



Regular Session

RS

Milwaukie City Council

COUNCIL REGULAR SESSION

Zoom Video Conference
www.milwaukieoregon.gov

2345th Meeting

REVISED AGENDA

NOVEMBER 2, 2021

(Revised October 29, 2021)

Council will hold this meeting through video conference. The public may attend the meeting by watching live on the [city's YouTube channel](#) or Comcast Cable channel 30 in city limits, or by joining the Zoom webinar. **Written comments** may be submitted by email to ocr@milwaukieoregon.gov. Council will take limited verbal comments. **For Zoom webinar login information** visit <https://www.milwaukieoregon.gov/citycouncil/city-council-regular-session-311>.

Note: agenda item times are estimates and are subject to change.

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1. **CALL TO ORDER** (6:00 p.m.)
 - A. **Pledge of Allegiance**
 - B. **Native Lands Acknowledgment**
2. **ANNOUNCEMENTS** (6:01 p.m.) **2**
3. **PROCLAMATIONS AND AWARDS**
 - A. **None Scheduled.**
4. **SPECIAL REPORTS**
 - A. **City Manager Updates – Report** (6:05 p.m.)
Staff: Ann Ober, City Manager
5. **COMMUNITY COMMENTS** (6:20 p.m.)

To speak to Council, please submit a comment card to staff. Comments must be limited to city business topics that are not on the agenda. A topic may not be discussed if the topic record has been closed. All remarks should be directed to the whole Council. The presiding officer may refuse to recognize speakers, limit the time permitted for comments, and ask groups to select a spokesperson. **Comments may also be submitted in writing before the meeting, by mail, e-mail (to ocr@milwaukieoregon.gov), or in person to city staff.**
6. **CONSENT AGENDA** (6:25 p.m.)

Consent items are not discussed during the meeting; they are approved in one motion and any Council member may remove an item for separate consideration.

 - A. **Approval of Council Meeting Minutes of:** **4**
 1. **October 5, 2021, work session, and**
 2. **October 5, 2021, regular session.**
 - B. **Approval of a Collective Bargaining Agreement with the American Federation of State, County, and Municipal Employees - Motion** **9**
 - C. **Approval of a Cost-of-Living Adjustment (COLA) for Management and Non-Represented Employees – Motion** **11**

7. BUSINESS ITEMS

- A. **Board and Committee Annual Interview Process – Update** (6:30 p.m.) **14**
Staff: Scott Stauffer, City Recorder
- B. **Milwaukie Bay Park Funding and Construction Agreements – Resolutions (2)** (6:40 p.m.) **18**
Staff: Ann Ober, City Manager
- C. **Legislative Session Preparation – Discussion** (7:25 p.m.)
Staff: Kelly Brooks, Interim Community Development Director

8. PUBLIC HEARINGS

- A. **None Scheduled.**

9. COUNCIL REPORTS (7:55 p.m.)

10. ADJOURNMENT (8:00 p.m.)

Executive Session

After the regular session Council will meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660 (2)(e) to conduct deliberations with persons designated by the governing body to negotiate real property transactions and (i) to review and evaluate the job performance of a chief executive officer, other officers, employees, and staff, if the person whose performance is being reviewed and evaluated does not request an “open hearing,” and (h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. (executive session added to the agenda)

Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice

The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at ocr@milwaukieoregon.gov or phone at 503-786-7502. To request Spanish language translation services email espanol@milwaukieoregon.gov at least 48 hours before the meeting. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the [city's YouTube channel](#) and Comcast Channel 30 in city limits.

Servicios de Accesibilidad para Reuniones y Aviso de la Ley de Estadounidenses con Discapacidades (ADA)

La ciudad se compromete a proporcionar igualdad de acceso para reuniones públicas. Para solicitar servicios de asistencia auditiva y de movilidad, favor de comunicarse a la Oficina del Registro de la Ciudad con un mínimo de 48 horas antes de la reunión por correo electrónico a ocr@milwaukieoregon.gov o llame al 503-786-7502. Para solicitar servicios de traducción al español, envíe un correo electrónico a espanol@milwaukieoregon.gov al menos 48 horas antes de la reunión. El personal hará todo lo posible para responder de manera oportuna y atender las solicitudes. La mayoría de las reuniones del Consejo de la Ciudad se transmiten en vivo en el [canal de YouTube de la ciudad](#) y el Canal 30 de Comcast dentro de los límites de la ciudad.

Executive Sessions

The City Council may meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660(2); all discussions are confidential; news media representatives may attend but may not disclose any information discussed. Final decisions and actions may not be taken in executive sessions.



COUNCIL REGULAR SESSION

Zoom Video Conference
www.milwaukieoregon.gov

2345th Meeting

MINUTES

NOVEMBER 2, 2021

Council Present: Councilors Lisa Batey, Angel Falconer, Desi Nicodemus, Council President Kathy Hyzy, and Mayor Mark Gamba

Staff Present: Joseph Briglio, Community Development Director
Kelly Brooks, Assistant City Manager
Justin Gericke, City Attorney
Adam Moore, Parks Development Coordinator
Ann Ober, City Manager
Peter Passarelli, Public Works Director
Scott Stauffer, City Recorder

Mayor Gamba called the meeting to order at 6:01 p.m.

1. CALL TO ORDER

A. Pledge of Allegiance.

B. Native Lands Acknowledgment.

2. ANNOUNCEMENTS

Mayor Gamba announced upcoming activities, including Planning Commission hearings on the Comprehensive Plan implementation, a question-and-answer session for the 42nd Avenue and 43rd Avenue improvements project, the city's Arbor Day, leaf drop-off, and Veterans Day events, and a work party event at Minthorn Springs.

3. PROCLAMATIONS AND AWARDS

A. None Scheduled.

4. SPECIAL REPORTS

A. City Manager Updates – Report

Ober thanked the American Federation of State, County, and Municipal Employees (AFSCME) and management negotiating teams for working to develop a new contract.

5. COMMUNITY COMMENTS

Mayor Gamba reviewed the public comment procedures and **Ober** reported that there was no follow-up report from the October 19 community comments.

6. CONSENT AGENDA

It was moved by Councilor Batey and seconded by Council President Hyzy to approve the Consent Agenda as presented.

A. City Council Meeting Minutes:

1. October 5, 2021, Work Session, and
2. October 5, 2021, Regular Session.

B. Approval of a collective bargaining agreement (CBA) with the American Federation of State, County, and Municipal Employees (AFSCME) – motion.

C. Approval of a cost-of-living adjustment (COLA) for management and non-represented employees – motion.

Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting “aye.” [5:0]

Mayor Gamba thanked AFSCME and management for their work on the new CBA.

7. BUSINESS ITEMS

A. Board and Committee (BC) Annual Interview Process – Update

Stauffer provided an update on the move to an annual interview process for BCs that would fill vacancies and create alternate appointee lists to fill future vacancies. **Stauffer** explained that applicants would be recruited and interviewed twice a year because BC terms end in March and June. The group commented on whether two-month recruitment periods would be enough time for people to apply. **Councilor Batey** commented that Council needed to help recruit applicants and noted that the second recruitment campaign would be just for two BCs whose terms end on June 30.

Mayor Gamba and **Stauffer** remarked on the importance of having alternate lists and noted that ad hoc interviews may be needed if there are vacancies and no alternates.

Councilor Nicodemus and **Stauffer** commented that the city would likely continue to hold BC interviews via Zoom video conference.

