

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF
PORTLAND AND CLACKAMAS COUNTY FOR THE DESIGN,
CONSTRUCTION, MAINTENANCE, AND MANAGEMENT OF THE
CLACKAMAS COUNTY PORTION OF THE SPRINGWATER CORRIDOR**

This Agreement is entered into by and between the City of Portland, Oregon (the City), a municipal corporation, by and through its Bureau of Parks and Recreation (Parks) and Clackamas County, Oregon (Clackamas County), collectively referred to as the Parties.

RECITALS

- A. The City is a municipal corporation of the State of Oregon and Clackamas County is a political subdivision of the State of Oregon. Both are organized and exist under the laws of the State of Oregon.
- B. The City enters into this Agreement pursuant to the authority granted by Section 2-105(a) 4 of its City Charter as well as ORS Chapter 190. Clackamas County enters into this Agreement pursuant to the authority granted by ORS Chapter 190.
- C. This Agreement concerns the Clackamas County portion of the Springwater Corridor, which is the former Springwater Division Line. The Springwater Corridor extends from milepost 5.094 near McLoughlin Boulevard in Portland, through Clackamas County to milepost 21.573 in Boring, Oregon.
- D. The City acquired the Springwater Corridor in 1990 from the Portland Traction Company and requested a "Notice of Interim Trail Use" pursuant to 16 U.S.C. §1247(d) from the Interstate Commerce Commission, in order to obtain and protect a virtually irreplaceable segment of the 40 Mile Loop Regional Trail system of walking, hiking, biking and equestrian trails on behalf of the City and the entire metropolitan region.
- E. The City intends to preserve the entire 21.5 mile Springwater Corridor as a unique natural resource area and to develop it as a walking, hiking, biking, and equestrian recreational resource for the region. Although the existing rail bed can be used with caution as a walking, hiking, biking, and equestrian facility, full development of the Springwater Corridor contemplates construction of a hard surface and soft surface trail, installation of signs, improvements to trestles, bridges and street crossings, and construction of trailhead parking areas.
- F. Clackamas County desires to design, construct, maintain and manage that segment of the Springwater Corridor, **south of Rugg Road to the north side of Dee Street**, which lies within Clackamas County.
- G. The intent of this Agreement is to grant to Clackamas County the right to design, construct, maintain, and manage a walking, hiking, biking, and equestrian recreational and commuting trail on the Clackamas County portion of the Springwater Corridor.

H. In addition to its primary use as a recreational and commuting trail, the Springwater Corridor may also be used for non-intrusive, compatible uses such as locating underground communications facilities and utilities, crossings, etc. As the owner of the entire Springwater corridor, the City retains the right, subject to the "Terms" below, to approve crossings, permits, licenses, easements and deeds for such non-intrusive, compatible uses at no cost to Clackamas County.

I. Clackamas County Parks has been awarded \$1.2 million in Oregon Department of Transportation Enhancement (ODOT TE) funding to build the Clackamas County portion of the Springwater Corridor.

TERMS

1. This Agreement grants to Clackamas County the right to design, construct, maintain and manage the Clackamas County portion of the Springwater Corridor, which is located approximately between Rugg Road and Dee Street and is more specifically depicted in Exhibit A and described in Exhibit B.
2. This Agreement shall take effect upon approval and signature by both parties and continues in full force and effect for an initial term of ten (10) years. Upon the mutual written agreement of the Parties, this Agreement may be renewed for an additional ten (10) year term.
3. Rights granted to Clackamas County under this IGA are contractual only, with no property rights being conveyed hereunder. When exercising its rights under the Agreement, Clackamas County will fully comply with applicable provisions of law, as they may change over time. Furthermore, all rights granted to the County are subject to the prior existing rights of others, including but not limited to that easement dated April 23, 1953 granted to Portland General Electric.
4. Clackamas County agrees to design, construct, maintain, and manage a recreational and commuting trail on the Clackamas County portion of the Springwater corridor in a manner that is substantially consistent with the City's master plan for the Springwater Corridor titled, Springwater Trail Corridor Master Plan, dated November, 1992 (Master Plan). Any deviations from the Master Plan will be presented to Parks for review and approval. Clackamas County acknowledges that the entire Springwater Corridor, including the Clackamas County portion, must be developed such that its potential future use as an active transportation rail corridor is preserved.
5. The trail shall be an accessible recreational resource for the people of Oregon. Clackamas County may, however, place reasonable restrictions on public use of Clackamas County's portion of the Springwater Corridor.
6. Trail construction and Springwater Corridor improvements, including parking or picnicking areas or other use of additional Springwater Corridor space, shall be in accordance with design plans developed by Clackamas County in consultation with

Parks, with Parks consultation to include assignment of a Parks staff person to serve as liaison to participate in the planning and design process.

