

INTERGOVERNMENTAL AGREEMENT

Smith and Bybee Lakes Trails Alignment Development Plan

This Intergovernmental Agreement ("Agreement") dated this April __, 2002, is by and between the City of Portland, Parks and Recreation Department, (the "City") and Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter ("Metro"). (The City and Metro shall each be individually referred to herein as a "Party" or collectively as the "Parties.") The Parties acknowledge that they have authority to enter into this Agreement pursuant to the powers contained in their respective charters and in ORS 190.010.

The Parties agree as follows:

1. Project Declaration.

- a. The activities and funding described in this Agreement (the "Project") are for the research, public involvement process, alternative alignment study, and preferred routes(s) selection and phasing of trails in the vicinity of the Smith and Bybee Lakes Wildlife Area, including St. Johns Landfill (the "Project Area"). A project advisory committee ("PAC") will be created with representation from the Metro Parks and Greenspaces Department ("Metro Parks"), the Metro Regional Environmental Management Department ("Metro REM"), the City of Portland Parks and Recreation Department ("City Parks"), the 40 Mile Loop Land Trust, a neighborhood citizens' group, and the Port of Portland. The size and composition of the PAC shall be mutually agreeable to the Parties.
- b. To assure an outcome that is consistent with efforts to protect natural resources at Smith and Bybee Lakes, efforts to complete the 40 Mile Loop Trail, and efforts to maintain public safety at the St. Johns Landfill site, the Project will be managed by Metro Parks in collaboration with Portland Parks and with Metro REM. The Parties will collaborate to ensure key goals and objectives of each agency are addressed in the planning process and a suitable public involvement process is implemented.
- c. The Project shall consider all conceptual recreational trail alignments included in the Natural Resources Management Plan for Smith and Bybee Lakes; a map of the Wildlife Area is attached as Exhibit A to this Agreement. However, the Project is not limited to these conceptual alignments, and other alignments may be considered.
- d. Metro enters into this agreement to fulfill Condition A of LUR 99-00579 EN, issued to Metro by the City of Portland Office of Planning and Development Review ("OPDR"). Neither Metro, Metro REM, nor Metro Parks shall be obligated to undertake any action

pursuant to this agreement until and unless OPDR has provided Metro with written documentation that OPDR considers this agreement to fully and completely satisfy the requirements of Condition A of LUR 99-00579 EN.

2. Development of Proposed Alignments for Recreational Trails.

- a. Metro will hire a consultant to research and evaluate conceptual alignments for recreational trails within the Project Area. Recreational trail connections to other trails, adjacent business areas, and residential neighborhoods shall be reviewed and additional alignments may be considered. The tasks described in this Agreement include research, evaluation, alternative alignment study, and public involvement, in accordance with the Project Schedule attached as Exhibit B to this Agreement. Portland Parks will participate in selection of the consultant. The consultant's work will include:
 - i. Gather field data, existing plans, regulatory requirements, management goals and policies, and other relevant information;
 - ii. Develop alternative recreational trail alignments for analysis, including short- and longterm alignments, if applicable; identification of all easements, permits, and plan amendments required for each alignment; appropriate schematic designs; proposed phasing of trail development; and cost estimates for construction and maintenance;
 - iii. Present findings and preliminary recommendations to the PAC and make revisions and refinements addressing and incorporating its comments as appropriate;
 - iv. Design and implement a public involvement process to seek and receive public input on all alignments deemed viable by the PAC;
 - v. Present the PAC's proposed consensus alignment, including phasing and preliminary cost estimates, to the Smith and Bybee Lakes Management Committee, the Metro Regional Parks and Greenspaces Advisory Committee, and the Metro Solid Waste Advisory Committee for their consideration, deliberation, and recommendations; and
 - vi. In cooperation with Metro Parks, present the PAC's consensus alignment to the Metro Council.
- b. Metro Parks will manage the consultant's contract. In addition, Metro REM and Metro Parks will perform the following tasks:
 - i. Provide topographic survey and other relevant maps and data for the Smith and Bybee Lakes Wildlife Area and the St. Johns Landfill;
 - ii. Pay for design, permitting, and construction of any trail segment on the St. Johns Landfill and complete construction of any such trail segment according to the timeline determined by the Project as adopted by the Metro Council; and
 - iii. If the recreational trail plan adopted by the Metro Council requires the construction of a bridge across the slough to the St. Johns Landfill, allocation of the costs shall be based on an equitable method acceptable to both Metro and the City of Portland.
- c. The City will perform the following tasks:

- i. Participate in the selection of the consultant;
 - ii. Collaborate with Metro on trail alignment work; examples include reviewing consultant reports prepared for Metro and attending meetings with Metro and the consultant;
 - iii. Participate in the creation of the project advisory committee and the development and implementation of the public involvement process; and
 - iv. Provide information required for the development of alternative trail alignments when they are located outside of the Wildlife Area and the St. Johns Landfill.
3. Design, Construction, Management, Maintenance, and Operations. Except as specifically provided in Paragraph 2, responsibility for design, construction, management, maintenance, and operations of any portion of a recreational trail will be determined by separate intergovernmental agreement(s) to be developed following final determination of alignment(s).
4. Project Budget. Metro REM agrees to pay for costs incurred for development of alternative trail alignments, up to \$10,500. The City agrees to pay up to \$15,000 of such costs; Metro will bill the City as work is completed and the City will reimburse Metro within 30 days of date of invoice. If additional funds are needed to complete development of alternative trail alignments, they shall come from sources mutually acceptable to Metro and the City.
5. Termination of Funding Obligation. The obligation of Metro to provide up to \$10,500, and the City to provide \$15,000, in funding shall terminate June 30, 2003 unless extended by mutual agreement between Metro and the City.
6. Indemnification.
 - a. To the extent permitted by Oregon law, and subject to the limitations of the Oregon Tort Claims Act, ORS 30.260 to 30.300, as may be amended from time to time, the City shall defend, indemnify, and hold harmless Metro and its respective officers, employees, and agents, against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, arising out of the City's obligations as set forth in this Agreement.
 - b. To the extent permitted by Oregon law, and subject to the limitations of the Oregon Tort Claims Act, ORS 30.260 to 30.300, as may be amended from time to time, Metro shall defend, indemnify, and hold harmless the City, and its respective officers, employees, and agents, against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, arising out of Metro's obligations as set forth in this Agreement.

- e. Integration. This Agreement contains the entire agreement among the Parties regarding the subject matter set forth herein, and supersedes all prior written or oral discussions or agreements. No waiver, consent, modification or change of the terms of this Agreement shall bind any Party unless it is in writing and signed by both Parties.

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

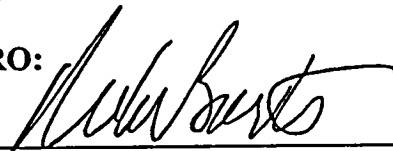
CITY OF PORTLAND:

By: _____
Print Name: _____
Title: _____
Date: _____

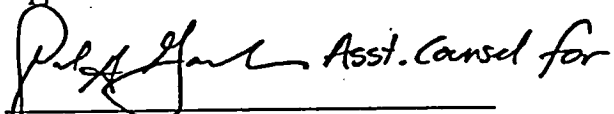
Approved as to Form:

Deputy City Attorney

METRO:

By: 
Mike Burton
Title: Metro Executive Officer
Date: April 3, 2002

Approved as to Form:


Metro General Counsel

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04/03/02 12:10 PM

7. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be sent by personal delivery (including by means of professional messenger service), facsimile, electronic mail, or regular mail to the other Party's designee. The City and Metro may change their respective designee by providing written notice of such a change to the other Party. Unless changed as provided in this paragraph, the Parties' respective designees are:

For the City: Gregg Everhart
City of Portland Parks and Recreation
1120 SW Fifth Ave, Rm. 1302
Portland, Oregon, 97204
503-823-6009 office
503-823-5570 FAX

For Metro: Elaine Stewart
Metro Regional Parks and Greenspaces
600 NE Grand Avenue
Portland, Oregon, 97232
503-797-1515 office
503-797-1849 FAX

8. General Provisions.

- a. Funding Declarations. The Parties will document in any publication, media presentation, or other presentations, the sources of funds for the project. If signs are placed in the project areas, such signs shall include the logos of the Parties to this Agreement, and shall recognize the Parties' respective contributions to the project.
- b. Oregon Law and Forum. This Agreement shall be construed according to the laws of the State of Oregon. Any litigation among the Parties arising out of this Agreement or out of work performed under this Agreement shall be brought, if in the state courts, in Multnomah County, and, if in the federal courts, in the United States District Court for the District of Oregon.
- c. Assignment. No Party shall assign this Agreement, in whole or in part, without the prior written consent of the other Party, except that a Party may delegate or subcontract for performance of any of its respective responsibilities under this Agreement.
- d. Severability. If any non-material provision in this Agreement is found to be illegal or unenforceable, all other provisions of this Agreement shall nevertheless remain in full force and effect and the illegal or unenforceable provision shall be stricken.

