

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING AN )  
INTERGOVERNMENTAL AGREEMENT WITH )  
OREGON DEPARTMENT OF TRANSPORTATION )  
AND THE CITY OF PORTLAND TO ALLOW )  
METRO TO DESIGN AND BUILD THE NORTH )  
PORTLAND ROAD SEGMENT OF THE )  
PENINSULA CROSSING TRAIL )

RESOLUTION NO. 99-2803

Introduced by Mike Burton  
Executive Officer

WHEREAS, funding for the Peninsula Crossing Trail comes from Metro's Bond Measure 26-26 for Open Space, Parks and Streams, which was approved by the voters of the region in May 1995; and

WHEREAS, the North Portland Road trail segment of the Peninsula Crossing Trail is within the Oregon Department of Transportation (ODOT) right-of-way; and

WHEREAS, ODOT must review and approve the design and specifications for the trail before it can be built; and

WHEREAS, ODOT must issue a permit to Metro before the trail can be built; and

WHEREAS, Metro Regional Parks and Greenspaces has trails planning experience and has designed and hired a general contractor to build segment one of the trail (Willamette Boulevard to Columbia Court); and

WHEREAS, ODOT has agreed to accept all trail improvements and to maintain the North Portland Road segment of the Peninsula Crossing Trail; now therefore,

**BE IT RESOLVED**

That the Metro Council approves and authorizes the Executive Officer to execute the intergovernmental agreement with Oregon Department of Transportation and the city of Portland, attached hereto as Exhibit A, allowing Metro to design and build the North Portland Road segment of the Peninsula Crossing Trail.

ADOPTED by the Metro Council this 18<sup>th</sup> day of November 1999.

  
Rod Monroe, Presiding Officer

Approved as to Form:

  
Daniel B. Cooper, General Counsel

EXHIBIT A

Resolution No. 99-2803

Misc. Contracts & Agreements

No. 16769

**COOPERATIVE IMPROVEMENT AGREEMENT  
Peninsula Crossing Trail - North Portland Road Section**

THIS Intergovernmental Agreement, entitled Cooperative Improvement Agreement ("AGREEMENT") is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT"; Metro, organized under the laws for the State of Oregon and the 1992 Metro Charter, hereinafter referred to as "METRO"; and the CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through its Portland Office of Transportation and its City Officials, hereinafter referred to as "CITY".

**WITNESSETH**

**RECITALS**

1. The Peninsula Crossing Trail ("the Trail") is a multi-use, urban trail of approximately three miles in total length, located in North Portland. The southern terminus is located at N. Willamette Boulevard; the northern terminus is located at N. Marine Drive, as set forth in the aerial map attached hereto as Exhibit A and incorporated herein by reference. Some portions of the Trail corridor are on State of Oregon roadways; other portions are on City of Portland roadways or other property owned by the City of Portland. This Agreement governs that portion of the Peninsula Crossing Trail starting at the Columbia Slough at the south end and extending to Old Marine Drive on the north end, located on ODOT right of way, on North Portland Road (Swift Highway No. 120), as indicated in blue on the attached aerial map, Exhibit A. This part of the Peninsula Crossing Trail is sometimes referred to as the "North Portland Road" segment or "Segment 3" of the Trail.
2. The METRO Council forwarded to the voters of the region a ballot measure which was approved by the electors on May 16, 1995, authorizing METRO to issue \$135.6 million in bonds for Open Spaces, Parks, Trails and Streams. METRO has budgeted and will contribute up to \$1.6 million from these Open Spaces Bond Measure funds for the design and construction of certain portions of the Peninsula Crossing Trail, including this Segment 3 of the Trail.

The parties have separately entered into other Intergovernmental Agreements governing the other segments of the Trail. Specifically, METRO and the CITY have entered into that certain Intergovernmental Agreement dated December 11, 1996, regarding the design, construction, operation, maintenance and management of Segment 1 of the Trail, generally located along the unimproved N. Carey Boulevard right of way, and also on N. Columbia Boulevard, N. Fessenden Street, N. Portsmouth Avenue, and Columbia Court indicated in red on the aerial map attached hereto as Exhibit A. That December 11, 1996 IGA also governs the BES-constructed portion of the Trail, also known as Segment 2 of the Trail, through the Treatment Plan property and across the Columbia Slough, as indicated in yellow on the attached aerial map. METRO, the CITY, and ODOT have also entered into an Intergovernmental Agreement dated September 11, 1997, regarding coordination of CMAQ funding for the design, construction, operation, maintenance and management of Segment 1 of the Trail.