Councilor Batey noted existing BC vacancies and suggested some positions needed to be filled before annual interviews were held in February 2022. **Stauffer** agreed that interviews for certain BCs should be scheduled in 2021 and commented on the city's intention to be clearer about the status of applications throughout the year.

Council President Hyzy and **Stauffer** remarked on how an annual interview panel would consider individuals who had applied for multiple BCs. **Mayor Gamba** and **Stauffer** agreed that the set BC interview questions should be updated.

Stauffer discussed plans for the annual recruitment campaign. **Council President Hyzy** suggested the volunteer dinner and award be highlighted in recruitment materials.

Stauffer explained there would be two recruitment and interview campaigns because of the two different BC term end dates and asked if Council would be open to changing all term end dates to June 30. **Councilor Batey** expressed support for moving to June 30 end dates for all BCs and the group commented on the benefits of recruiting for BCs in warmer springtime weather. **Mayor Gamba** recalled that the city had previously done an annual recruitment process and it hadn't worked. The group commented on developing strong alternate lists. It was Council consensus that staff should prepare the necessary ordinances and resolutions to move all BC term end dates to June 30. **Stauffer** noted that such a change may not happen until later in 2022.

Stauffer asked for feedback on updating the BC application form. **Council President Hyzy** and **Councilor Falconer** encouraged the form to be reviewed with an equity point of view. **Councilor Batey** and **Hyzy** believed the background question could be reworded and **Stauffer** agreed to send example applications to Council to review.

Council President Hyzy commented that other agencies had started to accept applications in non-written formats and encouraged staff to look at such options.

B. Milwaukie Bay Park Funding and Construction Agreements – Resolutions (2)

Ober discussed previous Council and staff discussions and North Clackamas Parks and Recreation District (NCPRD) Board actions related to the proposed intergovernmental agreements (IGAs) for funding and constructing Milwaukie Bay Park. **Ober** reported that the city and district had reached agreement on the IGA language, noted the estimated project timeline, and asked Council to approve the IGAs.

Councilor Batey expressed frustration that the park project had been delayed and that NCPRD Board Member Paul Savas had caused the delays. **Batey** and **Ober** proposed changes to the resolutions approving the IGAs. The group discussed the proposed resolution changes which would add language to both resolutions noting that the park is a regional asset and a clause to the funding resolution that would rescind the city's approval of the funding IGA if the district board did not fund the project by June 1, 2022.

It was moved by Councilor Batey and seconded by Councilor Nicodemus to approve the resolution authorizing an intergovernmental agreement with the North Clackamas Parks and Recreation District for Milwaukie Bay Park Phase III Funding as amended during the meeting. Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting "aye." [5:0]

Resolution 55-2021:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING AN UPDATED INTERGOVERNMENTAL AGREEMENT WITH THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT FOR MILWAUKIE BAY PARK PHASE III FUNDING.

It was moved by Councilor Batey and seconded by Councilor Nicodemus to approve the resolution authorizing an intergovernmental agreement with the North Clackamas Parks and Recreation District for Milwaukie Bay Park Phase III grant administration, construction, and operations as amended during the meeting. Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting "aye." [5:0]

Resolution 56-2021:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT FOR MILWAUKIE BAY PARK PHASE III GRANT ADMINISTRATION, CONSTRUCTION, AND OPERATIONS.

Ober thanked city staff for their dedicated work on the park project.

C. Legislative Session Preparation – Discussion

Brooks remarked on the likelihood of the state legislature holding a special session in 2021 and asked for feedback on how to track legislation during the 2022 session.

Gamba explained how the League of Oregon Cities (LOC) determines which bills to support and encouraged Council to participate in the League's policy committee process. The group noted which LOC committees Council members serve on and discussed what policy topics were likely to be considered by the legislature in 2022. They noted other sources of legislative information Council members use to track bills.

The group agreed to add legislative policy discussion items to a regular session agenda in December and once a month during the 2022 session.

Introduction of New Community Development Director

Briglio introduced himself and the group welcomed him to Milwaukie.

8. PUBLIC HEARING

A. None Scheduled.

9. COUNCIL REPORTS

None.

10. ADJOURNMENT

Mayor Gamba announced that Council would meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660 (2)(e) to conduct deliberations with persons designated by the governing body to negotiate real property transactions and (i) to review and evaluate the job performance of a chief executive officer, other officers, employees, and staff, if the person whose performance is being reviewed and evaluated does not request an “open hearing,” and (h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. (executive session added to the agenda)

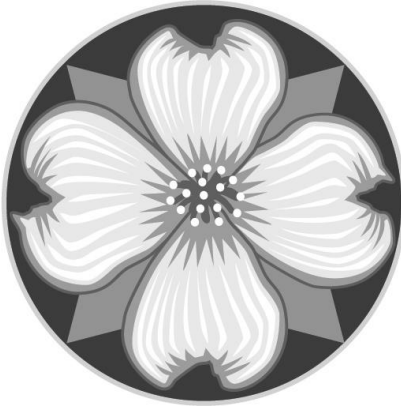
It was moved by Councilor Nicodemus and seconded by Councilor Falconer to adjourn the Regular Session. Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting “aye.” [5:0]

Mayor Gamba adjourned the meeting at 7:20 p.m.

Respectfully submitted,



Scott Stauffer, City Recorder



RS Agenda Item

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Announcements

Mayor's Announcements – November 2, 2021



- **Comprehensive Plan Implementation (Housing, Trees, and Parking) – Hearings continue on Nov. 9**
 - Visit Engage Milwaukie to learn more and provide comment at engage.milwaukieoregon.gov
- **43rd Ave./42nd Ave. Improvements In Person Q&A – Wed., Nov. 3 (5:30-6:30 PM)**
 - Learn about the paving and pedestrian/bicycle improvements coming this fall.
 - The event will take place in the parking lot of the business located on the corner of 43rd Ave. and Howe St.
- **Milwaukie Arbor Day Celebration and Planting – Saturday, November 6 (8:30 AM – 12 PM)**
 - Enjoy coffee and tree themed doughnuts, watch the ceremonial tree planting and learn more about Milwaukie's urban forest program.
 - Sign up for a tree for your yard or street through the Friends of Trees.
 - Event will take place at the city's Johnson Creek Building, 6101 SE Johnson Creek Blvd.
- **Free Leaf Drop Events For Milwaukie Residents – Saturday, Nov. 6 & 20 and Dec. 4, 11 & 14 (7 AM – 2 PM)**
 - To participate, please bring along a utility bill (e-bill or paper bill) as proof of residency.
 - Leaves are accepted in paper or plastic bags or loose, but paper bags are preferred.
 - Event is free, but the city will collect nonperishable food for local families from anyone that would like to donate.
 - Milwaukie's Public Works Yard, 6101 SE Johnson Creek Blvd.
- **Vietnam Veterans Remembrance Event – Thu., Nov. 11 (1-3 PM)**
 - A short ceremony will begin at 1:30 PM. Free carnations will be available for the community to place on the Vietnam Veterans monument during the event.
 - For questions about the event, contact Scott Stauffer, city recorder, at ocr@milwaukieoregon.gov.
- **Minthorn Springs Volunteer Work Parties – Sat., Nov. 13 and Sat., Dec. 11 (10 AM – 12 PM)**
 - Volunteer alongside the Milwaukie Parks Foundation and the Wetlands Conservancy.
 - Work will include the removal of invasive plants to ready the area for native plants in January.
 - Please register to volunteer in advance by emailing pattylyons@wetlandconservancy.org.
- **LEARN MORE AT [WWW.MILWAUKIEOREGON.GOV](https://www.milwaukieoregon.gov) OR CALL 503-786-7555**



