

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING )  
AN INTERGOVERNMENTAL AGREEMENT )  
WITH OREGON DEPT. OF TRANSPORTATION )  
AND CITY OF PORTLAND TO PERMIT METRO )  
TO CO-ADMINISTER WITH ODOT A FEDERALLY )  
FUNDED CONGESTION MITIGATION AIR QUALITY )  
(CMAQ) PROJECT TO BUILD THE PENINSULA )  
CROSSING TRAIL, AND TO DESIGNATE THE )  
CITY OF PORTLAND AS THE OPERATOR AND )  
MANAGER OF THE TRAIL )

RESOLUTION NO. 97-2530

Introduced by Mike Burton  
Executive Officer

WHEREAS, funding for the design and construction of 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, \$584,000 in federal Congestion Mitigation Air Quality (CMAQ) funds are available to fund part of the cost to build the Peninsula Crossing Trail from Willamette Blvd. to Columbia Wastewater Treatment Plant; and

WHEREAS, pursuant to the attached IGA, Metro and the Oregon Department of Transportation (ODOT) will co-administer the CMAQ funds which will be applied to construct the Peninsula Crossing Trail; and

WHEREAS, pursuant to the attached IGA, ODOT, in consultation with Metro, will administer the CMAQ funds, bid out the project, award the construction contract, manage trail construction activities, and pay contractor(s); and

WHEREAS, the city of Portland approved an IGA with Metro in December 1996 to maintain and operate the Peninsula Crossing Trail.

BE IT RESOLVED,

That the Metro Council approves and authorizes the Executive Officer to execute the Intergovernmental Agreement attached hereto as Exhibit A.

ADOPTED by the Metro Council this 11<sup>th</sup> day of September, 1997.

Approved as to Form:

  
Daniel B. Cooper, General Counsel

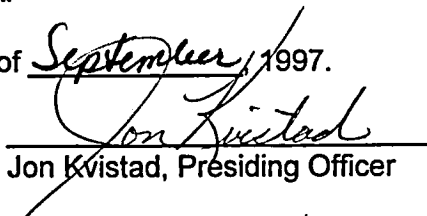
  
Jon Kvistad, Presiding Officer

EXHIBIT A  
METRO RESOLUTION NO. 97-2530  
INTERGOVERNMENTAL AGREEMENT

Misc. Contracts & Agreements  
No. 15,550

LOCAL AGENCY AGREEMENT  
CONGESTION MITIGATION AND AIR QUALITY PROJECT

THIS 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"; and METRO, a political subdivision of the State of Oregon, established pursuant to Oregon law and the 1992 Metro Charter, hereinafter referred to as "Metro"; and the City of Portland, a political subdivision of the State of Oregon, acting by and through its City Council, hereinafter referred to as "City".

1. By the authority granted in ORS 366.770 and 366.775, ODOT may enter into cooperative agreements with counties and cities for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. Under such authority, Metro and The City plan and propose to construct and maintain an approximately 1.7 mile Multi-Use Path on existing street right-of-way between Willamette Blvd. and Columbia Blvd. at the Columbia Wastewater Treatment Facility. The path includes multi-use bike lanes from the trail east along N. Fessenden to N. Portsmouth and then north along Portsmouth to Columbia Blvd., hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
3. This project shall be conducted as a part of the Congestion Mitigation and Air Quality (CMAQ) Program under Title 23, United States Code, and the Oregon Action Plan. The CMAQ funds are limited to \$584,000. Metro shall be responsible for the applicable 10.27% match for the federal funds and any portion of the Project which is not covered by federal funding. The purpose of this agreement is to set forth the rights and responsibilities associated with administering these CMAQ funds.
4. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.

M C & A No. 15,550  
Metro & City of Portland

5. Metro shall enter into and execute this agreement following a duly authorized meeting of its Councilors.

6. The City shall adopt an ordinance authorizing its city officials to enter into and execute this agreement.

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

The funds for this project were transferred from project (Key No. 07259) approved by the Oregon Transportation Commission on September 13, 1995, as a part of the 1996-1998 Statewide Transportation Improvement Program, page 46.

This project was approved by the FHWA on \_\_\_\_\_, 1997, as part of a STIP amendment.

STATE OF OREGON, by and through  
its Department of Transportation

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

METRO

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

Date \_\_\_\_\_

CITY OF PORTLAND, by and  
through its City Officials

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

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

Date \_\_\_\_\_

## ATTACHMENT NO. 1

### SPECIAL PROVISIONS

1. Metro, or its consultants shall, at its own cost conduct preliminary design and engineering functions, conduct the necessary field surveys, environmental studies, traffic investigations, acquire all right-of-way, identify and obtain all required permits, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates for the Project.
2. Pursuant to its administration of the CMAQ funds, ODOT shall advertise for bid proposals and award the construction contract for the Project. ODOT shall not advertise for bid proposals nor award any construction contracts without prior written review and approval by Metro of such bid proposals or award documents and decisions.
3. Metro or its consultants shall, upon ODOT's award of construction contract, furnish all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract at its own expense. The State shall obtain "Record Samples" at specified intervals for testing in the State Materials Laboratory in Salem.
4. All Project activities performed by ODOT, as defined in the Standard Provisions (Attachment No. 2), paragraph No. 8, shall be charged to the Project at actual costs via monthly or progress charges.
5. ODOT and Metro agree that right-of-way activities shall be in accord with the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended. Metro should contact Region right-of-way office for additional information or clarification.
6. Metro insures that all Project right-of-way monumentation will be conducted in conformance with ORS 209.150.
7. Metro shall conform with requirements of the Oregon Action Plan, and if necessary shall appoint and direct the activities of a Citizen's Advisory Committee and Technical Advisory Committee, conduct any required public hearings and recommend the preferred alternative.

8. Metro agrees that the minimum design standards shall be in accordance with the current Oregon Bicycle and Pedestrian Plan.

9. The City shall, upon completion of the Project, maintain the Project at its own expense. The City shall be responsible for the 100% of the power cost associated with any signal and illumination constructed as part of this Project.

10. The City shall, upon completion of the Project, submit an annual (Federal FY) progress report to ODOT on or before November 15th. The progress report as shown in Attachment 3, attached hereto and by this reference made a part hereof, should be sent to the Region 1 Manager (123 NW Flanders Street, Portland, OR 97209) with copies to Region Planning (same address), Public Transit (555 13th Street, Salem, OR 97310) and Environmental Services (1158 Chemeketa St. NE, Salem, OR 97310) in order to fulfill ODOT's requirement to report the progress and benefits of the CMAQ program to FHWA and to the Oregon Transportation Commission.

11. This Project will not require additional surveys or engineering services, and therefore ODOT will not prepare an Authority for Survey.

12. Nothing in this Agreement or in the Attachments hereto shall be interpreted as subjecting either Metro or the City to any responsibility for claims, demands, lawsuits, liability or damages, of whatever kind or nature, in excess of or contrary to the limitations and conditions of the Oregon Tort Claims Act, ORS Chapter 30 or as otherwise limited by law.

13. As between Metro and the City, the rights, duties, and responsibilities for the Project shall be as set forth in that certain Peninsula Crossing Intergovernmental Agreement executed by Metro and the City, dated December 11, 1996.

Misc. Contracts & Agreements  
No. 15,550

## ATTACHMENT NO. 2

### STANDARD PROVISIONS

#### JOINT OBLIGATIONS

##### PROJECT ADMINISTRATION

1. State is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this project, and Agency hereby agrees that State shall have full authority to carry out this administration. If requested by Agency, State will further act for the Agency in other matters pertaining to the project. State and Agency shall actively cooperate in fulfilling the requirements of the Oregon Action Plan. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases for all projects.

Any project that uses federal funds, in project development, is subject to PS&E review and approval by FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

##### P.E. & CONSTRUCTION ENGINEERING

2. Preliminary and construction engineering may be performed by State, Agency, or others. If Agency, or others, perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a consultant to perform any of the work covered by this agreement, Agency and Consultant shall enter into an agreement describing the work to be performed and the method of payment. State shall concur in the agreement prior to the beginning of any work. No reimbursement shall be made using federal-aid funds for any costs incurred by such Consultant prior to receiving authorization from State to proceed.

On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency agrees to accept all responsibility for and defend lawsuits involving tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

**REQUIRED STATEMENT FOR USDOT FINANCIAL  
ASSISTANCE AGREEMENT:**

3. If as a condition of assistance the Agency has submitted and the U.S. Department of Transportation has approved a Minority Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into this financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance agreement. Upon notification to the Agency of its failure to carry out the approved program, the U.S. Department of Transportation shall impose such sanctions as noted in Title 49, Code of Federal Regulations, Part 23, Subpart E, which sanctions may include termination of the agreement or other measures that may affect the ability of the Agency to obtain future U.S. Department of Transportation financial assistance.

The Agency further agrees to comply with all applicable Civil Rights Laws, Rules and Regulations, including Section 504 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Readjustment Act.

4. The parties hereto agree and understand that they will comply with all applicable statutes and regulations, including but not limited to Title 49 CFR, Parts 23 and 90, Audits of State and Local Governments; Title 41, USC, Anti-Kickback Act; Title 23, USC, Federal-Aid Highway Act; 42 USC, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1987; provisions of Federal-Aid Policy Guide (FAPG), Title 23 Code of Federal Regulations (23 CFR) 1.11, 710, and 140; and the Oregon Action Plan.

**STATE OBLIGATIONS**

**PROGRAM REQUEST**

5. State shall submit a program to the FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and construction work for the project. **NO WORK SHALL PROCEED ON ANY ACTIVITY IN WHICH FEDERAL-AID PARTICIPATION IS DESIRED UNTIL SUCH APPROVAL HAS BEEN OBTAINED.** The program shall include services to be provided by State, Agency or others. State shall notify Agency in writing when authorization to proceed has been received from the FHWA. Major responsibility for the various phases of the project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations, and the Oregon Action Plan.

### AUTHORITY FOR SURVEY

6. State shall prepare an Authority for Survey which will itemize the estimate of cost for preliminary engineering services to be provided by State, Agency or others, and shall furnish Agency with a copy of such cost estimate.

### FINANCE

7. State shall, in the first instance, pay all reimbursable costs of the project, submit all claims for federal-aid participation to the FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date, at anytime, by submitting a written request. When the actual total cost of the project has been computed, State shall furnish Agency with an itemized statement of such final costs.

### PROJECT ACTIVITIES

8. State shall, if the work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids. State shall prepare contract and bidding documents, advertise for bid proposals, award all contracts and, upon award of a construction contract, perform all necessary laboratory testing of materials, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the project. The actual cost of laboratory testing services provided by State will be charged to the project construction engineering expenditure account and will be included in the total cost of the project.

### FREE BRIDGE DESIGN

9. State shall, as provided in ORS 366.155(h), prepare plans and specifications for the structure portion only of bridges and culverts at no expense to the counties.

### RIGHT-OF-WAY

10. State is responsible for acquisition of the necessary right-of-way and easements for construction and maintenance of the project. Agency may request to perform the acquisition functions, subject to execution of a written agreement. State.



shall review all right-of-way activities engaged in by Agency to assure compliance with applicable laws and regulations.

If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations which are in effect at the time of disposition. Reimbursement to State of the required proportionate share of the fair market value may be required.

## AGENCY OBLIGATIONS

### FINANCE

11. Agency shall, prior to the commencement of the preliminary engineering and right-of-way acquisition phases, deposit with State its estimated share of each phase.

Agency's share of construction will be deposited in two parts. The initial deposit will represent 65 percent of the Agency's share, based on the engineer's estimate, and will be requested three weeks prior to opening bids on the project. Upon award of the contract, the balance of the applicant's share will be requested.

Collection of advance deposits amounting to less than \$2,500 for the P.E. and R/W phase of the project will be postponed until collectively the amount exceeds \$2,500 or until the collection of the advance deposit for construction is required.

Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option of which may be a deposit in the Local Government Investment Pool accompanied by an Irrevocable Limited Power of Attorney), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State.

12. Agency shall present properly certified bills for 100 percent of actual costs incurred by Agency on behalf of the project directly to State's Liaison Person for review and approval. Such bills shall be in a form acceptable to State and documented in such a manner as to be easily verified. Billings shall be presented for periods of not less than one month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to presentation to Highway Division Accounting for payment. Agency's actual costs eligible for federal-aid participation shall be those allowable under the provisions of FAPG, 23 CFR 1.11, 710, and 140. Final billings shall be submitted to State for

processing within six months from date that costs were incurred. Partial billing (progress payment) shall be submitted to State within three months from date that costs incurred.

13. The costs records and accounts pertaining to the work covered by this agreement are to be kept available for inspection by representatives of State and the FHWA for a period of three (3) years following the date of final payment. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (49 CFR 18.42).

This agreement is subject to the provisions of the Single Audit Act of 1984 (49 CFR, Part 90) as stated in Circular A-128 of the United States Office of Management and Budget.

#### PROJECT CANCELLATION

14. Agency agrees that should they cause the project to be canceled or terminated for any reason prior to its completion, Agency shall reimburse State for any costs that have been incurred by State on behalf of the project.

#### DELAYED STARTING DATE

\* 15. In the event that right-of-way acquisition for, or actual construction of the facility for which this preliminary engineering is undertaken is not started by the close of the TENTH FISCAL YEAR following the fiscal year in which this agreement is executed, State may request reimbursement of the sum or sums of Federal-Aid funds disbursed to Agency under the terms of this agreement.

#### UTILITIES

\* 16. Agency shall relocate or cause to be relocated, all utility conduits, lines, poles, mains, pipes, and such other facilities where such relocation is necessary in order to conform said utilities and facilities with the plans and ultimate requirements of the project. Only those utility relocations which are eligible for federal-aid participation under the FAPG, 23 CFR 645A, shall be included in the total project costs and participation; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility adjustments in areas lying within jurisdiction of State and, if State is performing the preliminary engineering. Agency may request State to arrange for utility adjustments lying within Agency jurisdiction, acting on behalf of Agency.

Agency shall, five weeks prior to the opening of construction bid proposals, furnish State with an estimate of cost for eligible reimbursable utility relocations, based on the plans for the project. Agency shall notify State's Liaison Person prior to proceeding with any utility relocation work in order that the work may be properly coordinated into the project and receive the proper authorization.

### CONSTRUCTION

17. Design Standards for all projects shall meet the requirements of the Intermodal Surface Transportation Efficiency Act of 1991. In addition, all projects on the Oregon State Highway System shall be in compliance to Standards specified in the current ODOT Highway Design Manual and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the project shall be in substantial compliance with the most current Oregon Standard Specifications for Highway Construction.

### GRADE CHANGE LIABILITY

18. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.

Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.

### CONTRACTOR CLAIMS

19. Agency shall provide legal defense against all claims brought by the contractor, or others, resulting from Agency's failure to comply with the terms of this agreement.

### MAINTENANCE RESPONSIBILITIES

\* 20. Agency shall, upon completion of construction, thereafter maintain and operate the project at its own cost and expense, and in a manner satisfactory to State and the FHWA.

## WORKERS' COMPENSATION COVERAGE

21. The contractor, its subcontractors, if any, and all employers working under this (Agreement/Contract) 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.

## LOBBYING RESTRICTIONS

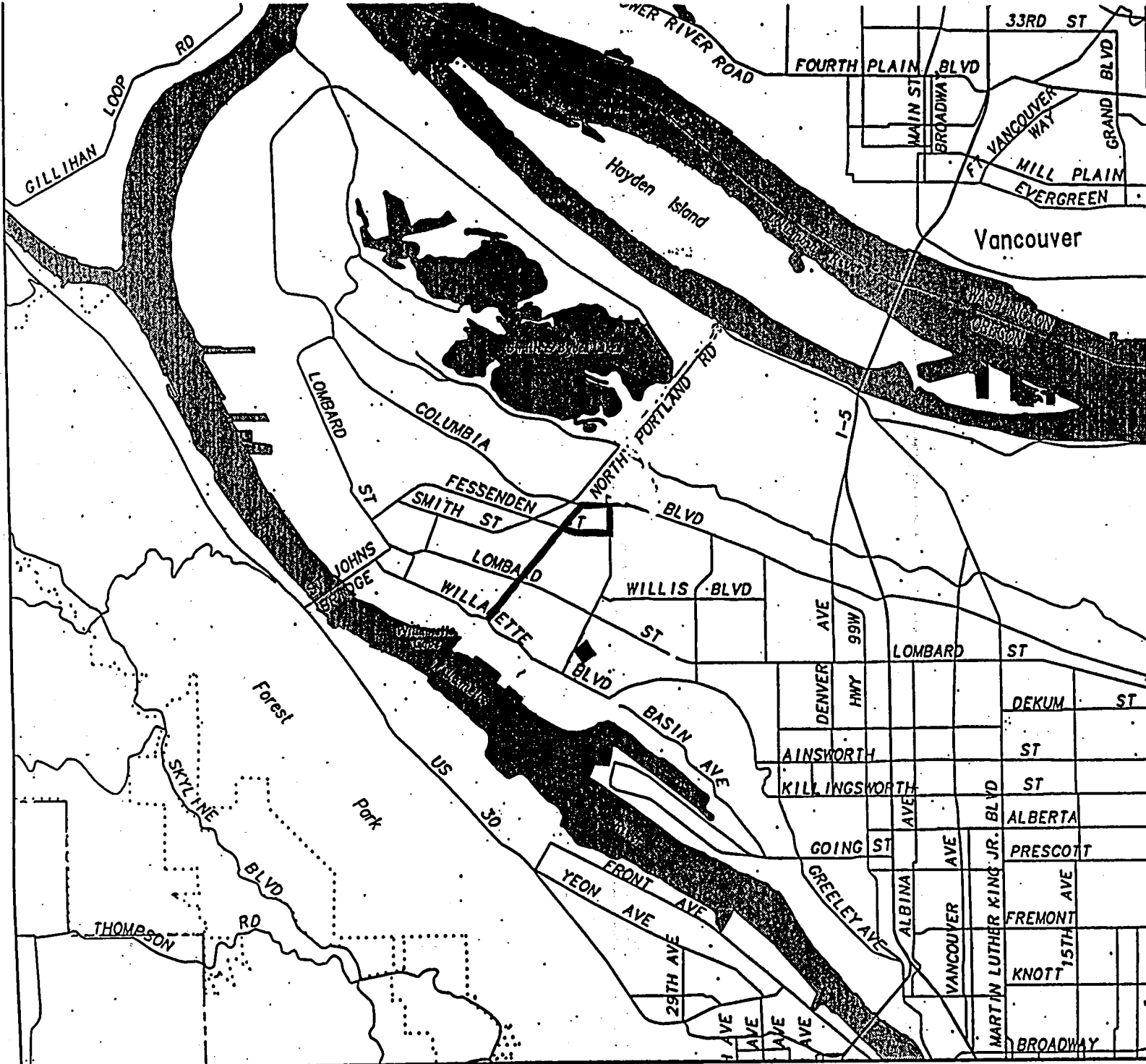
22. Agency certifies by signing this agreement that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\* Paragraphs 15, 16, and 20 are not applicable to any local agency on state highway projects.



REGIONAL LAND INFORMATION SYSTEM

# Peninsula Crossing Trail

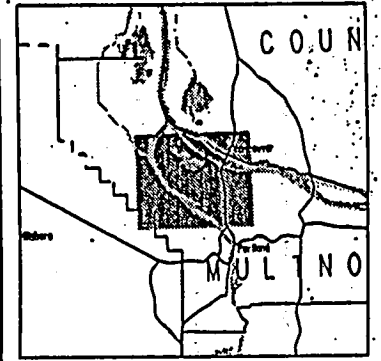
◆ Portsmouth Trinity Lutheran Church  
7119 N Portsmouth  
(corner of Portsmouth & Princeton)

ATTACHMENT 3  
PROJECT MAP



**METRO**

600 NORTHEAST GRAND AVENUE  
PORTLAND, OREGON 97232 2738  
TEL 503 797 1742  
FAX 503 797 1909  
Internet [dro@metro.oregon.gov](mailto:dro@metro.oregon.gov)



Location map

## STAFF REPORT

### **CONSIDERATION OF RESOLUTION NO. 97-2530 TO APPROVE AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE OREGON DEPT. OF TRANSPORTATION (ODOT) AND THE CITY OF PORTLAND TO PERMIT METRO TO CO-ADMINISTER A CONGESTION MITIGATION AIR QUALITY (CMAQ) PROJECT TO BUILD THE PENINSULA CROSSING TRAIL AND TO DESIGNATE THE CITY TO OPERATE AND MAINTAIN THE TRAIL.**

**Date: August 21, 1997**

**Presented By:**

**Charles Ciecko  
Jim Desmond**

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### FACTUAL BACKGROUND and PROPOSED ACTION

- The Peninsula Crossing Trail was identified as one of the regional trail and greenway projects on the Open Space, Parks and Streams 1995 Ballot Measure: "Develop 3-mile trail/bikeway connecting the Columbia River to the Willamette River."
- The Peninsula Crossing Trail's budget for design and construction is \$1.6 million of which \$584,000 is from U.S. Dept. of Transportation CMAQ funds (Congestion Mitigation Air Quality).
- CMAQ funds are targeted for alternative transportation projects such as trails and pedestrian and bike paths in order to reduce air pollution by decreasing use of automobiles.
- CMAQ funds will be used in combination with Metro Open Space bond funds to build the Peninsula Crossing Trail from Willamette Blvd. to Columbia Court. CMAQ funds will be used for trail construction.
- Metro is responsible for Peninsula Crossing Trail design and engineering, traffic studies, surveys, citizen involvement and cost estimates for building the trail, and will pay associated costs from the bond proceeds.
- Oregon Dept. of Transportation (ODOT) and Metro will be the local administering agencies of the CMAQ funds, and will manage all construction activities from bidding to project completion.
- Metro will deposit its proportionate share of the construction contract in an interest bearing account in the Local Government Investment Pool managed by the state of Oregon.
- The contract to actually build the trail will be let by ODOT. Contractor invoices will be paid by ODOT from funds deposited by Metro (bond funds) and U.S. Department of Transportation (CMAQ funds). The construction contract is scheduled to be awarded during the fall of 1997.

- The trail from Willamette Blvd. to Columbia Court will be located within the City of Portland's Carey Blvd. right-of-way, on city owned property, and on one parcel of land owned by Metro. The City of Portland will be the owner, operator and manager of the trail and all of its improvements.
- The City of Portland is a party to this Agreement with ODOT because it will be the agency to operate and maintain the trail. The City of Portland has already agreed to maintain the trail through a separate IGA with Metro signed in December, 1996, approved by Metro Council Resolution No. 96-2413.
- ODOT requires an IGA to implement its involvement with administering the CMAQ funds and managing the construction activities.
- Metro staff requests Council approval of the IGA, attached as Exhibit A.

#### **EXECUTIVE OFFICER'S RECOMMENDATION**

The Executive Officer recommends approval of Resolution No. 97-2530.