

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)	RESOLUTION NO. 21-5196
EXECUTION OF AN INTERGOVERNMENTAL)	
AGREEMENT WITH THE CITY OF GRESHAM FOR)	Introduced by Chief Operating Officer
LOCAL SHARE FUNDING PURSUANT TO THE)	Marissa Madrigal with the Concurrence of
2019 PARKS AND NATURE BOND MEASURE)	Acting Council President Christine Lewis

WHEREAS, on June 6, 2019, the Metro Council referred to the Metro area voters a ballot measure authorizing the issuance of general obligation bonds in an amount not to exceed \$475,000,000.00 for the purpose of funding natural area and water quality protection and to connect people to nature close to home (the "Bond Measure"); and

WHEREAS, at the general election held on November 5, 2019, the Metro Area voters approved the Bond Measure, thereby creating a program under which a portion of the total Bond Measure proceeds would be distributed by Metro to local government park providers to protect land, restore habitat, and build and care for parks that connect people to nature in local communities (the "Local Share Program"); and

WHEREAS, the City of Gresham has identified its first project eligible for Local Share Program funding, and Metro staff has determined that the project meets the requirements described in the Bond Measure, including community engagement, racial equity, and climate resilience criteria; and

WHEREAS, Metro staff has negotiated terms and conditions under which Local Share Program funding will be provided to the City of Gresham for the identified project, which terms and conditions are set forth in the proposed intergovernmental agreement attached hereto as Exhibit A; now therefore,

BE IT RESOLVED that the Metro Council authorizes the Metro Chief Operating Officer to execute an intergovernmental agreement with the City of Gresham in a form substantially similar to the attached Exhibit A.

ADOPTED by the Metro Council this 29th day of July 2021.



Christine Lewis, Acting Council President

Approved as to Form:



Carrie MacLaren, Metro Attorney

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**Intergovernmental Agreement
2019 Parks and Nature Bond Measure Local Share Program**



Metro

600 NE Grand Ave.
Portland, OR 97232
(503) 797-1700

**Metro Contract No.
XXXX**

INTERGOVERNMENTAL AGREEMENT Metro – City of Gresham

This Intergovernmental Agreement (this "**Agreement**") dated effective as of the last day of signature set forth below (the "**Effective Date**"), is entered into under the provisions of ORS chapter 190 by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter ("**Metro**"), and City of Gresham ("**Park Provider**") (each a "**Party**" or together the "**Parties**").

RECITALS

A. The electors of Metro approved Ballot Measure 26-203 on November 5, 2019, authorizing Metro to issue \$475 million in general obligation bonds to preserve natural areas, clean water, and protect fish and wildlife (the "**Measure**").

B. The Measure provided that \$92 million of the total bond proceeds ("**Local Share Bond Funds**") be distributed by Metro to local government park providers to protect land, restore habitat, and build and care for parks that connect people to nature in local communities.

C. After passage of the Measure, Metro developed the Local Share Handbook (the "**Handbook**") which sets forth the requirements that each eligible local government park provider must follow in order to receive its respective proportionate share of Local Share Bond Funds (the "**Program Requirements**"). The Program Requirements ensure that the community engagement, racial equity, climate resilience criteria set are consistently applied and that Local Share Bond Funds are distributed to local government park providers in accordance with the Measure guidelines.

D. Park Provider is a local government jurisdiction designated to receive \$5.4 million of the Local Share Bond Funds ("**Allocated Bond Funds**").

E. In accordance with the Handbook, Park Provider has completed the process required to formally identify capital projects that comply with the Program Requirements and are eligible

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to be paid for with Local Share Bond Funds (the “**Submittal Process**”).

F. The Parties now desire to enter into this Agreement to provide the terms and conditions under which Metro will provide a portion of the Allocated Bond Funds to Park Provider.

AGREEMENT

1. Identified Local Share Projects

1.1 Project List. Park Provider has identified one capital project (a “**Project**”) on which to spend a portion of Park Provider’s Allocated Bond Funds, which Project is more particularly described on the “**Project List**” attached as **Attachment A** to this Agreement. The Project List has been approved by the governing body of Park Provider and the Parties believe that the Project, as described on **Attachment A** and throughout the Submittal Process, meets the Program Requirements set forth in the Handbook and the Measure. If there are any changes to the Applicable Program Requirements set forth on **Attachment A** or the Project Requirements set forth on **Attachment A** for any Project (e.g., an increase or decrease in the Project Cost or change in the scope of work), then Park Provider must submit such changes to the Project through the Submittal Process, which process may be expedited or abbreviated as deemed reasonable by Metro.

1.2 Additional Projects. The Parties expect Park Provider will be identifying new projects to add to the Project List after the Effective Date of this Agreement. Additional projects may be added to the Project List if approved by the Park Provider’s governing body and if deemed by Metro to be in accordance with the Handbook and the Submittal Process, both of which may be amended by Metro in the future. Until such time as the Parties have entered into an amendment to add to the Project List in accordance with **Section 16** below, Metro will have no obligation to fund any additional projects identified after the Effective Date of this Agreement.

1.3 Removal of a Project. Park Provider may remove a Project from the Project List by providing written notice to Metro upon Park Provider’s determination that any such Project has become degraded, cost prohibitive, or otherwise unfeasible, is no longer in the best interest of the Park Provider or that a Project can be accomplished for less funds than estimated or becomes funded through other sources, thereby making such Allocated Bond Funds available for use in an existing Project or a new project approved in accordance with **Section 1.2** above.

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2. Limitations of Funding

2.1 Payment and Use of Allocated Bond Funds. Subject to the terms and conditions of this Agreement, Metro will provide the Allocated Bond Funds to Park Provider up to the Project Cost on a Project-by-Project basis. Metro will have no obligations under this Agreement other than for the payment of Allocated Bond Funds on a Project-by-Project basis pursuant to the Payment Request Requirements described in Attachment B to this Agreement. Park Provider will use the Allocated Bond Funds it receives only for the purposes specified in this Agreement.