3. By the authority granted in ORS 366.770, and 366.775, ODOT may enter into cooperative agreements with the counties, cities, and units of local government for the performance of work upon certain types of projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
4. By the authority granted in ORS 366.425, ODOT may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within ODOT. When said money or letter of credit is deposited, ODOT shall proceed with the project. Money so deposited shall be disbursed for the purpose for which it was deposited.
5. Portland Road (Swift Highway No. 120) is presently a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. ODOT and CITY entered into a Construction Finance Agreement No. 8115 on July 16, 1984 and a supplement dated December 17, 1991 for the construction of the 1-5 to N. Rivergate Access Section on N. Marine Drive and Swift Highway which included construction of the north portion of the Peninsula Crossing Trail on N. Portland Road. ODOT and CITY are in the process of entering into an Abandonment and Retention Agreement to transfer jurisdiction of N. Marine Drive and the northern portion of the Peninsula Crossing Trail (on N. Portland Road) to the CITY. Under said Construction and Finance Supplement Agreement, CITY presently maintains the existing northern portion of the Peninsula Crossing Trail along N. Portland Road which is located on ODOT right-of-way.

**NOW THEREFORE**, the premises being in general as stated in the foregoing RECITALS, it is agreed by and between, the parties hereto as follows.

## **TERMS OF AGREEMENT**

### **A. PROJECT DESCRIPTION**

1. METRO plans and proposes to design and construct Segment 3 of the Peninsula Crossing Trail along the east side of N. Portland Road on ODOT right-of-way completing the pedestrian/bicycle link between the Columbia Slough and N. Marine Drive, hereinafter referred to as "Project". Said work will include, subject to budget and permit restraints, a landscape buffer between the path and the road; construction of a pedestrian crossing at Old Marine Drive within the limits of the project which will connect to Smith & Bybee Lakes Natural Area, and shall also connect to the existing northern section of the Trail previously constructed by the CITY. The location of the Project is approximately as shown in blue on the aerial map attached hereto as Exhibit A.
2. Design and Construction of the Project will be funded 100 percent by METRO at no cost to ODOT or the CITY, subject to METRO's budget limitations as established by the Metro Council. In no event shall METRO's total funding of the entire Trail, including this Project and the other segments of the Trail, exceed One Million Six Hundred Thousand Dollars (\$1,600,000). In the event METRO's costs exceed that amount, METRO shall in its discretion prioritize elements of the Trail under its responsibility and determine which elements shall be funded.

3. Maintenance of this North Portland Road segment of the Trail shall be funded 100 percent by ODOT at no cost to METRO.
4. Post-construction, all improvements on the North Portland Road Segment of the Trail shall become the sole property of ODOT. ODOT shall retain the responsibility for access control and for issuing all permits on Property. ODOT shall use its best efforts not to take any action that would impair or impede access to the trail on the property, in accordance with the provisions in Section E1 below.
5. This Agreement shall become effective upon execution of this Agreement by all parties and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the facilities constructed as part of the Project.

**B. ODOT OBLIGATIONS**

1. ODOT's District Manager shall, at METRO expense, issue the necessary permits required to begin construction of the Project on ODOT property.
2. ODOT's Region Manager shall, at METRO's expense, assign a Project Manager for the plan review and periodic/final inspection of the Project, in an amount not to exceed Two Thousand-Five Hundred Dollars (\$2500).
3. ODOT shall, upon execution of this agreement, forward to METRO a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$2500 for payment of permits, plan review/final inspection of project. If the cost for ODOT's services does not exceed the \$2500, ODOT shall refund METRO, upon completion of the project, any portion of said advance deposit which is in excess of the total ODOT costs for the project. ODOT shall submit an invoice to METRO at the end of the project construction detailing the items billed to the \$2500 deposit/payment.
4. ODOT hereby grants METRO, its agents and contractors, the right to enter onto ODOT right-of-way, upon issuance of ODOT required permits, for the purpose of performing all activities reasonably necessary for design and construction of the Project.
5. ODOT shall, upon completion of the Project, maintain this Project's portion of the Peninsula Crossing Trail at its own expense. ODOT shall be responsible for maintaining the landscaped areas after the contractor's 18 month plant establishment period.
6. ODOT shall maintain the North Portland Section of the Trail for its intended Trail activities so long as owned by ODOT. ODOT shall maintain this portion of the Trail in a manner consistent with standards for other ODOT operated Trail facilities.
7. ODOT will not construct or allow construction of improvements to this section of the Trail which are inconsistent with the use of the Trail by pedestrians, bicyclists and other non-motorized modes of transportation (with the exception of the conditions described in Section E1 below).

