



March 24, 2016

Board of County Commissioners acting as
North Clackamas Parks & Recreation District Board
Clackamas County

Members of the Board:

Approval of a Funding Agreement between the Clackamas County Development Agency and the North Clackamas Parks and Recreation District

Purpose/Outcomes	This Agreement will allow the Development Agency (Agency) to provide funds toward debt service related to North Clackamas Parks and Recreation (NCPRD) facilities.
Dollar Amount and Fiscal Impact	Clackamas County Development Agency: Clackamas Town Center Urban Renewal District – no County General Funds involved.
Funding Source	Up to \$1,500,000
Duration	The Agreement will terminate March 31, 2025.
Previous Board Action	At a February 4, 2014 study session, the Board approved allocating up to \$1,500,000 to NCPRD. At a January 19, 2016 study session, the Board directed staff to proceed with a funding agreement with NCPRD.
Strategic Plan Alignment	Ensure safe, healthy and secure communities.
Contact Person	Laura Zentner, BCS Deputy Director, Business and Community Services – (503) 742-4351
Contract No.	N/A

BACKGROUND:

With Board direction to proceed with funding, NCPRD and the Development Agency held several discussions about the most beneficial use of the \$1,500,000 allocation. While the Urban Renewal Plan provides great flexibility regarding park site development throughout the plan area, discussions have been focused on debt service assistance associated with current NCPRD facilities within the area. More specifically, debt service currently associated with the North Clackamas Aquatic Park. Assistance of this nature would afford the District the ability to advance early payment of current debt or the ability to redirect district funds currently allocated for debt service to other beneficial uses.

Consistent with previous funding agreements with other Districts, the Plan and state statute allow the urban renewal district to pay debt service to assist in meeting the needs called out in the current plan.

Agency and NCPRD staff presented the option of providing funds toward debt service on the Aquatic Park at a Board study session on January 19, 2016. The Board concurred and directed staff to proceed with a Funding Agreement

The Funding Agreement stipulates that the Agency will provide \$1,500,000 to NCPRD within 60 days of the effective date of the agreement. NCPRD is required to place the funds into a debt retirement account, sinking fund or other restricted designation within 60 days of receipt of funds.

RECOMMENDATION:

Staff recommends the Board approve and execute the Funding Agreement between the Clackamas County Development Agency and the North Clackamas Parks and Recreation District.

Respectfully submitted,

Laura Zentner, CPA
BCS Deputy Director

**North Clackamas Parks and Recreation District
FUNDING AGREEMENT**

This Agreement is entered into and is effective as of this _____ day of _____, 2016 by and between Clackamas County Development Agency, the Urban Renewal Agency of Clackamas County, Oregon (the "Agency"), and North Clackamas Parks and Recreation District, a county service district formed pursuant to ORS Chapter 451 (the "District"). The Agency and the District hereby agree as follows:

RECITALS:

A. The Agency administers the Clackamas Town Center Urban Renewal Plan (the "Plan") pursuant to ORS Chapter 457. The Plan was duly adopted and approved by the Board of County Commissioners on December 30, 1980, and most recently amended on June 16, 2005.

B. The District is an entity organized for the purpose of providing parks and recreation programs, facilities and services in North Clackamas County and the surrounding area.

C. A goal of the Plan is to fund park site development and acquisition projects in the area. The District has pursued a possible partnership with the Agency regarding construction of ball fields in the Plan area but the site was ultimately found infeasible and no further action was taken regarding implementation of the Plan goals relating to park development.

D. In 1994, the District constructed and began operating the North Clackamas Aquatic Center (the "Aquatic Center") and has been providing recreational opportunities to residents of the District and beyond since that time.

E. In April 2013, the Clackamas County Board of Commissioners (the "Board") directed staff to identify partnership opportunities with the overlapping taxing districts affecting properties within the boundaries designated by the Plan.

F. On February 4, 2014, the Board approved the allocation of \$1,500,000 (the "Agency Funds") to the District to use for certain projects, including funding to be directed to the District to develop needed public spaces.

G. The District has requested that the Agency provide funding to assist with debt associated with the construction and capital facilities of the Aquatic Center (the "Project"). In exchange for such funding, the District will be able to operate the Aquatic Center in accordance with the terms and conditions of this Agreement and to use the Project in conformity with the Plan and applicable law.

H. The Agency is willing to allocate funds to the District for the purpose set forth herein. The funding for such purposes by the Agency to District is subject to the conditions provided in this Agreement.

AGREEMENT:

Section 1: Operation of the Aquatic Center; Uses of Proceeds

Within 60 days of receipt of the Agency Funds, defined below, the District or its successor agrees to apply the Agency Funds to the debt obligation associated with the Aquatic Center. For the purposes of clarity, the parties agree that placing the Agency Funds into a debt retirement account, sinking fund or other restricted designation meets the application requirement. Furthermore, the District or its successor shall operate the Aquatic Center or cause it to be operated to provide or support recreational opportunities for the District. The District shall operate the Aquatic Center for the purpose stated herein until the termination date of this Agreement, set forth below.