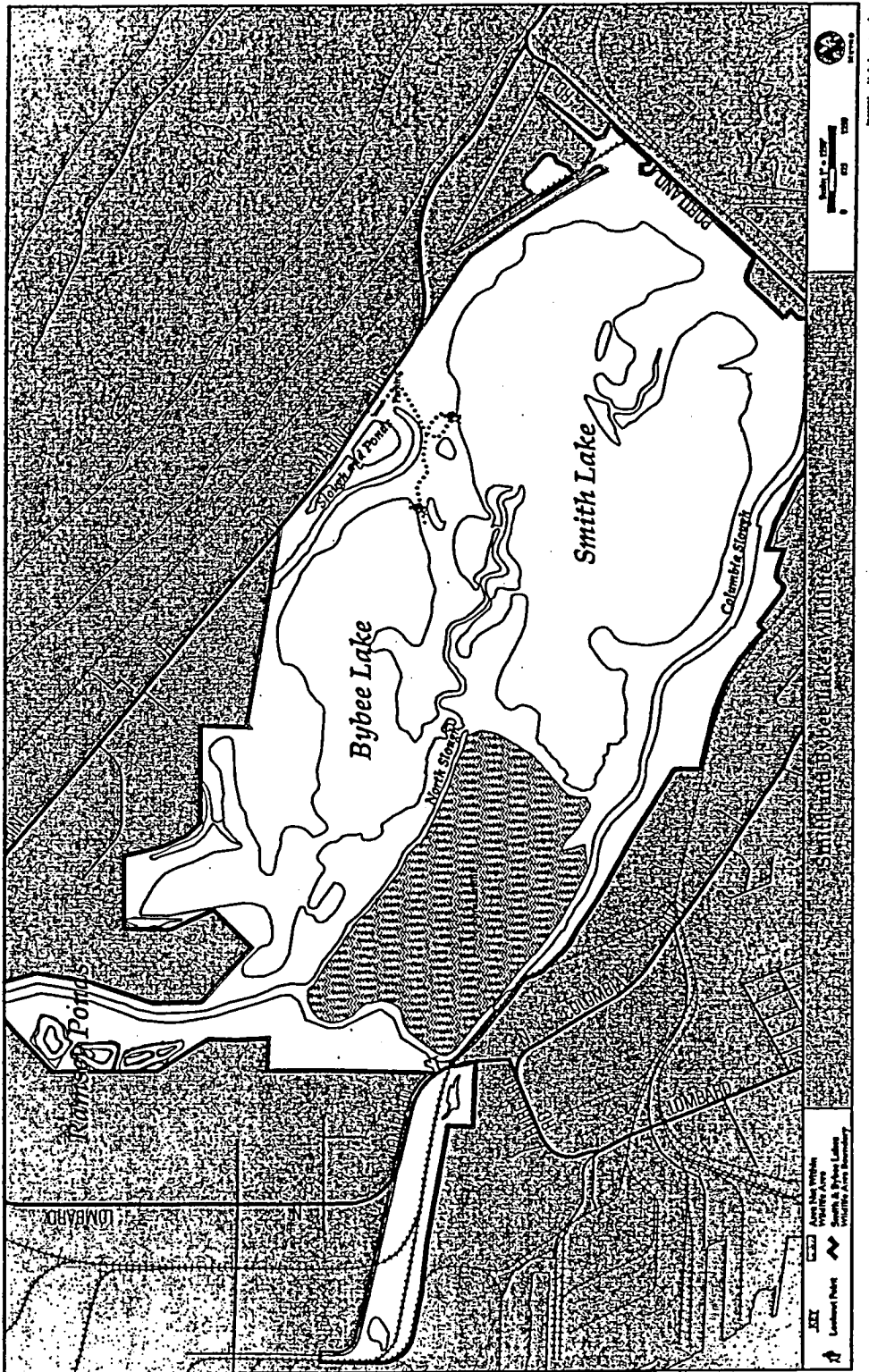
EXHIBIT B

Date Completed	Task
April 2002	✓ City/Metro IGA executed.
May 2002	✓ Put out RFP for consultant.
June 2002	✓ Select consultant.
July-August 2002	✓ Begin site analysis and research historic documents plus more recent information. ✓ Form project advisory committee. ✓ Meet with project advisory committee to identify important issues and considerations.
September 2002	✓ Consultant presents matrix and preliminary recommendations for alignment to project advisory committee.
September - October 2002	✓ Project advisory committee comments on preliminary recommendations and selects viable alignments for further study. ✓ Consultant revises recommended alignments based on project advisory committee input and completes analysis of viable alternatives.* ✓ Consultant implements any public involvement scheduled for this stage.* ✓ Project advisory committee selects proposed consensus alignment.
November 2002	✓ Consultant implements any additional public involvement.* ✓ Consultant presents proposed consensus alignment to Smith and Bybee Lakes Management Committee, RPAGAC and SWAC for review, consideration and recommendations.
November 2002	✓ Consultant finalizes trail alignment planning document.
December 2002	✓ Metro Council considers adoption of proposed consensus trail alignment plan.

* Additional public review may be needed if recommendations include alignments outside the Wildlife Area (e.g., into the St. Johns neighborhood). An additional two months may be needed for identification of stakeholders and additional public involvement.

EXHIBIT A

Map of Wildlife Area showing parcels (see Project Declaration, 1st paragraph).





METRO

April 4, 2002

Ms. Jessica Wilcox
City Planner
City of Portland OPDR
1900 SW Fourth Av. Ste 5000
Portland, OR 97201

Dear Ms. Wilcox:

In your letter to Dennis O'Neil dated March 19, 2002, you said that Metro's Regional Environmental Management Department (REM) had not complied with Condition A of LUR 99-00579 EN. REM interpreted that condition to require it to submit a proposed, written agreement to the City's Land Use Review Division for review and approval. We did that on July 31, 2000, when Dennis O'Neil of REM sent you a letter with a proposed intergovernmental agreement (IGA) between Metro and the City of Portland Parks Department (Portland Parks) that addressed all of the requirements of Condition A. On the same day, Mr. O'Neil also sent a copy of the proposed IGA via electronic mail to Jim Sjulín of Portland Parks. Metro was prepared to sign the agreement had it been acceptable to the City.