2.2 Capital Costs. The Local Share Bond Funds are from tax-exempt general obligation bond proceeds. As such, the Local Share Bond Funds may only be used to pay for expenditures that constitute qualified capital costs, consistent with the Oregon Constitution and federal tax law (“**Capital Costs**”). Capital Costs are costs that are capitalizable under generally accepted accounting principles (GAAP) and under general federal income tax principles and may include the costs of real property acquisition and/or capital construction and improvements to real property. As required by law and in accordance with **Section 13** of this Agreement, all Allocated Bond Funds disbursed to Park Provider may only be spent on Capital Costs. Park Provider must, based on its own financial and accounting policies, ensure that Allocated Bond Funds received are only used to pay for Capital Costs. Park Provider may not use Allocated Bond Funds to pay for or reimburse Park Provider for any Capital Costs incurred prior to April 30, 2020.

2.3 Capped Project Costs. Park Provider may not use Allocated Bond Funds for any administrative costs (even though these are Capital Costs), including Staff Costs, Overhead and Indirect Costs (each defined below) related to any Project in excess of ten percent (10%) of the total Project Cost (as defined on Attachment A), as further described on Attachment B (collectively referred to as “**Capped Project Costs**”). The 10% cap will be applied on a Project-by-Project basis and each Park Provider will be responsible for tracking and accounting for its costs to ensure compliance with the 10% cap. For purposes of clarity related to this cap, the term “Project Cost” refers to the amount of Allocated Bond Funds approved for each Project as shown on Attachment A and does not necessarily reflect the total costs of a Project which may be funded by other sources. By way of example, if the total cost of a Project is \$100,000 but the Project Cost is \$50,000, the amount of eligible Capped Project Costs for that Project is \$5,000. “**Staff Costs**” means Capital Costs that are the actual costs of the Park Provider for all staff time both directly and indirectly related to each Project. “**Overhead and Indirect Costs**”

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means Capital Costs that are the actual costs paid by the Park Provider whose benefit is not readily identifiable for a specific project but is necessary for the execution of each Project.

3. Real Property Acquisitions Requirements

3.1 General. In order to be eligible for funding under this Agreement, Projects that involve the acquisition of real property interests in land or improvements (“**Acquisition Projects**”) must comply with the following requirements: (A) title to the property must be held in the name of Park Provider; (B) the property must be acquired from willing sellers and Park Provider may not exercise any powers of eminent domain; (C) Park Provider must obtain an MAI appraisal (subject to no extraordinary assumptions) of the property in compliance with USPAP standards (and federal and ODOT right-of-way acquisition standards, if necessary), to ensure price paid does not substantially exceed the appraised fair market value; and (D) Park Provider must perform commercially reasonable due diligence, including, but not limited to, title reviews and environmental site assessments, to confirm there are no encumbrances, conditions or other issues that would materially restrict Park Provider’s use of the property for one or more of the following uses: (1) to protect water quality, fish wildlife habitat, natural areas, (2) to connect people to parks and nature, (3) as a local or regional trail, or (4) as an environmental educational facility (each, a “**Bond Required Use**”).

3.2 Acquisition Project Payment Requests. Park Provider will request payment of funds for all Acquisition Projects in accordance with the procedures set forth in the Payment Request Requirements attached as **Attachment B** to this Agreement.

3.3 Post-Acquisition Limitations on Sale and Use. All real property and improvements acquired by Park Provider with Allocated Bond Funds must be maintained for one or more of the Bond Required Uses. Park Provider may not sell or otherwise authorize the use of such property other than as a Bond Required Use unless Park Provider complies with all of the Post-Acquisition Restrictions set forth on **Attachment C**.

4. Capital Construction Projects: Requirements

4.1 General. All Projects that are not Acquisition Projects, but involve (A) construction of buildings and other improvements, (B) habitat restoration or habitat connectivity enhancements, (C) maintaining or developing public access facilities at public parks and natural areas, (D) design and construction of local or regional trails, or (E) enhanced or new

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learning/environmental educational facilities by Park Provider using Allocated Bond Funds are referred to in this Agreement as “**Construction Projects**”. All Construction Projects must be an improvement to non-federal, publicly owned real property.

4.2 Construction Project Payment Requests. Park Provider will request payment of funds for all Construction Projects in accordance with the procedures set forth in the Payment Request Requirements attached as **Attachment B** to this Agreement.

4.3 Equity In Contracting, Workforce Diversity, Construction Pathway Careers Requirements. For all Construction Projects, Park Provider will comply with the Equity in Contracting, Workforce Diversity, Construction Career Pathways Requirements set forth by Metro.

4.4 Post-Construction Limitations on Sale and Use. All Construction Projects will be constructed and otherwise maintained for one or more of the Bond Required Uses. Park Provider may not sell or otherwise authorize use of such buildings or improvements pursuant to this Agreement in a manner inconsistent with a Bond Required Use, unless it complies with all of the Post-Construction Restrictions set forth on **Attachment C**.

4.5 Notice of Material Changes. Park Provider will notify Metro of any events during construction that materially affect the Construction Project, including, without limitation (1) significant extensions of the Project schedule, (2) increases to the Project budget, (3) any notices of default issued by Park Provider or other Project lenders, or (4) any other changes that impact the quality or nature of the Construction Project from the Project Requirements described on **Attachment A**. If any such material events occur during Project construction, Park Provider will provide Metro with any additional information Metro reasonably requests related to such events.

