

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

RESOLUTION NO. 2018-017

Authorizing the County Chair to Execute an Intergovernmental Agreement with the City of Fairview for the NE 223rd Avenue Pedestrian Crossing Feasibility Study Project

The Multnomah County Board of Commissioners Finds:

- a. ORS 190.003 to 190.030 allows units of local government to enter into agreements for performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform.
- b. City of Fairview (hereafter, "City") is the sponsor of the NE 223rd Avenue Pedestrian Crossing Feasibility Study Project (the "Project"). The Project purpose is to study the cost of designing, engineering, and constructing a new pedestrian crossing under the railroad tracks located north of NE 223rd Avenue and Townsend Way, located in the City of Fairview within the County.
- c. NE 223rd Avenue is a County road as defined in ORS 368.001(1). In order to perform the Project, the City must obtain permits from Union Pacific Railroad Company ("Railroad").
- d. Because NE 223rd Avenue is a County road, the Railroad requires County to obtain all necessary permits from the Railroad in order for City to work within Railroad right of way on the Project.
- e. The County and the City desire to work together in obtaining necessary permits from Railroad for the purpose of the Project consistent with attached intergovernmental agreement.

The Multnomah County Board of Commissioners Resolves:

1. The intergovernmental agreement attached hereto in Exhibit A made and entered into by the City of Fairview and Multnomah County is approved and the County Chair is authorized and directed to sign the attached agreement. Board approval is needed for any modification or amendment that results in a material increase in County obligations or a material decrease in County benefits under the intergovernmental agreement.

ADOPTED this 1st day of March, 2018.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury

Deborah Kafoury, Chair

REVIEWED:

JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By *Courtney Lords*
Courtney Lords, Assistant County Attorney

Resolution Authorizing the County Chair to Execute an Intergovernmental Agreement with the City of Fairview for the NE 223rd Avenue Pedestrian Crossing Feasibility Study Project

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
MULTNOMAH COUNTY & CITY OF FAIRVIEW**

THIS AGREEMENT (“Agreement”) is made and entered into by and between MULTNOMAH COUNTY, acting by and through its elected officials, hereinafter referred to as “County”; and City of Fairview, acting by and through its governing body, hereinafter referred to as “City”, both herein referred to individually or collectively as “Party” or “Parties.”

RECITALS

1. ORS 190.003 to 190.030 allows units of local government to enter into agreement for performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform; and
2. City is the sponsor of the NE 223rd Avenue Pedestrian Crossing Feasibility Study Project (the “Project”). The Project purpose is to study the cost of designing, engineering, and constructing a new pedestrian crossing under the railroad tracks located north of NE 223rd Avenue and Townsend Way, located in the City of Fairview and County; and
3. NE 223rd Avenue is a County road as defined in ORS 368.001(1); and
4. In order to perform the Project, the City must obtain permits from Union Pacific Railroad Company (“Railroad”); and
5. Because NE 223rd Avenue is a County road, the Railroad requires County to obtain all necessary permits from the Railroad in order for City to work within Railroad right of way on the Project.

NOW THEREFORE, in order to assist the City with performing the Project, the Parties agree as follows:

1. **Term of Agreement.** This Agreement becomes effective upon signing and execution by both Parties and will terminate on either December 31, 2018 or upon completion of the Project, as determined by the Parties, whichever occurs first.
2. **Parties Obligations**
 - A. The County will work in good faith to obtain necessary permits from Railroad for the purpose of City performing the Project.
 - B. The County authorizes the City to proceed with the design services procurement.
 - C. The County will provide at no cost to the City, staff resources to obtain the permit from the Railroad and to review all project design work.

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- D. City will reimburse County for costs incurred by County in obtaining necessary permits from Railroad. Costs include direct permit fees from Railroad and any other jurisdictions.
- E. County will account for all costs incurred by County in obtaining necessary permits from Railroad and will provide those costs in an itemized invoice to City.
- F. City will pay County within 30 days of County invoicing City for costs accrued under performance of this Agreement.

3. Termination.

- A. This Agreement may be terminated at any time by mutual agreement of the Parties.
- B. Any termination of this Agreement will not prejudice any rights or obligations accrued to the Parties prior to termination.
- C. In the event this Agreement is terminated without completion of the Project, regardless of the reason, any costs accrued by County under this Agreement shall be refunded to County.

4. Contact Information.

County's liaison for the Project will be:

Riad Alharithi, PE
Road Engineering Manager
Multnomah County - Transportation Division
1620 SE 190th Ave,
Portland, Oregon 97233
(503) 988-0181
riad.alharithi@multco.us

City's liaison for the Project will be:

Allan Berry, Public Works Director
1300 NE Village Street
Fairview, Oregon 97024
(503) 665-9320
berrya@ci.fairview.or.us

5. General Terms

- A. Compliance with Laws. City and County agree to comply with all applicable local, state, and federal ordinances, statutes, laws, rules and regulations.

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- B. Negation of Agency and Partnership. Any agreement by either Party to cooperate with the other in connection with any provision of this Agreement shall not be construed as making either Party an agent or partner of the other Party.
- C. Indemnity and Hold Harmless. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300 and the Oregon Constitution, City shall hold harmless and indemnify County, its, officers, elected officials, employees, and agents against any and all claims, damages, losses and expenses (including all attorney(s) fees and costs), arising out of, or resulting from the City's performance of this Agreement when the loss or claim is attributable to the acts or omissions of the City.

Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300 and Oregon Constitution, County shall hold harmless and indemnify City, its officers, elected officials, employees, and agents against all claims, damages, losses and expenses (including all attorney(s) fees and costs) arising out of or resulting from County's performance of this Agreement when the loss or claim is attributable to the intentional acts or omissions of County.

- D. Authorization. The Parties certify and represent that the individual(s) signing this Agreement have been authorized to enter into and execute this Agreement, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind each Party.
- E. Counterparts. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together will constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed will constitute an original.
- F. Entire Agreement. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement will bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement will not constitute a waiver by either Party of that or any other provision.
- G. Severability. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- H. Notice. Any notice required or permitted under this Agreement shall be in writing and deemed given when either 1) actually delivered, or 2) three (3) days after deposit in

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United States certified mail, postage prepaid, addressed to the other Party to the contact at the address listed above in Section 7.

- I. Jurisdiction; Law. This Agreement is executed in the State of Oregon and is subject to Oregon law and jurisdiction. Venue for any trial court proceeding to enforce this Agreement shall be in Multnomah County Circuit Court, unless otherwise agreed in writing by the Parties.

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.

COUNTY

CITY

By: Board of County Commissioners

By: Fairview City Council

Deborah Kafoury, Chair

Ted Tosterud, Mayor

Date

Date

REVIEWED:

By _____
Courtney Lords
Assistant County Attorney

Date

By _____
Heather R. Martin
Attorney for the City

Date