

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING)	RESOLUTION NO. 97-2549
AN INTERGOVERNMENTAL AGREEMENT)	
WITH THE REGIONAL ARTS AND CULTURE)	Introduced by Mike Burton
COUNCIL TO ASSIST METRO IN PROVIDING)	Executive Officer
PUBLIC ART ALONG THE PENINSULA)	
CROSSING TRAIL IN NORTH PORTLAND)	

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

WHEREAS, Metro's "One Percent for Art Program," as set forth in Chapter 2.07 of the Metro Code, requires that 1% of the construction budget of all major district construction projects be set aside for the acquisition of public art; and

WHEREAS, Metro's Peninsula Crossing Trail, as a project with an estimated construction cost of over \$100,000, must comply the requirements of Metro's "One Percent for Art Program"; and

WHEREAS, the Regional Arts and Culture Council (RACC) has unique and significant experience in administering "One Percent for Art Programs" for Metro and the City of Portland; and

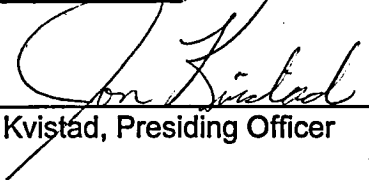
WHEREAS, the construction of the Oregon Convention Center, Metro Regional Center Headquarters, and the Exposition Center included the successful administration of "One Percent for Art Programs" by RACC, which assisted in artist selection, supervision of art design, fabrication, and installation; and

WHEREAS, the art will become City of Portland property as a fixture to the Peninsula Crossing Trail, which will be owned, operated and maintained by the City of Portland;

NOW, THEREFORE, BE IT RESOLVED:

The Metro Council approves and authorizes the Executive Officer to execute the Intergovernmental Agreement with RACC to administer the request for qualifications and bids, assist in artist selection, and supervise art design, fabrication, and installation for the Peninsula Crossing Trail project, attached hereto as Exhibit A.

Adopted by the Metro Council this 16th day of October, 1997.


Jon Kvistad, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT

between Metro and Regional Arts and Culture Council (RACC)
to Provide Public Art along
The Peninsula Crossing Trail Project

This Intergovernmental Agreement ("Agreement"), dated this ___ day of _____, 1997, is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon, 97232-2736 ("Metro") and the Regional Arts and Culture Council (RACC), located at 309 S.W. Sixth Avenue, Suite 100, Portland, Oregon, 97204 .

WITNESSETH

WHEREAS, Metro Regional Parks and Greenspaces is designing and building the Peninsula Crossing Trail in north Portland with funds from the Open Space, Parks and Streams Bond Measure 26-26 and federal CMAQ transportation funds;

WHEREAS, Metro's "One Percent for Art Program," as set forth in Chapter 2.07 of the Metro Code, requires that 1% of the construction budget of major district construction projects be set aside for the acquisition of public art; and

WHEREAS, RACC has unique and significant experience in administering "One Percent for Art Programs" for Metro and the City of Portland; and

WHEREAS, the construction of the Oregon Convention Center, Metro Regional Center Headquarters, and Exposition Center included successful "One Percent for Art Programs" administered by RACC, which assisted in artist(s) selection, supervision of art design, fabrication and installation; and

NOW THEREFORE, in recognition of their mutual interests, the parties hereby agree as follows:

I. Scope of Work

1. RACC shall administer the request for qualifications and bids from artists and shall serve as staff to the artist(s) and art selection committee, which shall include a Metro staff member, Metro's landscape architect for the Peninsula Crossing Trail Project (David Evans and Associates), and a member of Portland Parks staff, along with a community representative and three artists.
2. Artist(s) and art selection shall be by unanimous decision of the artist(s) selection and art selection committee.

3. RACC shall retain and pay the selected artist(s) to design, fabricate and install public art along the Peninsula Crossing Trail. Labor and materials required to fabricate the art will be paid for by the artist(s).
4. RACC and Metro will coordinate and supervise installation of the art and art shall be installed by Fall 1998. RACC will assist Metro in a public dedication.
5. The art to be placed along the trail shall bear a one year warranty from the artist(s). RACC shall be responsible for obtaining a warranty agreement with the artist(s). RACC shall be responsible for monitoring the durability of the art, and enforcing the warranty if such enforcement becomes necessary. If a dispute arises with the artist(s), RACC shall be responsible for resolving such dispute.
6. Art shall become City of Portland property, as a fixture to the City of Portland owned and operated Peninsula Crossing Trail. RACC shall be responsible for obtaining an agreement with the City relating to transfer of ownership to the City of Portland.
7. Maintenance and repair of art shall be the responsibility of RACC and/or the City of Portland. RACC shall be responsible for obtaining an agreement with the City relating to maintenance and repairs. Metro will contribute \$1,600 to RACC's maintenance endowment fund to help defray RACC's expenses for future maintenance and repair of art along the Peninsula Crossing Trail. Metro shall have no further obligation or liability for maintenance or repair of art along the Peninsula Crossing Trail.
8. The art must be very durable, easy to maintain, and must meet all public safety and accessibility requirements.

II. Schedule

- | | |
|---------------------------------------|-------------------|
| 1. Applications due from artists | October 17, 1997 |
| 2. Interviews of semi-finalists | October 31, 1997 |
| 3. Artist(s) to be selected | November 1997 |
| 4. Final art proposal to be presented | December 31, 1997 |
| 5. Art selected | Winter 1998 |
| 6. Fabrication of art | Spring 1998 |
| 7. Installation of art | Fall 1998 |

III. Budget

- \$29,000 Artist(s) design fee, materials, fabrication and installation
- \$ 3,400 RACC administrative costs
- \$ 1,600 RACC maintenance endowment
- Total Budget

IV. Limitation and Termination of Funding Obligation

1. Metro's financial obligation is limited to \$34,000 in funding for the entire public art project relating to the Peninsula Crossing Trail, including artist(s) design fee, materials, fabrication, and installation of the public art, RACC administrative fee, and a set figure to fund an endowment for future maintenance and repair costs of the public art.
2. This Agreement shall terminate no later than June 30, 1999. If necessary, an extension may be granted if mutually agreed upon by Metro and RACC.

V. Permits, Maintenance and Coordination with Other Public Agencies and Citizens

1. RACC shall be responsible for obtaining any permits necessary for construction, installation, management, maintenance or repair of the public art along the trail.
2. RACC shall be responsible for obtaining any agreements necessary with the City of Portland for the future maintenance and repair of the public art.
3. RACC shall be responsible for contacting and coordinating with other local, state or federal agencies, and adjacent property owners and residents with regard to design, installation, management, maintenance or repair issues that may arise with respect to the public art along the trail.

VI. Payment Schedule

1. Metro will pay RACC \$17,000 (one-half of total budget) within 30 days of execution of this Agreement upon receipt of an invoice from RACC.
2. Metro will pay RACC the balance of \$17,000 upon satisfactory inspection and approval of the art by the art committee.

VII. General Provisions

1. **Indemnification.** RACC shall defend, indemnify and hold harmless Metro and its officers, agents, and employees, against all loss, damage, expenses, judgments, claims and liability, whether arising in tort, contract or by operation of any statute or common law, arising out of or in any way connected to the wrongful acts of the RACC's officers, agents and employees acting within the scope of employment or duties in performance of this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS Chapter 30.

Metro shall defend, indemnify and hold harmless the RACC and its officers, agents, and employees, against all loss, damage, expenses, judgments, claims and liability, whether arising in tort, contract or by operation of any statute or common law, arising out of or in any way connected to the wrongful acts of Metro's officers, agents and employees acting

within the scope of employment or duties in performance of this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS Chapter 30.

2. Oregon Constitution and Tax Exempt Bond Covenants. The source of Metro funds for the construction of the Peninsula Crossing Trail 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 the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. RACC covenants that it 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 RACC breaches this covenant, Metro shall be entitled to whatever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.
3. Funding Declaration and Signs. RACC shall document on the art or on a sign or plaque next to the art that funding comes from Metro's Open Space, Parks and Streams Bond Measure 26-26. RACC shall also document in any publication, media presentation or other presentations, that funding for the public art came from Metro Open Spaces Bond Measure proceeds. On-site signs that provide recognition of Metro funding shall be subject to prior review and approval by Metro.
4. Joint Termination for Convenience. Either Metro or RACC may terminate all or part of this Agreement based upon a determination that such action is in the public interest and upon giving the other party seven (7) days written notice. In the event of termination, RACC shall be entitled to payment for work performed to the date of termination. Metro shall not be liable for indirect or consequential damages due to such termination. Termination by Metro will not waive any claim or remedies it may have against RACC.
5. Documents are Public Property. 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 public art project shall become public property. Nothing in this section or in any other part of this Agreement shall be construed as limiting Metro's or RACC's ability to consider real property transactions in executive session pursuant to ORS 192.660(1)(e) or as requiring disclosure of records that are otherwise exempt from disclosure pursuant to the Public Records Law (ORS 192.410 to 192.505) or Public Meetings Law (ORS 192.610 to 192.690).
6. Law of Oregon. This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement including but not limited to ORS 279.015 to 279.320.

7. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro: Mel Huie, Senior Regional Planner
Metro Regional Parks and Greenspaces
600 N.E. Grand Avenue
Portland, OR 97232-2736

To RACC: Eloise McMurray, Public Art Director
Regional Arts and Culture Council (RACC)
309 S.W. Sixth Ave., Suite 100
Portland, OR 97204

Copy to: Charles Ciecko, Director
Metro Regional Parks and Greenspaces
600 N.E. Grand Avenue
Portland, OR 97232-2736

8. Assignment. RACC may not assign any of its rights or responsibilities under this Agreement without prior written consent from Metro, except RACC may delegate or subcontract for performance of any of its responsibilities under this Agreement.
9. 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.
10. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to the subject matter herein. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

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

REGIONAL ARTS & CULTURE COUNCIL

METRO

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 97-2549 FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE REGIONAL ARTS AND CULTURE COUNCIL (RACC) TO ASSIST METRO IN PROVIDING PUBLIC ART ALONG THE PENINSULA CROSSING TRAIL IN NORTH PORTLAND

Date: September 25, 1997

Presented By: Charles Ciecko
Jim Desmond

FACTUAL BACKGROUND and PROPOSED ACTION

- Metro Regional Parks and Greenspaces is responsible for designing and building the Peninsula Crossing Trail in north Portland with funds from the Open Space, Parks and Streams Bond Measure 26-26 and federal CMAQ transportation funds .
- Metro's "One Percent for Art Program," detailed in Chapter 2.07 of the Metro Code, requires that 1% of the construction budget of major district construction projects be set aside for the acquisition of public art.
- Metro's Peninsula Crossing Trail, as a project with an estimated construction cost of over \$100,000, falls within the requirements of Metro's "One Percent for Art Program."
- The Regional Arts and Culture Council (RACC) has successfully assisted Metro in administering public art projects at the Oregon Convention Center, Metro Regional Center, and Exposition Center.
- Metro staff proposes an intergovernmental agreement (IGA) with RACC to administer the request for qualifications and bids, and assist in the art selection process and supervision of the design, fabrication and installation of public art along the Peninsula Crossing Trail.
- A Metro Regional Parks and Greenspaces staff member, Metro's trail designer David Evans and Associates, and one Portland Parks staff member, along with a community representative and three artists, will serve on the artist(s) selection and art approval committee.
- The public art requirements stipulate that the art constructed for the trail be very durable, easy to maintain, meet all public safety and accessibility requirements, as well as contribute to an inviting environment for trail users and neighbors. In addition, the artist(s) will be asked to visually identify the Peninsula Crossing Trail in the art, and be respectful of the neighborhood and larger system of trails of which the Peninsula Crossing Trail will be a part. A one-year warranty of the art will be required.
- Metro's funding for the art is provided by the Open Space, Parks and Streams Bond Measure 26-26, and will be limited under the proposed IGA to \$34,000. The budget includes artist(s)' design fees, cost of materials and fabrication, installation costs, RACC administrative fees, as well as a sum to establish an endowment for future maintenance and repairs. The art budget is included in the overall \$1.6 million budget for the trail

project and is within the original projection established at the time of the bond measure election in May 1995.

- The art will become property of the city of Portland as an improvement to the trail. The City and/or RACC will be responsible for all future maintenance and repair of the art.
- The art will be installed by late fall 1998, which is timed to coincide with the trail completion.
- Metro Regional Parks and Greenspaces requests Council approval of the IGA with the Regional Arts and Culture Council.

BUDGET IMPACT

- Funding for the public art project is included in the Council approved budget of \$1.6 million to design and build the Peninsula Crossing Trail. No new funds are requested.

EXECUTIVE OFFICER'S RECOMMENDATION

- The Executive Officer recommends approval of Resolution No. 97-2549.