7. Clackamas County will provide the financial match and project management services for the ODOT TE grant project. Clackamas County is the primary contact for the ODOT TE project and will administer all aspects of the project. Clackamas County will provide updates to Portland regarding process and will not proceed with construction until City has approved final plans, which approval will not be unreasonably denied.

8. For any future improvements made by Clackamas County, Clackamas County will submit to the City design documents and specifications at the 30%, 60%, and 90% completion points for review and approval. The City agrees to not unreasonably withhold approval. Upon receipt of the design documents and specifications, the City shall have thirty (30) days to review and submit comments and requested changes to Clackamas County.

9. The parties acknowledge that Clackamas County may apply for additional grants from a variety of regional, state and/or federal programs to supplement available County financial resources for the design, construction, improvement, or repair of the trail. The County agrees to provide reasonable notice to the City prior to submitting a proposal to a granting agency. The City agrees to facilitate the County's efforts to secure grant funds by providing necessary landowner signatures, approvals and commitments as required by a granting agency in a timely manner.

10. Signs installed by Clackamas County will be designed in coordination with City, to ensure a common style throughout the Trail, and will specifically identify the trail as part of the 40-Mile Loop Regional Trail System. Unless otherwise agreed, the logos of both Parties will be depicted on signs.

11. To the extent it has the funds available, and once the improvements are complete, Clackamas County will be responsible for all maintenance and repair of all improvements, including the bridge, that are part of the current ODOT TE Project, as well as for any improvements made by Clackamas County in the future. Clackamas County will provide for and fund all routine maintenance of the Clackamas Springwater Corridor; including, but not limited to, mowing, brush clearing, spraying, and removal of refuse, tree maintenance and drainage maintenance. Clackamas County shall also be responsible for making all repairs necessary to maintain this portion of the Springwater Corridor in a safe and useable condition. In the event that Clackamas County may not have sufficient funds available to fulfill its obligations under this Agreement, it will provide Parks with sufficient written notice of the potential deficiency and work in a good faith manner with Parks to remedy the problem.

12. Clackamas County will periodically monitor its portion of the Springwater Corridor to determine whether encroachments on the property are occurring and work with Parks to resolve said encroachments in a mutually acceptable manner. The parties intend that Clackamas County will be primarily responsible for monitoring and removal of

"nuisance" type encroachments which can be remedied with a minimum of formal legal action. To the extent that a more permanent encroachment is observed which threatens the integrity of the Springwater Corridor, City, as the underlying property owner, will be primarily responsible. The parties anticipate that communication and cooperation between their respective city attorney offices will best resolve any difficulties relating to this aspect of trail management. Neither party is obligated to undertake any legal action beyond what each respectively considers appropriate and feasible.

13. Parks retains the right to approve requests for crossings, permits, licenses, and easements within the Clackamas County portion of the Springwater Corridor. Clackamas County will forward any such requests to Parks for consideration and will inform the requestors that the City owns the underlying fee to the Springwater Corridor. Except as stated in paragraph 18, below, if the City uses or permits others to use the Springwater Corridor, including the Clackamas County portion of the Springwater Corridor, in a manner that generates revenue, the City will be solely entitled to the revenue.

14. Parks will notify the Clackamas County Park Manager of any request made to the City for a crossing, permit, license, easement or deed within Clackamas County's portion of the Springwater Corridor. Parks will not grant any such request or use within the Clackamas County portion of the Springwater Corridor unless Clackamas County approves, which approval shall not be unreasonably withheld. Parks will require any such applicant to comply with any code or regulation of Clackamas County, including Clackamas County's land use codes and regulations.

15. If Parks authorizes the disturbance of the Clackamas County portion of the Springwater Corridor for any reason, (e.g., by granting a request or use which involves construction on the Springwater Corridor), Parks will require as a term of any agreement authorizing the request or use that the Clackamas County portion be restored to the same or better condition at no cost to Clackamas County. Parks will provide Clackamas County thirty (30) days notice of an authorized disturbance.

16. The City reserves the right to construct, or allow others to construct, utilities within the Clackamas County portion of the Springwater Corridor as long as the utilities, after construction, do not interfere with or impair the use of the Springwater Corridor for its recreational and commuting purposes. Parks agrees to consult with Clackamas County regarding such plans and will submit final plans to Clackamas County for its review and approval, which approval shall not be unreasonably withheld. If the City disturbs the Clackamas County portion of the Springwater Corridor during construction, the City will repair or restore the Springwater Corridor to the same or better condition at no cost to Clackamas County.

