

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING) RESOLUTION NO. 99-2824
AN INTERGOVERNMENTAL AGREEMENT)
WITH THE CITY OF TROUTDALE FOR) Introduced by Mike Burton,
MANAGEMENT OF PROPERTY IN THE) Executive Officer
BEAVER CREEK CANYON GREENWAY)
TARGET AREA AND APPROVING AN)
AGRICULTURAL LEASE TO ONE PROPERTY)
IN SUCH TARGET AREA)

WHEREAS, in July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Ballot Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; and

WHEREAS, Measure 26-26 provided that lands acquired by Metro with the regional share of the bond funds would be "land banked" with minimal maintenance, and no bond funds can be legally used for any operating expenses on these lands; and

WHEREAS, Measure 26-26 stated that Metro Regional Parks and Greenspaces Department may operate and maintain these lands, or other cooperative arrangements may be made with other jurisdictions or park providers to operate and maintain these lands consistent with the Greenspaces Master Plan; and

WHEREAS, on July 11, 1996, the Metro Council adopted a refinement plan for the Beaver Creek Canyon Greenway regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition, and which encouraged partnerships involving Metro and the City of Troutdale in the acquisition of land along Beaver Creek; and

WHEREAS, on July 13, 1999, Metro entered into a purchase and sale agreement to acquire approximately 15.6 acres on Beaver Creek in the City of Troutdale (The Property) owned by the Vera M. Strebin Charitable Remainder Trust; and

WHEREAS, a condition of the purchase and sale agreement is the execution of an Agricultural Lease attached to the IGA, with the Vera M. Strebin Charitable Remainder Trust which will encumber the Property for a term of ten years, with a renewal option for an additional five years; and

WHEREAS, the City of Troutdale will contribute 14% of the purchase price to the acquisition of the Property, taking ownership as a tenant in common with Metro, proportionate to its contribution; and

WHEREAS, the City of Troutdale and Metro desire that the City of Troutdale should operate, manage, and maintain the Property, as well as properties in the same Beaver Creek Canyon Greenway Target Area that Metro may acquire in the future; and

WHEREAS, an intergovernmental agreement (IGA) between Metro and the City of Troutdale would benefit the Property, and future acquisitions in this vicinity, as well as the public in general by providing increased care for the properties and by encouraging public use; and

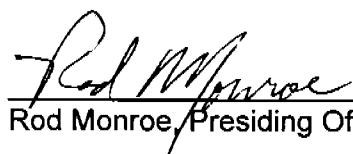
WHEREAS, the IGA attached to this resolution as Exhibit A sets forth the management, maintenance, and operation guidelines to be followed by the City of Troutdale as steward of the Property, requiring that the Property be managed consistently with the Agricultural Lease encumbering the Property, and for passive recreation, pedestrian/bicycle use, and habitat restoration, with the primary goals being the protection of the properties' natural resources, the enhancement and protection of wildlife habitat, and public recreation consistent with these goals; now therefore,

BE IT RESOLVED,

That the Metro Council approves and authorizes the Metro Executive Officer to


- 1) execute the Intergovernmental Agreement with the City of Troutdale, in substantially the form attached hereto as Exhibit A , wherein the City of Troutdale will manage the Property and potentially other properties within the Beaver Creek Canyon Greenway Target Area; and
- 2) execute the agricultural lease with the Vera M. Strebin Charitable Remainder Trust in substantially the form attached to the IGA, for a term of ten years with a five-year extension.

ADOPTED by the Metro Council this 12th day of AUGUST, 1999.



Rod Monroe, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

INTERGOVERNMENTAL AGREEMENT

Strebin Property

This Intergovernmental Agreement ("Agreement") dated this ___ day of _____, 1999, is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the City of Troutdale, located at 104 SE Kibling, Troutdale, Oregon 97060-2099 ("the City").

RECITALS:

WHEREAS, pursuant to the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26 ("Metro Open Spaces Bond Measure"), on July 13, 1999, Metro entered an Agreement of Purchase and Sale to purchase approximately 15.6 acres of real property, including approximately ___ feet of frontage on Beaver Creek, known as the Strebin Property ("the Property"), located in Troutdale, Oregon and more particularly described in Exhibit A attached hereto and incorporated herein;

WHEREAS, the Property is within the Beaver Creek Canyon Greenway Target Area identified pursuant to the Metro Open Spaces Bond Measure, and is also identified as a regionally significant open space and natural area in the Metro Greenspaces Master Plan;

WHEREAS, the Property has been identified as a locally significant site in the City's Parks, Recreation, and Greenways Plan;

WHEREAS, Metro and the City wish to preserve the Property as open space in accordance with the Metro Open Spaces Bond Measure and the Metro Greenspaces Master Plan;

WHEREAS, the Agreement of Purchase and Sale includes an Agricultural Lease, attached as Exhibit C, which will encumber the Property for ten years, with an optional extension of five years;