Since then Portland Parks and Metro have exchanged several drafts in an effort to conclude an IGA. Although the process has been slow, Metro and Portland Parks have acted in good faith and, I believe, in compliance with Condition A. The Land Use Review Division didn't respond to our July 31, 2000 letter or comment on the pace of negotiations. The first official communication from the Division was your letter last month telling us that you were forwarding the case to Code Compliance for enforcement action. We did not have an opportunity to read the electronic mail message you referenced in your March 19 letter because Dennis O'Neil inadvertently deleted his entire electronic mail file early in March, prior to opening or reading your message. Our information technology department is now attempting to retrieve a copy of that message for our records.

Metro wants to reach an agreement with Portland Parks and receive an acknowledgement from the Land Use Review Division that it has satisfied Condition A. To that end, I am sending you and Portland Parks a new IGA signed by the Metro Executive Officer.

Please write to me as soon as possible indicating whether the enclosed IGA complies with Condition A. If you believe it does not comply, please explain to me what more is required. If you would like to discuss this matter further, please call me at 503-797-1669.

Sincerely,

Terry Petersen, Director
Metro Regional Environmental Management Department

TP:PG:gbc

cc: Jim Sjulín, City of Portland Parks Department
Charlie Ciecko, Director, Metro Regional Parks and Greenspaces Department
Elaine Stewart, Metro Wildlife Area Manager, Smith and Bybee Lakes Wildlife Area
Dennis O'Neil, Metro REM

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INTERGOVERNMENTAL AGREEMENT

Smith and Bybee Lakes Trails Mini-Master Plan

This Intergovernmental Agreement ("Agreement") dated this August 31, 2000, is by and between the City of Portland, Parks and Recreation Department, (the "City") and Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter ("Metro"). (The City and Metro shall be individually referred to herein as a "Party" or collectively as the "Parties.")

RECITALS

WHEREAS, this Agreement authorizes and provides funds to determine a route for a non-motorized recreational trail in the proximity of the Smith and Bybee Lakes Wildlife Area ("Wildlife Area"); and

WHEREAS, the City and Metro adopted the *Smith and Bybee Lakes Natural Resources Management Plan* ("Management Plan") in 1990 and Metro commissioned the *Smith and Bybee Lakes Recreation Master Plan* ("Master Plan") completed in 1992;

WHEREAS, the Goal Statement in the Management Plan provides that (1) the Wildlife Area is to "be maintained and enhanced . . . in a manner that is faithful to [its] original natural condition;" (2) "[o]nly those recreational uses that are compatible with environmental objectives of the Management Plan will be encouraged;" and (3) Bybee Lake is to be less accessible than Smith Lake and is to be used primarily as an environmental preserve;

WHEREAS, both the Management Plan and the Master Plan describe potential routes for hard and soft surface recreational trails in the Wildlife Area;

WHEREAS, the Port of Portland ("Port") may construct a recreational trail on Port property in the Wildlife Area;

WHEREAS, Title 3 of Metro's Urban Growth Management Functional Plan, Metro Code 3.07.310 through 3.07.370, ("Title 3") establishes certain water quality performance standards including a general prohibition on certain development within vegetative corridors adjacent to protected water features such as Smith and Bybee Lakes, the Columbia Slough, and other sloughs in the Wildlife Area (see Metro Code 3.07.340(B));

WHEREAS, the City's Comprehensive Plan, since its adoption in 19--, has called for the construction of a recreational trail in and through the Wildlife Area;

WHEREAS, Title 3 also requires the City to show that the City's Comprehensive Plan is consistent with Title 3, including Metro Code 3.07.340(B), and the City has not yet done so;

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WHEREAS, the Parties have health and safety concerns regarding any recreational activities in the vicinity of St. Johns Landfill and are concerned about the adequate protection of natural resources in the Wildlife Area;

WHEREAS, based on these Recitals, it is necessary to review and update potential recreational trail routes in the proximity of the Wildlife Area in the form of a *Smith and Bybee Lakes Trails Mini-Master Plan* ("Mini-Master Plan"); and

WHEREAS, the City and Metro acknowledge that they have authority to enter into this Agreement pursuant to the powers contained in their respective charters and in ORS 190.010;

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. Project Declaration.

