

EXHIBIT A

NOTE: Attachments are construction drawings and not included here for brevity. Attachments can be made available if desired.

INTERGOVERNMENTAL AGREEMENT

TRYON CREEK CONFLUENCE HABITAT ENHANCEMENT PROJECT

This Intergovernmental Agreement ("Agreement") is entered into this ____ day of _____, 2009 by and between the CITY OF PORTLAND, an Oregon municipal corporation, acting by and through its Bureau of Environmental Services ("BES"), and the CITY OF LAKE OSWEGO, an Oregon municipal corporation ("Lake Oswego").

RECITALS

A. BES desires to conduct a habitat enhancement project in an area that includes certain real property owned by Lake Oswego at the confluence of Tryon Creek and the Willamette River.

B. Lake Oswego desires to allow BES to conduct the habitat enhancement project under certain conditions, including allowances for a future pedestrian bridge alignment through the project area.

C. The parties desire to work cooperatively to achieve the public benefits that will result from improving habitat for native species in the Tryon Creek confluence area and from improving pedestrian trail connectivity in Lake Oswego and throughout the region.

AGREEMENT

1. License for BES Enhancement Project. Effective upon execution of this Agreement Lake Oswego hereby grants BES a license to access the real property described on attached Exhibit A (the "Construction Contract Documents"), Sheets G3.1 (3 of 19) and G3.2 (4 of 19), subject to the terms of this Agreement, for the purpose of performing, constructing, maintaining and monitoring a habitat enhancement project consisting of re-grading the northern bank of Tryon Creek to improve floodplain connectivity, placing large woody debris, boulders, grade control and streambed material in the channel to improve spawning and rearing of ESA-listed salmonids, species of concern lampreys and other native species, placing logs in upland areas for terrestrial habitat, removing invasive plants and installing native plantings in order to improve conditions in the riparian area, all as generally described in Exhibit A, Sheets C1.1 (9 of 19) and C1.2 (10 of 19) and Exhibit B (the "Planting Plan"), Sheets L1.1 and L1.2. These activities, construction and improvements by BES are referred to collectively herein as "the Enhancement Project." This license shall expire upon the earlier of five years following the completion of the Enhancement Project or December 31, 2015.

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2. Review and Approval. The Enhancement Project, including all activities, construction, improvements, revegetation, and maintenance, shall be consistent with Exhibits A and B.

3. Future Pedestrian Bridge. As shown in Exhibit A, Sheet G3.1 (3 of 19), the Enhancement Project is designed and shall be constructed to allow for a future pedestrian bridge to be constructed and maintained through the Enhancement Project area by Lake Oswego, including construction of a bridge and pier abutment, at the locations and alignment designated in the Construction Contract Documents. The Enhancement Project is designed and constructed so as to minimize the future habitat impacts of, and the anticipated mitigation requirements for, the future bridge project. As shown in Exhibit B, Sheet L1.1, no trees shall be planted within the 50' bridge corridor shown on the Construction Contract Documents, or in the location of the pier abutment, in order to facilitate future construction of the bridge and pier abutment.

4. Future Pathway. As shown in Exhibit A, Sheet C1.1 (9 of 19), the Enhancement Project is designed and shall be constructed to allow for future development of a canoe/kayak pathway to access the northern beach near the Enhancement Project area. BES shall not place woody debris or plant trees within the future development area for the canoe/kayak pathway.

5. Storage License. In addition to the license granted in Section 1 of this Agreement, Lake Oswego also hereby grants BES a license to store equipment and materials for the Enhancement Project in an area of approximately 4.5 acres. Storage will occur within construction limits. Areas outside of construction limits are hatched in Exhibit C. The license granted pursuant to this Section 5 shall commence upon execution of this Agreement, and shall expire upon the earlier of the completion of the Enhancement Project or October 31, 2011.