WHEREAS, on _____, 1999, the City Council authorized the City to enter into this Agreement and to purchase, manage, operate and maintain the Property in accordance with the Agricultural Lease and with the terms set forth in this Agreement;

WHEREAS, on _____, 1999, the Metro Council authorized Metro to enter into this Agreement to provide funding for the transfer of such management responsibility for the Property in accordance with the terms set forth in this Agreement, and

WHEREAS, Metro and the City wish to enter into this Agreement to provide for the responsibilities and obligations of the parties with respect to the acquisition, allowable uses, management, maintenance, and operation of the Property;

Now, therefore, the parties agree as follows:

A. Acquisition

1. Metro is hereby authorized to enter into a Purchase and Sale Agreement, which includes Metro's execution of the Agricultural Lease as a condition of sale, to purchase the Property for SEVEN HUNDRED THIRTY-ONE THOUSAND, SIX HUNDRED TWENTY-EIGHT DOLLARS AND TWENTY-FIVE CENTS (\$731,628.25). At Closing Metro shall contribute 86% of the purchase price (\$629,301.25), and the City shall contribute 14% of the purchase price (\$102,327.00).
2. Metro and the City shall take title to the Property as tenants in common, with Metro having an undivided 43/50 interest and the City having an undivided 7/50 interest, and with deed restrictions requiring that the property remain in its natural condition in perpetuity. Metro shall execute the Agricultural Lease at Closing.
3. Metro shall be responsible for conducting the normal due diligence investigations pursuant to Metro Open Spaces Bond Measure requirements and pursuant to the terms of the Purchase and Sale Agreement. If the City requires any due diligence investigations not normally performed by Metro, the City shall be solely responsible for those items. Metro shall also be responsible for drafting and coordinating escrow instructions and closing details, and shall pay the Buyer's closing costs.

B. Management, Maintenance, and Operation

1. As required by the Metropolitan Greenspaces Master Plan, the long-term management guidelines for the Property must be set forth in a Resource Management Plan ("Management Plan") for the Property. This Agreement shall set forth the interim protection guidelines for the Property which shall govern prior to adoption of the Management Plan, and shall also set forth the use limitations for the Property which must be carried forth and reflected in the Management Plan.
2. Metro and the City agree that the City shall be responsible for the ongoing management, maintenance, and operation of the Property, both during the interim period and after adoption of the Management Plan.
3. If Metro executes an agreement to purchase additional property within the Beaver Creek Canyon Target Area which Metro would like the City to manage under the terms of this Agreement, Metro shall notify the City in writing in the form attached hereto as Exhibit B ("Notice of Acquisition"). The City shall notify Metro if the City does not wish to accept management responsibilities for that property in accordance with this Agreement, using the City's best efforts to make this notification prior to the closing date for the acquisition. If the City has not so notified Metro within thirty (30) days of receiving Metro's Notice of Acquisition, then the City shall be deemed to have accepted the new Property for management, maintenance and operation responsibilities in accordance with the terms and conditions of this Agreement.

4. The term of the City's management, maintenance, and operation responsibilities for the Property shall be determined by the Management Plan, but in no event shall the term be less than ten (10) years from the effective date of this Agreement, renewable by mutual written agreement for additional ten (10) year periods.
5. Metro grants to the City, its agents and contractors, the right to enter the Property for the purpose of performing all activities reasonably necessary for the management, maintenance and operation of the Property and for the fulfillment of its duties under this Agreement and pursuant to the Management Plan.

C. Interim Protection Guidelines

1. Prior to the adoption of a Management Plan for the Property, in the interim the Property shall be managed, maintained and operated by the City in accordance and in a manner consistent with this Agreement, the Agricultural Lease, the Metro Greenspaces Master Plan, the City's Comprehensive Plan, and the City's Parks Recreation and Greenway Plan (this Agreement and these plans collectively referred to herein as "the Plans"). In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern.
2. Subject to the terms of the attached Agricultural Lease, in the interim period and thereafter, the Property shall be managed, maintained, operated, and protected in accordance with its intended use as a natural area open space, with the primary goals being protection of the Property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing.
3. During the term of the Agricultural Lease, the City will manage the Property in a manner which does not interfere with the agricultural operations allowed under the Agricultural Lease, and is consistent with all Agricultural Lease provisions.
4. Subject to the terms of the attached Agricultural Lease, in accordance with the Metro Greenspaces Master Plan, formal public use of the Property and site development on the Property shall not begin until a Management Plan for the Property has been adopted.
5. Prior to the adoption of a Management Plan for the Property, and subject to the terms of the Agricultural Lease, in the interim period the Property may be used informally by the public for passive recreation, habitat enhancement, pedestrian activity, and/or nonmotorized bicycle use, at the City's discretion, subject to and upon the express permission of the Agricultural Lease lessee, Vera M. Strebin Charitable Remainder Trust . All uses of the Property in the interim period shall be consistent with this Agreement and with the Plans, and shall not preclude any uses that could later be allowed in the Management Plan.
6. Subject to the terms of the attached Agricultural Lease, prior to the adoption of the Management Plan for the Property, in the interim period the City shall not allow or permit any alteration of any water, timber, mineral, or other resource on the Property, except for the control of exotic or pest plant species or as necessary to prevent Property degradation or for