4.6 Third Party Indemnification. If Park Provider obtains an indemnification agreement from any third-party developer or general contractor for a Project, Park Provider will contractually require such party to indemnify Metro to the same extent as Park Provider

5. Funding Recognition

5.1 Overall Funding Recognition Requirements. At least once during the Term of the Agreement, Park Provider will hold a public meeting with members of Park Provider's governing

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body, at which Park Provider will recognize Park Provider's partnership with Metro to complete Park Provider's Bond Measure-funded projects. Park Provider will provide the Local Share Program Manager with written notice of such public meeting at least four (4) weeks prior to the scheduled event in order to coordinate with and allow for participation by Metro staff and elected officials.

5.2 Individual Project Funding Recognition Requirements.

A. Park Provider will (1) coordinate with Metro in selecting the date and time for any event recognizing, celebrating or commemorating any Project ground-breaking, completion, ribbon cutting or opening, and provide Metro an opportunity to participate, (2) ensure that the Measure is officially recognized as a funding source at any such event, and (3) provide a speaking opportunity for the Metro elected official representing the district in which the Project is located, if such opportunities are provided to Park Provider or other public officials.

B. Upon execution of this Agreement, Park Provider will publicly recognize Metro and the Measure in any publications, media presentations, or other presentations relating to or describing Projects receiving Allocated Bond Funds. Such project recognition will be included on on-site documentation (e.g. signs) and in any published final products and visual presentations, web site information, collateral materials, newsletters, and news releases.

C. At or before completion of any Project, signage will be installed at the Project site in prominent and highly visible locations near each primary public access point or viewing access area (but not located in a manner that would have a detrimental impact on any natural area viewshed) to acknowledge Metro's funding of the Project and any other partners that have provided funding. Signage will either (1) be a standard, free-standing sign provided by Metro, which Metro will make available to Park Provider upon request at no cost to Park Provider, or (2) include Metro's logo and script in other signage, with Metro's logo and script of a size in comparable proportion to the relative amount of funding provided by the Measure for the Project being recognized, in relation to other agencies recognized on such signage. In no event, however, must Metro's logo and script be larger than the logo and script of Park Provider. Metro will make its graphics available upon request.

D. When the Project is opened to the public, Park Provider will plan and hold at least one community/media event to publicize the Project and its relationship to the Measure. Park Provider will provide the Local Share Program Manager with written notice of such event at least four (4)

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weeks prior to the scheduled event in order to coordinate with and allow for participation by Metro staff and elected officials.

6. Reporting Requirements

6.1 Regular Reporting Requirements. Distribution of Allocated Bond Funds will be conditioned on Park Provider's ongoing demonstration of progress on each Project as presented through regular staff-to-staff conferences, quarterly updates and an annual progress report as described below:

A. Staff-to-Staff Conferences. Park Provider and Metro staff will confer as needed and at least every 6 months by telephone, video conference, in-person meetings, or site visits. Topics will include Project progress, support needs, challenges or issues, and opportunities to share progress with the community and the Metro Council.

B. Quarterly Updates. By September 30, December 31 and March 31 of each fiscal year during the Term, Park Provider will provide brief updates in writing describing Project status (scope, schedule budget) and identifying any issues that may delay or interfere with Project completion.

C. Annual Progress Report. By July 31 of each year of the Term, or until Park Provider has fully completed the Project whichever is first, Park Provider will provide a report to the Local Share Project Manager summarizing its progress, identifying successes and challenges of each Project and the ways it has met the principles and goals outlined in the Local Share Requirements (the "**Annual Progress Report**"). Park Provider will prepare the Annual Progress Report using a template provided by Metro, which may be revised at any time at Metro's sole discretion.

6.2 Annual Financial Report. Distribution of Allocated Bond Funds will be conditioned on Park Provider's delivering an Annual Financial Report as described below. On or before July 31 of each year during the Term, beginning in the year Metro first provides a disbursement of any portion of the Allocated Bond Funds to Park Provider for a Project, Park Provider will provide a report to Metro containing (A) an itemized list of Park Provider's expenditure of Allocated Bond Funds through the end of the applicable fiscal year and the prior fiscal year, (B) a certification from Park Provider to Metro that the Allocated Bond Funds were used only to pay for Capital Costs and the Capped Project Costs do not exceed the 10% cap described in **Section 2.3**, and (C) such other financial items related to this Agreement as may be reasonably requested by Metro (collectively, the "**Annual Financial Report**"). Park Provider will prepare

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the Annual Financial Report using a template provided by Metro, which may be revised at any time at Metro's sole discretion.

6.3 Annual Outcomes and Impacts Report. Distribution of Allocated Bond Funds will be conditioned on Park Provider providing an annual report on or before July 31 of each fiscal year during the Term (A) describing each Project's compliance with the Program Requirements, (B) tracking outcomes that have been emphasized in the Program Requirements, and (C) demonstrating the impact of investments from the Allocated Bond Funds (collectively, the "**Annual Outcomes and Impacts Report**"). Park Provider will prepare the Annual Outcomes Report using a template provided by Metro, which may be revised at any time at Metro's sole discretion.