- a. The activities and funding described in this Agreement are for the research, public involvement process, alternative alignment study, and preferred routes(s) selection and phasing of trails in the proximity of the Wildlife Area.
- b. The Smith & Bybee Lakes Management Committee (the "Management Committee") was established by the Management Plan to oversee implementation of the Management Plan and to provide on-going policy guidance for the Wildlife Area. Therefore, the Management Committee shall consider the findings of the Mini-Master Plan and shall make recommendations regarding trail alignment and phasing to Metro Council. Metro Council may accept, reject, or revise the recommendations of the Management Committee.
- c. This Agreement and this Project do not provide for the design, construction, or maintenance of recreational trails in the Wildlife Area.
- d. The Project shall acknowledge and consider all current and planned recreational trail alignments in the Wildlife Area.

2. Creation of Mini-Master Plan Work Group. A Mini-Master Plan Work Group ("Work Group") shall be created and shall be responsible for developing the Mini-Master Plan. The Work Group shall be chaired by the City's Project Manager, identified below, and shall consist of Metro's Project Manager and other persons appointed by the Management Committee.

3. Development of Wildlife Area Trails Mini-Master Plan.

- a. The Work Group shall develop a Mini-Master Plan for recreational trails within the area bounded by the Marine Drive to the north, Pier Park to the south, Kelley Point Park to the

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west, and the Peninsula Crossing Trail to the east. The Work Group and the Parties shall perform the tasks described in this Agreement, including research, alternative alignment study, and public involvement, in accordance with the Project Schedule attached as Exhibit B to this Agreement. The Work Group shall be responsible for the following Mini-Master Plan development work tasks:

- i. Gather field data, existing plans (including, without limitation, the Management Plan, Metro's Greenspaces Master Plan, and the City's Comprehensive Plan), regulatory requirements (including, without limitation, Title 3 of Metro's Urban Growth Management Functional Plan, Metro Code 3.07.310 through 3.07.370), and other relevant information;
 - ii. Develop alternative recreational trail alignments for analysis, consistent with Paragraph 4 of this Agreement, including short and long term alignments if applicable, identification of all easements, permits, and plan amendments required for each alignment; appropriate schematic designs; and cost estimates for construction and maintenance;
 - iii. Present findings and preliminary recommendations to the Management Committee;
 - iv. Make revisions and refinements to the Work Group's findings and recommendations, addressing and incorporating the Management Committee's comments as appropriate;
 - v. Make revisions and refinements, addressing and incorporating public comments as appropriate, and present recommended alignments, including phasing and preliminary cost estimates, to the Management Committee; and
 - vi. In cooperation with Metro's Project Manager, present the Management Committee's recommended alignments to the Metro Council for adoption.
- b. The City will cooperate with the Work Group and Metro and will perform the following tasks:
- i. Take the lead role in staffing the Work Group; and
 - ii. After the Management Committee has had an opportunity to review and comment on the Work Group's findings and preliminary recommendations, present revised findings and recommendations to the public for comment.
- c. Metro, acting through both its Regional Environmental Management Department ("REM") and Regional Parks and Greenspaces Department, will cooperate with the Work Group and the City and will perform the following tasks:
- i. Provide topographic survey and other relevant maps and data for the Wildlife Area, including the former St. Johns Landfill site;
 - ii. Determine whether alternative recreational trail alignments being considered by the Work Group are consistent with the requirements in Paragraph 4, below;
 - iii. Assist the City with public involvement meetings;
 - iv. Pay for design, permitting, and construction of any trail segment on the St. Johns Landfill site. Unless the Mini-Master Plan provides for an alternative construction schedule, Metro will complete construction of any such trail segment no later than 18

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months after the Metro Council adopts the Mini-Master Plan, or at a later date mutually agreed upon by Metro and the City; and

- v. If the Mini-Master Plan adopted by the Metro Council requires the construction of a bridge across the slough to the St. Johns Landfill site, Metro REM will contribute a portion of additional funds necessary for its design, permitting, and construction. The contribution of Metro REM shall be based on the ratio of (1) the length of a trail on the former St. Johns Landfill property to (2) the total trail length within the Wildlife Area, or by another method acceptable to both Metro REM and the Management Committee.

4. Design Alternative Constraints.

- a. No trail alignments within the Wildlife Area will be identified or selected by the Work Group as preferred alternatives that:
 - i. Fail to comply with Title 3 of Metro's Urban Growth Management Functional Plan, Metro Code 3.07.310 through 3.07.370, and specifically with the performance standards described in Metro Code 3.07.340(B)(2) (including Table 3.07-3 attached thereto), unless an alternative analysis has been completed that shows a riparian-based alternative as the only feasible route;
 - ii. Have a negative impact on sensitive habitat or wildlife using that habitat;
 - iii. Increase substantially the operations and maintenance requirements for Metro where adequate funding does not exist; or
 - iv. Pose excessive risk to health, safety, or the environment due to (1) exposure to landfill gas present at the former St. Johns Landfill site, or (2) potential vandalism or disruption of the landfill gas collection system at the site.
- b. Metro will have sole discretion in determining whether the alignment criteria in this Paragraph 4 have been met.

5. Design, Construction, Management, Maintenance, and Operations. Responsibility for design, construction, management, maintenance, and operations of the recreational trail will be determined by separate intergovernmental agreement(s) to be developed following final determination of alignment(s).