security or public safety concerns. If the City believes that an improvement, trail, or alteration of any water or timber resource on the Property is necessary prior to adoption of a Management Plan for the Property, Metro shall have the right to approve of such action, and the City shall provide Metro 90 days advance written notice of its intent to construct any improvements, trails, or alteration of water or timber resource on the Property. In any event, no improvements or trails shall be constructed on the Property and no alteration of water or timber resource shall occur that are inconsistent with this Agreement or the Agricultural Lease, and shall not preclude any uses that could later be allowed in the Management Plan.

7. Prior to adoption of the Management Plan and thereafter, the City shall maintain security of the Property, and shall provide additional fencing, gates, signage, and other measures as the City may deem necessary to increase safety on the Property, and to deter improper public use of the Property prior to adoption of the Management Plan. During the interim period the City shall control access to the Property, and shall respond to neighborhood or citizen complaints regarding improper use or noise on the Property.

D. Resource Management Plan for the Property

1. The City shall develop a Resource Management Plan (“Management Plan”) for the Property. The Management Plan shall set forth the acceptable management, operation, maintenance, types and levels of programmed and public use, and trail and improvement standards for the Property. The City shall manage the Property in accordance with the standards and guidelines developed in the Management Plan, subject to the terms of the Agricultural Lease.
2. The Management Plan shall ensure that the Property is managed, maintained and operated in accordance with the Metro Greenspaces Master Plan and with this Agreement, and that all trails and improvements on the Property comply with the Greenspaces Master Plan and with this Agreement. The Management Plan shall also ensure that the Property is maintained as a natural area open space, with the primary goals being protection of the Property’s natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing. As part of the process of developing the Management Plan, the City shall take an inventory of the resources on the Property.
3. The Management Plan shall be consistent with the terms of the Agricultural Lease attached as Exhibit C, which encumbers the Property.
4. Metro shall designate at least one staff member to participate in the Management Plan process for the Property. In addition to any other approvals required by the City, the Management Plan shall be subject to approval by the Metro Council prior to its implementation, which approval shall not be unreasonably withheld and shall be based on consistency with this Agreement and with the Greenspaces Master Plan.

E. Permits, Easements, Assessments, Coordination with Other Public Agencies

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Property the City agrees to be responsible for funding the operation and maintenance of the

Property with the City's own resources. The City's management responsibility shall include responsibility for all taxes or assessments for the Property.

2. Prior to adoption of the Management Plan and thereafter, the City shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Property.
3. Any permits granted by the City to users of the Property shall comply with the terms and limitations set forth in this Agreement and in the Management Plan for the Property.
4. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance or operation issues that may arise with respect to the Property.
5. All requests for easements, rights of way, and leases on or affecting the Property shall be submitted to Metro in accordance with the Metro Easement Policy, Resolution No. 97-2539B, passed by the Metro Council on November 6, 1997, attached hereto as Exhibit D.

F. General Provisions

1. Indemnification. The City, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless Metro, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from the management, maintenance or operation of the Property, including but not limited to construction of trails or in relation to any other improvement on the Property.
2. Oregon Constitution and Tax Exempt Bond Covenants. The source of funds for the acquisition of this Property 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 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 status of the bond interest. In the event the City breaches this covenant, Metro shall be entitled to whatever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.
3. Signage. The City may provide on-site signage informing the public that the City is managing the site. Metro will provide on-site signage which shall be installed by the City, stating that funding for the acquisition came from Metro Open Spaces Measure bond proceeds. The City shall also document in any publication, media presentation or other presentations, that funding for the acquisition came from Metro Open Spaces Measure bond proceeds. All signage will be consistent with Metro guidelines for Open Spaces Projects.

4. Joint Termination for Convenience. Metro and the City may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective upon ten (10) days written notice of termination issued by Metro, subject to the mutual written agreement of the parties.
5. Termination for Cause. Either party may terminate this Agreement in full, or in part, at any time before the date of completion, whenever that party determines, in its sole discretion, that the party has failed to comply with the conditions of this Agreement and is therefore in default. The terminating party shall promptly notify the other party in writing of that determination and document such default as outlined herein. The other party shall have thirty (30) days to cure the problem. Notwithstanding any termination for cause, both parties shall be entitled to receive payments for any work completed or for which that party is contractually obligated for, which completion or contractual obligation occurred prior to the effective date of the termination, provided that no party shall be obligated to make any payment except for work specifically provided for in this Agreement.
6. Laws 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 courts 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.
7. Assignment. The parties may not assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the parties may delegate or subcontract for performance of any of its responsibilities under this Agreement.
8. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro: Metro
 Charles Ciecko
 Director, Metro Regional Parks and Greenspaces
 600 N.E. Grand Avenue
 Portland, OR 97232-2736

To City: City of Troutdale
 Valerie Lantz
 Parks and Facilities Superintendent
 104 SE Kibling Road
 Troutdale, OR 97060-2099

9. 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.

10. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to this Property. 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 TROUTDALE

METRO

By: _____
Title: _____

By: _____
Title: _____

Exhibits:

Exhibit A - Legal Description

Exhibit B - Form of Notice of Acquisition

Exhibit C – Agricultural Lease

Exhibit D - Metro Easement Policy and Metro Resolution No. 97-2539B

EXHIBIT A

[legal description]

To be provided following survey

EXHIBIT BNotice of Acquisition

_____, 199__

City of Troutdale
Parks and Facilities Department
104 SE Kibling
Troutdale, OR 97060-1137

Re: Acquisition of Property along Beaver Creek

Dear _____:

Pursuant to the Metro Open Spaces Bond Measure 26-26, and the Intergovernmental Agreement between Metro and _____ dated _____, 1999, attached hereto ("Intergovernmental Agreement"), this shall serve as notice of acquisition of the following property along the [target area]:

[Property Address], in the City of Troutdale, County of Multnomah and State of Oregon, being more particularly described in Exhibit I attached hereto ("the Property").

Pursuant to the Intergovernmental Agreement, Metro requests that the City manage this Property pursuant to the terms of the Intergovernmental Agreement. Please notify Metro in writing if the City does not wish to accept management responsibility for this Property. As set forth in the Intergovernmental Agreement, if the City does not so notify Metro within thirty (30) days of receipt of this letter, the City shall be deemed to have accepted the new Property for management, maintenance, and operation in accordance with the terms and conditions of the Intergovernmental Agreement.

If you have any questions, please do not hesitate to contact me at 797-1914.

Sincerely,

Jim Desmond, Manager
Metro Open Spaces Acquisition Division

cc: Charles Ciecko, Director, Metro Regional Parks and Greenspaces

Exhibit C
AGRICULTURAL LEASE

By this lease made this _____ day of _____, 1999, between Metro, a municipal corporation and political subdivision of the State of Oregon, located at 600 NE Grand Avenue, Portland, OR, 97232 ("Lessor") and David Ripma and Sharon Nesbit, Trustees of the Vera M. Strebin Charitable Remainder Trust, under Will dated April 3, 1996 ("Lessee"), the Lessor, for and in consideration of the covenants and agreements hereinafter set forth, has leased to Lessee the premises known and described in Attachment 1, consisting of approximately 15.6 acres ("Leased Premises" or "Property").

To have and to hold the same unto the Lessee from the ___ day of _____, 1999, until the 31st day of October, 2009 (the "Initial Term"), unless sooner terminated or extended as provided herein.

1. **RENT:** During the Initial Term of the Lease, Lessee shall pay rent annually at the end of each lease year, in an amount equal to the fair market rental value of the Leased Premises for agricultural purposes, as determined at the beginning of each lease year on the first day of November, not to exceed THREE HUNDRED DOLLARS (\$300.00) per tillable acre per year based on _____ tillable acres. The lease year shall run from November 1 through October 31. The first rental payment under this Lease shall be due on October 31, 2000. If Lessee elects to extend the Initial Term of the Lease for an additional five (5) years, as provided in Section 14 below (the "Extended Term"), the rental rate for the Extended Term shall be equal to the fair market rental value of the Leased Premises for agricultural purposes as determined on the first day of the Extended Term. The annual rent for the Extended Term shall be due at the end of each lease year, on the thirty-first (31st) day of October. If the parties cannot agree on a fair market rental value of the Leased Premises for the Initial and Extended Terms, it shall be determined by arbitration as provided in Section 19, set forth below.
2. **TILLABLE ACRES.** Lessee and Metro agree that the tillable acreage will be reduced following the first growing season under this lease, to provide the drainage mitigation area as set forth in Section 9 herein, at which time, the number of tillable acres and rent due shall be recalculated.
3. **MANNER OF FARMING AND CONSERVATION LAWS.** Lessee shall farm, cultivate, maintain and operate the Property consistent with the standard agricultural practices employed by the farming industry in the area where the Property is located. Lessee shall use and occupy the leased premises for cropland. Lessee shall refrain from practices that will cause unusual and excessive (a) erosion and water runoff from the Property or (b) pollution to the water resources of the surrounding area from the Property. Lessee shall maintain the Property in compliance with all federal, state and other governmental laws, regulations and directives, and in accordance with Sections 8 and 9 set forth herein (Buffer/Riparian and Drainage Irrigation Areas).

4. COMPLIANCE WITH LAW AND HAZARDOUS MATERIALS/INDEMNIFICATION.

- (a) During the Initial Term and Extended Terms of the Lease, Lessee, at Lessee's expense, shall comply with all laws, rules, order, ordinances, directions, regulations, and requirements of federal, state, county and municipal authorities pertaining to Lessee's use of the Property, and with all recorded covenants, conditions, and restrictions, regardless of when they become effective. These include, without limitation, any required alteration of the Property because of Lessee's specific use, and all applicable federal, state, local laws, regulations or ordinances pertaining to air and water quality, Hazardous Materials as defined in Section (d) below, waste disposal, air emissions and other environmental matters, and all zoning and other land use matters.
- (b) Lessee shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Property by Lessee, Lessee's agents, employees, contractors, or invitees without the prior written consent of Lessor, which shall not be unreasonably withheld as long as Lessee demonstrates to Lessor's reasonable satisfaction that such Hazardous Material is necessary to Lessee's business and will be used, kept, and stored in a manner that complies with all laws regulating any such Hazardous Materials brought upon or used or kept in or about the Property. Prior written consent of Lessor for use of petroleum products normally used in farming operations, such as gasoline or diesel fuels, is not required.
- (c) Lessee shall indemnify, defend, and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including without limitation, diminution in value of the Property, damages for the loss or restriction on use or rent of the Property, damages arising from any adverse impact on marketing of the Property, and sums paid in settlement of claims, attorney fees, consultant fees, and expert fees) that arise during or after the lease term due to contamination by Hazardous Materials as a result of Lessee's and Lessee's Sublessee's use, or activities of Lessee's or Lessee's Sublessee's agents or contractors. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Materials present in the soil or groundwater or under the Property.

Without limiting the foregoing, if the presence of any Hazardous Material on the Property caused or permitted by Lessee and Lessee's Sublessee's or Lessee's or Lessee's Sublessee's agents or contractors results in any contamination of the Property, Lessee shall promptly take all actions at Lessee's sole expense as are necessary to return the Property to the condition existing prior to the release of any such Hazardous Material onto the Property, provided the Lessor's approval of such action shall first be obtained, and approval shall not be unreasonably withheld, as long as such actions would not potentially have any material adverse long- or short-term effect on the Property. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

- (d) As used in this Lease, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101), or by the United States Environmental Protection Agency as hazardous substances (40 CFR pt 302) and amendments thereto, petroleum products or other such substances, materials and wastes that are or become regulated under any applicable local, state or federal law.
5. CHEMICALS AND FERTILIZERS. It is understood that chemicals, fertilizers, insecticides and herbicides may be necessary to produce the highest financial returns from the Property. Subject to the limitations in Section 3 above, chemicals, fertilizers, insecticides and herbicides shall be used by Lessee, if necessary, so long as their use does not cause significant environmental degradation to the land leased hereunder and the waters of the surrounding area. Lessee shall provide Lessor with a list of all chemicals, fertilizers, insecticides and herbicides Lessee anticipates using during the term of the Lease. Change in farming practices and use of chemicals, fertilizers, insecticides and herbicides outside of the tillable area shall be made only with the approval of the Lessor, such approval not to be unreasonably withheld.
6. IRRIGATION. Lessee shall be responsible for all irrigation water use and the costs of all irrigation water used by the Lessee. Lessor assumes no responsibility to Lessee for any water shortage, nor does Lessor warrant the presence or absence of well water or surface water rights available to the Leased Premises, or the quality and quantity of the water available for irrigation. Lessee shall be responsible for maintenance, repair and replacement of the Lessee's or Lessee's sub-tenant's irrigation equipment on the Leased Premises.
7. OREGON STATE WATER RESOURCES DEPARTMENT. Lessee agrees to promptly comply, and to guarantee that Lessee's sub-tenant complies, with all directives and administrative orders of the Oregon State District 1 Water Master. Lessee hereby agrees to promptly pay and fully satisfy, or cause to be paid and fully satisfied, any civil penalties levied upon Lessee or Lessee's sub-tenant by the Oregon State Department of Water Resources, before the penalties become a lien upon the leased Premises. Lessee hereby indemnifies Lessor against, and agrees to defend and hold Metro harmless from, any and all claims, obligations, liabilities, losses, damages, penalties, actions, suits, costs and expenses (including attorneys' fees) of whatever kind or nature, whether or not well founded, meritorious or unmeritorious, demanded, asserted or claimed against Lessor in any way relating to, or arising out of or in connection with Lessee's or Lessee's sub-tenant's use of any water for irrigation or frost protection on the Leased Premises. If it becomes necessary to implement this indemnification, Lessee shall defend Metro with counsel of that is reasonably satisfactory to Metro, and neither party shall have the right to enter into any settlement without the prior approval of the other party, which approval shall not be unreasonably withheld or delayed.
8. BUFFER/RIPARIAN AREA. Lessor reserves the right to enter the Buffer/Riparian Area depicted in Attachment 2, to perform management and maintenance activities within the Buffer/Riparian Area for open space, conservation, and wildlife habitat purposes. No public

access to the Buffer/Riparian Area shall be granted by Lessor without express permission of Lessee. Lessee shall not alter or disturb the Buffer/Riparian area in any way beyond brush, tree and grass control, and shall coordinate Lessee's activities in the Buffer/Riparian Area with Lessor whenever possible. Lessee shall not expand the tilled portion of the Leased premises into the Buffer/Riparian Area.