**C. METRO OBLIGATIONS**

1. METRO shall, upon a letter of request from ODOT, forward to ODOT an advance deposit or irrevocable letter of credit in the amount of \$2500. Said amount being equal to the estimated total cost for the work performed by ODOT under ODOT Obligations. Any portion of said advance deposit which is in excess of ODOT's total costs will be refunded or released to METRO within 30 days after ODOT's final inspection of the Project construction.
2. METRO shall, at its own expense, and subject to the funding limitations set forth herein, design, obtain all required permits (including Rail Road permits), arrange for the relocation or adjustment of any utility facilities' which may be in conflict with plans for the project; prepare the contract and bidding documents, advertise for construction bid proposals; and upon award of a contract, furnish all construction engineering, material testing, technical inspection, and project manager services for administration of the construction contract.
3. Notwithstanding the foregoing, however, the CITY Bureau of Environmental Services (BES) is coordinating the undercrossing permit application. This permit will allow the trail to go underneath the Burlington Northern Railroad bridge which crosses the Columbia Slough. METRO shall pay one-half the cost of the undercrossing permit; however, METRO's cost of the undercrossing permit shall in no event be greater than Three Thousand Dollars (\$3000).
4. METRO shall, prior to award of its contract, submit final plans and specifications to ODOT's assigned Project Engineer for review and approval. METRO has previously submitted preliminary plans for the Project to ODOT and ODOT has found the standards proposed for the Project to be in keeping with ODOT's standards for trail design. No contract shall be awarded that is not in keeping with the plans and specifications reviewed and approved by ODOT.
5. METRO shall require its contractor to obtain and keep in effect during the term of the contract Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided under this agreement and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000 or the equivalent. Each annual aggregate limit shall not be less than \$2,000,000, when applicable. The certificate of insurance shall include the State of Oregon, Transportation Commission and its members, Department of Transportation, officers and employees as additional insured. METRO shall provide a copy of the certificate to ODOT prior to construction of the project. The insurance coverage shall not be amended, altered, modified or cancelled insofar as the coverage contemplated herein is concerned without at least 30 days prior written notice.
6. METRO agrees to obtain and comply with all provisions of ODOT issued permits addressed in ODOT OBLIGATIONS and shall require its contractors, subcontractors, or consultants performing such work to comply with such provisions. METRO shall also ensure that permits from the Rail Road Company for Temporary Occupancy and drainage have been obtained prior to award of its construction contract.
7. METRO agrees that during construction of the Project, METRO, through its contractor, shall be

responsible for maintaining the construction site associated with the Project in a clean and orderly condition.

#### **D. CITY OBLIGATIONS**

1. The CITY has reviewed the plans for the Project and has found the standards proposed for the Project in keeping with the CITY's standards for trail design. If ODOT and CITY agree in the future to extend the boundaries of jurisdiction to include negotiating the remaining portion of N. Portland Road to be transferred to the CITY, CITY agrees that the proposed, trail improvements are acceptable and would not impede the abandonment process.
2. METRO takes no position regarding the potential transfer from ODOT to the CITY of jurisdiction over the North Portland Road Segment of the Trail.