7. Project Records, Audits and Inspections.

7.1 Project Records. Park Provider will maintain comprehensive records and documentation relating to any Project for which it seeks payment from Metro pursuant to this Agreement, including, without limitation, the establishment and maintenance of books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of any nature that Park Provider incurred or anticipated to be incurred for the performance of this Agreement (collectively, the "**Project Records**") in sufficient detail to permit Metro or its auditor to verify how the Allocated Bond Funds were expended. Project Records will also include all records, reports, data, documents, systems, and concepts, whether in the form of writings, figures, graphs, or models that are prepared or developed in connection with any Project and any other records necessary to clearly document:

A. Park Provider's performance of this Agreement, including but not limited to Park Provider's compliance with this Agreement, and compliance with the Equity in Contracting, Workforce Diversity, Construction Career Pathways Requirements;

B. Any claims arising from or relating to the performance of Park Provider under this Agreement or any public contract entered into by Park Provider that is related to this Agreement;

C. Any cost and pricing data relating to this Agreement;

D. Payments made to all suppliers, contractors and subcontractors engaged in any work for Park Provider related to this Agreement: and

E. Any financial match or other contribution of funds from any other source relating to any Project.

7.2 Maintenance of Project Records. Park Provider will maintain all fiscal Project

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Records in accordance with generally accepted accounting principles. Park Provider will maintain Project Records for the longer period of either (A) three (3) years after the final maturity of the bonds issued for the Local Share Bond Funds, or (B) until the conclusion of any audit, controversy, or litigation that arises out of or is related to this Agreement and that commences within three (3) years from the date of termination of Metro's obligation to provide funds pursuant to this Agreement.

7.3 Availability of Project Records. After Metro provides Park Provider with at least seven (7) days' prior notice of its intent to examine, audit, inspect and copy Project Records, Park Provider will make Project Records available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor ("**Metro Representatives**"). Park Provider will make Project Records available within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, Park Provider agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other reasonable expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. Such costs paid by Park Provider to Metro for inspection, auditing, examining and copying such records will not be recoverable costs in any legal proceeding between Park Provider and Metro. Park Provider authorizes and permits Metro Representatives to inspect, examine, copy and audit the books and Project Records of Park Provider related to the Project, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any requirements of this Agreement. Park Provider agrees to disclose Project Records requested by Metro and agrees to the admission of such records as evidence in any proceeding between Metro and Park Provider, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process. Metro will keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of **Section 7.5** below.

7.4 Costs of Audit. Park Provider agrees that if Project Records disclose that Metro is owed any sum of money other than a nominal sum or establish that any portion of any claim made by Park Provider against Metro is not warranted, Park Provider will pay all costs incurred by Metro in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due to Park Provider from Metro.

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7.5 Public Records Law and Public Meetings Law. All Project Records will be public records subject to Oregon Public Records Law (ORS 192.311 to 192.478). Nothing in this **Section** will be construed as (A) limiting Park Provider's ability to consider real property transactions in executive session pursuant to ORS 192.660(1)(e) or (B) requiring disclosure of records that are otherwise exempt from disclosure pursuant to the Public Records Law (ORS 192.311 to 192.478) or Public Meetings Law (ORS 192.610 to 192.690).

8. Project Failure, Misuse of Allocated Bond Funds and Repayment.

Park Provider will use the Allocated Bond Funds strictly in accordance with the terms set forth in this Agreement. If an Acquisition Project fails to close within 90 days after Metro disburses the requested funds, then, unless otherwise directed in writing by Metro, Park Provider will promptly repay to Metro the amount of the Allocated Bond Funds disbursed for the Project, including any interest earned thereon. If a Project is a Construction Project and it fails to commence within 60 days after Metro disburses funds, then, unless otherwise directed in writing by Metro, Park Provider will promptly repay to Metro the amount of the Allocated Bond Funds disbursed for the Project, including any interest earned thereon. If a Project is no longer used for a Bond Required Use or in compliance with the terms set forth in this Agreement, Park Provider will promptly repay the amount of Allocated Bond Funds disbursed for the Project. Park Provider acknowledges and expressly affirms its repayment obligations set forth in this **Section** even if such failure is through no fault of Park Provider.

9. Term; Termination

9.1 Term. It is the intent of the Parties for Park Provider to have completed the Projects, and for all Allocated Bond Funds to have been spent by Park Provider prior to July 1, 2031 (the "**Termination Date**"). Metro's obligation to provide funds pursuant to this Agreement will terminate on the Termination Date. The provisions of Sections 3.3, 4.4, 5, 7, 8, 11 and 13 will survive the completion of any Project. Notwithstanding the foregoing, all terms of this Agreement will terminate on June 1, 2040.

9.2 Termination for Cause.

A. Metro may terminate this Agreement, in full or in part, at any time during the Term of this Agreement if Metro reasonably determines that Park Provider has failed to comply with any provision of this Agreement and is therefore in default. Upon such termination, Metro may

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immediately withhold or suspend future distributions of Allocated Bond Funds in addition to any other rights and remedies set forth herein or available at law, or in equity.

B. Metro will promptly document such default and notify Park Provider in writing of Metro's determination as required in **Section 9.2(C)** below. Notwithstanding any termination for cause, Park Provider will be entitled to receive payments for any work completed or for which Park Provider was contractually obligated on the date that Metro provided written notice of default, except that Metro will not be obligated to make any payment other than for work specifically provided for in this Agreement.

C. Prior to termination for cause, Metro will provide Park Provider with written notice of default that describes the reason(s) that Metro has concluded that Park Provider is in default and includes a description of the steps that Park Provider must take to cure the default. Park Provider will have 90 days from the date of the notice of default to cure the default, or a longer period that Metro may specify in its written notice (the "**Cure Period**"). In the event Park Provider does not cure the default within the Cure Period, Metro may terminate all or any part of this Agreement. Metro will notify Park Provider in writing of the reasons for the termination and the effective date of the termination, which will not be earlier than 90 days from the date of the notice of default. Park Provider will be entitled to receive payments for any work completed, including any contractual obligations entered, after the date of the notice of default and before the date that Metro provided written notice of termination, provided that such work or contractual obligations were undertaken by Park Provider in a good faith effort to comply with one of the steps to cure the default described by Metro in the notice of default, except that Metro will not be obligated to make any payment other than for work specifically provided for in this Agreement.

D. Park Provider will be liable to Metro for all reasonable costs and damages incurred by Metro as a result of and in documentation of the default.

E. If, after notice of termination, Metro agrees or a court finds that Park Provider was not in default or that the default was excusable, including but not limited to, a labor strike, fire, flood, epidemics, quarantine restrictions, freight embargoes, or other event that was not the fault of, or was beyond the reasonable control of Park Provider, Metro will allow Park Provider to continue work, or both Parties may treat the termination as a joint termination for convenience whereby the rights of Park Provider will be as provided in **Section 9.3** below.

9.3 Joint Termination for Convenience. Metro and Park Provider may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision will be effective only upon a mutual, written termination

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agreement signed by both Metro and Park Provider. Within 30 days after termination pursuant to this provision, Park Provider will submit an itemized invoice for all unreimbursed Project work completed before the effective date of termination, provided that Metro will not be obligated to make any payment other than for work specifically provided for in this Agreement. Metro will not be liable for any costs invoiced later than 30 days after termination; provided, however, that Metro may reimburse additional costs, at Metro's sole discretion, if Metro reasonably determines that the delay was due to factors beyond Park Provider's control.

10. Public Contracting Provisions; Compliance with Law

10.1 Public Contracting Provisions. Park Provider will be solely responsible for ensuring that all Projects receiving Allocated Bond Funds comply with prevailing wage rate law, as applicable. All applicable provisions of ORS chapters 187, 279A, 279B, and 279C, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement. Specifically, it is a condition of this Agreement that Park Provider and all employers working under this Agreement are subject employers that will comply with ORS 656.017.

10.2 Compliance with Law. Park Provider will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to its investment and expenditure of the Allocated Bond Funds. No recipient or proposed recipient of any services or other assistance under the provisions of this Agreement or any program related to this Agreement may be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this Agreement on the grounds of race, color, or national origin, 42 U.S.C. §2000d (Title VI), or on the grounds of religion, sex, ancestry, age, or disability as that term is defined in the Americans with Disabilities Act. For purposes of this **Section**, "program or activity" is defined as any function conducted by an identifiable administrative unit of Park Provider receiving funds pursuant to this Agreement.

11. Indemnification; Limitation on Liability

11.1 Indemnification. Subject to the limitations and conditions of the Oregon Constitution and the Oregon Tort Claims Act, Park Provider will indemnify, defend, and hold harmless Metro, its elected officers and employees, from and against any and all liabilities, claims, demands, damages, actions, costs, penalties, losses and expenses (including any attorney's fees in defense of Metro or

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any attorney's fees incurred in enforcing this provision) suffered or incurred as a result of third-party claims arising out of Park Provider's performance of this Agreement or resulting in whole or in part from any act, omission, negligence, fault or violation of law by Park Provider, its officers, employees, agents, and contractors. This indemnity provision does not apply to third-party claims resulting from the negligence or willful misconduct of Metro.

11.2 Limitation on Liability. In no event will either Party be liable to the other for, and each Party releases the other from, any liability for special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement, however caused, whether or not arising from a Party's sole, joint or concurrent negligence.

12. Oregon Law; Forum

This Agreement is to be construed according to the laws of the State of Oregon. Any litigation between Metro and Park Provider arising under this Agreement will occur, if in the state courts, in the Multnomah County Circuit Court, and if in the Federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

13. Oregon Constitution and Tax Exempt Bond Covenants

Park Provider acknowledges that Metro's source of funds for the Local Share Program is from the sale of voter-approved general obligation bonds that are to be repaid using ad valorem property taxes exempt from the limitations of Article XI, sections 11 and 11b, of the Oregon Constitution, and that certain interest paid by Metro to bond holders is currently exempt from federal and Oregon personal income taxes. Park Provider covenants and agrees that (A) it will take no actions that would jeopardize Metro's general obligation bond levy as exempt from Oregon's constitutional property tax limitations or the income tax exempt status of the bond interest under IRS rules, and (B) all Allocated Bond Funds disbursed hereunder will be used only to pay for or reimburse costs that are of a type that are properly chargeable to a Capital Cost (or would be so chargeable with a proper election) to comply with the Oregon Constitution and other applicable laws with respect to the permitted expenditure of general obligation bond proceeds. In the event Park Provider breaches these covenants, Park Provider will undertake whatever remedies are necessary to cure the default and to compensate Metro for any loss it may suffer as a result thereof, including, without limitation, reimbursement of Metro for any Projects funded under this Agreement.

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14. Notices

Any notices permitted or required by this Agreement, other than payment requests required pursuant to **Attachment B**, must be in writing to the addresses set forth below and will be deemed given upon (A) personal service, (B) deposit in the United States Mail, postage prepaid, (C) deposit with a nationally recognized overnight courier service or (D) by email delivery, if sent on a business day between the hours of 7:00am and 6:00pm Pacific Time; provided within one (1) business day after sending such notice by email delivery, a follow-up copy of such notice will also be sent pursuant to either clauses (A), (B) or (C) above. All such notices will be deemed received (1) upon personal service, (2) three (3) days after deposit in the United States Mail, postage prepaid, (3) one (1) day after deposit with a nationally recognized overnight courier service or (4) if by email delivery (a) on the date of delivery, provided that the email is sent on a business day during the hours stated above or (b) on the next business day if the email is sent outside of the hours stated above).

Park Provider's Designated Representative(s):

Kathy Majidi and Steve Fancher
Department of Environmental Services
1333 NW Eastman Parkway
Gresham, OR 97030
Phone: 503-618-2583
Email: kathy.majidi@greshamoregon.gov, steve.fancher@greshamoregon.gov

Metro's Designated Representatives:

Attn: Local Share Program Manager
Metro Regional Center
600 NE Grand Avenue
Portland, OR 97232
Phone: 503-797-1583
Email: alex.gilbertson@oregonmetro.gov

with copy to:

Office of Metro Attorney
600 NE Grand Avenue
Portland, OR 97232
Phone: 503-797-1526
Email: michelle.bellia@oregonmetro.gov

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manners set forth above will be effective when received by the Party for whom it is intended. Telephone numbers are for information only.