RS Agenda Item

5

Community Comments

19:08:04 From Kelly Brooks to Hosts and panelists:

Policy Committee Topics include the following:

- Community Development
- Energy & Environment
- Finance & Taxation
- General Government/Human Resources
- Telecom, Broadband & Cable
- Transportation
- Water & Wastewater



RS Agenda Item

6

Consent Agenda

COUNCIL WORK SESSION

Zoom Video Conference
www.milwaukieoregon.gov

MINUTES

OCTOBER 5, 2021

Council Present: Councilors Lisa Batey, Angel Falconer, Desi Nicodemus,
Council President Kathy Hyzy, and Mayor Mark Gamba

Staff Present: Justin Gericke, City Attorney
Dan Harris, Events & Emergency
Management Coordinator
Ann Ober, City Manager
Natalie Rogers, Climate & Natural Resource Manager
Scott Stauffer, City Recorder
Jason Wachs, Community Engagement Coordinator

Mayor Gamba called the meeting to order at 4:01 p.m.

1. Tree Board – Annual Report

Rogers provided an overview of the Tree Board, noted the board's work of the last year including Tree City USA recognition and tree code and inventory work. **Councilor Batey** and **Rogers** noted that the tree inventory had focused on public street trees only.

Rogers discussed the city's increased spending on tree maintenance and plantings in recent years and presented the board's work plan for the coming year which included a tree removal moratorium and tree code adoption, plantings, and events. **Councilor Batey** and **Rogers** noted how the public could volunteer to do tree planting or request a tree be planted on Arbor Day through the Friends of Tree's website.

Rogers reviewed the work the board and city planned to do in 2022, including tree-related community engagement events, a tree permitting program, continued tree inventory efforts, and establishing a heritage tree program.

Gamba wanted to meet with the board to discuss the tree code and **Rogers** noted the board was scheduled to meet on October 20.

The group noted other groups that would be planting trees in Milwaukie soon, including the Wetlands Conservancy and the Friends of Elk Rock Island and Spring Park and the city as part of the planned restoration of the Pennywood Retention Pond.

2. Winter Events – Update

Harris discussed community interest in the city's usual winter events and the risks posed by the ongoing COVID-19 pandemic and reported that it was staff's recommendation that the city only put on one winter event.

Councilor Batey thought it made sense to bring just one winter event back this year.

Ober reported that the Downtown Milwaukie Business Association (DMBA) had expressed concern about event crowd size during a pandemic and remarked that any event would be smaller than it had been before.

Harris reported that staff had reached out to the Lake Road, Historic Milwaukie, and Lewelling neighborhood district associations (NDAs) regarding the proposal to do one event and had only heard back from the Lewelling NDA which had agreed with the reasoning to not hold the Winter Solstice event this year.

Harris proposed that the city only put on the Umbrella Parade and Tree Lighting Ceremony, suggesting that the event lent itself better to maintaining social distancing protocols and it didn't need to include food and beverages. **Harris** suggested there were ways the city could promote downtown businesses during the parade and lighting event and throughout the Christmas Ships sailing season.

Council President Hyzy was glad to hear food and beverages would not be part of the event and observed that the community had been respectful of pandemic protocols during summer events. **Harris** agreed with Hyzy's observations about community behaviors and hoped that the solstice event could return in 2022.

Harris remarked that the pandemic could still force the parade and lighting event to be canceled and noted the importance of keeping city events accessible to all by making sure there was no cost to participate.

The group remarked on the city hall tree's history of not lighting up during the ceremony.

Wachs commented on staff's process for deciding which winter event to do, noting that the Christmas Ships would still sail by Milwaukie Bay Park regardless of whether the city hosts a solstice event. **Council President Hyzy** noted that solstice had attracted thousands of people in the past.

Mayor Gamba was curious to hear more about the DMBA's event concerns and expressed support for just organizing the parade and lighting ceremony.

3. Adjourn

Mayor Gamba announced that after the work session Council would meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660 (2)(e) to deliberate with persons designated by the governing body to negotiate real property transactions.

Mayor Gamba adjourned the meeting at 4:38 p.m.

Respectfully submitted,

Scott Stauffer, City Recorder

COUNCIL REGULAR SESSION

Zoom Video Conference
www.milwaukieoregon.gov

2343rd Meeting

MINUTES

OCTOBER 5, 2021

Council Present: Councilors Lisa Batey, Angel Falconer, Desi Nicodemus,
Council President Kathy Hyzy, and Mayor Mark Gamba

Staff Present: Kelly Brooks, Assistant City Manager Natalie Rogers, Climate & Natural Resources Manager
Justin Gericke, City Attorney Scott Stauffer, City Recorder
Ann Ober, City Manager Laura Weigel, Planning Manager

Mayor Gamba called the meeting to order at 6:03 p.m.

1. CALL TO ORDER

A. Pledge of Allegiance.

B. Native Lands Acknowledgment.

2. ANNOUNCEMENTS

Mayor Gamba announced upcoming activities, including the Comprehensive Plan implementation project, a Milwaukie Museum lecture, a poetry reading, and Arbor Day events. **Councilor Batey** noted a work party at the Minthorn Springs Wetlands.

3. PROCLAMATIONS AND AWARDS**A. Arbor Day – Proclamation**

Rogers introduced the proclamation and noted Arbor Day activities the city would be hosting. **Mayor Gamba** proclaimed November 6 to be Arbor Day.

Energy Efficiency Day – Proclamation (added to the agenda)

Mayor Gamba commented on the importance of becoming more energy efficient and proclaimed October 6 to be Energy Efficiency Day.

B. Indigenous Peoples Day – Proclamation

Councilor Falconer encouraged the public to learn about the people who lived on the land that is Milwaukie before the 1840s. **Stauffer** reported that staff had been in contact with the Confederated Tribes of the Grand Ronde regarding potential projects. The group noted a virtual Indigenous Peoples Day event Clackamas County would be hosting. **Mayor Gamba** proclaimed October 11 to be Indigenous Peoples Day.

C. Archives Month – Proclamation

Stauffer and the Milwaukie Historical Society's **Greg Hemer** introduced the proclamation, noted upcoming history events, and commented on the need to record all voices from the past. **Mayor Gamba** proclaimed October to be Archives Month.

D. Community Planning Month – Proclamation

Weigel remarked on the importance of community involvement in planning cities. **Mayor Gamba** proclaimed October to be Community Planning Month.

4. SPECIAL REPORTS

A. City Manager Updates – Report

Ober provided an update on conversations between the city and North Clackamas Parks and Recreation District (NCPRD) regarding intergovernmental agreements (IGAs) for Phase III of Milwaukie Bay Park.

Ober reported on staff's work to recruit members for the Equity Steering Committee (ESC), and develop staff equity and inclusion trainings, policies, and procurement rules.

5. COMMUNITY COMMENTS

Mayor Gamba reviewed the public comment procedures and **Ober** reported that there was no follow-up report from the September 21 community comments. It was noted that no audience member wished to address Council.

6. CONSENT AGENDA

It was moved by Councilor Batey and seconded by Council President Hyzy to approve the Consent Agenda as presented.

