
Stanley Park (excluding well site)
Century Park
Water Tower Park (excluding well site and water tank)
Furnberg Park
North Clackamas Park
Dogwood Park
Wichita Park
Scott Park
Robert Kronberg Park (enhanced)
40th and Harvey – NCP areas only
Lewelling Community Park
Homewood Park
Riverfront Park (enhanced)
Balfour Property (local share 2008)
Lake Rd Property (local share 2008)
Monroe Street Triangle (at 37th Ave)

B. MILWAUKIE OPEN SPACES TO BE MAINTAINED AND OPERATED BY THE CITY OF MILWAUKIE

Old Shop (40th & Harvey)
City Hall Grounds and Parking Lot
Well #8
New Century Player/Historic Society Building
Stanley Well area behind fence
Monroe/Washington Triangles
Water Tower Well areas behind fences and access road

If the City of Milwaukie so chooses, it may contract with the District to maintain some or all of the facilities listed above in Section B. If the City contracts with the District to maintain a facility listed in Section B, the District will charge the City a fee that will allow the District to cover (but not exceed) its maintenance costs.

ATTACHMENT #2

Park Maintenance Standards City of Milwaukie

The Milwaukie Parks facilities are divided into several categories. The categories include: High Maintenance, Moderate Maintenance, Basic Maintenance, Special Use Facilities, Infrastructure and Natural Resource Maintenance.

HIGH MAINTENANCE AREAS

High Maintenance Areas include: Ardenwald Park, Dogwood Park, Lewelling Community Park, the Milwaukie Center, North Clackamas Park, Riverfront Park, Scott Park and Water Tower Park.

High Maintenance areas are those associated with City buildings, located in the downtown area, located at an entry point into the City or are high use areas. These areas are mowed a minimum of once per week, edged twice per month and fertilized two times per year. Tree rings and flowerbeds are edged with string trimmers bi-weekly. Broadleaf weeds will be treated as needed. Flower beds are weeded and sprayed as needed. Trash and litter will be picked up weekly. All high maintenance areas are irrigated. Irrigation will be programmed, maintained and winterized. Trees and shrubs will be pruned as needed. Leaves will be removed annually in the fall. Picnic tables, playground equipment and signage will be monitored and repaired. Fencing will be repaired as needed. Mowing in these areas should be performed March through November as weather permits.

MODERATE MAINTENANCE AREAS

Moderate Maintenance areas include: Century Park, Furnberg Park, Homewood Park, Stanley Park, and 40th Avenue Maintenance Area.

Moderate maintenance areas are typically neighborhood parks. These facilities are mowed an average of once a week, trimmed and edged with a weed-eater monthly. Fertilizers are not applied. Trash and litter is collected on a weekly basis. Playgrounds are inspected on a weekly basis. Herbicides are applied as needed. Picnic tables, playground equipment and signage will be monitored and repaired when needed. Mowing in these areas should be performed March through November as weather permits.

BASIC MAINTENANCE

Basic Maintenance areas include: Balfour St, Jefferson Street Boat Ramp, Lake Rd, Robert Kronberg Park, Spring Park, Wichita Park and Balfour St.

Basic maintenance includes weekly litter and trash removal. Mowing will occur twice

yearly. Restrooms will be cleaned and stocked weekly. Parking lot islands will be string trimmed as needed. Signage and picnic tables will be monitored and repaired as needed. Herbicides will be applied as needed. Mowing in these areas should be performed March through November as weather permits.

SPECIAL USE FACILITIES

Special use facilities: There are a variety of special use facilities. The facilities are treated differently based on the activities that occur within them. These facilities range from the Cemetery to the Boat Ramp. Pieces of larger facilities are included within this category. An example of this would be the horse arena at North Clackamas Park. Although North Clackamas Park is listed as a High maintenance area, many of its amenities fit within the special use category. For the purpose of establishing a standard, Special use facilities will be listed independently and defined separately.