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15. Assignment; Entire Agreement; Merger; Waiver

This Agreement is binding on each Party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by Park Provider without Metro's written consent, which may be withheld in Metro's sole discretion. This Agreement and attached attachments, exhibits and schedules constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The failure to enforce any provision of this Agreement does not constitute a waiver by either Party of that or any other provision. Any waiver of any breach is not a waiver of any succeeding breach or a waiver of any provision.

16. Amendment

The terms of this Agreement cannot be waived, altered, modified, supplemented or amended except by written amendment signed by both Parties and all necessary approvals have been obtained.

17. No Third Party Beneficiaries

Park Provider and Metro are the only parties to this Agreement and are the only parties entitled to enforce its terms and the sole beneficiaries hereof. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons any greater than the right and benefits enjoyed by the general public.

18. Relationship of Parties

Nothing in this Agreement nor any acts of the Parties hereunder will be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture or any association between any Park Provider and Metro. Furthermore, Metro will not be considered the owner, contractor or the developer of any Project funded with Allocated Bond Funds. This Agreement is not intended to be a contract that provides for the development or construction of any Project, either directly with a construction contractor or through a developer. Metro specifically waives any provision contained in this Agreement, to the extent it is construed to provide Metro the right to manage, direct or control the developer, general contractor or the subcontractors. The rights and duties of any developer, the general

Exhibit A to Resolution No. 21-5196

contractor and the subcontractors are the subject of a separate contract or contracts with Park Provider to which Metro is not a party. Park Provider waives and releases Metro from any claims and actions related to the construction, operation, repair, or maintenance of any Project.

19. Other Agreements

This Agreement does not affect or alter any other agreements between Metro and Park Provider.

20. Further Assurances

Each of the Parties will execute and deliver any and all additional papers, documents, and other assurances, and will do any and all acts and things reasonably necessary in connection with the performance of their obligations under this Agreement and to carry out the intent and agreements of the Parties.

21. No Attorney Fees

Except as otherwise set forth in **Section 11.1** of this Agreement, in the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each Party will be responsible for its own attorneys' fees and expenses.

22. Debt Limitation

This Agreement is expressly subject to the limitations of the 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.

23. Severability

If any term or provision of this Agreement is held invalid or unenforceable by a court order or judgment, the validity of the remaining provisions are not affected.

24. Counterparts; Electronic Execution

This Agreement may be executed in counterparts, each of which, when taken together, constitute fully executed originals. Electronic (including e-mail or other digital signatures) operate as original signatures with respect to this Agreement

Exhibit A to Resolution No. 21-5196

25. Authority

Park Provider and Metro each warrant and represent that each has the full power and authority to enter into and perform this Agreement in accordance with its terms; that all requisite action has been taken by Park Provider and Metro to authorize the execution of this Agreement; and that the person signing this Agreement has full power and authority to sign for Park Provider and Metro, respectively. The Parties, by the signatures below of their authorized representatives, hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

ATTACHMENTS:

Attachment A:	Projects List
Attachment B:	Payment Request Requirements
Attachment C:	Post-Acquisition and Post-Construction Restrictions on Sale and Use

Exhibit A to Resolution No. 21-5196

The Parties have executed this Agreement as of the Effective Date.

Metro

Gresham

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM BY:

Carrie MacLaren
Metro Attorney

Date: _____

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ATTACHMENT A Projects List

PROJECT #1

A. LOCAL SHARE PARK PROVIDER NAME: City of Gresham

B. PROJECT DETAILS:

1. **Project Name:** Shaull Property Acquisition
2. **Project Contact Information:** Kathy Majidi and Steve Fancher, City of Gresham
3. **Project Description:** Acquisition of approximately 7.8 acre property at 3535 W Powell Boulevard for preservation of natural resources and addition to Gresham's adjacent SW Community Park site.
4. **Project Location (Address and Attach Map):** 3535 W Powell Boulevard
5. **Acquisition Project OR Construction Project:** Acquisition
6. **Stabilization Plan for Land Acquisitions:** Please refer to Local Share project application submitted by City of Gresham

C. PROJECT MEETS FOLLOWING APPLICABLE PROGRAM REQUIREMENTS:

1. **Local Share Investment Category:**
Natural areas or park land acquisition.
2. **Local Share Criteria:**
Park provider selected one or more specific local share criteria, articulated how project meets them and connected these criteria to the project description. Please refer to Local Share project application submitted by City of Gresham.
3. **Climate Resilience Criteria:**
Park provider selected one or more specific climate resilience criteria, articulated how project meets them and connected these criteria to the project description. Please refer to Local Share project application submitted by City of Gresham.
4. **Community Engagement and Racial Equity Criteria:**
Park provider met meaningful engagement criteria and made a good faith effort to engage members of historically marginalized communities. Please refer to Local Share project application submitted by City of Gresham.
5. **Strategies for avoiding gentrification/displacement:**
Park provider identified demographics of community in vicinity of project. Park provider described anti-displacement strategies its agency use or it will employ to mitigate impacts on at-risk communities. Please refer to Local Share project application submitted by City of Gresham.

D. PROJECT REQUIREMENTS: The Project will comply with the following (collectively referred to as the "**Project Requirements**"):

1. **Project Budget:**
 - a. Amount of Allocated Bond Funds Requested ("**Project Cost**"): \$2,475,000
 - b. Description of other Project Funding: \$200,000 is being allocated from East Multnomah Soil and Water Conservation District. The City of Gresham is also contributing additional resources to cover overhead and other expenses related

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to property acquisition due diligence and management. This amount is yet to be determined so is not included in the Total Project Budget at this time.