A. City Council Meeting Minutes:

1. September 7, 2021, work session, and
2. September 7, 2021, regular session.

B. Resolution 52-2021: A resolution of the City Council of the City of Milwaukie, Oregon, making appointments to the Arts Committee.

Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting "aye." [5:0]

7. BUSINESS ITEMS

A. Kellogg Good Neighbor Committee (KGNC) Dissolution – Resolution

Rogers discussed the KGNC's work, the recommendation to dissolve the committee, and proposed changes to the city's IGA with Clackamas County Water Environment Services (WES) related to managing the impacts of the Kellogg Wastewater Treatment facility. The group noted that the facility's issue reporting phone line had been experiencing technical issues.

Council President Hyzy reported that the KGNC had thoroughly discussed the need for the committee in the future and the committee had concluded that it was time to change the way good neighbor funds are spent and dissolve the committee.

It was moved by Councilor Nicodemus and seconded by Councilor Falconer to approve the resolution dissolving the Kellogg Good Neighbor Committee. Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting "aye." [5:0]

Resolution 53-2021:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DISSOLVING THE KELLOGG GOOD NEIGHBOR COMMITTEE (KGNC).

Greg Geist, WES Director, remarked on the KGNC's good work, the benefits of the proposed model for administering good neighbor funds, and noted recent upgrades at the Kellogg facility.

Mayor Gamba, **Geist**, and **Ober** commented that the city and WES would begin discussions to revise the IGA soon. **Ober** and **Councilor Batey** thanked WES for working with the city as good partners.

Councilor Batey asked about WES' plans for the Three Creeks Nature Area and **Geist** commented that WES wanted Council's input on the project. **Geist** and **Ober** noted WES would attend a Council meeting soon to discuss the project.

8. PUBLIC HEARING

A. None Scheduled.

9. COUNCIL REPORTS

None.

10. ADJOURNMENT

Mayor Gamba announced that after the meeting Council would convene as the Milwaukie Redevelopment Commission (MRC).

It was moved by Councilor Nicodemus and seconded by Councilor Falconer to adjourn the Regular Session. Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting "aye." [5:0]

Mayor Gamba adjourned the meeting at 7:04 p.m.

Respectfully submitted,

Scott Stauffer, City Recorder

To: Mayor and City Council
Through: Ann Ober, City Manager
Reviewed: Scott Stauffer, City Recorder; and
Bonnie Dennis, Finance Director
From: Gary Rebello, Human Resources Director

Date: Oct. 20, 2021

Subject: **American Federation of State, County and Municipal Employees Local 350-5 (AFSCME) Three-Year Collective Bargaining Agreement**

ACTION REQUESTED

Council is asked to approve a three-year successor AFSCME Collective Bargaining Agreement (CBA) effective July 1, 2021 – June 30, 2024. AFSCME has ratified the CBA.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

Council approved the current AFSCME CBA, which expired on June 30, 2021.

ANALYSIS

The CBA includes a 2% cost of living adjustment (COLA) effective the first day of the pay period of July 1, 2021; 1% effective the first pay period of January 1, 2022; 3% effective the first pay period of July 1, 2022; and 3% effective with the first pay period of July 1, 2023. The CBA includes an increase to the city's contribution to the deferred compensation plan from 2.5% to 3.5%, effective with the first pay period of January 1, 2022, and a one-time recognition payment of \$1,000 to all members of the association. Juneteenth has also been added as a city paid holiday.

AFSCME staff salaries are currently about +/- 5% relative to the competitive market. Overall, this is a good market position. Salary increase rates in the market will vary by jurisdiction but will likely be in the 2.0 to 3.0% range. The July 2021 to June 2024 CBA will keep the city competitive in terms of salaries.

Although the contract is not based on the Consumer Price Index for All Urban Consumers (CPI-U West), it is important to note that the CPI-U was low in 2020 (1.6%) but is increasing significantly. The year-to-date 2021 CPI-U is currently 6.7%.

BUDGET IMPACTS

The city's budget includes COLA increases at approximately 2.5% - 3.0% annually. The current biennium budget can absorb the COLA increases based on the adopted budget and from under expending throughout the biennium should Council decide to approve the CBA. The one-time recognition payment is partially paid by the Federal American Revenue Recovery Act (ARPA), which is estimated at \$28,000. Other funding for the recognition payment, approximately \$68,000, will be paid using existing under expend or other savings within the departments.

WORKLOAD & CLIMATE IMPACTS

None.

COORDINATION, CONCURRENCE, OR DISSENT

No dissent.

STAFF RECOMMENDATION

Staff recommends Council approve the three-year MPEA CBA as bargained between the city and AFSCME, in consultation with the Council.

ALTERNATIVES

Council could direct staff to return to the bargaining table to continue negotiations through the State mediation process.

ATTACHMENTS

None.

To: Mayor and City Council
Through: Ann Ober, City Manager
Reviewed: Scott Stauffer, City Recorder; and
Bonnie Dennis, Finance Director
From: Gary Rebello, Human Resources Director

Date: Oct. 20, 2021

Subject: **Management/Non-Represented Cost of Living Adjustment (COLA)**

ACTION REQUESTED

Council is asked to approve a 2.0% management/non-represented COLA effective retroactively to the first day of the pay period July 1, 2021; a 1% COLA effective the first day of the pay period January 1, 2022; and an increase to the city's contribution to the deferred compensation plan from 2.5% to 3.5% effective the first day of the pay period January 1, 2022. Additionally, Council is asked to approve a \$2,000 recognition payment for police managers and \$1,000 recognition payment for all other managers and non-represented personnel, and to add Juneteenth as a city paid holiday.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

Council has discretion to grant a COLA to management and other non-represented personnel. In addition to management, there are two non-union represented staff (payroll specialist and human resources specialist) due to their roles in collective bargaining. The decision to grant the management COLA is not automatic and is considered on an annual basis. In recent years, Council has granted management and non-represented staff an identical COLA as negotiated by the American Federation of State County and Municipal Employees (AFSCME).

ANALYSIS

The AFSCME contract calls for the same compensation increases as noted above (COLA; deferred comp and one-time recognition payment), and the addition of Juneteenth as a city paid holiday. The Milwaukie Police Employee's Association (MPEA) contract also includes the same COLA and deferred compensation increases.

Management staff salaries are currently about +/- 5% relative to the competitive market.

The Consumer Price Index for All Urban Consumers (CPI-U West) – Size Class B/C for the prior year (2020) was 1.6% but has been increasing dramatically in 2021. Salary increase rates will vary by jurisdiction but will likely be in the 2.0 to 3.0% range.

BUDGET IMPACTS

The city's budget includes COLA increases at approximately 2.5% - 3.0% annually. The current biennium budget can absorb the COLA increases based on the adopted budget and from under expending throughout the biennium should Council decide to approve these adjustments. The one-time recognition payment, estimated at \$38,000, will be paid by existing under expend or other savings as it does not qualify under the American Revenue Recovery Act (ARPA).

WORKLOAD & CLIMATE IMPACTS

None.

COORDINATION, CONCURRENCE, OR DISSENT

No dissent.