#### **E. GENERAL PROVISIONS**

1. ODOT retains the right to reoccupy any of the trail area as necessary for maintenance, operation, construction or reconstruction of N. Portland Road/Swift Highway. In the event that ODOT should need to reoccupy any of the trail area, ODOT shall consider all other alternatives in an attempt to minimize impacts to the trail. However, if the property is required for ODOT's use as specified herein, METRO shall, at its own expense, arrange to relocate the trail if METRO so desires
2. **Workers Compensation.** METRO, its contractors, subcontractors, if any, and all employers working under this agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.
3. **Applicable Laws.** METRO shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, the parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Acts of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
4. **Project Managers.** METRO's Project Manager shall be Mel Huie of the Metro Regional Parks and Greenspaces Department. ODOT's Project Manager shall be Darlene Maddux. The CITY's Project Manger shall be Jerry Markesino, Portland Department of Transportation. The parties may change their respective Project Managers and shall provide written notice to the other parties upon such change.
5. **Oregon Constitution and Tax Exempt Bond Covenants.** ODOT and CITY acknowledge that METRO's source of funds for this project is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11 (b), 11 (c), 11 (d), and 11 (e) of the Oregon Constitution, and that the interest paid by METRO to bond holders is currently exempt from federal and Oregon income taxes. ODOT and CITY covenant

and agree that they will take no actions that would cause METRO to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event ODOT or City breaches this covenant, and to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, METRO shall be entitled to what ever remedies are available to either cure the default or to compensate METRO for any loss it may suffer as a result thereof.

6. **Indemnifications.** ODOT, METRO, and CITY, shall each, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save and hold harmless the other parties from all claims, suits or actions of any nature arising out of the activities of that party, its consultants, contractors, officers, subcontractors, agents or employees under this agreement.
7. **Funding Declaration.** METRO, ODOT and the CITY will document on-site and in any publication, media presentation or other presentations regarding the Trail, that funding for certain portions of the Trail came from Metro Open Spaces Bond Funds, and that ODOT is responsible for maintenance of the North Portland Road section of the Trail.
8. **Public Records.** ODOT, METRO, and CITY agree that all records, reports, data, documents, systems and concepts, whether in the form of writings, figures, graphs, or models which are prepared or developed in connection with the project shall become public records to the extent required by public records laws. Nothing in this section or in any other part of this Agreement shall be construed as limiting the ability to consider real property transactions in executive session pursuant to ORS Chapter 192 or as requiring disclosure of records that are otherwise exempt from disclosure pursuant to Public Records Laws or Public Meetings Laws, ORS Chapter 192.
9. **Termination by Mutual Consent.** This agreement may be terminated by mutual consent of all parties upon 30 days' notice, in writing and delivered by certified mail or in person.