9. DRAINAGE MITIGATION AREA. The Drainage Mitigation Area is depicted in Attachment 3. Lessee agrees that, at the end of the first growing season and annual harvest under this Lease, the Drainage Mitigation Area will become subject to all provisions applying to the Buffer/Riparian Area. Lessee also agrees that, at the end of the first growing season and annual harvest under this Lease, Lessee shall promptly remove, cause to be removed, or allow Lessor to remove, all crop vegetation and support structures from the Drainage Mitigation Area. Upon removal of crop vegetation as set forth above, Lessor may relocate, within the Drainage Mitigation Area, the farm road that currently traverses the Drainage Mitigation Area. The relocated road shall be of a width and all-weather surface at least as passable as that portion of the road that is relocated.
10. LIENS. Lessee shall pay when due all claims for work done on the Property, and for services rendered or material furnished to Lessee to grow Lessee's crops on the Property or incurred for Lessee's repair responsibilities for the Property and improvements; and Lessee shall keep the Property free of any liens.
11. MAINTENANCE OF THE PROPERTY. Lessee shall not make any additions or alterations to the premises without Lessor's written consent obtained in each instance except that Lessee can erect fencing as necessary to protect the cropland and pasturage hereby leased. Any additions or improvements made by Lessee at his expense and fencing must be removed by Lessee at or prior to termination of this lease.
12. ASSIGNMENT: Lessee will not sublet the premises nor any part thereof, nor transfer or assign this lease without obtaining advance written consent of Lessor in each case. Rights to sublet the premises will not be unreasonably withheld. Any use of the leased premises by an assignee or sub-lessee shall be for cropland only. Lessee shall not permit any transfer, by operation of law, of the interest in said premises acquired through this lease. Lessor retains the right to transfer the premises leased hereunder and shall have the option to assign this lease to the transferee. Provided, however, that Lessee is hereby authorized to sublease the Leased Premises to JIM FUJII, dba FUJII FARMS, INC., or any successor business operated by JIM FUJII or any member of his family.
13. ACCESS: Lessee will allow Lessor access to the Leased Premises as necessary to insure compliance with the lease agreement and where it does not interfere with normal farming operations. Lessor is liable for any damages to the Property or the Lessee's crops that result from the Lessor's entry into the Property. Reasonable and legal access will be provided to the Lessee by the Lessor.

14. **EXTENSION.** Lessee shall have the option to extend the term of this Lease for one (1) additional five (5) year period (the "Extended Term"), by means of a written notice to Lessor given not less than ninety (90) days prior to the end of the Initial Term of the Lease.
15. **TERMINATION AND DEFAULT:** This lease may be terminated by mutual consent. Where termination of the lease is by mutual consent and not due to violation of covenants and agreements set forth herein, Lessee shall have the right to harvest any crops planted at the time of agreement of termination.

Where Lessee has violated the covenants and agreements set forth herein, Lessor shall have the right to terminate this lease at any time during the lease term by giving the Lessee thirty (30) days written notice of Lessee's responsibility to cure the default or vacate the premises. If such default remains uncorrected after thirty (30) days written notice thereof from Lessor, Lessor may re-enter the premises or any part thereof and remove Lessee or anyone claiming under Lessee in addition to any other remedies Lessor may have. Provided however, with respect to any alleged default which cannot reasonably be cured within thirty (30) days of Lessor's Notice, Lessee shall be deemed to have cured the default if Lessee commences to cure within thirty (30) days and thereafter pursues said cure to completion with reasonable diligence.