STAFF RECOMMENDATION

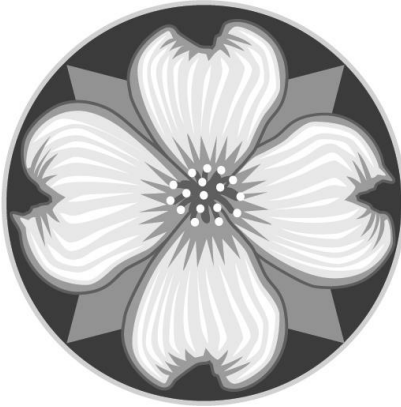
Staff recommends that Council approve the presented compensation changes (COLA; deferred compensation; and additional payment) for management and non-represented staff.

ALTERNATIVES

Council may decide to keep management salary as it is currently (with no COLA) or grant an amount other than the recommend amount.

ATTACHMENTS

None.



RS Agenda Item

7

Business Items

COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager

Date Written: Sep. 20, 2021

Reviewed: Jason Wachs, Community Engagement Coordinator

From: Scott Stauffer, City Recorder

Subject: **Semi-Annual Board & Committee (BC) Recruitment Process – Update**

ACTION REQUESTED

Council is asked to receive an update and provide feedback on the plans to move to a semi-annual BC recruitment process.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

[April 20, 2021](#): In response to concerns reported by staff about the city's current BC interview scheduling process, Council directed staff to move to a semi-annual BC recruitment process.

ANALYSIS

In April, Council directed staff to move the city's BC recruitment process from on-demand to a semi-annual interview process. This direction was given in response to scheduling conflicts noted in previous reports. In response to this direction, staff drafted a year-long timeline for implementing a semi-annual interview process that would feature deliberate recruiting periods in December/January and March/April with interview panels convened in February and May. The key outcomes of the proposed process would be fewer interviews and a list of already interviewed applicants to fill unexpected vacancies that occur between the semi-annual interviews.

2022 Game Plan (timeline and process)

The timeline below provides for one annual interview session for each BC, with most committees interviewing in February due to March term expiration dates. The Budget Committee and Public Safety Advisory Committee (PSAC) will hold interviews in May due to June term expiration dates.

Staff is working on a recruitment campaign that will likely include a postcard mailing in January, (possibly) an event to highlight each BC's role, outreach work to key community groups, and a series of communications to all applicants that will provide the status of their application in the annual process.

At this time, it is expected that two weekends in both February and May will be needed for interviews. Staff are currently looking at February 12 and 19 and May 14 and 21 for interviews (likely to be held via Zoom video conference). *Staff is open to any Council feedback on this timeline and these interview dates.*

Anticipated Annual Recruitment Timeline

DATES	ACTIONS
(2021) October	<ul style="list-style-type: none"> • Applications Accepted • No More ad hoc Interviews
November	<ul style="list-style-type: none"> • Applications Accepted • Recruitment Campaign Launches for most BCs
December	<ul style="list-style-type: none"> • Applications Accepted • Recruitment Campaign Underway for most BCs • Visit with community groups
(2022) January	<ul style="list-style-type: none"> • Applications Accepted • Recruitment Campaign Underway for most BCs • January XX: BC Involvement Fair • January 31: Deadline to apply for most BCs
February	<ul style="list-style-type: none"> • Applications Accepted (but not for inclusion in 2022 interviews) • Interviews the mornings of February 12 and 19 <ul style="list-style-type: none"> ○ The interview panel will identify those to be appointed to current vacancies and alternates for appointment as vacancies arise later
March	<ul style="list-style-type: none"> • Applications Accepted • Recruitment Campaign Launches for Budget Committee and PSAC • Council to consider appointments for vacancies at 3/1 regular session
April	<ul style="list-style-type: none"> • Applications Accepted • Recruitment Campaign: Underway for Budget Committee and PSAC • April 29: Deadline to apply for Budget Committee and PSAC
May	<ul style="list-style-type: none"> • Applications Not Accepted (closed until December or special call) • Interviews the mornings of May 14 and 21 <ul style="list-style-type: none"> ○ The interview panel will identify those to be appointed to current vacancies and alternates for appointment as vacancies arise later
June 7	<ul style="list-style-type: none"> • Applications Not Accepted • Council to consider appointments for vacancies at 6/7 regular session
July – November	<ul style="list-style-type: none"> • Applications Not Accepted (not open again until December) • Vacancies filled by those on alternate list • Ad hoc interviews only if on-deck list exhausted and we need to fill a position before next annual interviews.

A Question About Term End Dates

As staff prepared the semi-annual interview schedule, there was discussion about why BC terms end at two different times of the year. Most BC member terms end on March 31, but Budget Committee and Public Safety Advisory Committee (PSAC) terms end on June 30. Budget and PSAC terms end in June because of the nature of the budgeting process, which ends in June and the city's neighborhood district associations (NDAs) nominate their PSAC representatives in May and June. Staff is unable to identify a reason why most BC terms end in March and believes that by changing the term end dates the city could move to a once-a-year interview process (likely in late spring) instead of the currently planned twice-a-year interview process. *Staff would like to know if Council is open to moving all BC term end dates to June 30?*

Refreshing the Application

The planned change to a semi-annual recruitment process is a good opportunity to review and revise the city's general BC application form. The form was last updated in 2018 and is the template for other applications, such as the Tree Board and the Equity Steering Committee. The general application form is attached, and *staff would appreciate Council feedback on whether any changes are desired.*

BUDGET & CLIMATE IMPACTS

None.

WORKLOAD IMPACT

Staff anticipates that the initial roll-out of the semi-annual interview process will require a significant amount of staff time. However, after the interview process, the as-needed appointment process throughout the rest of the year should require less staff time. Over a year, the semi-annual process should reduce staff work related to BC recruitments.

COORDINATION, CONCURRENCE, OR DISSENT

The city recorder worked with the community engagement coordinator, communications program manager, events and emergency management coordinator, and the equity program manager on this report, and consulted the city manager.

STAFF RECOMMENDATION

Council is asked to provide feedback to staff regarding the planned move to a semi-annual BC recruitment process.

ALTERNATIVES

Council may direct staff to not move to a semi-annual process, move to a different recruitment process, or to leave the current ad-hoc process in place.

ATTACHMENTS

1. General BC Application Form



CITY OF MILWAUKIE

Boards and Commissions Application

Office of the City Recorder
 10722 SE Main Street
 Phone: 503-786-7515 Fax: 503-786-7540
 ocr@milwaukieoregon.gov

To apply for a board or commission please complete this form and return it to the Office of the City Recorder. If desired, you may also include a resume. If you are interested in applying for a board 6 months after submitting this form, please submit a new application.

Name: _____ Phone: _____ Date: _____

Home Address: _____ Email: _____

Are you a registered voter in Milwaukie? ☐ Yes ☐ No

How long have you been a Milwaukie Resident? _____

Do you live with anyone currently serving on a City board or commission? ☐ Yes ☐ No

If so, which one? _____

Occupation: _____ Employer: _____

Please list any prior civic or professional activities:

Why have you applied for this position?

What special training, skills, or experience have you had that would be pertinent to this application?