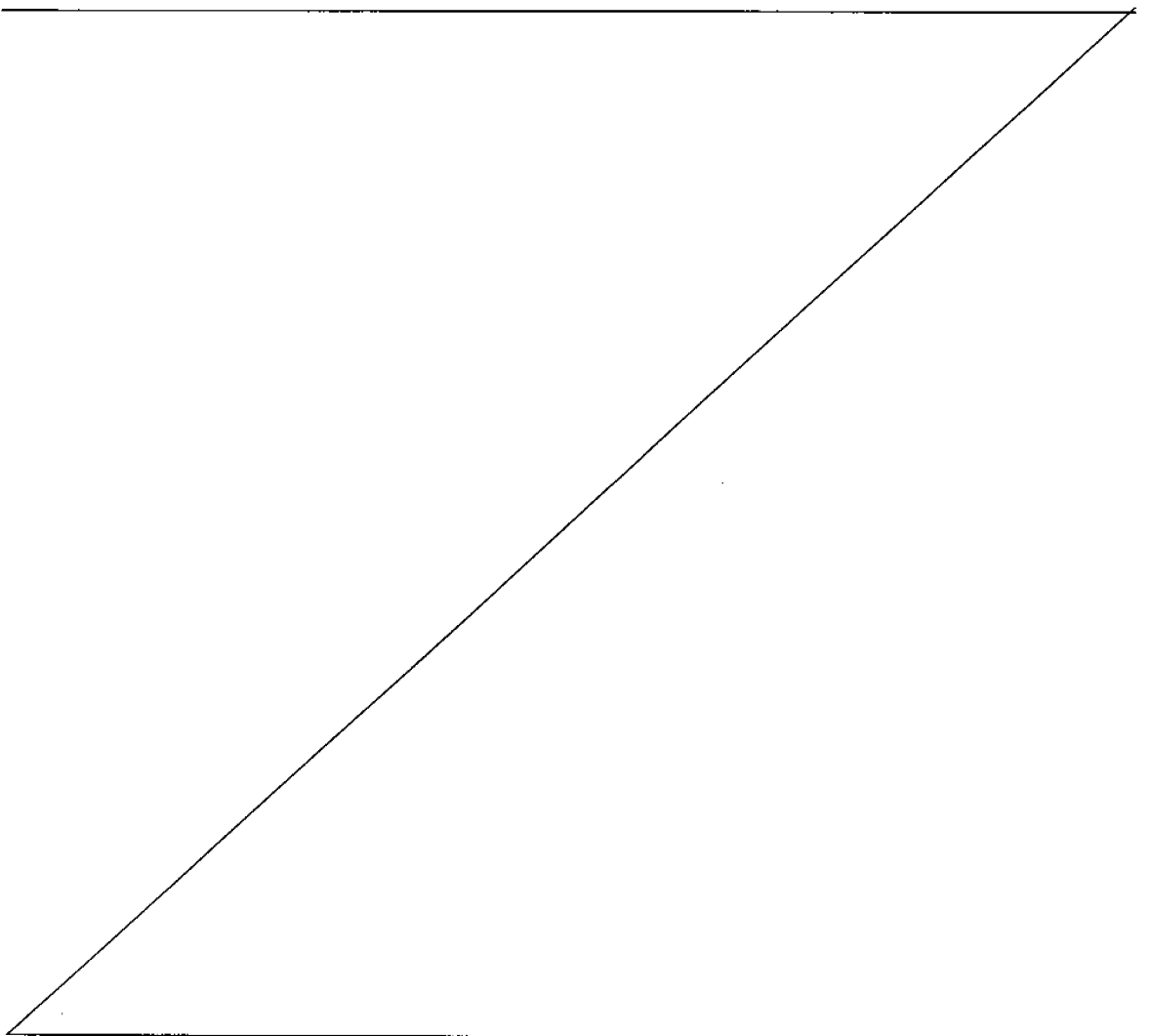
Any party may terminate this agreement effective upon delivery of written notice to the other parties or at such later date as may be established by the terminating party, under any of the following conditions:

- a. If the other party/parties fails to provide services or take actions called for by this agreement within the time specified herein or any extension thereof.
- b. If the other party/parties fails to perform any of the other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from the other party/parties fails to correct such failures within 10 days or such longer period as the other party/parties may authorize.
- c. If METRO fails to provide payment of the \$2500 cost of ODOT's services for the project within 20 days of receipt of a letter of request from ODOT.
- d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that the work under this agreement is prohibited.



Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

10. **Assignment.** Except for the possible assignment of responsibilities by ODOT to the CITY as set forth above, no party shall assign any of its responsibilities under this Agreement without prior written consent from the other party, except that each party may subcontract for performance of any of their respective responsibilities under this Agreement.
11. **Severability.** If any covenant or provision in this agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.



12. **Entire Agreement.** This agreement and attached exhibits 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. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of any party to enforce any provision of this agreement shall not constitute a waiver by that party of that or any other provision.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

The Oregon Transportation Commission on March 18, 1999, approved Subdelegation Order No. 2, in which the Director grants authority to the Region Manager to approve and execute agreements for day to day operations.

APPROVAL RECOMMENDED

By \_\_\_\_\_  
Region 1 Project Delivery Manager

CITY OF PORTLAND, By and through its  
Elected Officials

By \_\_\_\_\_  
Commissioner of Public Safety

Date \_\_\_\_\_

By \_\_\_\_\_  
City Auditor

METRO:

By \_\_\_\_\_  
Executive Officer

Date \_\_\_\_\_

STATE OF OREGON  
by and through its Department of  
Transportation

By \_\_\_\_\_  
Region Manager

Date \_\_\_\_\_

APPROVED AS TO LEGAL  
SUFFICIENCY

By \_\_\_\_\_  
Asst. Attorney General

APPROVED AS TO FORM:







By \_\_\_\_\_  
Chief Deputy City Attorney

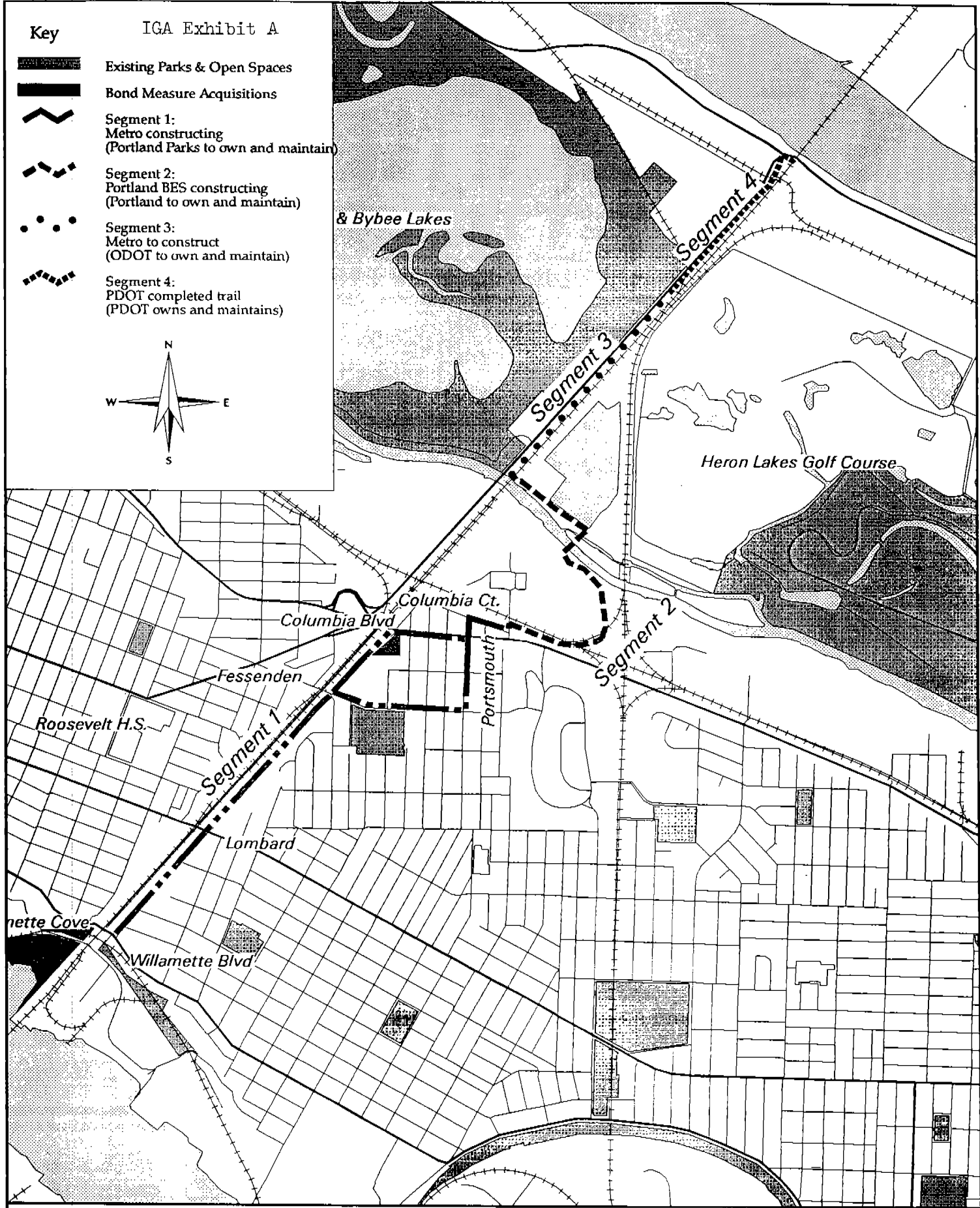
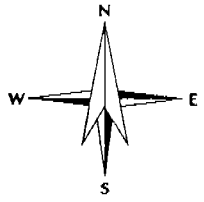
Approved as to Form:

By \_\_\_\_\_  
Metro Attorney

Key

IGA Exhibit A

-  Existing Parks & Open Spaces
-  Bond Measure Acquisitions
-  Segment 1:  
Metro constructing  
(Portland Parks to own and maintain)
-  Segment 2:  
Portland BES constructing  
(Portland to own and maintain)
-  Segment 3:  
Metro to construct  
(ODOT to own and maintain)
-  Segment 4:  
PDOT completed trail  
(PDOT owns and maintains)