6. Total Available Project Budget. Metro agrees to pay 50% of the cost of the Mini-Master Plan up to \$10,500. The City agrees to pay 50% of the cost of the Mini-Master Plan. If additional funds are needed to complete the Mini-Master Plan, they shall come from sources mutually acceptable to Metro and the City.

7. Termination of Funding Obligation. The obligation of Metro to provide up to \$10,500 in funding shall terminate June 30, 2002 unless extended by mutual agreement between Metro and the City.

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8. Limitations on Use. Any trail located within the Wildlife Area pursuant to the Mini-Master Plan shall be planned, constructed, managed, maintained, and operated in accordance with its intended use exclusively as a recreational pedestrian trail and with the requirements of Metro Code Chapter 10.01. Consistent with the Wildlife Area's primary mission as an environmental reserved, no modes of transportation other than pedestrian use will be permitted on dry land trails within the Wildlife Area.
9. Indemnification.
- a. To the extent permitted by Oregon law, and subject to the limitations of the Oregon Tort Claims Act, ORS 30.260 to 30.300, as may be amended from time to time, the City shall defend, indemnify, and hold harmless Metro and its respective officers, employees, and agents, against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, arising out of the City's obligations as set forth in this Agreement.
 - b. To the extent permitted by Oregon law, and subject to the limitations of the Oregon Tort Claims Act, ORS 30.260 to 30.300, as may be amended from time to time, Metro shall defend, indemnify, and hold harmless the City, and its respective officers, employees, and agents, against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, arising out of Metro's obligations as set forth in this Agreement
10. Project Managers/ 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 the other Party's project manager. The City and Metro may change their respective project managers by providing written notice to the other Party of such a change. Unless changed as provided in this paragraph, the Parties' respective project managers are:

For the City: Gregg Everhart
City of Portland Parks and Recreation
1120 SW Fifth Ave, Rm. 1302
Portland, Oregon, 97204
503-823-6009 office
503-823-5570 FAX

For Metro: Elaine Stewart
Metro Regional Parks and Greenspaces
600 NE Grand Avenue
Portland, Oregon, 97232
503-797-1515 office
503-797-1849 FAX

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11. General Provisions.

- a. **Funding Declarations.** The Parties will document in any publication, media presentation or other presentations, the sources of funds for the project. If signs are placed in the project areas, such signs shall include the logos of the Parties to this Agreement, and shall recognize the Parties' respective contributions to the project.

- b. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon. Any litigation among the Parties arising out of this Agreement or out of work performed under this Agreement shall be brought, if in the state courts, in Multnomah County, and, if in the federal courts, in the United States District Court for the District of Oregon.

- c. **Assignment.** No Party shall assign this Agreement, in whole or in part, without the prior written consent of the other Party, except that a Party may delegate or subcontract for performance of any of its respective responsibilities under this Agreement.

- d. **Severability.** If any non-material provision(s) in this Agreement is found to be illegal or unenforceable, all other provisions of this Agreement shall nevertheless remain in full force and effect and the illegal or unenforceable provision(s) shall be stricken.

- e. **Integration.** This Agreement contains the entire agreement among the Parties regarding the subject matter set forth herein, and supersedes all prior written or oral discussions or agreements. No waiver, consent, modification or change of the terms of this Agreement shall bind any Party unless it is 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:

By: _____
Title: _____
Date: _____

Approved as to Form:

Deputy City Attorney

METRO:

By: _____
Title: _____
Date: _____

Approved as to Form:

Metro General Counsel

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EXHIBIT A

Map of Wildlife Area showing parcels (see Project Declaration, 1st paragraph).

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EXHIBIT B

Date Completed	Task
September 2000	City/Metro IGA executed
November 2000	Provide public notice and form Work Group
January 2001	Site analysis and research: historic documents plus more recent information
January 2001	Develop matrix of potential trail alignments with budget plus pros and cons and, if necessary, conduct alternatives analysis required under Title 3 of Metro's Urban Growth Management Functional Plan and pursuant to paragraph 4 of this Agreement ("Design Alternative Constraints")
February 2001	Consult Metro regarding consistency of potential trail alignments with the Design Alternative Constraints in paragraph 4 of this Agreement
March 2001	Work Group presents preliminary recommendations for alignment & cross-sections to Management Committee
April 2001	Management Committee comments on Work Group's preliminary recommendations and Work Group revises recommended alignments based on Management Committee input
May/June 2001	City presents Work Group's recommendations for public input
July 2001	Work Group revises alignments based on public input
August 2001	Send newsletter on alignments to mailing list
October 2001	Work Group finalizes Mini-Master Plan document
November 2001	Metro &/or City Council to consider adoption of plan

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INTERGOVERNMENTAL AGREEMENT

Smith and Bybee Lakes Trails Alignment Development Plan

1/01

This Intergovernmental Agreement ("Agreement") dated this August 31, 2000, is by and between the City of Portland, Parks and Recreation Department, (the "City") and Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter ("Metro"). (The City and Metro shall be individually referred to herein as a "Party" or collectively as the "Parties.")

