

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Clackamas County, the North Clackamas Parks and Recreation District, the Clackamas County Assessor and the City of Happy Valley. Clackamas County, the North Clackamas Parks and Recreation District and the Clackamas County Assessor may be referred to collectively as the “County;” the North Clackamas Parks and Recreation District may be referred to as “NCPRD” or “District”; the City of Happy Valley may be referred to as the “City.” The County, District and City may be referred to individually as a “Party” or collectively as the “Parties.”

I. Recitals

Whereas, on June 6, 2017, the City Council (“City Council”) for the City of Happy Valley (“City”) approved Ordinance 522 withdrawing the City from the North Clackamas Parks and Recreation District (“NCPRD” or “District”).

Whereas, on October 9, 2017, the City filed suit against the District in Clackamas County Circuit Court (the “Breach Case”). In the lawsuit, the City alleged that the District breached a 2005 agreement (“Contract”) between the City and the District under which the District was required to build certain park facilities in the City using funds collected by the City and transferred to the District.

Whereas, on October 12, 2018, the court in the Breach Case ruled that the District breached the Contract by failing to provide the park projects.

Whereas, on August 16, 2019, the jury in the Breach Case found that the City was entitled to \$18,078,238 in damages. The court added prejudgment interest to the damage award and on October 11, 2019, general judgment was entered in the City’s favor in the amount of \$21,301,117.

Whereas, on July 18, 2018, Clackamas County (“County”) filed suit against the City in Clackamas County Circuit Court (the “Withdrawal Case”) seeking a determination as to the validity of Ordinance 522. In the lawsuit, the County alleged that Ordinance 522 was not authorized by ORS 222.520 and was therefore invalid.

Whereas, on December 13, 2018, the court ruled that Ordinance 522 was not authorized by ORS 222.520. Therefore, the court found that the ordinance was void *ab initio* and entered judgment in the County’s favor.

Whereas, as a result of the decision in the Withdrawal Case, the City remains part of the District.

Whereas, the City appealed the decision in the Withdrawal Case and the County appealed the decision in the Breach Case. At the time of this Agreement both appeals are pending.

Whereas, the District is governed by the Board of County Commissioners which serves as the Board of Directors (“District Board”) for the District.

Whereas, the Parties agree that it is in the best interest of their respective residents to resolve the litigation on mutually agreeable terms. As such, and in consideration of the mutual promises and obligations set forth below, the City and County have each approved this Agreement.

II. Agreement

Based on the foregoing recitals which are incorporated into the terms of this Agreement, the Parties mutually agree as follows:

A. Pending Litigation

1. The City Attorney and County Counsel will jointly prepare and timely file such documents as necessary to stay further proceedings in the appeals of the Withdrawal Case and the Breach Case. The stays shall remain in effect until March 31, 2020.
2. In the event the Oregon Legislature enacts the legislation described in Section II.D below, the City Attorney and County Counsel shall jointly prepare and file such documents as necessary to dismiss both appeals within 30 days of the effective date of the legislation.
3. In the event the City receives from the District the funds described in Section II.E below, the City Attorney shall file a satisfaction of judgment in the Breach Case within 14 days of the date the City receives the funds.
4. After such time as the Breach Case and the Withdrawal Case are dismissed and the City files a satisfaction of judgment in the Breach Case, neither party shall take any further judicial or administrative action to contest the matters at issue in either case.
5. In the event the legislation described in Section II.D is not enacted, either the City Attorney or County Counsel, or both, may file with the Court of Appeals such documents as necessary to remove the stay of the Breach Case or the Withdrawal Case, or both, and continue the proceedings on appeal.
6. The City agrees to stay further accrual of post-judgment interest in the Breach Case for the period beginning on the date this Agreement is approved by the Parties and ending on the date the Legislature adjourns *sine die* without enacting the legislation described in Section II.D. If the legislation is not enacted by the date the Legislature adjourns *sine die*, the post-judgment interest shall begin accruing again the following day.