- c. Total Project Budget: \$2,675,000. Note: The City of Gresham is contributing additional resources to cover overhead and other expenses related to property acquisition due diligence and management. This amount is yet to be determined so is not included in the Total Project Budget listed, which will be amended at a later date.
2. **Project Timeline:** The property sale closing date is set for September 15, 2021, with an option to extend to November 1, 2021.

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ATTACHMENT B Payment Request Requirements

ACQUISITION PROJECT PAYMENT REQUEST PROCEDURES:

- A. **General:** For all Acquisition Projects, Metro will disburse funds in the amount of the final purchase price and closing costs up to the Project Cost (defined in **Attachment A**) at the time of expenditure directly to the seller through an escrow account with a title company to be held until the closing of the transaction. Disbursements for all other Capital Costs related to Acquisition Projects will be made by Metro on a reimbursement basis in accordance with the Reimbursement Request process for Construction Projects described above.
- B. **Each Acquisition Project Funding Request must include:**
1. A completed Acquisition Project Certification on a form provided by Metro, signed by an authorized representative of Park Provider which certifies Park Provider has complied with (i) all Acquisition Project requirements set forth in Section 3 of the Agreement and (ii) all Program Requirements and Project Requirements set forth in **Addendum A** of the Agreement.
 2. A closing statement that details the price of the property and all related closing costs.
 3. Wiring instructions or other instructions related to the transmittal of funds to the title company escrow account.

All of the documents above will be emailed to the attention of Local Share Program Manager. The Metro contract number and Park Provider's name must be referenced in the email subject line. All of the documents above must also be submitted through Metro's online system (ZoomGrants).

- C. **Upon Metro's receipt of an Acquisition Project Funding Request:** Metro's Local Share Program Manager will review the submitted documents to confirm compliance with the Submittal Process, or request additional information from Park Provider as needed. Metro will transfer funds to the escrow account within five (5) business days after receipt of all necessary documents from Park Provider.

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ATTACHMENT C

Post-Acquisition and Post-Construction Restrictions On Sale and Use

The Post-Acquisition and Post-Construction Restrictions on Sale and Use apply until the end of the Term of the Agreement.

I. Post- Acquisition Restrictions:

Park Provider may not sell or otherwise authorize the use of such property for a use other than as a Bond Required Use (provided however a de minimis portion of such property may be transferred or put to another use, which may include, but is not limited to, a road dedication, utility requirements or other requirements necessary to comply with a land use review proceeding initiated to use the overall property consistent with a Bond Required Use), unless Park Provider complies with all of the following:

A. Park Provider's decision to sell or use the property in a manner inconsistent with a Bond Required Use is the result of unforeseen circumstances.

B. Park Provider's intent, at the time it purchased the property, was to use it for a Bond Required Use.

C. In the event of a sale, the property is transferred to a non-federal public agency or jurisdiction.

D. Park Provider provides Metro 180 days advance written notice of its intent to authorize the sale to a third party or change in use of the property.

E. Park Provider holds at least one public hearing regarding the matter, consistent with its adopted public meeting procedures, prior to making a final decision to sell or change the use of the property, and adopts a resolution or ordinance that includes findings that the conditions in subsections (I)(A) through (I)(D) of this Attachment have been satisfied and that Park Provider has satisfied or will satisfy its obligations as described in subsections (I)(F) and (I)(G) of this Attachment.

F. Metro approves Park Provider's determination of the appraisal value of the property pursuant to the following steps:

(1) At least 90 days prior to making a final decision to sell or change the use of the property, Park Provider will provide Metro with an independent MAI appraisal of the fair market value of the property assuming that the property was subject to the same use restrictions as were in place at the time Park Provider purchased the property (such appraisal will be in

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compliance with USPAP standards (and federal and ODOT right-of-way acquisition standards, if necessary) and will not be subject to any other extraordinary assumptions); and

(2) Not later than 90 days after receiving the appraisal obtained by Park Provider, Metro will inform Park Provider whether Metro has approved the appraisal, which decision will be made in good faith and based on whether the appraisal is complete and reasonable. Metro's review will include having the appraisal reviewed by a review appraiser hired by Metro to conduct a review in accordance with USPAP and general appraisal standards. If Metro does not approve the appraisal, then Metro will inform Park Provider the reasons for not approving the appraisal and Park Provider may resubmit a revised appraisal to Metro pursuant to subsection (I)(F)(1) of this Attachment.

G. If approved by Metro as provided above, then within 180 days after selling the property or authorizing the change in use of the property, Park Provider will apply toward completion of a Project listed on **Attachment A**, or a new Project selected consistent with the provisions of **Section 1.2** of the Agreement, an amount equal to the (2) the proceeds of the sale.

II. Post- Construction Restrictions:

Park Provider may not sell or otherwise authorize use of such buildings or improvements pursuant to this Agreement in a manner inconsistent with a Bond Required Use (provided however a de minimis portion of such property may be transferred or put to another use, which may include, but is not limited to, a road dedication, utility requirements or other requirements necessary to comply with a land use review proceeding initiated to use the overall property consistent with a Bond Required Use),, unless it complies with all of the following:

- A. Park Provider's decision to sell or use such buildings or improvements in a manner inconsistent with the Bond Required Use is the result of unforeseen circumstances.
- B. Park Provider's intent, at the time it constructed such buildings or improvements, was to use them for a Bond Required Use.
- C. In the event of a sale, the property is transferred to a non-federal public agency or jurisdiction.
- D. Park Provider provides Metro 180 days advance written notice of its intent to authorize the sale to a third party or change in use of such buildings or improvements.
- E. Park Provider holds at least one public hearing regarding the matter, consistent with its

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adopted public meeting procedures, prior to making a final decision to sell or change the use of such buildings or improvements, and adopts a resolution or ordinance that includes findings that the conditions in subsections (II)(A) through (II)(E) of this Attachment have been satisfied and that Park Provider has satisfied or will satisfy its obligations as described in subsections (II)(F) and (II)(G) of this Attachment.