Open Spaces, Parks and Streams Bond Measure  
Peninsula Crossing Trail



# Peninsula Crossing Trail

Exhibit A



-  Segment 1:  
Metro constructing  
(Portland Parks to own and maintain)
-  Segment 2:  
Portland BES constructing  
(Portland to own and maintain)
-  Segment 3:  
Metro to construct  
(ODOT to own and maintain)
-  Segment 4:  
PDOT completed trail  
(PDOT owns and maintains)



METRO

450 NE Grand Ave. Portland, OR 97232-2731  
Voice 503 797-1742 FAX 503 797 1909  
Email [dro@metrodot.org](mailto:dro@metrodot.org)

## **STAFF REPORT**

### **CONSIDERATION OF RESOLUTION NO. 99-2803 FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH OREGON DEPARTMENT OF TRANSPORTATION AND THE CITY OF PORTLAND TO ALLOW METRO TO DESIGN AND BUILD THE NORTH PORTLAND ROAD SEGMENT OF THE PENINSULA CROSSING TRAIL**

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**Date: October 15, 1999**

**Presented By: Charles Ciecko  
Jim Desmond**

#### **Proposed Action**

Resolution No. 99-2803 requests authorization to enter into an intergovernmental agreement (IGA) with Oregon Department of Transportation (ODOT) and the city of Portland to allow Metro Regional Parks and Greenspaces to design and build the North Portland Road segment of the Peninsula Crossing Trail. The North Portland Road trail segment is in ODOT's right-of-way. The trail improvements will be owned and maintained by ODOT after construction.

#### **Background and Analysis**

- The "Peninsula Crossing Trail" is one of the six regionally significant greenway and trail projects identified for regional funding under Metro's \$135.6 million Open Spaces, Parks and Streams Bond Measure passed by the voters in May 1995.
- North Portland Road is the third segment of the Peninsula Crossing Trail that will connect the Willamette and Columbia rivers across the north Portland Peninsula. The entire trail is approximately three miles long. The North Portland Road trail segment is approximately one mile in length. The first segment of the trail, from Willamette Boulevard north to the front of the City's wastewater treatment plant at North Columbia Court, opened last fall. The second segment of the trail will cross the property of the City's wastewater treatment plant and cross the Columbia Slough on a bridge built by the City's Bureau of Environmental Services (BES). BES plans to open parts of the trail across its property in Fall 2000.
- In late 1996, the Metro Council approved (via Resolution No. 96-2413) an IGA with the City for the design and construction of segment one of the trail (Willamette Boulevard to Columbia Court). The Portland Bureau of Environmental Services is paying for segment two of the trail (across the wastewater treatment facility and slough). The city of Portland will own all the trail improvements on these two segments and maintain them.
- Metro Regional Parks and Greenspaces will design and hire a contractor to build the North Portland Road segment of the trail.
- Metro will serve as project manager, finalize the construction drawings and bid packet, and hire the general contractor. Metro will be in charge of obtaining necessary permits, construction management, testing of asphalt for the trail and all warranties.

- Oregon Department of Transportation (ODOT) must review and approve the trail design.
- Portland Parks and Recreation and Portland Department of Transportation (PDOT) support the construction of the trail. The final trail design will meet state and city trail standards.
- Under the terms of the IGA, ODOT will issue Metro a permit to build the trail in ODOT's right-of-way, accept ownership of all improvements and agree to maintain the trail.

## **BUDGET IMPACT**

- The estimated budget for design, engineering, permits, inspection, testing and construction (including construction management) of the trail project is \$400,000. Funding comes from the Metro Open Spaces, Parks and Streams Bond Measure.

## **MAP**

- Attached is a map showing the project boundaries.

## **ESTIMATED TIME-LINE**

- |                                       |                      |
|---------------------------------------|----------------------|
| • Final Trail Design Approved by ODOT | Spring 2000          |
| • Trail Construction Permit from ODOT | Spring 2000          |
| • Bid Awarded                         | Spring - Summer 2000 |
| • Construction Period                 | Summer - Fall 2000   |
| • Completion (estimated)              | December 31, 2000    |
| • Dedication / Grand Opening          | Spring 2001          |

## **EXECUTIVE OFFICER'S RECOMMENDATION**

The Executive Officer recommends approval of Resolution No. 99-2803.