

188277

Exhibit C  
Completed Work Product

**EXHIBIT C****Intergovernmental Agreement****Transfer of Elk Rock Island and Implementation of the Elk Rock Natural Area Management Plan**

This Intergovernmental Agreement (IGA) is entered into by and between the City of Portland, a municipal corporation (Portland) and the City of Milwaukie, a municipal corporation (Milwaukie).

Whereas:

Elk Rock Island is located in unincorporated Clackamas County, abutting Milwaukie and adjacent to Spring Park, a Milwaukie city park. It is owned and managed by Portland as a component of the Elk Rock Island Natural Area.

It is relatively difficult and expensive for Portland to actively control access and provide enforcement to address nuisances and public safety issues associated with use of Elk Rock Island. This results in Milwaukie responding to complaints outside of its city boundary.

Portland Parks and Recreation has approved an Elk Rock Natural Area Management Plan, dated May 2016 (Plan) and the parties' desire that the Area be preserved and enhanced as provided in the Plan.

Transfer of Elk Rock Island, pursuant to the terms of this Agreement, will promote efficient and effective management of Elk Rock Island and implementation of the Plan.

Now, therefore, in consideration of the mutual covenants herein, the parties AGREE as follows:

**A. Portland Obligations:**

1. Portland shall execute a bargain and sale deed conveying Elk Rock Island to Milwaukie substantially in the form set forth in Exhibit 'A' hereto, and subject to the following:
  - a. Elk Rock Island shall be known and designated as "Peter Kerr Park" at Elk Rock Island Natural Area,
  - b. Elk Rock Island shall be used solely as a public park in a manner consistent with a Regional Natural Area, as defined in Metro's 2016 Parks and Nature System Plan, to promote its values as a natural area through control of invasive vegetation, restoration of native vegetation and habitat, and minimizing negative human impacts, subject to the Management Plan ("Plan") attached as Exhibit 'B' hereto; and

- c. Nothing herein shall prohibit Milwaukie from allowing public access to or use of the Property.

2. The deed shall be executed and delivered to the Milwaukie no later than 30 days after Milwaukie provides to Portland a copy of an ordinance or resolution of the City Council of the City of Milwaukie adopting the Plan and appropriating no less than \$32,000 for implementation of the Plan for the remainder of FY 2016-2017.

**B. Milwaukie Obligations:**

- 1. Milwaukie will, subject to obtaining all necessary land use approvals:
  - a. Seek an amendment to its Urban Growth Management Agreement with Clackamas County to include Elk Rock Island within the Milwaukie urban services area;
  - b. Amend its urban growth boundary to include Elk Rock Island; and
  - c. Annex Elk Rock Island into Milwaukie.

Milwaukie shall make diligent good faith efforts to complete these items within 180 days of the transfer ownership of Elk Rock Island to Milwaukie. On annexation, Milwaukie shall provide public safety response and enforcement to Elk Rock Island consistent with such services provided generally throughout Milwaukie.

2. Within thirty (30) days after delivery of the deed from Portland, Milwaukie shall apply to the Division of State Lands to become the registered owner of the concrete feature adjoining the island known as “the steps” and to renew the registration for the “steps”. Thereafter, Milwaukie shall continue to renew the registration and comply with any applicable DSL requirements.

3. Milwaukie thereafter will appropriate funds each year as it determines reasonably necessary to implement the Plan set forth in Exhibit ‘B’ hereto in a diligent and good faith manner, in accordance with best management practices. Portland will turn over any work product already completed pursuant to the Plan, such as survey lists of vegetation including rare and special status plants as shown on Exhibit ‘C’, to facilitate expedient and efficient implementation of the Plan. Milwaukie may implement the Plan through use of its own forces or by contract, including but not limited to an intergovernmental agreement for services with the North Clackamas County Park and Recreation District. Any such contract or agreement shall expressly incorporate the Plan.

4. On or before March 1, of each year, Milwaukie shall provide Portland Parks and Recreation with a written report detailing actions taken and expenditures made to implement the Plan since July 1 of the prior year, together with a proposed work plan and expenditures for the ensuing fiscal year. Portland shall have at least 30 days to provide comments on report, work

plan and proposed expenditures. Milwaukie staff shall meet with Portland staff as reasonably requested to address any issues or concerns. The work plan, including any City of Portland comments, shall be presented to the Milwaukie City Council for adoption.

5. Portland staff shall have unimpeded access to Elk Rock Island for inspection and environmental monitoring provided that Portland staff shall make reasonable efforts to provide an opportunity for Milwaukie staff or designee to accompany Portland staff. Portland shall not conduct any invasive procedure unless it first provides at least 30 days' notice to Milwaukie and obtains Milwaukie's consent for such procedures, which consent shall not be unreasonably delayed or withheld. For purposes of this paragraph "invasive procedures" shall include but not be limited to drilling, plant removal or soil disturbance or sampling.

