

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 14-4503
CHIEF OPERATING OFFICER TO GRANT AN)
EASEMENT TO THE CITY OF FOREST GROVE) Introduced by Chief Operating Officer Martha
FOR CONTINUING TRAIL DEVELOPMENT) Bennett in concurrence with Council
) President Tom Hughes

WHEREAS, pursuant to the 1995 Metro Open Spaces, Parks and Streams Ballot Measure 26-26 (“Metro Open Spaces Bond Measure”), Metro purchased approximately 48 acres of real property now referred to as the site Gales Forest Grove (“Gales Forest Grove”) in the Gales Creek Target Area; and

WHEREAS, the City of Forest Grove (the “City”) owns real property adjacent to Gales Forest Grove (the “City Property”); and

WHEREAS, pursuant to Metro Council Resolution 08-3935, “Authorizing the Chief Operating Officer to Execute an Intergovernmental Agreement with the City of Forest Grove for Trail Development”, approved on May 15, 2008, Metro and the City entered into an Intergovernmental Agreement to allow the City to construct a pedestrian and bicycle trail across the western edge of Gales Forest Grove and along the City Property (the “First Trail”), and upon completion of the First Trail construction, for Metro to grant the City a permanent, recordable pedestrian and bicycle trail easement across Gales Forest Grove providing for the ongoing use, maintenance, repair, and reconstruction of the First Trail; and

WHEREAS, the First Trail has opened for public use; and


WHEREAS, the City has adopted a Community Trail Master Plan that identifies an extension of the First Trail along the eastern side of Gales Forest Grove (the “Second Trail”) as an important connection for both recreation and transportation purposes, and the City is applying for a grant from the State of Oregon Parks and Recreation Department (“OPRD”) for design and construction of the Second Trail; and

WHEREAS, the City believes OPRD will consider the grant application to be more complete and view it more favorably if the City obtains an easement from Metro providing for the ongoing use, maintenance, repair, and reconstruction of the Second Trail, prior to applying for the grant; and

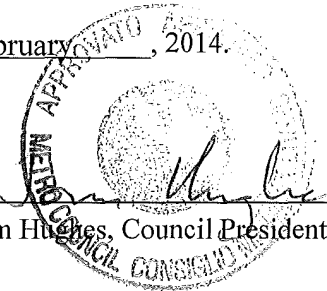
WHEREAS, the Metro Council concludes that such a trail use on Gales Forest Grove is a park use and is consistent with Metro’s Metropolitan Greenspaces Master Plan and, more specifically, with Metro’s easement policy as described in Metro Resolution No. 97-2539B, “For the Purpose of Approving General 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,” approved on November 6, 1997; now therefore

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to grant a trail easement to the City of Forest Grove in substantially the form attached as Exhibit A to this resolution.


ADOPTED by the Metro Council this 25 day of February, 2014.



Tom Hughes, Council President



Approved as to Form:



Alison R. Kean, Metro Attorney

Form of Easement

GRANTOR: Metro
600 NE Grand Ave.
Portland OR 97232

GRANTEE: The City of Forest Grove, Oregon
1924 Council Street
Forest Grove, OR 97116

BICYCLE AND PEDESTRIAN TRAIL EASEMENT

This BICYCLE AND PEDESTRIAN TRAIL EASEMENT ("Easement") is made and entered into as of _____, 2014 (the "Effective Date") by and between Metro, an Oregon municipal corporation ("Metro") and the City of Forest Grove, an Oregon municipal corporation (the "City").

RECITALS

A. Metro is the owner of the real property in the County of Washington, State of Oregon, commonly known as tax parcel 2700 in Section 06C of Township 1 South, Range 3 West of the Willamette Meridian and tax parcels 300, 400 and 200 in Section 06CB of Township 1 South, Range 3 West of the Willamette Meridian, and legally described on the attached Exhibit A (collectively, the "Property").

B. The City is an Oregon municipal corporation whose purpose is, among other things, to build, operate, and maintain recreational trails and pathways for the benefit of the public within its city limits.

C. Metro desires to grant to the City, and the City desires to accept from Metro, an easement over the Property for the purpose of allowing the City to establish and maintain a public bicycle and pedestrian trail in accordance with the terms and conditions set forth in this Easement.

AGREEMENT

1. Grant of Easement. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Metro hereby grants to the City a nonexclusive, perpetual easement in gross, on, over, across, and along a portion of the Property (the "Easement Area"). The Easement Area is depicted on attached Exhibit B.

This depiction of the Easement Area is preliminary, having been prepared prior to detailed design and development of the Trail (as defined below). In the course of designing and engineering the Trail, the City shall obtain a survey of the Easement Area from a registered land surveyor, to create a legal description of the Easement Area and a survey drawing of the Easement Area sufficient to allow recording of this Easement with the Washington County Recorder. The surveyor shall stake the Easement Area, so that the City and Metro may inspect and approve it. The parties shall use good faith efforts to ensure that the Easement Area is generally configured as shown on Exhibit B; provided, however, that the parties acknowledge and agree that the Easement Area may need to be adjusted in response to conditions on the ground. Material adjustments and modifications to the Easement Area shall require the approval of each party. Once the surveyed Easement Area is approved by both parties, the parties shall amend and restate this Easement in its entirety to include the legal description of the Easement Area and the survey drawing of the Easement Area, so that the amended and restated easement may be recorded. This Easement shall automatically terminate on the date that is three (3) years from the Effective Date (if not amended and restated prior to this deadline).

2. Purposes. The purpose of this Easement is to give the City the right to (a) enter the Easement Area at any time, subject to the requirements of Section 3, below, to establish, install, construct, maintain, and repair a trail and pathway (the “Trail”), and (b) permit the public to access and use the Trail established, installed, and constructed by the City for nonmotorized recreational and transportation purposes, including, without limitation, walking, running, cycling, skating, skiing, and horseback riding. Except as specifically authorized by this Easement, no other use may be made of the Easement Area without the prior written approval of Metro.

3. Construction, Repair, Maintenance. The City shall develop its design for the Trail in collaboration with Metro, which plans, design, and construction drawings shall be subject to the prior written approval of Metro. Once the design and construction of the Trail is agreed upon, the City may take all actions necessary to construct, maintain, and repair the Trail, including, without limitation, installing the following related surface and subsurface utilities and improvements (all of such improvements shall be considered part of the “Trail” as that term is used herein): (i) trail surfaces, foot bridges and associated trail structures, (ii) trail markers, signs, lights, benches, and other security enhancements, and (iii) any barriers, fences, and gates necessary to prevent motorized vehicular access. All such Trail improvements constructed by the City shall be the property of the City. The City shall be responsible for obtaining all governmental permits for construction of the Trail prior to commencing such construction, and Metro shall cooperate in good faith with City in obtaining any necessary construction and/or development permits. The City shall be solely responsible for all repair and maintenance of the Trail, and shall maintain and keep the Trail in good repair, so that it remains open to the public, safe and free from hazards. Any substantial future changes to the design of the Trail shall be subject to Metro’s prior written consent.

4. Metro’s Use of Easement Area; Damage to the Property. Metro shall retain the right to access, use, and enjoy the Easement Area for its purposes consistent with the rights granted herein. Metro 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 the City’s prior written consent. The City shall compensate Metro

for all damages to Metro's real and/or personal property improvements, including to vegetation and landscaping and to any agricultural activities occurring on the Property, caused by the construction, maintenance, repair, replacement, or removal of the Trail.

5. Release of Liability. By granting this Easement, Metro shall have no liability or responsibility for the costs of any installation made by the City in the Easement Area, including the cost of constructing, maintaining, repairing, replacing, reconstructing, or removing the Trail. The City hereby releases Metro 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 Metro's negligence or willful misconduct.

6. Right of Re-Entry; Termination. This Easement is granted on the express condition that the City use the Easement solely for the purposes stated in Sections 1 and 2, above. If the City 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, if the parties mutually agree to terminate this Easement, then Metro may re-enter and terminate this Easement. Within ninety (90) days from the date of written notice from Metro upon non-continuous use for the one (1) year period or mutual termination of this Easement, the City 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 the City's sole cost as directed by and to the satisfaction of Metro, and shall deliver to Metro a recordable document or documents sufficient to remove this Easement as an encumbrance on the Property.

7. Indemnity. To the maximum extent permitted by law and subject to the Oregon Constitution and the Oregon Tort Claims Act, the City shall fully indemnify, hold harmless, and defend Metro and Metro'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 the City or the City'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; (3) 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; or (4) any breach, violation, or failure to perform any of the City's obligations under this Easement. By accepting this Easement, however, the City is not accepting liability for any preexisting release of hazardous substances onto or from the Easement Area, and Metro is not attempting to convey any such liability.

8. Authority. Metro represents and warrants that Metro has the full power and lawful authority to grant this Easement.

9. Entire Agreement; Further Cooperation. This Easement is the final and complete agreement between the parties concerning the rights granted herein, and supersedes all prior understandings with respect to it. This Easement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by all parties to the Easement. Each of the parties agrees to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intent purpose of this Easement.

10. Covenants Running With the Land. The parties acknowledge and agree that the grant conferred by this Easement is intended to, and does, constitute an encumbrance that runs with the Property and inures to the benefit of and is binding upon the parties and their respective grantees, heirs, successors, and assigns.

[Signatures follow on next page.]

IN WITNESS WHEREOF, the parties have executed this Easement on the Effective Date.

METRO

By: _____
Martha J. Bennett, Chief Operating Officer

CITY OF FOREST GROVE

By: _____
Name: _____
Title: _____

State of OREGON

County of Multnomah

This instrument was acknowledged before me on _____, 201____, by _____ as the _____ of Metro, an Oregon municipal corporation.

Notary Public - State of Oregon

State of OREGON

County of _____

This instrument was acknowledged before me on _____, 201____, by _____ as the _____ of _____, an Oregon municipal corporation.

Notary Public - State of Oregon

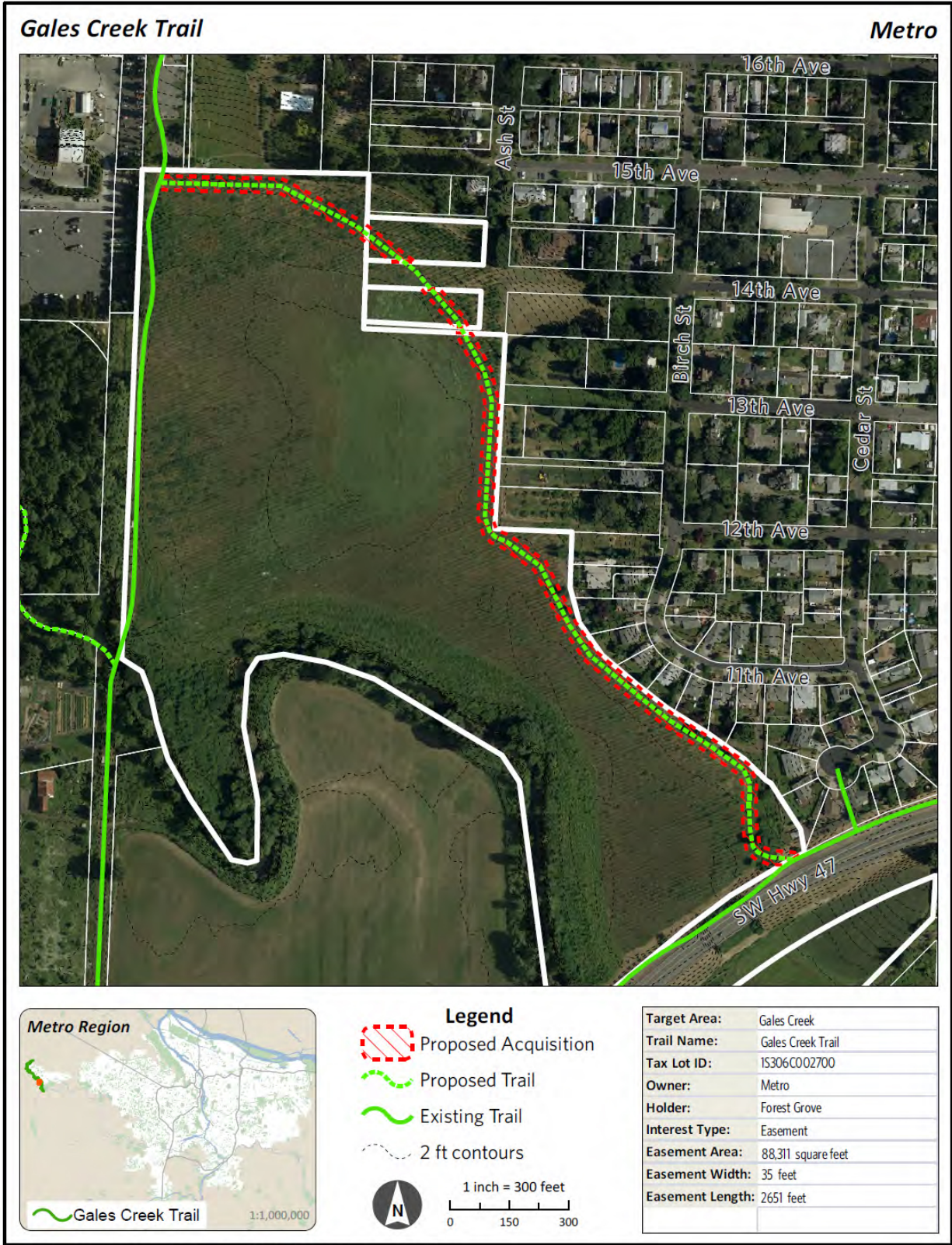
EXHIBIT A
Property Description

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;

Lots 7, 8, 9, 10, 11 and 12, Block 15 and Lots 1, 2, 3, 4, 5 and 6, Block 16, according to the duly filed plat of SOUTH PARK ADDITION, in the City of Forest Grove, filed August 6, 1891, in Plat Book 1, Page 107, Records of the County of Washington and State of Oregon.

DRAFT

EXHIBIT B
Easement Area



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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 14-4503, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO GRANT AN EASEMENT TO THE CITY OF FOREST GROVE FOR CONTINUING TRAIL DEVELOPMENT

Date: February 25, 2014

Prepared by: Dan Moeller, 503-797-1819

BACKGROUND

In 1996, Metro acquired 43 acres of property in the Wapato Lake Target Area with funds from the 1995 Open Spaces, Parks and Streams bond measure. This property, which would become part of the site Gales Forest Grove, includes approximately 2,500 feet of Gales Creek stream frontage, protecting the critical riparian area, and adds scenic, water quality protection and habitat values to Metro's portfolio of natural areas.

In 2008, Metro and the City of Forest Grove entered into an Intergovernmental Agreement regarding the City's construction of a trail on this Metro owned and managed property. That particular Intergovernmental Agreement provided the City with an easement over the western edge of this Metro property to build the trail, and temporary authority to enter certain portions of the Metro property to construct the trail. The trail construction of this segment is now complete and the trail provides continuity for the City's Emerald Necklace Bike and Pedestrian Trail. The trail is identified as an important connection for recreation and transportation purposes in the City's Community Trail Master Plan. The City of Forest Grove now plans to build a second segment of this trail along the eastern edge of the Metro property. This section is also identified as an important connection for recreation and transportation purposes in the City's Community Trail Master Plan to enhance the Emerald Necklace loop. The City would like to obtain an easement from Metro to construct the trail on a different portion of the same Metro owned and managed site, Gales Forest Grove. The applicant requests a permanent access easement along the eastern edge of the property, from the north end to the south end of the property. Metro receives requests for easements, leases and right-of-ways through natural area properties and these requests are reviewed and analyzed per guidance and policy established via Resolution 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 Regional Parks and Greenspaces Department" adopted by Council on November 6, 1997.

Staff has determined that the proposed trail is for park use and is consistent with Metro's easement policy. The intended use on the Metro natural area is consistent with Metro's Metropolitan Greenspaces Master Plan.

The City is requesting an easement from Metro in advance of any detailed planning and design. Staff acknowledges it is unusual for Metro to grant an easement at such an early stage. However, the City has applied for grant funding, including through Metro's Nature in Neighborhoods program and the Oregon State Lottery Grant program, and the City believes having an easement in place will allow it to be more competitive in the grant funding process. Metro supports the idea of the trail, so staff recommends granting the City a general easement, approximately 25 feet in width, across the area in which the City plans the trail. Once the details are worked out, the City will survey the trail area for a legal description (much like the 2008 easement), and the City and Metro will sign and record the document. The City is aware that Metro has already entered into other partnership agreements regarding this property, including a stream shade easement to Clean Water Services and an agreement with NRCS for grant funding through their Wetland Restoration Program, and has assured staff the City will work with these partners during the design and construction process to ensure all obligations are met.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

1995 Metro Open Spaces Bond Measure approved by voters on May 16, 1995.

Metro Code Section 2.04.026(a)(2), which requires Metro Council authorization for the Chief Operator to transfer interests in real property.

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" adopted November 6, 1997.

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

Resolution No. 10-4148 "Authorizing the Chief Operating Officer to Amend an Intergovernmental Agreement with the City of Forest Grove for Trail Development" adopted May 6, 2010.

3. Anticipated Effects

Adoption of this Resolution will allow Metro to grant a perpetual easement over a section of Metro property to the City. This will allow completion of an important trail connection as outlined in the City's Community Trail Master Plan.

4. Budget Impacts

None; the City will bear all expenses for trail permitting, construction, ongoing use, maintenance, and repair.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution 14-4503