

**AMENDMENT NUMBER 01**  
**INTERGOVERNMENTAL AGREEMENT**  
**Columbia Slough Trail**  
***City of Portland***

The **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "State," and the **City of Portland**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on April 21, 2008. Said Agreement covers the extension of Columbia Slough Trail between Denver Avenue and Martin Luther King Boulevard.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to extend the project completion and termination date, revise project scope, update Agency Project Manager and update standard language. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**Exhibit A shall be deleted in its entirety and replaced with the attached Revised Exhibit A. All references to "Exhibit A" shall hereinafter be referred to as "Revised Exhibit A."**

**Recitals, Table 1, Page 2, Project 6, which reads:**

Project	Preliminary Amount	Funding Recommended for
6 Columbia Slough Trail	\$460,000	Extension of the Columbia Slough Trail between Denver Avenue and Martin Luther King Blvd.

**Shall be deleted in its entirety and replaced with the following:**

Project	Preliminary Amount	Funding Recommended for
6 Columbia Slough Trail	\$460,000	Extension of the Columbia Slough Trail between Denver Avenue and Vancouver Avenue.

**TERMS OF AGREEMENT, Paragraph 1, Page 2, which reads:**

1. Under such authority, State wishes to retain the services of Agency to extend the Columbia Slough Trail between Denver Avenue and Martin Luther King Blvd. The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof. The total Project cost is estimated at \$610,000. The Community Enhancement Funds are limited to \$460,000. Agency shall be responsible for the remaining balance of all Project costs not covered by the Community Enhancement Funds.

**Shall be deleted in its entirety and replaced with the following:**

1. Under such authority, State wishes to retain the services of Agency to extend the Columbia Slough Trail between Denver Avenue and Vancouver Avenue. The location of the Project is approximately as shown on the sketch map attached hereto, marked Revised Exhibit A, and by this reference made a part hereof. The total Project cost is estimated at \$610,000. The Community Enhancement Funds are limited to \$460,000. Agency shall be responsible for the remaining balance of all Project costs not covered by the Community Enhancement Funds.

**TERMS OF AGREEMENT, Paragraph 2, Page 3, which reads:**

2. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate four years from the date of execution.

**Shall be deleted in its entirety and replaced with the following:**

2. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on December 31, 2013.

**AGENCY OBLIGATIONS, Paragraph 4, Page 3, which reads:**

4. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its contractors complies with these requirements.

**Shall be deleted in its entirety and replaced with the following:**

4. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.

**AGENCY OBLIGATIONS, Paragraphs 6 and 7, Pages 3 and 4, which read:**

6. Agency shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation, its officers and employees from any and all claims, suits, and liabilities which may occur in the performance of this Project.
7. Notwithstanding the foregoing defense obligations under the paragraph above, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

**Shall be deleted in their entirety and replaced with the following:**

6. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
7. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.

**AGENCY OBLIGATIONS, Paragraph 10, Page 4, which reads:**

10. Agency's Project Manager is Gregg Everhart, Landscape Architect, Portland Parks and Recreation, 1120 SW 5<sup>th</sup> Avenue, Suite 1302, Portland, Oregon 97204-1933 (503) 823-6009.

**Shall be deleted in its entirety and replaced with the following:**

10. Agency's Project Manager is Travis Ruybal, Capital Project Manager II/Landscape Architect, Portland Parks and Recreation, 1120 SW 5<sup>th</sup> Avenue, Suite 1302, Portland, Oregon 97204, (503) 823-5487, [travis.ruybal@portlandoregon.gov](mailto:travis.ruybal@portlandoregon.gov), or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

**Insert new AGENCY OBLIGATIONS, Paragraphs 11 and 12, to read as follows:**

11. Agency or its consultant shall acquire all necessary rights of way according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Certification of right of way acquisition work must be made by the Agency (or on behalf of its consultant) doing the work. If Agency acquires the right of way, they shall provide a letter from Agency's legal counsel certifying that 1) the right of way needed for the Project has been obtained and 2) right of way acquisition has been completed in accordance with the right of way requirements contained in this Agreement. The certification form shall be routed through the State Region 1 Right of Way Office for co-signature and possible audit. If Agency elects to have State perform right of way functions, a separate agreement shall be executed between Agency and State right of way, referencing this Agreement number.
12. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

**GENERAL PROVISIONS, Paragraph 4, Page 5, which reads:**

4. Agency acknowledges and agrees that State, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

**Shall be deleted in its entirety and replaced with the following:**

4. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

**Insert new GENERAL PROVISIONS, Paragraphs 7 through 10, to read as follows:**

7. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
8. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

9. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
10. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2006-2009 Statewide Transportation Improvement Program, (Key #15208) that was approved by the Oregon Transportation Commission subsequently approved by amendment to the STIP (Amendment #0609-65a) on January 4, 2007.