At the time of execution hereof, the District or its successors shall own, and have all ownership responsibility and duties regarding the Aquatic Center.

Section 2: Funding

In consideration of the obligations undertaken by the District pursuant to this Agreement, the Agency agrees to allocate the Agency Funds for the purposes discussed above and subject to the terms and conditions provided herein.

In the event the Agency Funds are not used for the purpose expressly provided in Section 1 of this Agreement, or where the District has defaulted under this Agreement, the Agency may require the District to reimburse all or part of such, as provided below in Section 3C.

Section 3: Disbursement of Funds; Security for Performance

A. The Plan specifically authorizes the Agency to make funds available to fund the development of needed public spaces. Pursuant to specific direction from the Board, the Agency shall make the Agency Funds available to the District for the Project from the allocated funds as more specifically described in Section 2 of this Agreement, and as authorized by ORS Chapter 457.

B. Within 60 days of the Effective Date of this Agreement, the Agency shall transfer the Agency Funds to the District.

C. In the event the District is in default of its obligations under Section 1 of this Agreement, then the Agency shall be entitled to recover from the District or its successors or assigns up to the full amount of the funds directed to the District in connection with the Project. Amounts recoverable under this subsection shall be determined by evaluating the scope of the default and the default's effect on the Plan's goal. If the Agency intends to recover funds under this subsection, the Agency shall provide the District with reasonable written notice of the default as well as a reasonable opportunity for the District to cure and/or explain such default.

Section 5: Termination

So long as there is no outstanding event of default, this Agreement shall terminate on March 31, 2025.

Section 6: Indemnification

- A. Subject to the tort limitations in the Oregon Tort Claims Act and Oregon Constitution, Agency agrees to indemnify, save harmless and defend the District, its officers, Board of Directors, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts, of Agency or Agency's officers, owners, employees, agents, or its subcontractors or anyone over which Agency has a right to control related to this Agreement
- B. Subject to the tort limitations in the Oregon Tort Claims Act and the Oregon Constitution, District agrees to indemnify, save harmless and defend Agency, its officers, commissioners, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts, of the District or the District's officers, owners, employees, agents, or its subcontractors or anyone over which the District has a right to control.

Section 7: Nonliability of Officials and Employees

No official or employee of the Agency shall be personally liable to the District for any obligation under the terms of this Agreement.

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Section 8: Nonwaiver of Government Rights

This Agreement is no way intended to limit, restrict or modify the rights of Clackamas County or any other governmental agency to exercise ordinary police powers over the Project.

Section 9: General Provisions

A. **Prior Agreements.** This instrument is the entire, final and complete Agreement of the parties pertaining to the rights and obligations of the parties with respect to the Project and supersedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives in connection therewith. Neither party shall be bound by any promises, representations or agreements except as are herein expressly set forth.

B. **Notices.** Any notice required or permitted under this Agreement shall be in writing and shall be given and actually delivered in person or deemed delivered 48 hours after having been deposited in the United States Mail as certified mail addressed to the addresses set forth below:

to: North Clackamas Parks and Recreation District
Attn: Gary Barth
150 Beaver Creek Road
Oregon City, Oregon 97045

to: Clackamas County Development Agency
Attn: Dan Johnson
150 Beaver Creek Road
Oregon City, Oregon 97045

or as addressed in such other way in respect to either party, as that party may from time to time designate in writing dispatched as provided in this Section.

C: **Amendments.** This Agreement may be amended, modified or extended only by written instrument executed by both parties.

D: **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.

E: **Binding Effect.** Covenants, conditions and terms of this Agreement shall extend to and be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

F: **Execution and Counterparts.** This Agreement may be executed in any number of counterparts each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

H: **Non-Assignment.** This Agreement may not be assigned in whole or in part without the prior written consent of Agency, which may withhold its consent in its sole discretion.

I: **Subleasing.** The Project may not be subleased without prior written consent of Agency, which may withhold its consent in its sole discretion.

I: **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.

J: **Waiver.** The Agency and District shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

IN WITNESS WHEREOF, the Agency and the District have executed this Agreement as of the date first above written.

[Signatures on Following Page]

“AGENCY”

BOARD OF COUNTY COMMISSIONERS acting as
the governing body of the Clackamas County
Development Agency

By: _____

Chair

By: _____

Recording Secretary

“DISTRICT”

BOARD OF COUNTY COMMISSIONERS acting as
the governing body of the North Clackamas Parks
and Recreation District

By: _____

Chair

By: _____

Recording Secretary