Board(s) or Commission(s) in which you are interested:

- | | |
|---|---|
| <input type="checkbox"/> Arts Committee (artMOB) | <input type="checkbox"/> Kellogg Good Neighbor Committee (KGNC) |
| <input type="checkbox"/> Audit Committee | <input type="checkbox"/> Citizen at large OR <input type="checkbox"/> Downtown Business/Property Owner |
| <input type="checkbox"/> Budget Committee | <input type="checkbox"/> Library Board |
| <input type="checkbox"/> Citizens Utility Advisory Board (CUAB) | <input type="checkbox"/> Park and Recreation Board (PARB) |
| <input type="checkbox"/> Community Action Board (CAB) | <input type="checkbox"/> Planning Commission |
| <input type="checkbox"/> Design and Landmarks Committee (DLC) | <input type="checkbox"/> Public Safety Advisory Committee (PSAC) |
| | <input type="checkbox"/> Tree Board |

Please list your top choice: _____

I understand that this application will be kept for up to 6 months: ☐ I Agree

Please note: The information submitted in this application may be subject to public records laws.

A stylized graphic of a flower with light-colored petals and a dark center, set against a green and brown background, all within a circular frame.

**RS 7. A.
11/2/2021
Presentation**

Semi-Annual Board & Committee Interviews

Update

City Council Regular Session
November 2, 2021

Scott Stauffer, City Recorder

Annual BC Interviews

- Historically: **on demand**
 - Applications ALWAYS Accepted
- Starting 2022: **Once a Year**
 - Applications Accepted ONCE A YEAR
Two Application Windows (Dec/Jan, Mar/Apr)



Annual BC Interviews

- Timeline for **MOST** BCs
 - Recruit (Dec. – Jan.)
(accept applications)
 - Interviews (Feb.)
 - Appointments (Mar.)
 - New Terms Begin (Apr. 1)



Annual BC Interviews

- Timeline for Budget/PSAC
 - Recruit (Mar. – Apr.)
(accept applications)
 - Interviews (May)
 - Appointments (Jun.)
 - New Terms Begin (Jul. 1)



Annual BC Interviews

- Interviews
 - February 12 and 19
 - May 14 and 21

Q: Does Council have any input on these proposed interview dates?



Annual BC Interviews

- Timeline for the rest of the year
 - No applications accepted
 - Fill vacancies with alternates identified during annual interviews
 - If no alternates, wait until next year, or
 - Ad hoc interviews scheduled if needed



Annual BC Interviews

- Recruitment Campaign
 - City website, OnBoard
 - Pilot article, social media, postcard
 - BC Involvement Fair (TBD Jan. '22)
 - 1:1 Recruiting and Relationship Building



Annual BC Interviews

- Annual, but two campaigns?
 - Two different term end dates:
 - March 31 (most BCs)
 - June 30 (Budget, PSAC)

Q: Is Council open to moving all BC term ends dates to June 30?



Application Update

Q: Does Council have any feedback on the application form?



CITY OF MILWAUKIE

Office of the City Recorder
10722 SE Main Street
Phone: 503-786-7515 Fax: 503-786-7540
ocr@milwaukieoregon.gov

Boards and Commissions Application

To apply for a board or commission please complete this form and return it to the Office of the City Recorder. If desired, you may also include a resume. If you are interested in applying for a board 6 months after submitting this form, please submit a new application.

Name:	<input type="text"/>	Phone:	<input type="text"/>	Date:	<input type="text"/>
Home Address:	<input type="text"/>			Email:	<input type="text"/>

Are you a registered voter in Milwaukie? ☐ Yes ☐ No

How long have you been a Milwaukie Resident?

Do you live with anyone currently serving on a City board or commission? ☐ Yes ☐ No

If so, which one?

Occupation:	<input type="text"/>	Employer:	<input type="text"/>
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Please list any prior civic or professional activities:

Why have you applied for this position?

What special training, skills, or experience have you had that would be pertinent to this application?

Board(s) or Commission(s) in which you are interested:

- | | |
|---|---|
| <input type="checkbox"/> Arts Committee (artMOB) | <input type="checkbox"/> Kellogg Good Neighbor Committee (KGNC) |
| <input type="checkbox"/> Audit Committee | <input type="checkbox"/> Citizen at large <u>OR</u> <input type="checkbox"/> Downtown Business/Property Owner |
| <input type="checkbox"/> Budget Committee | <input type="checkbox"/> Library Board |
| <input type="checkbox"/> Citizens Utility Advisory Board (CUAB) | <input type="checkbox"/> Park and Recreation Board (PARB) |
| <input type="checkbox"/> Community Action Board (CAB) | <input type="checkbox"/> Planning Commission |
| <input type="checkbox"/> Design and Landmarks Committee (DLC) | <input type="checkbox"/> Public Safety Advisory Committee (PSAC) |
| | <input type="checkbox"/> Tree Board |

Please list your top choice:

I understand that this application will be kept for up to 6 months: ☐ I Agree

Please note: The information submitted in this application may be subject to public records laws.

Questions?

Scott Stauffer, City Recorder
stauffers@milwaukieoregon.gov

503-786-7502



COUNCIL STAFF REPORT**To:** Mayor and City Council**Date Written:** Nov. 2, 2021**From:** Ann Ober, City Manager**Subject:** **Milwaukie Bay Park Funding and Construction Intergovernmental Agreement****ACTION REQUESTED**

Council is asked to approve a resolution updating an intergovernmental agreement (IGA) with the North Clackamas Parks and Recreation District (NCPRD) to include NCPRD's minimum financial contribution to Milwaukie Bay Park Phase III and a resolution approving an IGA for the construction of Milwaukie Bay Park Phase III.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

The full history of Milwaukie's actions with relation to Milwaukie Bay Park, formerly Riverfront Park, extends back nearly 20 years. The limited history below covers Council discussions about Phase III only.

[July 5, 2017](#): Council discussed options associated with construction of Phase III.

[October 10, 2017](#): NCPRD presented the scope of the project and announced it intended to release a request for qualifications.

[January 16, 2018](#): Council provided direction to NCPRD regarding the scope of work for design refinement.

May 5, 2018: NCPRD announced that 2ink Design was selected as the consultant for the project and provided an overview of the public engagement structure.

[September 18, 2018](#): NCPRD provided an overview of public outreach to date, technical updates, and discussed next steps for the project.

December 18, 2018: NCPRD provided an update on comments received through outreach, revised cost estimates for the project, and an overview of the process for arriving at a final design in January 2019.

January 29, 2019: NCPRD presented a final update on Phase III design.

[March 10, 2020](#): NCPRD Project Manager Heather Koch presented a project update to Council.

[November 17, 2020](#): Milwaukie approved the original Milwaukie Bay Park Funding IGA.

December 3, 2020: Clackamas County approved the original Milwaukie Bay Park Funding IGA.

ANALYSIS

The current funding IGA authorizes the transfer of \$250,000 in city general fund dollars and up to \$750,000 of the city's local share of Metro's 2019 parks and nature bond measure (via reimbursement) for a combined total of \$1,000,000. This amended IGA commits NCPRD to an

additional \$5.6 Million to be contributed from various District controlled funding sources. The agreement also acknowledges grants that have been received since the initial creation of the IGA.

The combined funds will be used to construct Phase III of Milwaukie Bay Park, which has an estimated project cost of \$9,600,000. The commitments outlined in the funding IGA confirm that Milwaukie Bay Park is financially viable and is expected to be constructed. Any value engineering that may be required due to cost escalations will be decided between the two entities. The project is expected to begin construction in 2023 and be completed by the end of 2024. This is a later date than provided in past meetings.

The second IGA outlines the construction process for Milwaukie Bay Park and provides guidelines for how the park will be managed once construction is complete. At the request of the city, this IGA was constructed similarly to the IGA for Wichita Park.

BUDGET IMPACTS

This action has no new budgetary impact for the City of Milwaukie. NCPRD has yet to determine the fund sources for their commitment.