**Signature Page to Follow**

**CITY OF PORTLAND**, by and through  
its elected officials

By \_\_\_\_\_  
Commissioner

Date \_\_\_\_\_

By \_\_\_\_\_  
Auditor

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By James H. Van Dyke  
Agency Attorney  
**CITY ATTORNEY**

Date 3/2/2012

**Agency Contact:**

Travis Ruybal  
Portland Parks & Recreation  
1120 SW Fifth Ave., Suite 1302  
Portland, OR 97204  
(503) 823-5487  
travis.ruybal@portlandoregon.gov

**State Contact:**

Shelli Romero  
ODOT-Region 1  
123 NW Flanders St.  
Portland, OR 97209  
(503) 731-8231  
shelli.romero@odot.state.or.us

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services Manager/Chief  
Engineer

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Planning Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

## REVISED EXHIBIT A

### Columbia Slough Trail

#### **Scope of Work**

This Project will design and construct a hiking / biking trail along the Columbia Slough as part of the I-5 Delta Park (Victory to Lombard) highway project, (Key #12076),. Phase 1 of the Delta Park project will widen this section of SB I-5 to three lanes. Phase 2 will incorporate improvements to Schmeer Road and Denver Avenue to improve access to I-5.

The Columbia Slough Trail "Denver Avenue to Vancouver Avenue" stretches from the intersection of Denver Avenue & Schmeer Road and will align on the existing levee to the east terminating at Vancouver Avenue. An additional trail connection from the levee north to Schmeer Road running parallel to I-5 within State right of way will also be designed and constructed as part of this Project (See Map Exhibit).

This Project provides an additional link in the overall Forty Mile Loop network and further meets City of Portland planning goals of creating additional recreation resources and opportunities for alternative modes of transportation.

#### **Schedule:**

Design and PE	Fall 2010 to Spring 2013
ROW	Fall 2010 to Spring 2013
*Construction	Spring 2013 to Fall 2013

\*Note construction schedule is dependent on final easement acquisition completed by Metro.

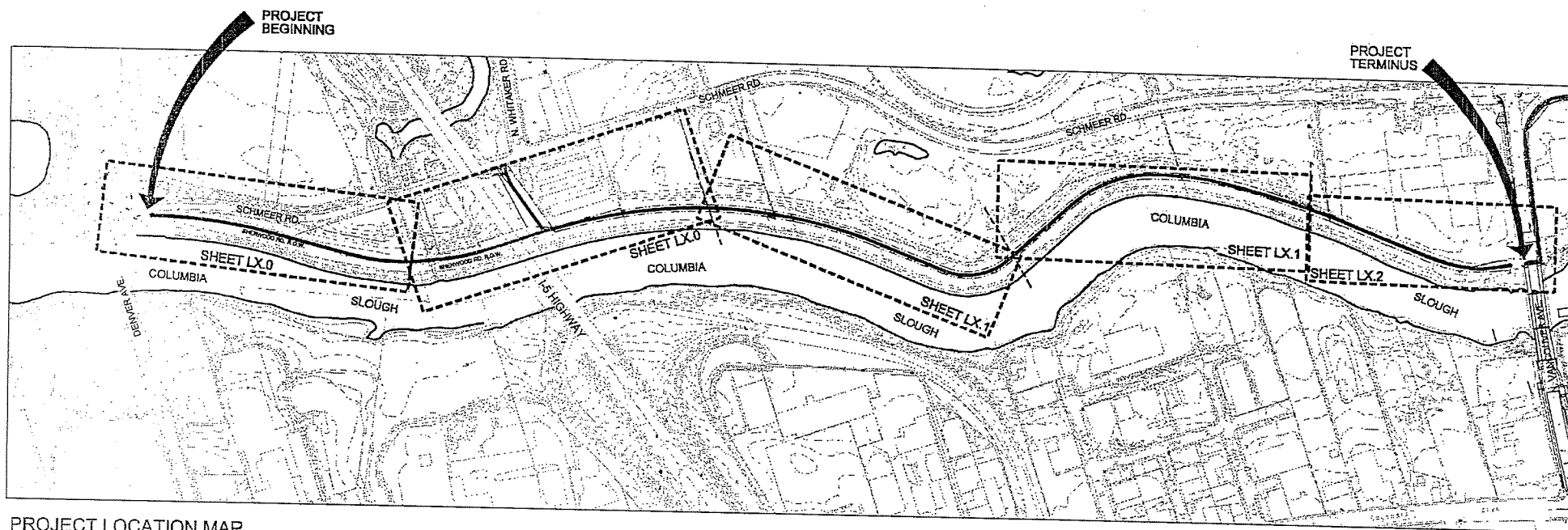
**Total Construction Cost**      \$610,000

Overall project cost is estimated at \$610,000. State will provide \$460,000 in funding for the Project. An additional \$150,000 will be contributed by City of Portland, Parks Bureau.

Per this Agreement, State shall work with City of Portland, Parks Bureau and Office of Transportation (PBOT) on the issue of connecting the Columbia Slough Trail segments East and West of the Denver viaduct.

The Director of Parks and Recreation or his designee is authorized to execute amendments to this Agreement and give any notices or acceptances to take any action once approved as to form by the City Attorney, to execute on behalf of the City any other document necessary to protect the City's rights, or carry out the City's responsibilities under this Agreement.





PROJECT LOCATION MAP

SCALE: 1"=200'-0"



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