Boat Ramp: The boat ramp is primarily a parking lot. It does have some planting area between the upper and lower lots which are kept clear of vegetation. The vegetation removal is done both manually and chemically. To the southern end of the parking lot is a small grass area. This area is mowed on an as-needed basis. Litter and garbage is collected twice a week during the non-fishing season and three times a week during fishing season. The heaviest use time for this facility is during the Spring Chinook run. During this time of year, the ramp area is patrolled on a daily basis for litter.

North Clackamas Park (NCP) Horse Arena: The horse arena at NCP is offered on both a reservation and drop in basis. The critical elements of the arena include the fencing and the footing. Footing is replaced on an ongoing basis. Fencing is repaired as needed.

NCP Ballfields: The Softball fields are mowed on a weekly basis. This begins in late March or early April. Lighting maintenance is performed on an annual basis when the ground is firm enough to support the needed truck. Historically, these facilities are fertilized annually.

NCP Picnic areas: The three picnic areas in NCP are rented on a daily basis beginning the week after May 1st through September 30th. The shelter tables are washed before every picnic.

INFRASTRUCTURE

Infrastructure: This heading includes such items as roads, irrigation, and restrooms.

Restrooms: There are ten restrooms. The first eight restrooms are located at NCP. These block-constructed restrooms are washed and sanitized using a mixture of chlorine bleach on a weekly basis. During days of scheduled events they are inspected at regularly scheduled intervals depending on the size and type of the event. The other two restrooms are all steel and are located at the boat ramp. These restrooms are

cleaned at least once per week. During high use time, such as the spring Chinook run, the restrooms are cleaned and inspected on a daily basis.

Sidewalks and Parking Lots: All debris is blown from sidewalks on a weekly basis. Parking lots and roadways are swept and repaired on an as needed basis by City of Milwaukie Public Works. The city street sweeper will sweep NCP and Milwaukie Center parking lots twice monthly.

NATURAL RESOURCE AREAS

Natural areas are found in the following City parks: Furnberg Park, Homewood Park, Spring Park, Kronberg Park, Dogwood Park, Scott Park, North Clackamas Park and Riverfront Park.

Natural areas are characterized as being largely undeveloped landscapes, with relatively intact ecosystem structure and functions, and used primarily for passive recreation. Natural areas are considered to have limited or minimal human disturbance and provide habitat for Lower Willamette Valley biotic communities in an urban setting.

The District will provide staff, organize volunteers or coordinate contract workers to enhance park ecosystems utilizing methods such as removing invasive and/or dangerous plants and trees, litter collection on an as-needed basis, replacing or planting native plants and clearing pathways in a manner fitting natural areas. The use of chemicals shall be minimized in these areas.

Where practical and safe, the District will consider the impacts of maintenance to natural cycles of succession, disturbance, and wildlife habitat needs. For example, dead or declining trees in a natural area may create opportunities for standing snags, nurse logs and brush piles. Aquatic features like pools or in stream woody debris are maintained even if doing so decreases drainage. Every effort should be taken to retain or increase available enhancement resources on a given site while maintaining a safe environment for the public.

Natural and sensitive areas shall be monitored for the following:

- Public use, such as high impact, vandalism, graffiti, or illegal activity
- Silt or debris loading and drainage of wetlands, ponds, and streams
- Presence of invasive plants
- Water quality and upstream impacts
- Dog or other pet impacts to turf, trails and wetlands

Natural areas are subject to litter and dumping activity. Park visitors are less likely to dump or litter if a site is clean and appears well maintained. Maintenance activities may discourage this activity through these routine tasks:

- Weekly to semi-monthly inspection of trailheads and street ends
- Quick response clean-up when incidents are reported
- Inspection of dumped materials to identify the perpetrator
- Prompt removal of encampments (Milwaukie Code Enforcement staff should be contacted to assist with this)