WORKLOAD IMPACTS

None.

COORDINATION, CONCURRENCE, OR DISSENT

Ongoing coordination with Metro will be required to use the city's local share allocation for this project.

CLIMATE IMPACT

Materials used in construction of the park, along with any emissions from construction vehicles, will contribute to greenhouse gas emissions. Improvements to the trolley trail, which will incentivize non-auto trips, and tree planning will provide climate benefits.

STAFF RECOMMENDATION

Staff recommends that Council authorize the city to sign both IGAs to demonstrate Milwaukie's strong support for the project.

ALTERNATIVES

Council could vote no on the authorization and the IGAs will not proceed.

ATTACHMENTS

1. Funding Resolution
2. Funding IGA
3. Construction Resolution
4. Construction IGA



COUNCIL RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING AN UPDATED INTERGOVERNMENTAL AGREEMENT WITH THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT (NCPRD) FOR MILWAUKIE BAY PARK PHASE III FUNDING.

WHEREAS the city wishes to fulfill the community's vision for Milwaukie Bay Park through the construction of a new play area, amphitheater, interactive water feature, picnic space, and plaza; and

WHEREAS the city has worked diligently since the 1990s to plan and construct multiple phases of improvements to the riverfront so that everyone can enjoy the beauty of the Willamette River; and

WHEREAS the City Council previously allocated funds for the Milwaukie Bay Park project and approved a funding agreement with NCPRD, which has subsequently been revised; and

WHEREAS the city wishes to finalize its financial commitment to the Milwaukie Bay Park project so that NCPRD can move forward and identify the final resources needed to construct Milwaukie Bay Park.

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that the city manager is authorized to sign an intergovernmental agreement between the City of Milwaukie and NCPRD to fund construction of Milwaukie Bay Park Phase III.

Introduced and adopted by the City Council on **November 2, 2021**.

This resolution is effective immediately.

Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

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

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into by and between the City of Milwaukie ("City"), a municipal corporation, and the North Clackamas Parks and Recreation District ("District"), a county service district formed under ORS Chapter 451, effective as of the last date of signature indicated below ("Effective Date").

RECITALS

- A.** Milwaukie Bay Park ("Park") is a city park in downtown Milwaukie owned by the City and operated and maintained by the District; and
- B.** City and District are in the process of finalizing the design of major improvements to the Park to be constructed as Phase III; and
- C.** The District Board has approved (May 2020) solicitation of a Construction Manager/General Contractor ("CMGC") for preconstruction and construction of Phase III; and
- D.** Construction of Phase III in accordance with the final design is a substantial endeavor and when completed, will transform the Park into a regional asset; and
- E.** In order to facilitate such an endeavor, funds from several sources are required. If any portion of the funding is not received, Phase III of the Park will not be completed as currently envisioned.

NOW THEREFORE, it is agreed by and between City and District as follows:

TERMS OF AGREEMENT

- 1. Description of Agreement for transfer of existing City funds.** Upon the execution of a CMGC contract, the City shall transfer within 30 days \$250,000 approved by City Council for the Park to the District for its use in constructing Phase III of the Park. Upon the City's execution of an intergovernmental agreement with Metro for City Local Share (funding from Metro 2019 bond measure), the City shall reimburse NCPRD within 60 days of each NCPRD reimbursement request for expenses incurred in the construction of Phase III of the Park, up to the total amount designated for the Park in the City's Local Share IGA. The funds shall only be used as a portion of the funding to construct Phase III of the Milwaukie Bay Park. Should the additional funding described below not be received by the District in the amounts necessary to construct the full plan, or the modified plan after value engineering, by December 31, 2023, the funds shall be returned to the City and construction of Phase III of Milwaukie Bay Park will not begin.

2. The City and District agree funding for construction of Phase III of Milwaukie Bay Park shall consist of the following:

- a. City funds of \$250,000 as described above;
- b. \$750,000 of the City's Local Share allocation approved for the Park (funding from Metro 2019 bond measure);
- c. Local Government Grant Program Agreement committed to the Park of \$750,000 plus and additional amount of \$1,046,125 recommended by OPRD from the Land and Water Conservation Fund;
- d. Grants and other sources to reach full project funding based on the estimated project cost refined during design development. The estimated total project cost is \$9.6 million; this will be updated as the design is refined and funding agreements are executed, with a Guaranteed Maximum Price (GMP) to be set before the final set of Construction Documents is approved.
- e. The District agrees to commit minimum additional \$5,600,000 from NCPRD controlled fund sources to include but not limited to Local Share Grant funds, System Development Charges, and the District's general fund.
- f. If adequate funds are not received or committed by December 31, 2023 to construct the full plan the City and District will work together to value engineer the park construction and build the park with the funding identified in this Agreement.

3. Effective Date, Duration, and Termination. This Agreement shall become effective on the date all required signatures are obtained ("Effective Date") and shall continue until all funding is secured and the District is able to begin the Construction of Phase III of Milwaukie Bay Park or this Agreement is terminated. This Agreement can also be terminated by mutual written agreement by the City and District. The indemnity obligations set forth in Paragraph 7 shall survive termination.

4. Amendment Provisions. The terms of this Agreement may be amended by mutual agreement of the parties. Any amendment shall be in writing, shall refer specifically to this Agreement, and shall be executed by the parties.

5. Compliance with Applicable Law. City and District will comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the services provided under this Agreement. Without limiting the generality of the foregoing, City and District expressly agree to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V or the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) the Fair Labor Standards Act; (v) the Occupational Safety and Health Act of 1970; (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

- 6. Indemnification.** Subject to the Oregon Constitution and the limits of the Oregon Tort Claims Act, each party agrees to indemnify, defend and hold harmless the other party and its officers, agents, employees and elected officials from any and all liability, loss, and cost, except for attorney's fees as described in paragraph 8 below, arising out of or resulting from the acts of their officers, agents, employees, and elected officials, including intentional or willful misconduct, in the performance of this Agreement.
- 7. Notice.** Any notice required or permitted to be given shall be given in writing, shall be effective when actually received, and may be given by email, hand delivery, or by mail delivery addressed to the parties as follows:

Milwaukie:

City Liaison
Kelly Brooks
10722 SE Main Street
Milwaukie, Oregon 97222
Email: brooksk@milwaukieoregon.gov

District:

District Liaison
Heather Koch
150 Beavercreek Road
Oregon City, OR 97045
Email: HKoch@ncprd.com

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

- 8. Attorney Fees.** In the event an action, lawsuit or proceeding, including appeal therefrom, is brought for failure to fulfill or comply with any of the terms of this Agreement, each party shall be responsible for their own attorney fees, expenses, costs and disbursements for said action, lawsuit, proceeding or appeal.
- 9. No Waiver.** The failure by any party to enforce any provision of this Agreement shall not constitute a waiver by that party of that provision or of any other provision of this Agreement.
- 10. Severability.** Should any provision or provisions of this Agreement be construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall affect only the provision or provisions so construed, and shall not affect, impair or invalidate any of the other provisions of this Agreement which shall remain in full force and effect.

- 11. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.
- 12. Merger.** This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.
- 13. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 14. Binding Effect.** This Agreement constitutes the entire agreement between City and District on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of the terms of this Agreement will bind either party unless in writing and signed by all parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instances and for the specific purpose given. This Agreement is personal to City and District and is not intended to confer upon any other person or entity any rights or remedies whatsoever.

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

City of Milwaukie:

Mayor Mark Gamba

Date

North Clackamas Parks and Recreation District:

Chair Tootie Smith

Date



COUNCIL RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT (NCPRD) FOR MILWAUKIE BAY PARK PHASE III GRANT ADMINISTRATION, CONSTRUCTION, AND OPERATIONS.

WHEREAS the city wishes to fulfill the community's vision for Milwaukie Bay Park through the construction of a new play area, amphitheater, interactive water feature, picnic space, and plaza; and

WHEREAS the city has worked diligently since the 1990s to plan and construct multiple phases of improvements to the riverfront so that everyone can enjoy the beauty of the Willamette River; and

WHEREAS the city wishes to finalize the grant administration, construction, and operational role commitments for the Milwaukie Bay Park project so that NCPRD can move forward and identify the final resources needed to construct Milwaukie Bay Park.

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that the city manager is authorized to sign an intergovernmental agreement between the City of Milwaukie and NCPRD for grant administration, construction, and operation of Milwaukie Bay Park Phase III.

Introduced and adopted by the City Council on **November 2, 2021**.

This resolution is effective immediately.

Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

**INTERGOVERNMENTAL AGREEMENT BETWEEN:
THE CITY OF MILWAUKIE AND
THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT
FOR GRANT ADMINISTRATION, CONSTRUCTION, AND OPERATION OF PHASE III
OF MILWAUKIE BAY PARK**

THIS AGREEMENT (this “Agreement”) is entered into and between North Clackamas Parks and Recreation District (“NCPRD” or the “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 NCPRD 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 NCPRD.

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 terminated or superseded.
2. **Grant Management.** NCPRD and City agree to the following Grant responsibilities under this Agreement:
 - A. **Grant Performance.** The District shall have primary responsibility for performance and completion of the Project, as it is described in the Oregon Community Paths Program and the Metro Local Share Grant Agreements. This includes, but is not limited to, project design, contractor selection and procurement, project management, compliance with all applicable laws and regulations, and payment pursuant to the Grant.
 - B. **Grant Administration.** The District shall administer and comply with all conditions and requirements set forth by the Grant awards to District. This includes, but is not limited to, requests for reimbursement, progress reports, final reports, inspection reports, completed site plan, project boundary map, project appraisals, digital images of the completed project, and representations and warranties. The District shall send copies of all grant deliverables and correspondence to the City.
 - C. **Recovery of Funds.** Any funds disbursed to the District under the Grant that are expended in violation or contravention of one or more of the provisions of the Grant or that remain unexpended on the earlier of termination or expiration of this Agreement must be returned to the Grantor by the District.

- D. **Responsibility for Grant Funds.** The District shall assume sole liability for City or District breach of the Grant. Upon City or District's breach of conditions that requires State to return funds to the federal government, hold harmless and indemnify State for an amount equal to the funds received under the Grant; or if legal limitations apply to the indemnification ability of the Grantees of Grant Funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under the Grant.
 - E. **Records Maintenance and Access.** The District shall make and retain proper and complete books of record and account and maintain all fiscal records related to the Grant and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations as identified in Exhibit A. The District shall send copies of all records and expenditures to the City.
 - F. **Audit Requirements.** The District shall adhere to all terms and conditions regarding auditing requirements set forth by the Grant.
3. **Project Management.** The District and City agree to the following responsibilities under this Agreement:
- A. Permits required for the initiation of construction will be secured by The District by March 31, 2024, and all construction must be completed by December 31, 2024, or such other dates as mutually agreed by the Parties.
 - B. City shall allow District to construct the park and offsite improvements on City property.
 - C. City shall delegate authority to District to act as the lead on development and construction.
 - D. District shall plan, design, engineer, and construct park improvements to District and City standards, and comply with conditions and requirements set forth by the Grants.
 - E. District shall develop construction plans, specifications, and estimates for park facilities, fixtures, open space, and offsite improvements in accordance with District procurement policies.
 - F. District shall advertise, bid, and award a contract for construction plans and specifications for park facilities, fixtures, open space, and offsite improvements in compliance with District procurement policies and State of Oregon public works contracting laws.

- G. District shall manage and administer contractor and subcontractor bonds, licenses, insurances and certified payrolls in compliance with District procurement policies and State of Oregon public works contracting laws.
 - H. District shall coordinate relocation and installation of utilities with existing utility providers.
 - I. District shall coordinate community outreach with City during design and construction, including quarterly project updates to Milwaukie City Council, Milwaukie Parks and Recreation Board, and District Advisory Committee.
 - J. District shall provide City with as-built construction plans upon completion of project.
4. **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. District shall retain ownership of fixtures which are easily moveable and are not part of the permanent built out environment following completion of construction (i.e. picnic tables, signage, and waste receptacles) except for any portion of playground equipment paid for by the City or associated non-profit or Neighborhood District Association.
 - C. The District shall operate and maintain Milwaukie Bay Park as a High Maintenance Area as defined in the Master IGA between District and City. For any period of necessary construction or maintenance occurring at the park, portions or the entire park, may be closed consistent with District policy, practice, contract, ordinance, rule or law.
 - D. The District shall be responsible for scheduling of Milwaukie Bay Park programs with priority for District and City Events and activities. The District will manage and coordinate all District-led events and activities and District special use permits, including collection of appropriate fees.
 - E. The District shall offer structured recreational and community opportunities for youth and adults at Milwaukie Bay Park four days a week during the summer (mid-June – August), and as available the rest of the year. Programming shall reflect community interests, and be offered at times that meet attendance minimums. Programming may be impacted and reduced due to access, weather, conflicting events or health mandates.

5. Termination.

- A. Either NCPRD or the City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, 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 effect 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. NCPRD may terminate this Agreement without penalty or obligation to the City in the event NCPRD fails to receive expenditure authority, grant awards, or other funding sufficient to allow NCPRD, 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 NCPRD 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. The District or City's "Development Costs" for the construction for Phase III of Milwaukie Bay Park shall include all costs incurred, funds contributed, work performed, consultants hired, debt incurred, if as a result of termination of this agreement penalties accrued through non-performance, and any other costs or obligations incurred.
- E. Prorated Development Costs and funds contributed by a party shall be the amount of money that represents that percentage of the Development Costs and funds contributed based upon the 25 year useful life of the park improvements. For example if the contract were to terminate after five years 80% of the useful life of the improvements would be remaining. The terminating party would pay 80% of the other party's development costs in that example.
- F. Should a party terminate the agreement and after termination the City assumes operation and maintenance of the park and does not operate Milwaukie Bay Park with access for all NCPRD residents on the same terms (equal use rights for district and city residents) for a period of 25 years from park completion City shall pay the prorated Development Costs of NCPRD, and return funds to any entity granting funds for the Project consistent with the grant agreement.
- G. Should the City be withdrawn from NCPRD, City will be deemed to have terminated the Agreement.

6. 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.

7. **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
Peter Passarelli
10722 SE Main Street
Milwaukie, Oregon 97222
Email: passarellip@milwaukieoregon.gov

District:

District Liaison
Michael Bork
150 Beavercreek Road
Oregon City, OR 97045
Email: Mbork@ncprd.com

8. **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.** District shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) 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. District 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, District shall permit the City'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 referenced 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

Tootie Smith, Chair, Board of Directors

Ann Ober, City Manager

Date

Date