6. Project Mitigation. BES shall be allowed to use up to 3.5 acres of Lake Oswego City-owned property for mitigation purposes for the Enhancement Project in the area shown in Exhibit B. Mitigation shall meet Lake Oswego's tree removal permit mitigation requirements. Mitigation plantings shall include native grasses, shrubs, and trees. Any adjustments to the agreed upon mitigation area, and the proposed plant materials and locations for planting, shall be approved of by Lake Oswego in advance.

7. Soil Disposal. As shown in Exhibit A, Sheets C1.1 and C1.2 (9 and 10 of 19) and Special Provisions Specification Section 00330 – Earthwork, Lake Oswego shall allow BES to dispose of soil removed from the project area in the course of the Enhancement Project on up to 2.5 acres of Lake Oswego property in Tryon Cove Park. Soil deposited within the top 24" of the deposition zone shall be native material, and shall not include debris or hazardous materials or other contaminants.

A Phase I Environmental Site Assessment was completed for the 6.5-acre property in December 1999. The report concluded that further investigatory work did not appear to be necessary. BES conducted soil sampling on the site in November 2006 in preparation

for Enhancement Project design. Test results showed that none of the three samples had detectable petroleum hydrocarbons. The detections in metals analysis were below Oregon background levels.

In addition, soil deposits in the deposition zone shall not exceed an average of two feet in depth over the entire approved deposit area, and shall not exceed a depth of six feet in any location on the site, as shown in Exhibit A, Sheet C2.2 (12 of 19). The final placement and grading of the deposited soils will be done by BES according to the Construction Contract Documents, and shall be deposited in manner that minimizes the existing site grades for a future regional trail.

8. Tree Disposal. Placement of upland logs shall be consistent with Exhibit A, Sheet C1.2 (10 of 19).

9. Pathway/Bridge Alignment. BES and Lake Oswego agree to negotiate in good faith to determine the location of a future Lake Oswego pedestrian bridge and a mutually agreeable route for a pedestrian path across the BES Wastewater Treatment Plant property. The purpose of the pedestrian path is to provide a connection for the Willamette River Regional Trail between Lake Oswego's future pedestrian bridge and Lake Oswego's existing Foothills Park trail. The parties desire to work cooperatively to achieve the public benefits that will result improving pedestrian trail connectivity in Lake Oswego and throughout the region. The intent of the parties is to utilize the existing BES-City of Lake Oswego Foothills Park recreational easement dated December 22, 2004 to the maximum extent practicable. The alignment should be designed, to the extent practicable, to buffer pedestrians and bicyclists from wastewater treatment plant processes and to minimize impairment of wastewater treatment plant expansion options.

In addition, the BES will work with Lake Oswego in good faith during master planning for the Water Treatment Plant and/or Foothills redevelopment discussions to consider other options for a pedestrian bridge crossing which may result in a more desirable and less costly option than a crossing at the mouth of Tryon Creek.

10. Lake Oswego will allow BES to post an interpretive sign at the Enhancement Project describing the project and contributors. This sign is not part of the Construction Contract Documents. BES will coordinate sign details, such as size, content and location with Lake Oswego staff.

11. Responsibility for Costs. BES shall be responsible for all costs of constructing the project. If contaminated or hazardous substances are encountered on Lake Oswego property, BES shall immediately notify Lake Oswego. BES will handle these materials in accordance with Exhibit D, Section 00291 of the City of Portland Standard Construction Specifications. Costs associated with contaminated or hazardous substances discovered in the course of construction shall be split equally between Lake Oswego and BES. In the alternative, Lake Oswego and BES may agree to terminate the project or modify the project's design to address contaminated or hazardous substances.

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BES is not responsible for costs incurred by Lake Oswego for review or administration of this agreement or the Enhancement Project.

BES shall be responsible for acquiring all permits related to the Enhancement Project at its expense. The obligation to proceed with the project is contingent upon receipt of permits and appropriations of funding by Portland City Council.

12. Monitoring and Maintenance. Following construction of the Enhancement Project, Lake Oswego may mow, at its discretion, areas designated as "Native Grass Seed" in Exhibit B. BES has no responsibility to mow.