17. Clackamas County may be permitted to construct utilities within the Clackamas County portion of the Springwater Corridor as long as the utilities, after construction, do not interfere with or impair the use of the corridor for its recreational and commuting purposes. Clackamas County utility proposals for the Springwater Corridor will be considered in accordance with Springwater Corridor permitting procedures adopted by

City Council, as they may change over time.

18. Clackamas County is authorized to permit any events, including races, walks or other temporary recreational or fundraising events on the Clackamas County portion of the Springwater Corridor. The City will refer any event requests it receives to Clackamas County, and Clackamas County will be solely entitled to any revenue, with said revenue to be used for management of or improvements to the Springwater Corridor. Clackamas County will timely notify Portland Parks and Recreation Permit Center of any events that it permits to ensure that conflicts do not arise. As the Trail is used for commuting purposes, Clackamas County will make reasonable efforts to avoid permitting events that will close the Trail to commuters. Clackamas County will require as a term of its permits that the permittee indemnify and defend the City of Portland against all claims and actions arising out of the permittee's use of the Springwater Corridor.

19. Clackamas County has examined the Clackamas County portion of the Springwater Corridor, including all appurtenances thereto. No representations or warranties as to the condition of the Clackamas County portion of the Springwater Corridor have been made by the City. The City shall have no liability to any person or entity for any damage or injury caused by the condition of the Clackamas County portion of the Springwater Corridor.

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

21. The City shall indemnify, defend and hold harmless Clackamas County and its agents, employees, and elected officials 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, its officers, agents, or employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30.

22. Nothing in this Agreement shall obligate either party to expend funds in excess of funds available to it.

23. Clackamas County shall not assign any part of its rights and duties under this Agreement without the prior written consent of the City.

24. Any written notice required or permitted under this Agreement shall be mailed to the following unless each party is notified otherwise:

a) For Portland:
City of Portland

With a copy to:
City Attorney's Office

INTERGOVERNMENTAL AGREEMENT

183740

Director of Parks & Recreation
1120 S.W. 5th Ave., Suite 1302
Portland, Oregon 97204
ATTENTION: Zari Santner

1221 SW 4th Ave.
Portland, OR 97204

b) For Clackamas County:
Clackamas County Parks
150 Beaver Creek Road
Oregon City, OR 97045
ATTENTION: Parks Manager

With a copy to:
Clackamas County Counsel
Public Services Building
2051 Kaen Road
Oregon City, OR 97045

25. In the event of a dispute arising under this Agreement among the parties, either party may initiate the following informal dispute resolution process:

- a) The initiating party shall give written notice of the dispute to the other at the address above and to the respective attorney's offices for each party.
- b) The party against whom the dispute has been lodged shall respond in writing within thirty (30) days, with copies to the attorney's offices.
- c) A meeting shall be scheduled within thirty (30) days of receipt of the response, at which resolution of the dispute shall be the goal.

26. A material breach of this Agreement by either party shall, upon 90 days written notice to the other, constitutes grounds for termination. In the event that the breach is cured to the satisfaction of the non-breaching party within the 90 day notice period, the notice of termination may be rescinded by the non-breaching party.

27. Clackamas County's rights hereunder may be terminated upon a determination by the Portland City Council that use of the Clackamas County portion of the Springwater Corridor is necessary for restoration of rail service. Clackamas County's rights shall not be terminated on less than six (6) months written notice. If any serious proposal to restore rail service is made which would affect the Clackamas County portion of the Springwater Corridor, the City shall provide notice thereof to Clackamas County, so that Clackamas County may become involved in planning options at a timely stage. In the event that Portland receives payment from a railroad for reestablishment of a rail line, Portland shall give Clackamas County a portion of the payment that is attributable to the Clackamas County segment of the Springwater Corridor. More specifically, Clackamas County will receive that proportionate share of the payment that reflects the value, at the time of payment, of the improvements made by Clackamas County, considering the age and condition of the improvements, in comparison to the value of the land. In no event shall Clackamas County receive more than its actual out of pocket costs of trail construction.

28. The Director of Portland Parks & Recreation, on behalf of the City, and the Director of County Parks, on behalf of Clackamas County, are authorized to provide any consent, approval, or direction required under the terms of this Agreement, unless otherwise stated herein. This authorization extends to amendments of this Agreement so long as the

INTERGOVERNMENTAL AGREEMENT

183740

amendment does not impose a significant, unbudgeted financial obligation on a party. All amendments to this Agreement must be in writing and signed by authorized representatives of the parties.

29. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement.

The parties have caused this Agreement to be executed by their duly appointed officers.

Dated: _____, 2010

Dated: _____, 2010

CITY OF PORTLAND

CLACKAMAS COUNTY

By: _____

Nick Fish
Commissioner of Parks

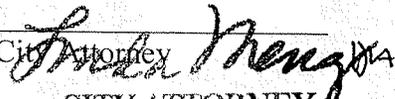
By: _____

Chair, Board of County Commissioners

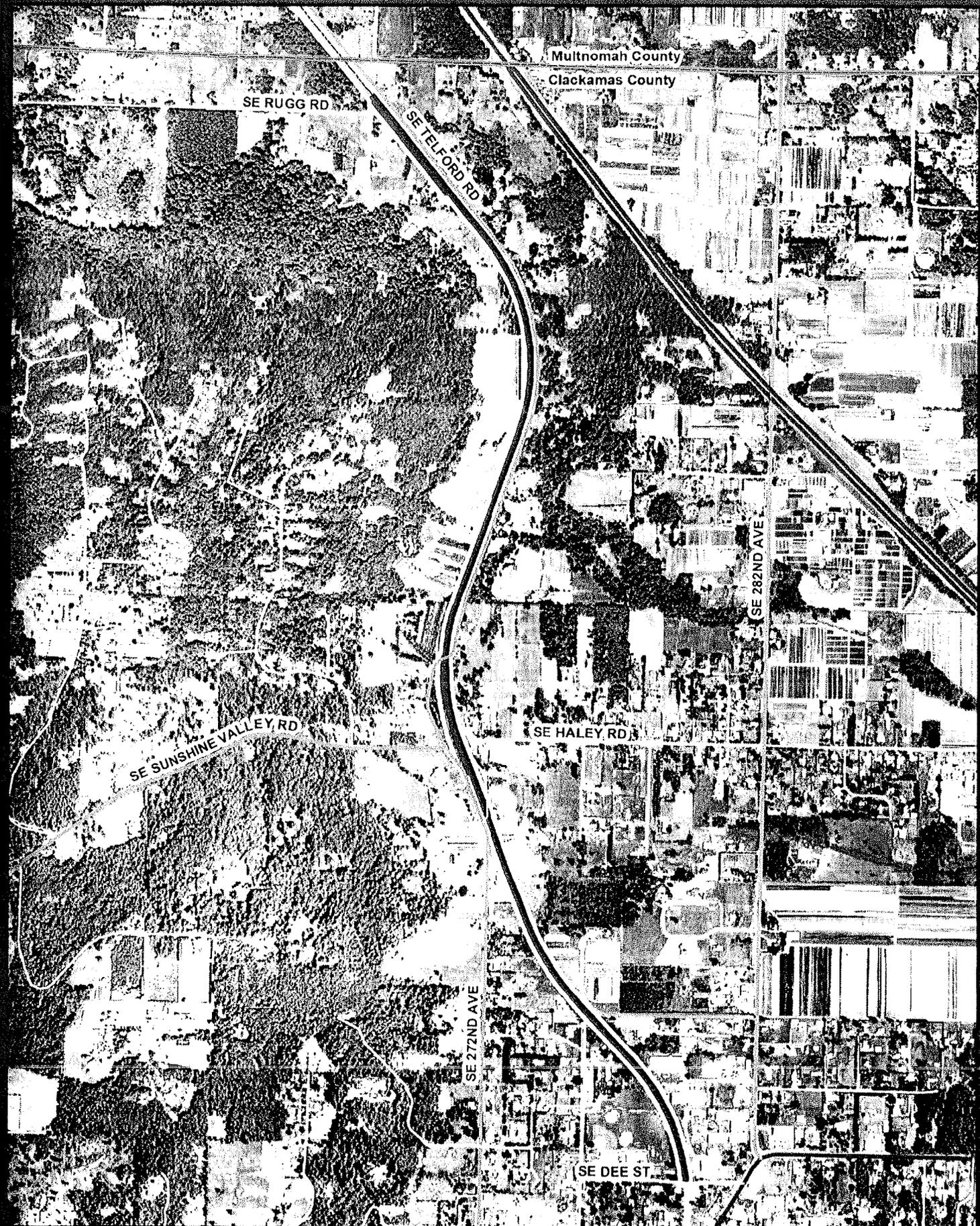
Approved as to form:

APPROVED AS TO FORM

Approved as to form:


City Attorney
CITY ATTORNEY

County Counsel



**EXHIBIT B
PROPERTY**

This IGA applies to the following parcels, collectively referred to herein as the Clackamas County portion of the Springwater Corridor:

State ID

- 13E36B 01800
- 13E36B 01890
- 13E25A 01700
- 13E25A 01790
- 13E25B 01000
- 13E36D 03300
- 13E25C 01800
- 13E36A 01800
- 23E1AA 00601