RECITALS

WHEREAS, the City and Metro adopted the *Smith and Bybee Lakes Natural Resources Management Plan* ("Management Plan") in 1990 and Metro commissioned the *Smith and Bybee Lakes Recreation Master Plan* ("Master Plan") completed in 1992;

WHEREAS, the Management Plan, the Master Plan, and the City's Comprehensive Plan describe potential routes for hard and soft surface recreational trails in the vicinity of the St. Johns Landfill (the "SJLF");

WHEREAS, the Port of Portland ("Port") may construct a recreational trail on Port property in the vicinity of the SJLF;

WHEREAS, the City Office of Planning and Development Review, as a condition for granting approval for Metro's repair of portions of the ~~dyke~~^{dike} surrounding the SJLF, required Metro to enter into an agreement with the City's Parks Department regarding construction of a portion of the 40-Mile Loop Trail in the vicinity of the SJLF;

WHEREAS, the Smith & Bybee Lakes Management Committee (the "Management Committee") has established a subcommittee to review and update potential recreational trail routes in the vicinity of the SJLF (the "Trails Alignment Subcommittee");

WHEREAS, the Management Committee includes representatives of the 40 Mile Loop Land Trust, the Port of Portland, the City, and the Metro Parks and Greenspaces Department ("Metro Parks");

WHEREAS, the City and Metro acknowledge that they have authority to enter into this Agreement pursuant to the powers contained in their respective charters and in ORS 190.010;

NOW, THEREFORE, the Parties agree as follows:

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AGREEMENT

1. Project Declaration.

- a. The activities and funding described in this Agreement are for the research, public involvement process, alternative alignment study, and preferred routes(s) selection and phasing of trails in the vicinity of the SJLF (the "Project").
- b. The Smith & Bybee Lakes Management Committee (the "Management Committee") was established by the Management Plan to oversee implementation of the Management Plan and to provide on-going policy guidance for the Smith & Bybee Lakes Wildlife Area (the "Wildlife Area"). The Management Committee shall consider the findings of the Trails Alignment Subcommittee and shall make recommendations regarding trail alignment and phasing to the Metro Council.
- c. The Project shall acknowledge and consider all current and planned recreational trail alignments in the Wildlife Area, as designated on Exhibit A to this Agreement.

2. Development of Proposed Alignments for Wildlife Area Recreational Trails.

- a. The Trails Alignment Subcommittee has been directed by the Management Committee to develop proposed alignments for recreational trails within the area bounded by the Marine Drive to the north, Pier Park to the south, Kelley Point Park to the west, and the Peninsula Crossing Trail to the east. In support of Trails Alignment Subcommittee, the Parties shall perform the tasks described in this Agreement, including research, alternative alignment study, and public involvement, in accordance with the Project Schedule attached as Exhibit B to this Agreement. It is the Parties' understanding that the Trails Alignment Subcommittee will perform the following work tasks:
 - i. Gather field data, existing plans (including, without limitation, the Management Plan, Metro's Greenspaces Master Plan, and the City's Comprehensive Plan), regulatory requirements (including, without limitation, Title 3 of Metro's Urban Growth Management Functional Plan, Metro Code 3.07.310 through 3.07.370), and other relevant information as determined by Trails Alignment Subcommittee members;
 - ii. Develop alternative recreational trail alignments for analysis, including short and long term alignments, if applicable; identification of all easements, permits, and plan amendments required for each alignment; appropriate schematic designs; proposed phasing of trail development; and cost estimates for construction and maintenance;
 - iii. Present findings and preliminary recommendations to the Management Committee and make revisions and refinements addressing and incorporating the Management Committee's comments as appropriate;
 - iv. Make revisions and refinements addressing and incorporating public comments as appropriate, and present recommended alignments, including phasing and preliminary cost estimates, to the Management Committee; and

natural resource issues, operational considerations

Someone will need to do a lot of legwork for the sub-committee - who? metro prefers consultant on contract w/ metro -