B. Park Facilities

1. NCPRD will transfer ownership of the following park properties to the City within 60 days of the effective date of legislation described in Section II.D of this Agreement:
 - i. Southern Lites
 - ii. Village Green
 - iii. Ashley Meadows
 - iv. Mt. Talbert Parcels (within the City)
 - v. Mt. Scott Creek Trail
 - vi. Hidden Falls
2. NCPRD shall transfer the parks to the City by quitclaim deed.
3. The City is not subject to any development agreement or other agreement entered into by the County or the District in connection with the parks except as may be set forth in a deed or plat that conveys the park property to the County or the District. The City does not assume liability for any system development charge credits issued by the District prior to the date the parks are transferred to the City.
4. Following transfer of the park properties, the City shall be responsible for all operations, repair and maintenance of the parks.

C. Future Annexation Into City

1. Following the effective date of this Agreement, when the City annexes property that is located in the District, the City will not withdraw the annexed property from the District.
2. The Parties agree that the District's permanent rate and any subsequent property tax levies will continue to apply to these properties. The Parties further agree that the District may impose and collect its parks system development charge to any development on these properties and that the City will not collect its parks system development charge.
3. The District boundary on the effective date of this Agreement is shown on Exhibit A.
4. The Parties agree to review the terms of this Section II.C at least every five years.

D. Legislation

1. The Parties agree to support legislation in the 2020 legislative session that removes the City from the District. The legislation shall be narrowly drafted to withdraw the City from NCPRD. The legislation shall not be drafted to create a method for a city to withdraw from a district that was not annexed to the district pursuant to ORS 198.866 and ORS 198.867.
2. The City Attorney shall coordinate with Legislative Counsel to draft the legislation and shall consult with County Counsel on the draft and any revisions. The County's support for the legislation as described in Section II.D.3 below is expressly conditioned on the County's consent to the form of legislation, which shall not be unreasonably withheld. The Parties further agree that the legislation will include an emergency clause that makes the legislation effective on or before March 31, 2020.
3. The Parties agree that "support" as used in this Section includes at least the following:
 - i. City and County will work with and support their respective lobbyists in developing and lobbying for the passage of the legislation.
 - ii. City and County elected officials and staff will communicate full support of the legislation in public and private written documents and conversations.
 - iii. The City and County will fully support legislation on their respective websites, newsletters, emails, at meetings where the legislation is discussed and with City and County residents.
 - iv. The City and County will work in coordination to secure legislative sponsors for the legislation.
 - v. Both before and during the 2020 legislative session, the City and County will actively lobby for passage of the legislation by expressing full support for the legislation with the Clackamas County legislative delegation, legislative leadership, relevant committee chairs and members, staff, and other members of the legislative assembly as necessary to secure passage of the legislation.
 - vi. Joint written testimony with logos and signatures from both the City and County will be submitted before all committee meetings and floor votes.
 - vii. Elected officials from both the City and County will to the extent practicable provide verbal testimony to all House, Senate and Joint committees.

- viii. County shall seek and make all reasonable efforts to secure support for the legislation from the Association of Oregon Counties and the Special Districts Association of Oregon.
- ix. City shall seek and make all reasonable efforts to secure support for the legislation from the League of Oregon Cities.

E. Payment

1. In the event the legislation described in Section II.D of this Agreement is enacted, the District shall transfer to the City the amount of \$14,300,000 within 30 days of the effective date of the legislation.
2. Within 14 days of the date the City receives the funds, the City will file a satisfaction of judgment in the Breach Case as described in Section II.A above.

F. Approval

1. The Parties agree that the City Council and District Board shall each take formal action to approve or reject this Agreement on or before December 6, 2019.
2. Failure of either Party to approve the Agreement by December 6, 2019, constitutes rejection by that Party and the other Party is released of all obligations under this Agreement as of December 7, 2019.