16. **CONDITION OF THE PREMISES:** The Lessee is fully familiar with the physical condition of the leased property. The Lessor has made no representations of any nature in connection with the condition of the leased property or its suitability for cultivation.
17. **INDEMNIFICATION:** In addition to the environmental indemnification set forth above, Lessee shall also indemnify and defend Lessor from any claim, loss, or liability arising out of or relating to any activity of Lessee on the Property. Before going into possession of the Property, Lessee shall procure, and during the term of this Lease shall continue to carry, public liability and property damage insurance, naming Lessor as an additional insured, with liability limits of not less than \$500,000 for injury to persons or property in one occurrence. Such insurance should be provided by an insurance carrier reasonably acceptable to Lessor. Lessee shall deliver to Lessor certificates evidencing such insurance with an endorsement requiring 10 days' notice to Lessor prior to the cancellation of such insurance coverage. Lessor shall indemnify, defend, and hold Lessee harmless from any claim, loss, or liability arising out of or relating to any activity of Lessor on the Property.
18. **GENERAL COOPERATION:** Lessor will cooperate with Lessee in providing information to the appropriate agencies managing cost-share and other farm management programs that may benefit the Lessee in conducting farming operations on the Property.
19. **ARBITRATION.**
- A. **Disputes To Be Arbitrated.** If any dispute arises between the parties as to rental rates herein, either party may request arbitration and appoint as an arbitrator an independent real estate appraiser having knowledge of valuation of rental properties comparable to the Leased Premises. The other party shall also choose an arbitrator with such qualifications,

and the two arbitrators shall choose a third. If the choice of second or third arbitrator is not made within ten (10) days of the choosing of the prior arbitrator, then either party may apply to the presiding judge of the judicial district where the Leased Premises are located to appoint the required arbitrator.

B. Procedure for Arbitration. The arbitration shall proceed according to the Oregon statutes governing arbitration, and the award of the arbitrators shall have the effect therein provided. The arbitration shall take place in the county where the Leased Premises are located. Costs of the arbitration shall be shared equally by the parties, but each party shall pay its own attorney fees incurred in connection with the arbitration.

20. NOTICES: Notice from one party to the other shall be deemed to have been properly given if mailed by first class or certified mail, postage prepaid, to the other party at the respective addresses which appear in this lease.

21. SEVERABILITY: If any provision of this lease or portion of such provision or the application thereof to any person or circumstance is held invalid, the remainder of the lease (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

22. WAIVER: The waiver of one breach of any term, condition, covenant, obligation or agreement of this lease shall not be considered to be a waiver of that or any other term, condition, covenant, obligation or agreement or of any subsequent breach thereof.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above mentioned.

METRO,
a Municipal corporation

Mike Burton, Executive Officer

LESSEE:
VERA M. STREBIN CHARITABLE
REMAINDER TRUST, Under Will Dated
April 3, 1996

By: _____
David Ripma, Trustee

By: _____
Sharon Nesbit, Trustee

Attachment 1 - Property Description
Attachment 2 - Map of Buffer Riparian Area
Attachment 3 - Map of Drainage Mitigation Area

EXHIBIT D
Metro Easement Policy and
Metro Resolution No. 97-2539B

I HEREBY CERTIFY THAT THE FOREGOING
IS A COMPLETE AND EXACT COPY OF THE
ORIGINAL THEREOF.

Rebecca V. Shoemaker, Archivist
Clerk of the Metro Council

RESOLUTION NO. 97-2539B

FOR THE PURPOSE OF APPROVING GENERAL)
POLICIES RELATED TO THE REVIEW OF)
EASEMENTS, RIGHT OF WAYS, AND LEASES)
FOR NON-PARK USES THROUGH PROPERTIES)
MANAGED BY THE REGIONAL PARKS AND)
GREENSPACES DEPARTMENT.)

Introduced by
Mike Burton, Executive Officer

WHEREAS, Metro currently owns and manages more than 6,000 acres of regional parks, open spaces, natural areas, and recreational facilities; and

WHEREAS, additional lands are being acquired through the Open Space, Parks, and Streams Bond Measure, approved by voters in May of 1995; and

WHEREAS, the primary management objectives for these properties are to provide opportunities for natural resource dependent recreation, protection of fish, wildlife, and native plant habitat and maintenance and/or enhancement of water quality; and

WHEREAS, Metro will be approached with proposals to utilize regional parks, open spaces, natural areas, and recreational facilities property for utility, transportation, and other non-park purposes; and

WHEREAS, Metro seeks to insure that these uses have no negative impact upon the primary management objectives of Metro Regional Parks and Greenspaces properties; and

WHEREAS, it would be in Metro's best interest to provide for the orderly evaluation and consideration of proposals to utilize portions of Metro Regional Parks and Greenspaces properties for utility, transportation and other non-park uses; NOW THEREFORE,

BE IT RESOLVED, that the Metro Council hereby adopts the policy attached as Exhibit "A" for any and all requests related to formal proposals for the use of Metro Regional Parks and Greenspaces properties for the purposes noted therein.

ADOPTED by the Metro Council this 6th day of November, 1997.

