

INTERGOVERNMENTAL AGREEMENT

Contract No. _____

Natural Areas Bond Measure

This Intergovernmental Agreement (this “Agreement” or “IGA”), entered into under the provisions of ORS chapter 190 and effective on the date the Agreement is fully executed (the “Effective Date”), is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, and the City of Portland, a municipal corporation (the “City”).

RECITALS

WHEREAS, in May 1995 voters in the Metro region approved a \$135.6 million Open Spaces, Parks and Streams Bond Measure 26-26 (the “Measure”) with a stated goal of acquiring land in six regional trails and greenways corridors, including securing important inholdings and “pinchpoints” in Forest Park (as outlined in the refinement plan for the Forest Park Connections Target Area, Metro Council Resolution No. 96-2274A).

WHEREAS, the City desires to facilitate construction of a footbridge over West Burnside road to connect Washington Park to Forest Park via the Wildwood Trail (the “Footbridge,” or the “Project”), which Project was identified as a community priority in the 1998 Portland Pedestrian Master Plan;

WHEREAS, the south landing of the Footbridge will be built on property owned and operated by the City, as part of Washington Park and Hoyt Arboretum, and the north landing of the Footbridge will be constructed on Metro property, known to staff as the Lakeman acquisition (the “Metro Property”), which Metro Property is managed by the City under an Intergovernmental Agreement between Metro and the City dated October 22, 2009 (the “Management IGA”), which Management IGA allows the City to construct improvements on the Metro Property;

WHEREAS, Metro acquired the Metro Property with the stated purpose of facilitating construction of a bridge crossing over West Burnside;

INTERGOVERNMENTAL AGREEMENT

WHEREAS, the City approved Ordinance No. 188668 authorizing the Parks & Recreation Bureau to enter into a grant agreement in the form attached to the Ordinance, to provide \$500,000 to the Portland Parks Foundation (the “Foundation”) for the Foundation to construct the Footbridge (the “Grant Agreement”), in accordance with the terms and conditions of the Grant Agreement; and

WHEREAS, pursuant to the Grant Agreement, upon completion of the Footbridge, the Foundation intends to grant the City an easement or other such rights to allow the public to use the Footbridge, or the Foundation and the City may negotiate a transfer of the Footbridge to the City; and

WHEREAS, Metro desires to contribute to the cost of the Project, on the terms and conditions set forth in this IGA.

NOW THEREFORE, the parties agree as follows:

1. Metro Contribution

Metro will pay Two Hundred Thousand Dollars (\$200,000) (the “Metro Funds”) to the City for the construction of the Project, which the City may combine with the other funds identified in the Grant Agreement to be provided to the Foundation for the construction of the Project. The Metro Funds will be held by the City, in accordance with the Grant Agreement, and may be used only for the following: construction materials and construction labor of the Project. No Metro Funds may be used for planning, design, construction oversight, City staff costs, or administrative costs. This Agreement will serve as Metro’s preliminary approval of the Project under the Management IGA, and the City will seek Metro’s final approval of the design of the Project under Section 4.2 of the Management IGA when plans for the Project are further developed.

2. Project Managers

The City appoints Dan Layden as City’s project manager for this Agreement. Metro appoints Dan Moeller as Metro’s project manager for this Agreement.

Metro: Dan Moeller
600 NE Grand Ave.

INTERGOVERNMENTAL AGREEMENT

Portland, OR 97232
503-797-1819
Dan.Moeller@oregonmetro.gov

City: Dan Layden
1120 SW 5th Ave Rm 800
Portland, OR 97213
503-789-5986
Dan.Layden@portlandoregon.gov

Purpose; Limitations

A. The purpose of this Agreement is to implement the Measure and facilitate the funding of the Project by Metro. This Agreement provides the City permission, in accordance with the Management IGA, to allow the Foundation enter onto the Metro Property to construct, repair, maintain, and operate the Footbridge on the Metro Property pursuant to a Non-Park Use Permit, license, or other form of approval issued and managed by the City.

B. At no time will Metro have any supervisory responsibility regarding any aspect of the Project, including, without limitation, its construction, operation, repair or maintenance. Any indirect or direct involvement by Metro in the Project shall not be construed or interpreted by the City as Metro's assumption of a supervisory role.

C. The City is solely responsible for any and all contracts and subcontracts associated with the Project. The City acknowledges that other than Metro's payment of the Metro Funds to the City, Metro has no other obligation or responsibility for the Project, including, without limitations, any supervision of the Foundation.

3. Term; Repayment

It is the intent of the parties for the Project to have been completed as expeditiously as is practicable and for the Metro Funds to be spent on the construction of the Project prior to December 31, 2019.

INTERGOVERNMENTAL AGREEMENT

4. Funding Recognition

The City shall recognize in any publications, media presentations, or other presentations referencing the Project produced by or at the direction of the City, including, without limitation, any on-site signage, that funding for the Project came from the Metro Open Spaces Bond Measure. The City shall obtain Metro's prior written consent of the wording of any such recognition. The City shall also permit Metro to place at or near the Project's location signage that communicates that some of the funding for the Project came from Metro.

5. Assignment

The City may not assign any of its responsibilities under this Agreement without prior written consent from Metro, which consent may be withheld in Metro's sole discretion. Notwithstanding the foregoing, the City may delegate its obligations and responsibilities under this Agreement (without release of the City from the same) to the Foundation, in accordance with the terms of the Grant Agreement.

6. Termination for Cause

A. Subject to the notice provisions set forth in Section 7B below, Metro may terminate this Agreement, in full or in part, at any time during the term of the Agreement if Metro reasonably determines that the City has failed to comply with any provision of this Agreement and is therefore in default.