F. Metro approves Park Provider's determination of the appraisal value of such buildings or improvements pursuant to the following steps:

- (1) At least 90 days prior to making a final decision to sell or change the use of such buildings or improvements, Park Provider will provide Metro with an independent MAI appraisal of the fair market value of such buildings or improvements (such appraisal will be in compliance with USPAP standards (and federal and ODOT right-of-way acquisition standards, if necessary) and will not be subject to any other extraordinary assumptions); and
- (2) Not later than 90 days after receiving the appraisal obtained by Park Provider, Metro will inform Park Provider whether Metro has approved the appraisal, which decision will be made in good faith and based on whether the appraisal is complete and reasonable. Metro's review will include having the appraisal reviewed by a review appraiser hired by Metro to conduct a review in accordance with USPAP and general appraisal standards. If Metro does not approve the appraisal, then Metro will inform Park Provider the reasons for not approving the appraisal and Park Provider may resubmit a revised appraisal to Metro pursuant to subsection (II)(F)(1) of this Attachment.

G. Within 180 days after selling such buildings or improvements or authorizing the change in use of such buildings or improvements, Park Provider will apply toward completion of a Project listed on **Attachment A**, or a new Project selected consistent with the provisions of **Section 1.2** of the Agreement, an amount equal to proceeds of the sale.

IN CONSIDERATION OF RESOLUTION NO. 21-5196, FOR THE PURPOSE OF
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH
THE CITY OF GRESHAM FOR LOCAL SHARE FUNDING PURSUANT TO THE 2019
PARKS AND NATURE BOND MEASURE

Date: July 16, 2021
Department: Parks and Nature
Meeting Date: July 29, 2021

Prepared by: Beth Cohen, Alex Gilbertson
Presenter(s): Jon Blasher, Alex Gilbertson
Length: 15 minutes

ISSUE STATEMENT

The 2019 parks and nature bond local share program allocates funds to 27 park providers in the region for projects in their communities that satisfy bond community engagement, racial equity and climate resilience criteria and meet program criteria guidelines.

An intergovernmental agreement (IGA) between Metro and each park provider will formalize commitment to these projects and launch the distribution of funding for projects.

The City of Gresham has submitted for local share funds the acquisition of the Shaull Property site adjacent to the city's Southwest Community Park, and the IGA pursuant to this resolution formalizes the commitment to use local share funds for this project and meeting the relevant bond and program criteria. The resolution for consideration by Council will authorize the execution of the IGA with the City of Gresham when the Gresham City Council approves authorization, planned for August 2021.

To date, no other park providers have submitted projects for local share funds.

ACTION REQUESTED

Staff requests approval of Resolution No. 21-5196, for the purpose of authorizing the execution of an Intergovernmental Agreement with the City of Gresham for local share funding pursuant to the 2019 parks and nature bond measure.

IDENTIFIED POLICY OUTCOMES

The Metro Council's policy direction for the local share program is reflected in the local share program materials, which support park providers in meeting the bond criteria around racial equity, community engagement and climate resilience

Through completing the local share submission process, the City of Gresham demonstrated that the Shaull Property acquisition meets the relevant bond and program criteria for projects that protect clean water, restore habitat and connect people with nature close to home. The Shaull Property acquisition secures for public use a privately owned 7.8-acre

parcel immediately adjacent to a 34-acre parcel purchased by the City of Gresham in 1990 (from the same Shaull family) for development of a community park amenity to be known as Southwest Community Park. The parcel is the final opportunity for preservation of developable land within the 170-acre contiguous area that comprises the Fairview Creek Headwaters. This acquisition effort will complete on-going city efforts to (1) protect further encroachment into this regionally significant habitat area, and (2) develop the first community park-scale amenity for the central west and southwest portions of the City.

The City of Gresham's prioritization of this project has been guided by consistent and strong community voice. On May 11 2021, the Gresham City Council's reviewed results from a community survey on local share project priorities where the top project by vote total was the Shaull Property acquisition.

STAFF RECOMMENDATION

Staff recommends that the Metro Council approve Resolution No. 21-5196, for the purpose of authorizing the execution of an Intergovernmental Agreement with the City of Gresham for local share funding pursuant to the 2019 parks and nature bond measure.

BACKGROUND

Parks and Nature staff launched the local share program by finalizing a program handbook, a ZoomGrants portal for submitting priority projects and a community engagement toolkit and other resources to help park providers identify and submit priority projects.

At the Council work session on local share earlier this spring, the Metro Council affirmed a path that allows for expeditious distribution of local share funds in which the Metro Council approves an IGA form and delegates authority to the Metro Chief Operating Officer (COO) to execute the final IGA negotiated with each park provider.

The Office of Metro Attorney developed a draft IGA form and provided an opportunity for all 27 park providers to review the form. Staff are working now to incorporate comments received from park providers. The IGA pursuant to this resolution reflects feedback from the City of Gresham, but not the full range of comments received from other park providers.

This fall, staff will ask the Metro Council to consider and approve a local share IGA form and delegate authority for approval of individual IGAs with park providers to the COO. Having a Metro Council approved IGA form will allow for the negotiation of individual IGAs with park providers once they have submitted projects for local share dollars.

The IGA pursuant to this resolution is being utilized solely to facilitate the advancement of the Shaull Property acquisition. The City of Gresham will submit its other local share projects after conducting more community engagement. The IGA with the City of Gresham will then be amended to reflect the IGA form that will be approved by Council this fall.