III. Terms and Conditions

- A. Effective Date and Term. This Agreement becomes effective on the date it is approved by both the City Council and the District Board. This Agreement shall remain in effect until it is terminated by its terms.
- B. Termination. This Agreement may be terminated only by the mutual written consent of both Parties
- C. Modification. This Agreement may be modified only in writing signed by both Parties.
- D. Representations. The Parties each represent that the person(s) signing the Agreement below on behalf of the Party has full authority to do so and by signing that the Agreement has been legally approved by the governing body of the Party.

- E. No Third-Party Beneficiaries. The rights and obligations set forth in this Agreement are intended only for the benefit of the Parties hereto and no third-party beneficiaries are intended or created.
- F. Entire Agreement. This Agreement, the attached exhibits and any document referenced herein constitute the entire Agreement between the Parties on the subject of the Agreement.
- G. Controlling Law; Breach; Remedies.
1. This Agreement is subject to and shall be construed in accordance with the laws of the State of Oregon.
 2. In the event of a breach by either Party, the non-breaching Party must provide written notice of the breach to the breaching party. The breaching Party shall have 30 days from the date of the written notice to cure the breach or take substantial steps toward curing the breach. If the breach is not cured within 30 days or such other time as the parties may agree in writing, the parties may seek all legal remedies available.
 3. In the event legal action is initiated, each Party is responsible for its own fees including legal fees and witness fees.
- H. Time of the Essence. Time is of the essence in this Agreement and the Parties each agree to take any action described herein within the time set forth for that action, if any. For any action that requires preliminary actions or preconditions, the Parties further agree to take all reasonable and necessary steps to complete the preliminary action or meet the precondition in a timely and expedited manner.
- I. Counterparts. This Agreement may be signed in two or more counterparts, each of which shall be deemed as an original and which, when taken together, shall constitute one and the same Agreement.

[Signatures on Next Page]

DATED this 3rd day of December, 2019.

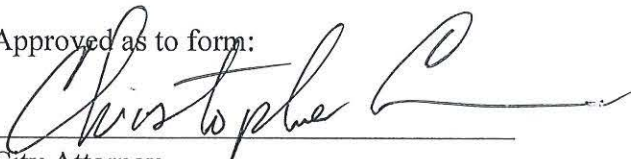
CITY COUNCIL OF THE CITY OF HAPPY VALLEY



Mayor




City Recorder

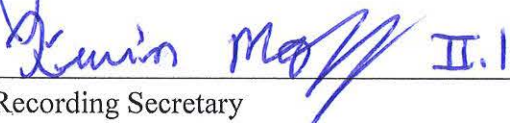
Approved as to form:


City Attorney


BOARD OF COUNTY COMMISSIONERS



Chair

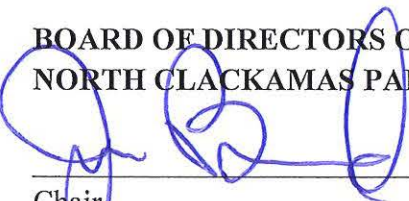


Recording Secretary

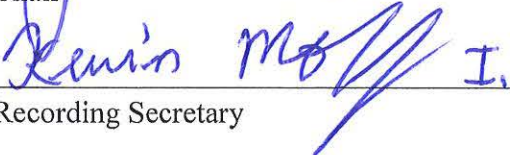
Approved as to form:


County Counsel

**BOARD OF DIRECTORS OF THE
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**




Chair



Recording Secretary

Approved as to form:

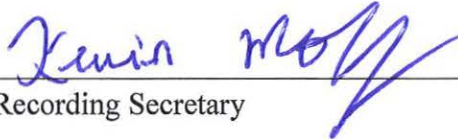


County Counsel

CLACKAMAS COUNTY ASSESSOR




Assessor

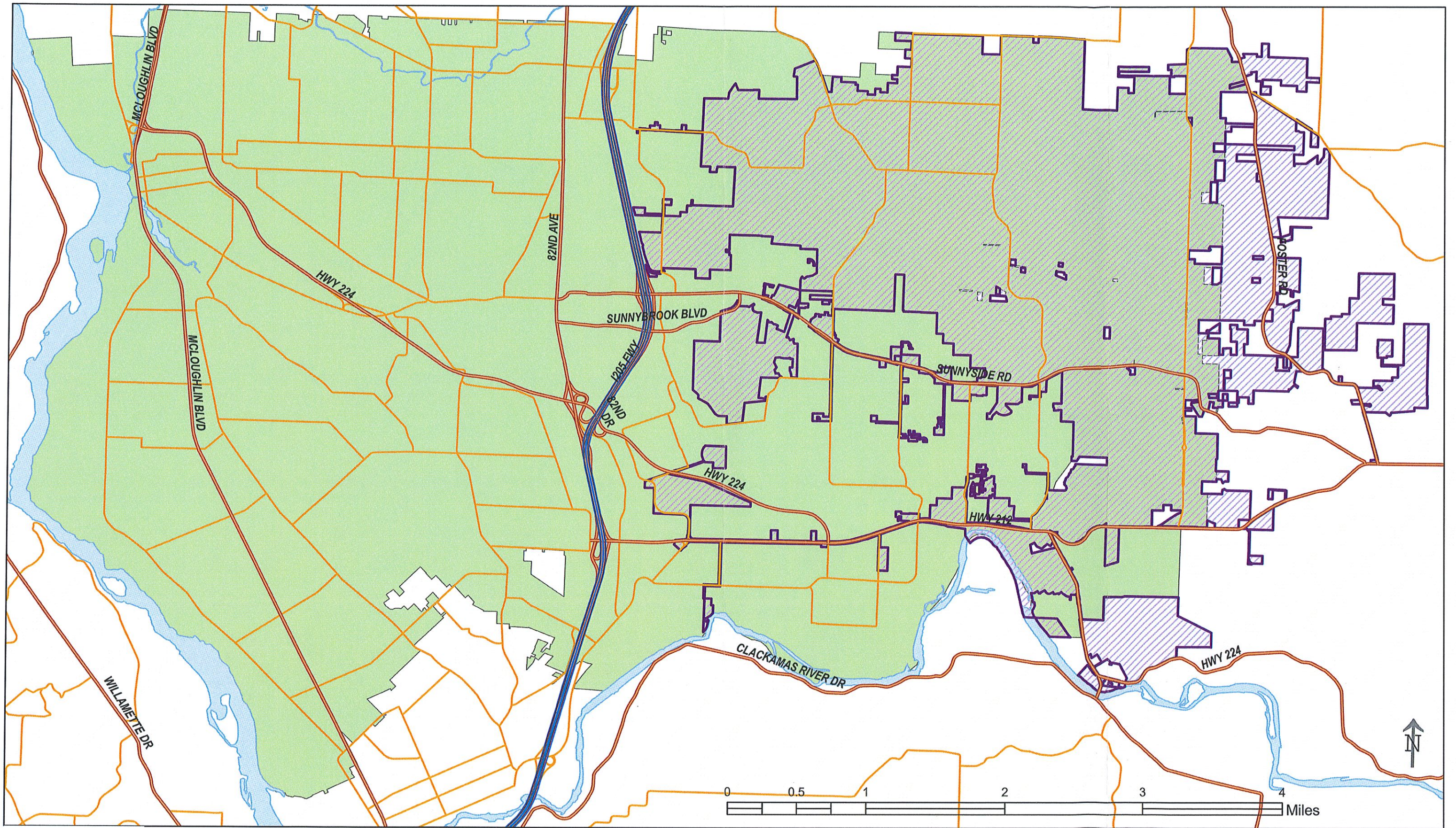





Recording Secretary

Approved as to form:



County Counsel



-  Happy Valley City Limits
-  NCPRD Boundary
-  205 Fwy
-  Major Arterials
-  Minor Arterial

City of Happy Valley - North Clackamas Park and Recreation District Map