B. Prior to terminating this Agreement in accordance with Section 7A above, Metro shall provide the City with written notice that describes the reason(s) that Metro has concluded that the City is in default and includes a description of the steps that the City shall take to cure the default. The City shall have 30 days from the date such notice is received of default to cure the default or to implement a plan to cure such default. In the event the City does not cure the default or implement a plan to cure the default within the 30-day period, Metro may terminate all or any part of this Agreement. Following such termination, Metro shall notify the City in writing of effective date of the termination.

INTERGOVERNMENTAL AGREEMENT

C. The City shall be liable to Metro for all reasonable costs and damages incurred by Metro as a result of and in documentation of the default. Following such termination, should Metro later determine or a court find that the City was not in default or that the default was excusable (e.g. due to a labor strike, fire, flood, or other event that was not the fault of, or was beyond the control of the City) this Agreement shall be reinstated or the parties may agree to treat the termination as a joint termination for convenience whereby the rights of the City shall be as set forth below in Section 8.

7. Joint Termination for Convenience

Metro and the City may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective only upon the mutual, written, signed agreement of both Metro and the City.

8. Mutual Indemnification

A. The City shall indemnify, defend, and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with the performance of this Agreement by the City or the City's officers, agents, or employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30. Metro shall indemnify, defend, and hold the City and the City's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with the performance of this Agreement by Metro or Metro's officers, agents, or employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30.

B. Metro shall indemnify, defend, and hold the City and the City's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with the performance of this Agreement by Metro or Metro's officers, agents, or employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30.

INTERGOVERNMENTAL AGREEMENT

9. Project Records, Audits, and Inspections

A. For the term of this Agreement, the City shall require that the Foundation maintain comprehensive records and documentation relating to the Project and the City shall maintain its own comprehensive records of the City's performance of this Agreement (hereinafter "Project Records"). Project Records shall include all records, reports, data, documents, systems, and concepts, whether in the form of writings, figures, graphs, or models, that are prepared or developed in connection with any Project.

B. In accordance with Section 10A above, the City shall maintain all fiscal Project Records in accordance with GAAP. In addition, the City shall maintain any other records necessary to clearly document:

- (i) The City's performance of its obligations under this Agreement, the Project's compliance with fair contracting and employment programs, and the Project's compliance with Oregon law on the payment of wages and accelerated payment provisions;
- (ii) Any claims arising from or relating to (a) the performance of the City under this Agreement, or (b) any other contract entered into by the City that relates to this Agreement or the Project;
- (iii) Any cost and pricing data relating to this Agreement; and
- (iv) Payments made to all designers, consultants, contractors, suppliers and subcontractors engaged in any work related to this Agreement or the Project.

C. The City shall maintain Project Records for the longer period of either (a) six years from the date the Project is completed, or (b) until the conclusion of any audit, controversy, or litigation that arises out of or is related to this Agreement or the Project and that commences within six years from the date the Project is completed.

D. The City shall make Project Records available to Metro and its authorized representatives, including, without limitation, the staff of any Metro department and the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places, regardless of whether litigation has been filed on any claims. If the Project Records are not made available

INTERGOVERNMENTAL AGREEMENT

within the boundaries of Metro, the City agrees to bear all of the costs incurred by Metro to send its employees, agents, or consultants outside the region to examine, audit, inspect, or copy such records, including, without limitation, the expense of travel, per diem sums, and salary. Such costs paid by the City to Metro pursuant to this Section shall not be recoverable costs in any legal proceeding.

E. The City authorizes and permits Metro and its authorized representatives, including, without limitation, the staff of any Metro department and the Metro Auditor, to inspect, examine, copy, and audit the books and Project Records of the City, including tax returns, financial statements, other financial documents relating to this Agreement or the Project. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provision of Section 10(F) below.

F. The City agrees to disclose Project Records requested by Metro and agrees to the admission of such records as evidence in any proceeding between Metro and the City, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.

G. In the event the Project Records establish that the City has a financial liability to Metro for non-compliance with this Agreement, the City shall pay all costs incurred by Metro in conducting the audit and inspection.

10. Public Records

All Project Records shall be public records subject to the Oregon Public Records Law, ORS 192.410 to 192.505. Nothing in this Section shall be construed 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).

11. Law of Oregon; Public Contracting Provisions

The laws of the state of Oregon shall govern this Agreement and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All activities on and use of the

INTERGOVERNMENTAL AGREEMENT

Metro Property as permitted by this Agreement shall be in compliance with all applicable laws, statutes, ordinances, rules, regulations, and requirements of any governmental authority.

12. Notices and Parties' Representatives

Any notices permitted or required by this Agreement shall be addressed to the other party's Project Manager) as set forth in Section 2, above, and shall be deemed received (a) on the date they are personally delivered, (b) on the date they are sent via facsimile, or (c) on the third day after they are deposited in the United States mail, postage fully prepaid, by certified mail return receipt requested. Either party may change its representative(s) and the contact information for its representative(s) by providing notice in compliance with this Section of this Agreement.

13. Severability

If any term or provision in this Agreement shall be adjudged invalid or unenforceable, such adjudication shall not affect the validity or enforceability of the remainder of the Agreement, which remaining terms and provisions shall be valid and be enforced to the fullest extent permitted by law.

14. Entire Agreement; Modifications

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The Parties, by the signatures below of their authorized representatives, hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

INTERGOVERNMENTAL AGREEMENT



METRO
600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

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

City of Portland

METRO

Signature

Martha J. Bennett

Metro Chief Operating Officer

Print Name: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM BY:

Signature

Hope S. Whitney

Senior Assistant Metro Attorney

Print Name: _____

Title: _____

Date: _____

Date: _____