

**AMENDMENT NUMBER 01
TERMINATION
COOPERATIVE IMPROVEMENT AGREEMENT
Peninsula Crossing Trail - North Portland Road Section
Swift Highway (OR 120)**

The State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," Metro, acting by and through its designation as the Portland Urbanized Area Metropolitan Planning Organization, hereinafter referred to as "METRO," and the City of Portland, acting by and through its elected officials, hereinafter referred to as "CITY," entered into an Agreement on February 3, 2000 (No. 16769). Said Agreement covers the design and construction of Segment 3 of the Peninsula Crossing Trail along the East side of N. Portland Road on ODOT right-of-way completing the bike pedestrian link between the Columbia Slough and N. Marine Drive (Swift Highway).

It has now been determined by State, CITY and METRO that the Agreement referenced above shall be terminated in its entirety. The reason for this termination is as follows:

At the time of execution, ODOT stated in the Agreement that it was in the process of transferring the right-of-way on or impacted by the Project, Swift Highway (OR 120), to CITY. This process has now been finalized between CITY and ODOT by Jurisdictional Transfer Agreement No. 770, executed March 4, 2008 and by the Jurisdictional Transfer Document signed May 2, 2008. The portion of the Project that was on ODOT right-of-way has now been passed to CITY by the Jurisdictional Transfer. Ownership and maintenance responsibilities have now passed to CITY.

Agreement number 16769 with METRO and CITY is hereby terminated in its entirety upon execution of this Termination Agreement. METRO and CITY agree that Segment 3 of the Peninsula Crossing Trail will now instead be governed by that certain agreement between METRO and CITY dated December 11, 1996 (No. 50833), attached as Exhibit A to this Amendment (the "IGA"), under Section 4(B)(1) of the IGA.

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 Amendment, hereby acknowledge that their signing representatives have read this Amendment, understand it and agree to be bound by its terms and conditions.

City/Metro/ODOT
Agreement No. 16769-01

CITY OF PORTLAND, by and through
its elected officials

STATE OF OREGON, by and through its
Department of Transportation

By _____
Mayor

By _____
Region 1 Manager

Date _____

Date _____

~~APPROVED AS TO FORM~~ **APPROVED AS TO FORM**

**APPROVED AS TO LEGAL
SUFFICIENCY**

By James H. Van Dyke
City Attorney
CITY ATTORNEY

By _____
Assistant Attorney General

Date 10/29/12

Date _____

METRO, by and through its chief
operating officer, or her designee

ODOT Contact:
Basil Christopher
R1 Bike/Ped. Coordinator
123 NW Flanders Street
Portland, OR 97209
503-731-3261
basil.r.christopher@odot.state.or.us

By [Signature]

Title Director, Sustainability
center

Date Oct 23, 2012

CITY Contact:
Patrick G. Boyd
Contracts Management Coordinator
Portland Bureau of Transportation
1120 SW 5th Ave. Suite 800
Portland, OR 97204
503-823-7031
patrick.boyd@portlandoregon.gov

APPROVED AS TO FORM

By [Signature]
Assistant Metro Attorney

Date 10/22/12

METRO Contact:
Mel Huie, Principal Planner
Metro
600 NE Grand Avenue
Portland, OR 97232
503-797-1731
mel.huie@oregonmetro.gov

EXHIBIT A
Peninsula Crossing Trail IGA

ORDINANCE No. 170771

* Intergovernmental Agreement with Metro for Design, Construction and Maintenance of the Peninsula Crossing Trail (Ordinance)

The City of Portland ordains:

Section 1: The Council finds:

1. Through Resolution No. 35388 in April, 1995, Council accepted the Peninsula Crossing Trail Feasibility Study and its recommendations regarding alignment, development and management.
2. Funding has been appropriated in the Bureau of Environmental Services Inverness Force Main Project for portions of trail across Columbia Boulevard Wastewater Treatment Plant (CBWTP) property and for a bike/pedestrian bridge which will cross the Columbia Slough.
3. Metro's Bond Measure 26-26 for Open Spaces, Trails and Streams was approved by the voters in May, 1995, and Metro's Council has subsequently approved a work plan and budget which includes \$1.6 Million to design and construct the Peninsula Crossing Trail.
4. The multi-use urban trail will provide a three-mile corridor linking the Willamette and Columbia Rivers. The proposed alignment connects residential and employment areas with significant natural areas and parks. The route is adjacent to five neighborhoods and is within one-half mile of five schools.
5. The intergovernmental agreement specifies responsibilities for design, construction and maintenance of the trail among Metro and the City Offices of Transportation and Bureaus of Parks and Environmental Services.

NOW, THEREFORE, the Council directs:

- a. The Commissioners of Public Utilities and Public Safety and the Auditor are hereby authorized to enter into an intergovernmental agreement with Metro in accordance with the agreement attached as Exhibit A.

Section 2. The Council declares that an emergency exists because a delay in proceeding could delay completion of the project on schedule; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, DEC 11 1996

Commissioner Mike Lindberg
Nea Lynn Robinson
December 2, 1996

BARBARA CLARK
Auditor of the City of Portland

By *Britta Olson*
Deputy

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50833

JAN 9 1997

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT

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

Peninsula Crossing Trail

This Intergovernmental Agreement ("Agreement") dated this 11 day of DECEMBER 1996, is by and between Metro, located at 600 Northeast Grand Avenue, Portland, Oregon 97232-2736, and the City of Portland Bureau of Environmental Services ("BES"), the City of Portland Department of Transportation ("PDOT") and the City of Portland Bureau of Parks and Recreation ("Parks"), located at the Portland Building, 1120 Southwest Fifth Avenue, Portland, Oregon 97204, (hereinafter collectively referred to as "City"), for the purpose of providing responsibilities and obligations of the parties as they relate to the design, construction, operation, and maintenance of the Peninsula Crossing Trail ("Trail").

RECITALS:

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

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

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

D. The Metro Council forwarded to the voters of the region a ballot measure which was approved by the electors on May 16 1995, authorizing Metro to issue \$135.6 million in bonds for Open Spaces, Parks, Trails and Streams. In accordance with that ballot measure, Metro has budgeted and will contribute up to \$1.6 million for the design and construction of certain portions of the Trail.

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

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

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Boulevard Wastewater Treatment Plant. A segment of the "40-Mile Loop" trail is located within BES's project.

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

H. Metro intends to purchase a 1.46 acre undeveloped parcel which is located at the north end of the Carey Blvd. section of the Trail. This parcel is intended to provide an improved trail alignment. The purchase is expected to be finalized in February 1997.

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

AGREEMENT

The parties agree as follows:

Section 1. Design

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

Section 2. Permits.

- A. Permit Application/Estimate of Permit Fees. Metro and BES shall obtain or cause their respective contractors to obtain all required City permits necessary for the construction of their respective segments of the Trail. Metro and the City agree to use their best efforts to assist each other in obtaining all permits required for the design, construction and operation of the Trail in accordance with applicable permitting process. PDOT's current estimate for the Carey Blvd. permit fee is Eighty Eight Thousand and Two Hundred dollars (\$88,200.00).
- B. Street Improvement Permitting Process. PDOT shall carefully manage the City's Street Improvement permitting process, shall provide a full accounting of permit costs at reasonable times as requested by Metro and shall immediately inform Metro of any permit cost overruns or potential for permit cost overruns.

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Section 3. Construction.

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

Section 4. Maintenance, Operation and Management

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

B: Post Construction Phase.

1. Regardless of ownership and upon completion of construction, the City shall be responsible for maintenance, operation and management of all sections of the Trail located upon City property, City right-of-way or the parcel Metro intends to acquire which is located at the north end of the Carey Blvd. right-of-way at Columbia Blvd. except for those items included under the contractor's warranty. Maintenance, operation and management of the Trail segment on the south section of N. Portland Road, to be constructed by Metro, is set forth in the Metro-ODOT IGA.

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

• PDOT will be responsible for the street maintenance associated with the Carey Boulevard section bike routes located along Fessenden Street and Portsmouth Avenue;

~~• BES, in cooperation with Parks, will be responsible for the Treatment Plant property segment, and~~

• Parks will be responsible for the ~~Carey Boulevard segment~~ *off-street segments, including* the proposed Metro purchase of the parcel at the north end of Carey Blvd. exclusive of the bike routes.

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

Handwritten signatures and initials: "KK", "CJL", "JK", "CJL" with an asterisk.

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

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

Section 7. Schedule. A preliminary project schedule has been developed and attached as Exhibit B and hereby incorporated herein. The dates on this schedule are subject to change. However, the City and Metro intend to use their best efforts to meet

* Christine Canham Leon, PDOT
John Sewell, Parks
Hea Lynn Robinson, BES

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these dates and to proceed with their respective obligations at a pace necessary to maintain these dates and complete the entire project by January 1, 1999.

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

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

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

Section 11. Indemnification. The City shall defend, indemnify and hold harmless Metro and its officers, agents and employees, against all loss, damage, expenses, judgments, claims and liability, whether arising in tort, contract or by operation of any statute or common law, arising out of or in any way connected to the wrongful acts of the City's officers, agents and employees acting within the scope of employment or duties in performance of this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act ORS Chapter 30.

Metro shall defend, indemnify and hold harmless the City and its officers, agents and employees, against all loss, damage, expenses, judgments, claims and liability, whether arising in tort, contract or by operation of any statute or common law, arising out of or in any way connected to the wrongful acts of Metro's officers, agents and employees acting within the scope of employment or duties in performance of this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act ORS Chapter 30.

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

Section 13. Oregon Constitution and Tax Exempt Bond Covenants. The City acknowledges that Metro's source of funds for this Project is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d), and 11(e) of the Oregon Constitution, and that the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The City covenants that it will take no actions that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or the income tax exempt

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status of the bond interest. In the event the City breaches this covenant, Metro shall be entitled to what ever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.

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

Section 15. Documents are Public Property. All records, reports, data, documents, systems and concepts, whether in the form of writings, figures, graphs, or models which are prepared or developed in connection with the Project shall become public property.

Nothing in this section or in any other part of this Agreement shall be construed as limiting the ability to consider real property transactions in executive session pursuant to ORS 192.660 (1)(e) or as requiring disclosure of records that are otherwise exempt from disclosure pursuant to Public Records Law (ORS 192.410-505) or Public Meetings Law (ORS 192.610-690).

Section 16. Law of Oregon. This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the court of the state of Oregon.

All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement including but not limited to ORS 279.015 to 279.320.

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

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

Section 18. Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.

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Section 19. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

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

CITY OF PORTLAND

METRO

By: Charles Hales
Title: Comm. of Public Safety

By: Mike Burton
Title: Exec. Dir.

By: Mike Lindberg
Title: Commissioner of Public Utilities

By: Burke
Title: AUDITOR

By: _____
Title: _____

Approved as to Form:
[Signature]
City Attorney

Approved as to Form:
[Signature]
Metro Attorney

City/Metro/ODOT
Agreement No.16769-01

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EXHIBIT B

Peninsula Crossing Trail Preliminary Schedule

Prepared December 1996

<i>Activity</i>	<i>Start Date</i>	<i>End Date</i>
Design of BES trail section	Complete	
Construction of Slough Bridge by BES	September 1996	August 1997
Public involvement & pre-design phase of Metro's section	January 1997	March 1997
Design of Metro trail section	April 1997	September 1997
Construction of Metro trail section	March 1998	November 1998
Construction of BES trail section	July 1999	December 1999