

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER) RESOLUTION NO. 10-4148
TO AMEND AN INTERGOVERNMENTAL)
AGREEMENT WITH THE CITY OF FOREST) Introduced by Chief Operating Officer
GROVE FOR TRAIL DEVELOPMENT) Michael J. Jordan, with the concurrence of
) Council President David Bragdon

WHEREAS, the City of Forest Grove and Metro entered into an Intergovernmental Agreement effective June 9, 2008, (“IGA”) to allow the City to construct a pedestrian and bicycle trail across Metro property and along the city property (the “Trail”), and, upon completion of Trail construction, for Metro to grant to the City a permanent, recordable pedestrian and bicycle trail easement across the Metro Property providing for the ongoing uses, maintenance, repair, and reconstruction of the Trail; and

WHEREAS, the IGA was authorized by the Metro Council’s approval on May 15, 2008, of Resolution No. 08-3935, “Authorizing the Chief Operating Officer to Execute an Intergovernmental Agreement with the City of Forest Grove for Trail Development,” and was authorized by the City of Forest Grove Council’s approval on February 11, 2008, of Resolution No. 2008-16, “Resolution of the City of Forest Grove Authorizing an Intergovernmental Agreement Between the City of Forest Grove and Metro for Trail Development ;” and

WHEREAS, the City of Forest Grove and Metro entered into an Amendment to the IGA effective September 23, 2009, to extend the effective date of the IGA until March 31, 2011;

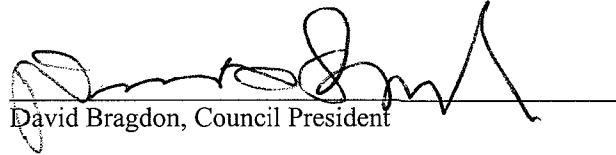
WHEREAS, the trail location has shifted during trail design to align the trail with the most appropriate location for a bridge to cross over Gales Creek, and the new alignment places significantly more of the trail and part of the bridge over Gales Creek on Metro’s property than did the originally-proposed trail location;

WHEREAS, the parties wish to enter into this Second Amendment to reflect and authorize the new location of the trail;

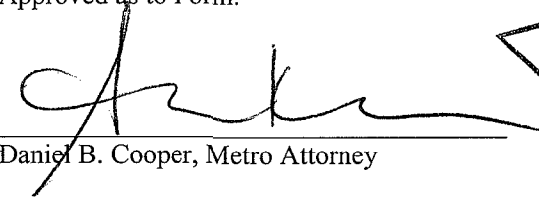
WHEREAS, the Metro Council concludes that the trail use on the Metro Property described in Exhibit A to this resolution is a park use and is consistent with Metro’s Metropolitan Greenspaces Master Plan and, more specifically, with Metro’s easement policy as described in Metro Resolution No. 97-2539B, approved on November 6, 1997; now therefore

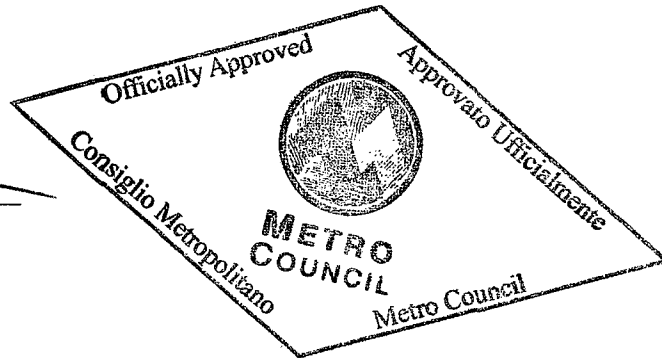
BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to execute an amendment to the existing intergovernmental agreement with the City of Forest Grove, substantially in the form attached hereto as Exhibit A, to allow for the new trail alignment.

ADOPTED by the Metro Council this 6 day of MAY, 2010.


David Bragdon, Council President

Approved as to Form:


for Daniel B. Cooper, Metro Attorney



**SECOND AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT**

This Second Amendment to Intergovernmental Agreement (“Second Amendment”) is by and between Metro, an Oregon municipal government, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 (“Metro”), and the City of Forest Grove, an Oregon municipal corporation, located at 1924 Council Street, Forest Grove, Oregon 97116-0326 (“the City”). This Second Amendment shall be effective on the last date of signature of a party, below (the “Effective Date”).

RECITALS

WHEREAS, the City and Metro entered into an intergovernmental agreement (“IGA”) effective June 9, 2008, regarding the City’s construction of a trail on Metro-owned property;

WHEREAS, the City and Metro entered into an Amendment to the IGA effective September 23, 2009, to extend the effective date of the IGA;

WHEREAS, the trail location has shifted during trail design to align the trail with the most appropriate location for a bridge to cross over Gales Creek, and the new alignment places significantly more of the trail and part of the bridge over Gales Creek on Metro’s property than did the originally-proposed trail location;

WHEREAS, the parties wish to enter into this Second Amendment to reflect the new location of the trail;

Now, therefore, the parties agree as follows:

AGREEMENT

1. Exhibit A to the IGA shall be deleted and replaced with Exhibit A to this Second Amendment.
2. As provided in the IGA, the Trail Construction Area shall be as depicted in Exhibit A to this Second Amendment; provided, however, that the Trail Construction Area shall not extend further than 60 feet from any point on the western boundary of the Metro Property.
3. As depicted in Exhibit A, one bridge abutment and part of the bridge over Gales Creek will be located on the Metro Property (the “Bridge”). All references in the IGA to the “Trail” or “trail” shall be read and interpreted to include the Bridge, including all Bridge-related surface and subsurface utilities and Bridge-related safety improvements.
4. Section 2 of the IGA the words “375 feet long” shall be deleted and replaced with the words “1,350 feet long” and the following text shall be inserted between the first and second sentences of Section 2 of the IGA:

The city shall construct the Trail and Bridge substantially in conformance with the design as presented in the project Bid/Permit Set plans prepared by Group Mackenzie dated February 11, 2010, as amended

by Addendum No. 1 dated February 18, 2010, and Addendums No. 2 and 3 dated March 1, 2010, and as subsequently amended as reasonably necessary in the normal course of final project design and construction.

- 5. Exhibit B to the IGA shall be amended and replaced as shown on Exhibit B to this Second Amendment.
- 6. Except as provided for in this Second Amendment, all the terms and conditions of the IGA remain unchanged and are hereby ratified and confirmed by all of the undersigned. Capitalized terms used in this Second Amendment and not defined shall have the meanings set forth in the IGA.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year set forth below.