**C. Plan Amendment**

1. Milwaukie shall not amend the Plan without first obtaining the written approval of Portland Parks and Recreation.

2. Following termination of this Agreement as provided in Paragraph E, Milwaukie may amend the Plan only after providing Portland Parks and Recreation with a minimum of 30 days' notice and opportunity to comment on the proposed amendment(s). This obligation shall survive termination.

**D. Breach and Remedy**

1. Failure of either party to perform the obligations imposed herein shall constitute a breach of this Agreement. The party alleging a breach shall provide the other with not less than 90 days written notice specifying the alleged breach and providing no less than 90 days opportunity to cure. If requested, the party alleged to have breached shall meet and confer with the party alleging the breach in a reasonable and good faith attempt to resolve the dispute.

2. If the alleged breach is not resolved during the cure period specified in the notice, the party alleging the breach may bring an action to enforce the obligation, including but not limited to specific performance.

**E. Termination.** Except as provided in paragraph C 2, this Agreement and the obligations imposed herein shall terminate on June 30, 2025. Termination under this section shall in no way impair ownership of Elk Rock Island by Milwaukie or the limitation to park use provided for in the deed from Portland to Milwaukie.

**F. Miscellaneous.**

1. Each party represents and warrants that it has taken such actions as required by law to approve execution of this Agreement and is bound by its terms. This Agreement shall be effective on the date last executed.

2. All notices required or permitted under this Agreement shall be in writing and mailed by first class mail to the persons set forth below. Either party may amend the designation of the person or place to receive notice on that party's behalf by giving written notice to the other party as provided in this Section. The date of notice shall be the first business day after the date postmarked:

To Portland: Mike Abbate, Director  
Portland Parks and Recreation  
1211 SW Fifth Avenue, Room 1302  
Portland, OR 97204

To Milwaukie: Mitchell Nieman, Asst. to City Manager  
City of Milwaukie  
10722 SE Main St.  
Milwaukie, OR 97222

With a copy to: Tim Ramis  
Jordan Ramis PC  
PO Box 230669  
Portland, OR 97281

3. In the event that a court deems any portion or part of this Agreement unlawful or invalid, only that portion of the Agreement shall be considered enforceable. The remainder shall remain in full force and effect.

4. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representation regarding the subject matter of the Agreement. No waiver, consent, modification or change shall bind the Parties unless in writing and executed by each Party.

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APPROVED BY:

CITY OF PORTLAND

CITY OF MILWAUKIE

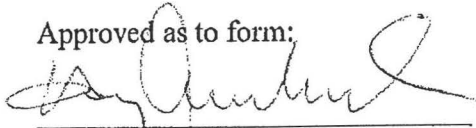
By: \_\_\_\_\_  
Ted Wheeler, Mayor

By: \_\_\_\_\_  
Mark Gamba, Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:



\_\_\_\_\_  
For the City Attorney

Approved as to form

\_\_\_\_\_  
For the City Attorney

## Exhibit A

## Return To and Tax Statement To:

City of Milwaukie  
10722 SE Main St  
Milwaukie, OR 97222

*This space is reserved for recorder's use.*

**BARGAIN AND SALE DEED**

The City of Portland, an Oregon municipal corporation ("Grantor") hereby conveys to the City of Milwaukie ("Grantee") the real property described in Exhibit A, attached hereto and incorporated by this reference herein, and subject to the terms and conditions set forth in the Intergovernmental Agreement entered into by Grantor and Grantee dated XXXX, as amended, and upon the express condition that the property described herein shall be used solely as a public park, or for public park purposes, for the use and enjoyment of the public generally, and that the property shall be known and designated as "Peter Kerr Park at Elk Rock Island Natural Area".

The true and actual consideration for this conveyance consists of or includes other property or value given or promised which is a part of the consideration.

**BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND**

195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

City of Portland

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of Oregon        )  
                                  )ss.  
County of Multnomah)

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_ as \_\_\_\_\_ of the City of Portland.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

ACCEPTED BY:

**THE CITY OF MILWAUKIE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of Oregon        )  
                                  )ss.  
County of Clackamas )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_ as \_\_\_\_\_ of the City of Milwaukie.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_



**EXHIBIT A TO BARGAIN AND SALE DEED**

Real property in the County of Clackamas, State of Oregon, described as follows:

A tract of land being a portion of the Lot Whitcomb's Donation Land Claim No. 38, in Section 35, Township 1 South, Range 1 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, being more particularly described as follows:

That certain Island in the Willamette River above the Town of Milwaukie, Oregon, formerly known as Whitcomb Island, now called Elk Rock Island, lying near the Southwest corner of the said Lot Whitcomb's Donation Land Claim No. 38, Township 1 South, Range 1 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon.