

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING)
AN INTERGOVERNMENTAL AGREEMENT)
WITH THE CITY OF PORTLAND TO DESIGN,)
CONSTRUCT AND MAINTAIN THE)
PENINSULA CROSSING TRAIL)

RESOLUTION NO. 96-2413

Introduced by Mike Burton
Executive Officer

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

WHEREAS, the Metro Council has approved the Open Spaces Program's work plan and budget which includes \$1.6 million to design and build the Peninsula Crossing Trail; and

WHEREAS, the Portland City Council passed Resolution No. 35388 in April 1995 which endorsed the Peninsula Crossing Trail project, and directed the city's Parks, Transportation, and Environmental Services departments to support and develop the trail; and

WHEREAS, the Portland City Council has authorized \$1.6 million to the Bureau of Environmental Services (BES) to design and construct the segment of the Peninsula Crossing Trail on the City's sewage treatment plant site; and

WHEREAS, the IGA will enable Metro to design and construct the trail; and

WHEREAS, the IGA requires Metro to pay for the required street improvement permit which includes design review and construction inspection by city staff; and

WHEREAS, the IGA provides that the city of Portland will maintain the trail which is within city right-of-way and on city owned land; now therefore,

BE IT RESOLVED,

That the Metro Council approves the Intergovernmental Agreement attached hereto as Exhibit A.

ADOPTED by the Metro Council this 14th day of November, 1996.



Jon Kvistad, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT

METRO
AND
CITY OF PORTLAND:
BUREAU OF ENVIRONMENTAL SERVICES
DEPARTMENT OF TRANSPORTATION
BUREAU OF PARKS AND RECREATION

Peninsula Crossing Trail

This Intergovernmental Agreement ("Agreement") dated this _____ day of _____ 1996, is by and between Metro, located at 600 Northeast Grand Avenue, Portland, Oregon 97232-2736, and the City of Portland Bureau of Environmental Services ("BES"), the City of Portland Department of Transportation ("PDOT") and the City of Portland Bureau of Parks and Recreation ("Parks"), located at the Portland Building, 1120 Southwest Fifth Avenue, Portland, Oregon 97204, (hereinafter collectively referred to as "City"), for the purpose of providing responsibilities and obligations of the parties as they relate to the design, construction, operation, and maintenance of the Peninsula Crossing Trail ("Trail").

RECITALS:

A. Metro is a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter.

B. BES, PDOT and Parks are bureaus of the City which is a unit of local government authorized to enter into this Agreement pursuant to the provisions of ORS 190.010 et seq.

C. The Peninsula Crossing Trail is a multi-use, urban trail of approximately three miles in length in total, located in North Portland. The southern terminus is located at N. Willamette Boulevard; the northern terminus is located at N. Marine Drive.

D. 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. In accordance with that ballot measure, Metro has budgeted and will contribute up to \$1.6 million for the design and construction of certain portions of the Trail.

E. Metro is also entering into an Intergovernmental Agreement with the Oregon Department of Transportation (ODOT) regarding design, permitting, construction, maintenance and operation of the section of the Trail on the south section of North Portland Road ("Metro-ODOT IGA").

F. Portland City Council authorized BES funds to design and construct the Inverness Force Main project which includes a segment of the Trail. An estimated \$1.6 million will be spent by BES on the Trail segment which includes a bridge over the

Columbia Slough and the construction of the Trail along the perimeter of the Columbia Boulevard Wastewater Treatment Plant. A segment of the "40-Mile Loop" trail is located within BES's project.

G. Portland City Council passed Resolution No. 35388 in April 1995 which endorsed the Trail project and directed BES, PDOT and Parks to support and develop the Trail.

H. Both Metro and the City have participated in an extensive planning phase, which included a substantial public involvement component and a feasibility study for the Trail.

AGREEMENT

The parties agree as follows:

Section 1. Design

- A. The proposed trail corridor is indicated on the aerial map which is attached hereto as Exhibit A. Metro shall design the segments of the Trail corridor which are generally located along the unimproved N. Carey Boulevard right-of-way, and also on N. Columbia Boulevard, N. Fessenden Street, N. Portsmouth Avenue, Columbia Court and the south section of N. Portland Road as indicated in red on the aerial map which is attached hereto and incorporated by reference. BES shall design the segment through the Treatment Plant property and across the Columbia Slough as indicated in pink on the aerial map. The Trail corridor section highlighted in orange is already in existence and is located on ODOT right-of-way and is currently managed under a separate agreement between ODOT and the City.
- B. To provide continuity throughout the Trail, design elements shall be similar through all segments of the Trail. Metro and the City shall cooperate during their design, permitting and construction processes to ensure a well coordinated and fully functional Trail.

Section 2. Permits.

A. Permit Application/Estimate of Permit Fees. Metro and BES shall obtain all required City permits necessary for the construction of their respective segments of the Trail. Metro and the City agree to use their best efforts to assist each other in obtaining all permits required for the design, construction and operation of the Trail in accordance with applicable permitting process. PDOT's current estimate for the Carey Blvd. permit fee is Eighty Eight Thousand and Two Hundred dollars (\$88,200.00).

B. Street Improvement Permitting Process. PDOT shall carefully manage the City's Street Improvement permitting process, shall provide a full accounting of permit costs at reasonable times as requested by Metro and shall immediately inform Metro of any permit cost overruns or potential for permit cost overruns.

Section 3. Construction.

A. Metro and BES shall each construct their respective trail segments in accordance with all required permits and the associated approved design plans and specifications.

Section 4. Maintenance, Operation and Management

A. Construction Phase. During the construction phase, each party, through its construction contractor, shall be responsible for maintaining the construction site associated with its segment of the Trail in a clean and orderly condition.

B. Post Construction Phase.

1. Regardless of ownership and upon completion of construction, the City shall be responsible for maintenance, operation and management of all sections of the Trail located upon City property or City right-of-way. Maintenance, operation and management of the Trail segment on the south section of N. Portland Road, to be constructed by Metro, is set forth in the Metro-ODOT IGA.

2. The City will allocate its responsibility among its bureaus and departments as follows:

- PDOT will be responsible for the street maintenance associated with the Carey Boulevard section bike routes located along Fessenden Street and Portsmouth Avenue;
- BES, in cooperation with Parks, will be responsible for the Treatment Plant property segment; and
- Parks will be responsible for the Carey Boulevard segment exclusive of the bike routes.

The City will notify Metro if the City, in the City's discretion, changes this allocation of responsibility.

3. Metro shall instruct its construction contractor(s) that all warranties or quality assurances made in connection with Metro's Trail construction are to be made for the benefit of both Metro and the City. The City agrees that to the extent any maintenance, repair or defect is covered by such warranty or quality assurance, that the City will be responsible for pursuing this remedy. Metro agrees to provide any documentation or information within its control necessary to assist the City in this regard.

Section 5. Trail Consistency. Metro and the City will cooperate during their respective design, permitting and construction efforts to ensure a well-coordinated and fully functional Trail. All sections of the Trail shall be consistent in terms of design, construction and operation. The parties agree to cooperate to the fullest extent possible to achieve a uniform design in accordance with City standards.

Section 6. Right of Entry. The City grants to Metro, its agents and contractors, the right to enter upon City-owned property and City-managed public right-of-way in the trail corridor for the purpose of performing all activities reasonably necessary for design of the Trail. Metro and its contractors will coordinate these efforts by pre-arranging access and by complying with all reasonable and routine security procedures.

Section 7. Schedule. A preliminary project schedule has been developed and attached as Exhibit B and hereby incorporated herein. The dates on this schedule are subject to change. However, the City and Metro intend to use their best efforts to meet these dates and to proceed with their respective obligations at a pace necessary to maintain these dates and complete the entire project by January 1, 1999.

Section 8. Future Displacement. If the completed Trail, or any portion thereof, is ever displaced for any reason, including but not limited to future development or road placement, the City shall replace the Trail, or any portion thereof, in a site to be mutually agreed on by Metro and the City. The nature of any replacement shall meet or exceed the standards of the original trail design and construction. Metro shall bear no financial responsibility related to the replacement of displaced Trail segment(s).

Section 9. Funding Limitation. Metro shall fund all elements associated with design and construction of Metro's segments of the Trail as indicated in red on the aerial map (on both the PDOT and ODOT right-of-ways) to a maximum amount of One Million Six Hundred Thousand Dollars (\$1,600,000.00). In the event costs exceed \$1,600,000.00, Metro shall prioritize elements under its responsibility of the project and shall determine which elements shall be funded.

Section 10. Project Manager. Metro's Project Manager shall be Mel Huie of the Metro Regional Parks and Greenspaces Department, Open Spaces Acquisition Division. The City's Project Manager shall be John Sewell of the City's Parks and Recreation Department. The City and Metro may change their respective Project Managers and shall provide written notice to the other upon such change.

Section 11. Indemnification. The City 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 City'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 City 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.

Section 12. Limitations on Use All property on which the Trail is constructed shall be maintained for its intended trail activities. The City commits to operate and maintain the Trail in a manner consistent with standards for other City operated trails and parks facilities. The City will not construct or allow construction of improvements to the Trail property which are inconsistent with the use of the trail by pedestrians, bicyclists and other non-motorized modes of transportation.

Section 13. Oregon Constitution and Tax Exempt Bond Covenants. The City acknowledges 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. The City 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 the City breaches this covenant, 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.

Section 14. Funding Declaration. Metro and the City will document on-site and in any publication, media presentation or other presentations, that funding for certain portions of the Trail came from Metro and that the City is responsible for management, maintenance and operation of the Trail. The City shall maintain such on-site documentation at all times.

Section 15. 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 Project shall become public property.

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 section pursuant to ORS 192.660 (1)(e) or as requiring disclosure of records that are otherwise exempt from disclosure pursuant to Public Records Law (ORS 192.410-505) or Public Meetings Law (ORS 192.610-690).

Section 16. 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 court 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.

Specifically, it is a condition of this Agreement that Metro, the City and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by Oregon Laws 1989, chapter 684.

Section 17. Assignment. Neither party shall assign any of its responsibilities under this Agreement without prior written consent from the other party, except that both Metro and the City may subcontract for performance of any of their respective responsibilities under this Agreement.

Section 18. 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.

Section 19. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersede any prior oral or written agreements or representations. 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.

CITY OF PORTLAND

METRO

By: _____

By: _____

Title: _____

Title: _____

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 96-2413 TO APPROVE AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE CITY OF PORTLAND TO DESIGN, CONSTRUCT, AND MAINTAIN THE PENINSULA CROSSING TRAIL IN NORTH PORTLAND

Date: November 4, 1996

Presented By:

**Charles Ciecko
Jim Desmond**

FACTUAL BACKGROUND and PROPOSED ACTION

- The Peninsula Crossing Trail is a three mile corridor in north Portland connecting the Willamette and Columbia rivers. The corridor is planned to be a multi-use urban trail. The southern terminus is at N. Willamette Blvd. (on the bluff above Willamette Cove). The northern terminus is located at N. Marine Drive (adjacent to Smith and Bybee Lakes Natural Area).
- Trail construction is funded under Metro's Open Spaces bond at \$1.6 million. The segment of the trail to be constructed on Portland Bureau of Environmental Services (BES) owned property is also \$1.6 million. BES trail construction costs include a bridge over the Columbia slough.
- Passage of this resolution would allow Metro to enter into an Intergovernmental Agreement (IGA) with the city of Portland. The IGA enables Metro to design and construct the trail; and provides that the city of Portland will maintain the trail within its right-of-way and on city owned property.
- The IGA requires Metro to pay for the required street improvement permit which includes design review, and construction inspection by city staff, primarily transportation (PDOT) staff. PDOT has estimated these costs at \$88,200. The IGA does not cap these costs. PDOT's director has assured Metro that the City will make every effort to stay within its estimate.
- Trail improvements built within the city's right-of-way and on city owned property will be transferred to the City, upon completion of trail construction. Trail improvements built within state of Oregon right-of-way will be transferred to the state of Oregon Department of Transportation (ODOT).
- Operations and maintenance of the trail will be the responsibility of the city and state upon completion of construction.
- Metro has made an offer to purchase a parcel (1.47 acres) of land at N. Carey Blvd. and Columbia Blvd. which will become part of the trail. This parcel will allow for construction of a trail which meets slope and grade requirements of the Americans' with Disabilities Act (ADA) as well as save on trail construction costs. The site would also create an open space amenity along the trail.

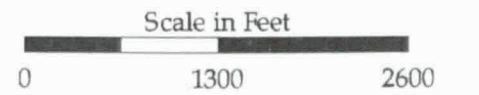
- The trail will be entirely within city right-of-way (undeveloped Carey Blvd., bike lanes and sidewalks on Portsmouth, Fessenden and Columbia Blvd.); on city owned property (BES sewage treatment plant); state right-of-way (N. Portland Rd.); and on a parcel that Metro has made an offer to purchase at N. Carey Blvd. and Columbia Blvd.
- Metro Parks and Greenspaces staff have coordinated the trail project with neighborhood residents and property owners; City Parks, Transportation (PDOT), and BES staff; ODOT staff; and the appropriate private utility companies since the inception of the trail concept three years ago.
- Metro Parks and Greenspaces staff have met with city staff over the past few months to coordinate project implementation and to draft the IGA. The IGA will also be discussed and reviewed by the Portland City Council for approval.
- Pending Metro and City approval of the IGA, design workshops for the public and other citizen involvement activities will commence. Final design approval, permits and construction would follow. Trail construction is scheduled to be completed in 1999.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 96-2413.

Peninsula Crossing

-  Metro
-  Portland
-  Existing Trail



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