CITY OF FOREST GROVE

METRO

By: _____

Michael Jordan, Chief Operating Officer

Print Name: _____

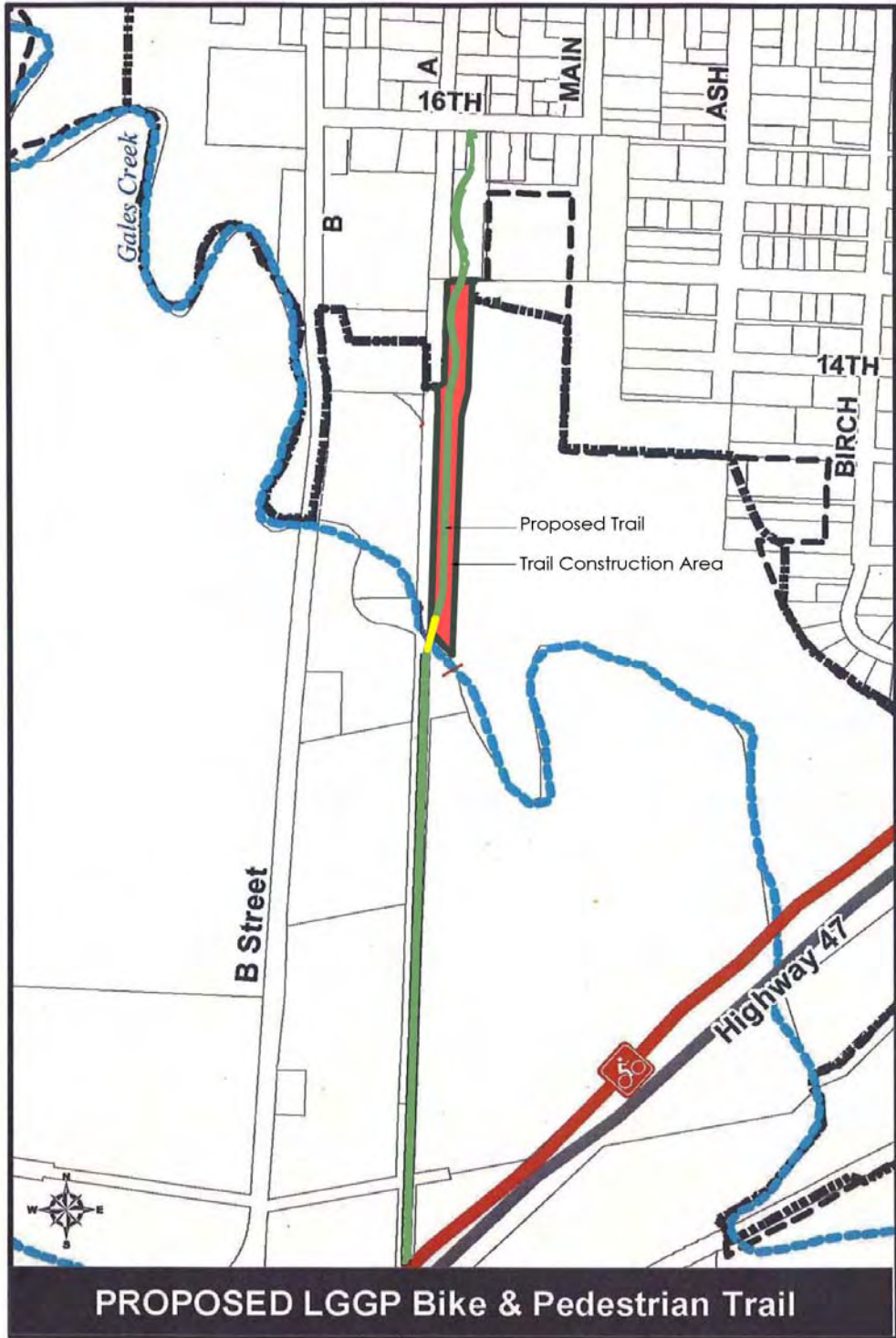
Title: _____

Date: _____

Date: _____

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Exhibit A
Depiction of Trail Construction Area and Trail Corridor



**Exhibit B
Form of Easement**

GRANTOR: METRO
600 NE Grand Avenue
Portland, OR 97232-2736

GRANTEE: THE CITY OF FOREST GROVE, OREGON
1924 Council Street
Forest Grove, Oregon 97116-0326

Until a change is requested, all tax statements should be sent to:
METRO
600 NE Grand Avenue
Portland, OR 97232-2736

After Recording Return to:
The City of Forest Grove, Oregon
P.O. Box 326
Forest Grove, Oregon 97116-0326

GRANT OF BICYCLE AND PEDESTRIAN TRAIL EASEMENT

METRO, an Oregon municipal corporation ("Grantor"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, subject to the terms hereof, to THE CITY OF FOREST GROVE, OREGON, an Oregon municipal corporation ("Grantee" or "City"), an exclusive, perpetual, public bicycle and pedestrian trail easement and right-of-way over and through that certain real property commonly known as Tax Lot 2700 in Township 1 South, Range 3 West, Section 6C, as more fully described in the legal description attached hereto as Exhibit 1 (the "Metro Property"), for the purposes outlined herein and within an area not more than 400 feet long and 15 feet wide, as more fully described and depicted in Exhibit 2, attached hereto and incorporated herein (the "Easement Area").

The cash consideration paid for this grant is \$0; however, the true and actual consideration includes other value given or promised which is the whole of the consideration.

PURPOSE. The purpose of this Easement is for Metro to grant the City the right to use, maintain, repair, and reconstruct an all-weather, paved bicycle and pedestrian trail, including without limitation a portion of a bridge over Gales Creek (the "Bridge") over which such trail shall pass, within the Easement Area (the "Trail"). As used herein, references to the "Trail" shall be interpreted to include the Bridge and all portions of the bicycle and pedestrian trail, including on and over the ground and on and over the Bridge.

1. **RIGHTS GRANTED.** This Easement hereby grants to Grantee and the public the perpetual, exclusive right of ingress and egress to and from, over and across the Easement Area along the Trail for all-hours public bicycle and pedestrian access. Forest Grove shall have the right to access the Easement Area to use, maintain, repair, and reconstruct the Trail.

2. LIMITATIONS. Except as specifically authorized by this Easement, no other use may be made of the Easement Area without the prior written approval of Grantor. Except for fuel and lubricants stored within equipment necessary and incidental to the authorized use of the Easement Area pursuant to this Easement, no Hazardous Substances may be used, handled, stored, or transported on, to, or from the Easement Area. Under no circumstances shall any use be made of, or conduct occur on, the Easement Area which would cause such areas, or any part thereof, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or any other special authorization under any applicable law, rule, or regulation.
3. GRANTEE SHALL MAINTAIN TRAIL AND BRIDGE. Grantee shall construct, maintain, repair, reconstruct, replace, remove (if necessary), and operate the trail in a prompt and workmanlike manner. The Trail and Bridge shall be operated and maintained so that it remains open to the public, safe, and free from hazards.
4. SURFACE DAMAGES. Grantee shall compensate Grantor for all damages to Grantor's real and/or personal property improvements, including all damages and impacts to the Metro Property and to any agricultural activities occurring on the Metro Property, caused by the construction, maintenance, repair, replacement, or removal of the Trail in the Easement Area or, in the event that the damages relate to removal of native vegetation, landscaping, or landscaping material, Grantee shall restore the vegetation and landscaping as provided below. In making any installation in the Easement Area, the Grantee shall restore any landscaping to its condition and size prior to such installation, as well as replace, as applicable, any sidewalks, pavement, curbs, driveways, signs, irrigation systems, or other improvements affected by the installation. Grantee shall perform any work in the Easement Area in a prompt and workmanlike manner.
5. RELEASE OF LIABILITY. By granting this Easement, the Grantor shall have no liability or responsibility for the costs of any installation made by Grantee in the Easement Area, including the cost of constructing, maintaining, repairing, replacing, reconstructing, or removing the Trail. Grantor is hereby released from all liability for damages to any improvements, utilities, or systems installed in the Easement Area caused by members of the public entering on the Easement Area, except to the extent such damages arise from or are caused by Grantor's negligence or willful misconduct.
6. INDEMNITY. To the maximum extent permitted by law and subject to the Oregon Constitution and the Oregon Tort Claims Act, Grantee shall fully indemnify, hold harmless, and defend the Grantor and Grantor's officers, employees, and agents from and against all actual or alleged claims, actions, demands, judgments, and damages, and all costs, expenses, and fees incidental to the investigation and defense thereof, including, but not limited to, attorney, accountant, paralegal, and expert fees through all appeals, based upon or arising out of: (a) an intentional or negligent act or omission of Grantee or Grantee's officers, employees, agents, invitees, contractors, or subcontractors acting within the scope of their employment or duties occurring on the Easement Area; (2) the installation, construction, maintenance, repair, or operation of any improvements, utilities, or other systems installed in the Easement Area, including the installation, construction, maintenance, or operation of the Trail; and (3) any breach, violation, or failure to perform any of Grantee's obligations

under this Easement.

7. DAMAGE TO TRAIL OR BRIDGE. In the event that that portion of the Trail or the Bridge over Gales Creek constructed within the Easement Area is ever structurally damaged by high water, an earthquake, or a similar event, the CITY shall be solely responsible for any liability resulting from downstream damage caused by any part of such Trail or Bridge and for removing any damaged parts of such Trail or Bridge from wherever they come to rest. In the event of such an occurrence, the CITY's responsibility for surface damages, the release of liability, and the indemnification provisions set forth in Sections 4, 5 and 6 of this Easement shall apply to such an occurrence.
8. ENVIRONMENTAL INDEMNITY. To the maximum extent permitted by law and subject to the Oregon Constitution and the Oregon Tort Claims Act, Grantee shall fully indemnify, hold harmless, and defend the Grantor, its officers, and employees from and against the costs of any necessary or required sampling, testing, study, remediation, cleanup, or monitoring, and against all actual or alleged claims, actions, demands, judgments, and damages, and all costs, expenses, and fees incidental to the investigation and defense thereof, including, but not limited to attorney, accountant, paralegal and expert fees through all appeals, arising out of or related to Grantee's activities on the Metro Property authorized herein and based upon or arising out of the release, disposal, generation, or transport within the Easement Area of Hazardous or Toxic Materials or Substances, as those terms are defined in ORS chapters 465 and 466, as amended, or the federal Resource Conservation and Recovery Act ("RCRA"), Toxic Substances Control Act ("TSCA"), Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended 42 USC § 960 et seq., or any other federal, state, or local law, ordinance, rule, or regulation pertaining to the protection of the environment; provided, however, that by accepting this Easement, Grantee is not accepting liability for any preexisting release of hazardous substances onto or from the Easement Area, and Grantor is not attempting to convey any such liability.
9. RIGHT OF RE-ENTRY; TERMINATION. This Easement is granted on the express condition that the Grantee use the Easement solely for the purposes stated in Sections 1 and 2, above. In the event the Grantee uses the Easement for another purpose or fails to use the Easement Area for a continuous period of one (1) year at any time after the initial Trail construction authorized by this Easement, or, in the event the parties mutually agree to terminate this Easement, then Grantor may re-enter and terminate this Easement. Within ninety (90) days from the date of written notice from Grantor upon non-continuous use for the one (1) year period or mutual termination of this Easement, the Grantee shall remove any installation from the Easement Area, including the Trail, shall restore the land to a grade consistent with the surrounding area, said restoration to be at Grantee's sole cost as directed by and to the satisfaction of the Grantor, and shall deliver to the Grantor a recordable document or documents sufficient to remove this Easement as an encumbrance on the Easement Area.
10. RESERVATIONS. Grantor reserves the right to use and enjoy the Easement Area provided that such use shall not hinder, conflict with, or interfere with Grantee's rights hereunder or disturb its installations within the Easement Area, and Grantor shall neither authorize nor

construct, create, or maintain any road, reservoir, excavation, change in surface grade, obstruction, or structure on, over, along, or within the Easement Area without Grantee's prior written consent.

- 11. COVENANTS. The rights granted herein shall be covenants running with the land and be binding upon Grantor, its successors and assigns in perpetuity, except as otherwise set forth herein. Grantee covenants and agrees to maintain and repair all improvements, utilities, and systems installed within the Easement Area by Grantee, including the Trail. Grantee covenants and agrees that, in the conduct of any and all of its activities and operations hereunder, it will comply strictly with all present and future rules and regulations of all federal, state, and local government bodies having jurisdiction over the construction activities occurring within the Easement Area and, if applicable, on adjacent real property owned by Grantor.

- 12. GRANTOR'S RIGHT TO GRANT EASEMENT. Grantor represents and warrants that it is the owner of the Easement Area having the full right and power to grant the rights provided in this Easement, subject to liens and encumbrances of record as of the date of execution set forth below.

THIS EASEMENT is executed this _____ day of _____ 2008.

METRO, GRANTOR

By: _____
Name: Michael J. Jordan
Title: Chief Operating Officer

State of Oregon)
 ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 20____
by _____ as Chief Operating Officer of Metro.

Notary Public - State of Oregon

ACCEPTANCE

THIS EASEMENT is hereby accepted this _____ day of _____ 2008.

CITY OF FOREST GROVE, GRANTEE

By: _____
Name: _____
Title: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on the ____ day of _____
2008 by _____, the _____ of the City of
Forest Grove, Oregon.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

**Easement Exhibit 1
Metro Property Legal Description**

Parcel No. 1, according to PARTITION PLAT NO. 1994-96, in the City of Forest Grove, filed December 12, 1994, Records of the County of Washington and State of Oregon.

Easement Exhibit 2
Easement Area Legal Description and Survey Depiction
[to be appended upon completion of survey]

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 10-4148, AUTHORIZING THE CHIEF OPERATING OFFICER TO AMEND AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF FOREST GROVE FOR TRAIL DEVELOPMENT.

Date: May 6, 2010

Prepared by: Kathleen Brennan-Hunter, 503-797-1948

BACKGROUND

Metro and the City of Forest Grove entered into an intergovernmental agreement effective June 9, 2008 regarding the City's construction of a trail on Metro-owned and managed property. This agreement was amended September 23, 2009 to extend the effective date of the IGA to allow extra time necessary for trail construction.

Due to requisite design changes, a second amendment is now necessary. During the design phase, it became apparent that the alignment of the trail must be shifted to allow for the most appropriate location for a bridge to cross over Gales Creek. This new alignment places an additional 975 feet of trail on Metro property. This will include one bridge abutment and part of the bridge over Gales Creek to be located on Metro-owned property.

Metro staff reviewed the design as presented in the project Bid/Permit Set plans prepared by Group Mackenzie dated February 11, 2010, as amended by Addendum No. 1 dated February 18, 2010, and Addendums No. 2 and 3 dated March 1, 2010, and as subsequently amended as reasonably necessary in the normal course of final project design and construction.

Metro staff has been present on site for pre-bid construction meetings and feel that all potential concerns with the new alignment, and accompanying revised bridge design, have been met. Furthermore, the Metro scientist responsible for the restoration of the natural area has reviewed all materials and does not feel that this alignment and design change will have an adverse affect on the natural resource components of the site, nor affect restoration in progress.

Other than the alignment shift and design changes to the original trail development project, the terms and conditions of the original IGA remain unchanged.

ANALYSIS/INFORMATION

1. Known Opposition

None identified.

2. Legal Antecedents

On November 6, 1997, the Metro Council adopted Resolution No. 97-2539B, "For the Purpose of Approving General Policies Related to the Review of Easements, Right of Ways, and Leases for Non-Park Uses Through Properties Managed by the Regional Parks and Greenspaces Department."

On May 15, 2008, the Metro Council adopted Resolution No. 08-3935, "Authorizing the Chief Operating Officer to Execute an Intergovernmental Agreement with the City of Forest Grove for Trail Development."

On September 23rd, 2009, the City of Forest Grove and Metro approved an amendment to the agreement to extend the effective date.

3. **Anticipated Effects**

Allowing the trail to be built in the revised location is the best possible outcome, given Metro and the City's previously expressed intent to partner on a trail construction adjacent to the Metro-owned property. The new location is the most stable in terms of periodic stream flooding and will have the least impact on Metro-sponsored restoration efforts. Further, the trail will allow the public to have more access to nature and offers the potential for conservation education.

4. **Budget Impacts**

None.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution 10-4148.