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- v. In cooperation with Metro's Regional Parks and Greenspaces Department, present the Management Committee's recommended alignments to the Metro Council for adoption.
- b. The City will cooperate with the Trails Alignment Subcommittee and Metro and, specifically, will present revised findings and recommendations to the public for comment after the Management Committee has had an opportunity to review and comment on the Trails Alignment Subcommittee's findings and preliminary recommendations.
- c. Metro, acting through both its Regional Environmental Management Department ("REM") and Metro Parks, will cooperate with the Trails Alignment Subcommittee and the City and will perform the following tasks:
 - i. Provide topographic survey and other relevant maps and data for the Wildlife Area, including the SJLF;
 - ii. Assist the City with public involvement meetings;
 - iii. Pay for design, permitting, and construction of any trail segment on the SJLF and complete construction of any such trail segment no later than July 31, 2002; and
 - iv. If the recreational trails plan adopted by the Metro Council requires the construction of a bridge across the slough to the SJLF, REM will contribute a fair share of additional funds necessary for its design, permitting, and construction. The contribution of REM shall be based on the ratio of (1) the length of a trail on the SJLF to (2) the total trail length within the Wildlife Area, or by another method acceptable to both REM and the director of the Portland Department of Parks and Recreation.
- 3. Design, Construction, Management, Maintenance, and Operations. Except as specifically provided in Paragraph 2, responsibility for design, construction, management, maintenance, and operations of any portion of a recreational trail proposed by the Trails Alignment Subcommittee will be determined by separate intergovernmental agreement(s) to be developed following final determination of alignment(s).
- 4. Project Budget. Metro agrees to pay 50% of the costs incurred by the Trails Alignment Subcommittee for development of alternative trail alignments, up to \$10,500. The City also agrees to pay 50% of such costs, up to \$10,500. If additional funds are needed to complete development of alternative trail alignments, they shall come from sources mutually acceptable to Metro and the City.
- 5. Termination of Funding Obligation. The obligation of Metro to provide up to \$10,500 in funding shall terminate July 31, 2002 unless extended by mutual agreement between Metro and the City.
- 6. Indemnification.

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- a. To the extent permitted by Oregon law, and subject to the limitations of the Oregon Tort Claims Act, ORS 30.260 to 30.300, as may be amended from time to time, the City shall defend, indemnify, and hold harmless Metro and its respective officers, employees, and agents, against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, arising out of the City's obligations as set forth in this Agreement.
 - b. To the extent permitted by Oregon law, and subject to the limitations of the Oregon Tort Claims Act, ORS 30.260 to 30.300, as may be amended from time to time, Metro shall defend, indemnify, and hold harmless the City, and its respective officers, employees, and agents, against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, arising out of Metro's obligations as set forth in this Agreement
7. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be sent by personal delivery (including by means of professional messenger service), facsimile, electronic mail, or regular mail to the other Party's designee. The City and Metro may change their respective designee by providing written notice of such a change to the other Party. Unless changed as provided in this paragraph, the Parties' respective designees are:

For the City: Jim Sjulín
City of Portland Parks and Recreation
1120 SW Fifth Ave, Rm. 1302
Portland, Oregon, 97204
503-823-6009 office
503-823-5570 FAX

For Metro: Elaine Stewart
Metro Regional Parks and Greenspaces
600 NE Grand Avenue
Portland, Oregon, 97232
503-797-1515 office
503-797-1849 FAX

8. General Provisions.

- a. Funding Declarations. The Parties will document in any publication, media presentation, or other presentations, the sources of funds for the project. If signs are placed in the project areas, such signs shall include the logos of the Parties to this Agreement, and shall recognize the Parties' respective contributions to the project.

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- b. Oregon Law and Forum. This Agreement shall be construed according to the laws of the State of Oregon. Any litigation among the Parties arising out of this Agreement or out of work performed under this Agreement shall be brought, if in the state courts, in Multnomah County, and, if in the federal courts, in the United States District Court for the District of Oregon.
- c. Assignment. No Party shall assign this Agreement, in whole or in part, without the prior written consent of the other Party, except that a Party may delegate or subcontract for performance of any of its respective responsibilities under this Agreement.
- d. Severability. If any non-material provision in this Agreement is found to be illegal or unenforceable, all other provisions of this Agreement shall nevertheless remain in full force and effect and the illegal or unenforceable provision shall be stricken.
- e. Integration. This Agreement contains the entire agreement among the Parties regarding the subject matter set forth herein, and supersedes all prior written or oral discussions or agreements. No waiver, consent, modification or change of the terms of this Agreement shall bind any Party unless it is 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:

By: _____
Title: _____
Date: _____

Approved as to Form:

Deputy City Attorney

METRO:

By: _____
Title: _____
Date: _____

Approved as to Form:

Metro General Counsel

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EXHIBIT A

Map of Wildlife Area showing parcels (see Project Declaration, 1st paragraph).

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EXHIBIT B

Date Completed	Task
January 2001	City/Metro IGA executed
February 2001	Provide public notice of formation of Trails Alignment Subcommittee
March 2001	Site analysis and research: historic documents plus more recent information
April 2001	Develop matrix of potential trail alignments with budget plus pros and cons and, if necessary, conduct alternatives analysis required under Title 3 of Metro's Urban Growth Management Functional Plan
May 2001	Trails Alignment Subcommittee presents preliminary recommendations for alignment & cross-sections to Management Committee
June 2001	Management Committee comments on Trails Alignment Subcommittee's preliminary recommendations and Trails Alignment Subcommittee revises recommended alignments based on Management Committee input
July 2001	City presents Trails Alignment Subcommittee's recommendations for public input
August 2001	Trails Alignment Subcommittee revises alignments based on public input
September 2001	Send newsletter on alignments to mailing list
November 2001	Trails Alignment Subcommittee finalizes trail alignment planning document
December 2001	Metro considers adoption of final trail alignment plan