Following construction of the Enhancement Project, Lake Oswego shall grant BES a license to cross property owned by the City of Lake Oswego, in the location described in Exhibit B, for the purpose of maintaining the Enhancement Project improvements along the Tryon Creek corridor. BES shall use this license to perform adaptive maintenance activities, such as cutting large woody debris, moving and or removing large wood, and performing localized grading in the creek corridor, all at the expense of BES. BES shall be responsible for all required notices to local, state and federal agencies when maintenance is deemed necessary.

Following construction of the Enhancement Project and until December 31, 2015, BES shall be responsible for monitoring the project area improvements at its expense. Monitoring activities may include, but are not limited to, photo monitoring, fish counts, vegetation establishment, survey cross-sections, aquatic and terrestrial observations, and water quality testing.

BES shall notify Lake Oswego in advance of entering the project area for monitoring or maintenance activities.

13. Insurance. BES shall require its contractor to name Lake Oswego as an additional insured with coverage and limits as follows:

a. Automobile Liability Insurance for Contractor's/Subcontractor's activities on the Project Site and off the Project Site:

\$1,000,000 combined single limit for bodily injury and property damage per occurrence for Contractor's/Subcontractor's owned, non-owned, and hired vehicles.

b. Workers Compensation and Employers Liability Insurance for activities off the Project Site:

Oregon statutory coverage and limits for Workers Compensation Employers Liability insurance with limits not less than:

\$500,000 for each accident-bodily injury by accident.

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\$500,000 each employee-bodily injury by disease.

\$500,000 annual aggregate-bodily injury by disease.

c. Commercial General Liability insurance for activities off the Project Site.

The policy shall not contain exclusions for Blanket Contractual, Broad Form Property Damage, Personal Injury, Premises-Operations, Products-Completed Operations, Independent Contractors, Fire Legal Liability, and Explosion, Collapse, and Underground (XCU) property damage liability. Policy limits shall not be less than:

\$1,000,000 combined single limit for bodily injury and property damage per occurrence.

14. Amendments. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by both parties.

15. Captions. The Captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

16. No Third Party Beneficiary. BES and Lake Oswego are the only parties to this Agreement and as such are the only parties entitled to enforce its terms. Nothing contained in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties.

17. Indemnification. Within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, and Article XI, Section 9 of the Oregon Constitution, each party agrees to indemnify and defend the other and its elected officials, officers, employees, agents and representatives from and against all claims, demands penalties and causes of action of any kind or character relating to or arising from this Agreement, including the cost of defense or attorney fees, arising in favor of any person on account of personal injury, death or damage to property and arising out of or resulting from the negligent or other legally culpable acts or omissions of the indemnitor, its employees, agents, subcontractors or representatives.

18. Termination.

The parties may agree to an immediate termination of this IGA, or at a time certain, upon mutual written consent.

Either party may terminate this IGA effective not less than 30 days from delivery of written notice to the other party.

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Either party may terminate this IGA effective not less than 10 days from written notice or at such other date as may be established by both parties under any of the following conditions:

- a. If funding is not obtained and continued at levels sufficient to allow for purchase of the specified services. When possible, and when agreed upon, the IGA may be modified to accommodate a reduction in funds.
- b. If federal or state regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this IGA, or are no longer eligible for the funding proposed for payments authorized by this IGA.

Either party may terminate this IGA in the event of a breach by the other party. Prior to such termination, however, the party seeking termination shall give the other party written notice of the party's intent to terminate. If the party has not cured the breach within 10 days or a longer period as granted in the cure notice, the party seeking compliance may terminate this IGA.

In the event of termination, BES agrees to remove debris and equipment associated with the Enhancement Project in a manner agreeable to both parties.

CITY OF PORTLAND

CITY OF LAKE OSWEGO

WTR

Dean Marriot, Bureau Director Date

Jack D Hoffman, Mayor Date

Approved as to form:

APPROVED AS TO FORM

Linda Meng

Linda Meng, City Attorney
CITY ATTORNEY

Approved as to form:

David Powell, City Attorney