Jon Kvistad
Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

[Signature]

[Signature]

Exhibit "A"

METRO POLICY RELATED TO THE REVIEW OF EASEMENTS, RIGHT OF WAYS, AND LEASES FOR NON-PARK USES

Metro owns and manages , either on its own or in partnership with other government and private entities, several thousand acres of regional parks, open spaces, natural areas and recreational facilities. These facilities are maintained to promote and preserve natural resources and recreational opportunities for the public consistent with the Greenspaces Master Plan adopted by the Metro Council in 1992, the Open Spaces Bond Measure approved by the voters in 1995 and other restrictions limiting the uses of specific properties in existence at the time of its acquisition by the public. Nothing in this policy shall be construed to allow these facilities to be used in any manner which detracts from this primary purpose. This policy is written from the perspective of Metro as the property owner, however, in those cases in which Metro co-owns a property with other entities, all decisions concerning the use of the property in question will be fully coordinated with the other owners. In addition, all new development and all proposed work within Water Quality Resource Areas or other environmentally sensitive work will be conducted in accordance with Metro or local government policies, to include where appropriate, application for permits and completion of environmental reviews. In event that local government policies are less restrictive than the Metro Model ordinances, Metro will apply the more restrictive Metro policies.

Regarding requests for easements, right of ways, and leases for non-park uses in Metro owned or managed regional parks, natural areas or recreational facilities, it is Metro's policy to:

- 1) Provide for formal review of all proposed easements, right of ways, and leases for non-park, uses by the Regional Parks and Greenspaces Advisory Committee, the Regional Facilities Committee and the full Council. Notwithstanding satisfaction of the criteria set forth herein, the final determination of whether to approve a proposed easement, right of way, or lease is still subject to the review and approval by the full Metro Council.
- 2) Prohibit the development of utilities, transportation projects and other non-park uses within corridors or on sites which are located inside of Metro owned or managed regional parks, natural areas, and recreational facilities except as provided herein.
- 3) Reject proposals for utility easements, transportation right of ways and leases for non-park uses which would result in significant, unavoidable impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management.
- 4) Accommodate utility easements, transportation right of ways or other non-park uses when the Regional Parks and Greenspaces Department (the Department) determines that a proposed easement, right of way or non-park use can be accommodated without significant impact to

natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management; and that the impacts can be minimized and mitigated.

5) Require full mitigation and related maintenance, as determined by the Department, of all unavoidable impacts to natural resources, recreational facilities, recreational opportunities or their operation and management associated with the granting of easements, right of ways, or leases to use Metro owned or managed regional parks, natural areas or recreational facilities for non-park uses.

6) Limit rights conveyed by easements, right of ways, and leases for non-park uses to the minimum necessary to reasonably accomplish the purpose of any proposal.

7) Limit the term of easements, right of ways and leases to the minimum necessary to accomplish the objectives of any proposal.

8) Require "reversion", "non-transferable" and "removal and restoration" clauses in all easements, right of ways and leases.

9) Fully recover all direct costs (including staff time) associated with processing, reviewing, analyzing, negotiating, approving, conveying or assuring compliance with the terms of any easement, right of way, or lease for a non-park use.

10) Receive no less than fair market value compensation for all easements, right of ways, or leases for non-park uses. Compensation may include, at the discretion of the Department, periodic fees or considerations other than monetary.

11) Require full indemnification from the easement, right of way or lease holder for all costs, damages, expenses, fines or losses related to the use of the easement, right of way or lease. Metro may also require appropriate insurance coverage and/or environmental assurances if deemed necessary by the Office of General Counsel.

12) Limit the exceptions to this policy to: grave sales, utilities or transportation projects which are included in approved master/management plans for Metro regional parks, natural areas and recreational facilities; projects designed specifically for the benefit of a Metro regional park, natural area, or recreational facility; or interim use leases as noted in the Open Spaces Implementation Work Plan.

13) Provide for the timely review and analysis of proposals for non-park uses by adhering to the following process:

a) The applicant shall submit a detailed proposal to the Department which includes all relevant information including but not limited to: purpose, size, components, location, existing conditions, proposed project schedule and phasing, and an analysis of other alternatives which avoid the Metro owned or managed regional park, natural area or recreational facility which are considered infeasible by the applicant. Cost alone shall not constitute infeasibility.

b) Upon receipt of the detailed proposal, the Department shall determine if additional information or a Master Plan is required prior to further review and analysis of the proposal. For those facilities which have master plans, require that all proposed uses are consistent with the master plan. Where no master plan exists all proposed uses shall be consistent with the Greenspaces Master Plan. Deficiencies shall be conveyed to the applicant for correction.

c) Upon determination that the necessary information is complete, the Department shall review and analyze all available and relevant material and determine if alternative alignments or sites located outside of the Metro owned or managed regional park, natural area, or recreational facility are feasible.

d) If outside alternatives are not feasible, the Department shall determine if the proposal can be accommodated without significant impact to park resources, facilities or their operation and management. Proposals which cannot be accommodated without significant impacts shall be rejected. If the Department determines that a proposal could be accommodated without significant impacts, staff shall initiate negotiations with the applicant to resolve all issues related to exact location, legal requirements, terms of the agreement, mitigation requirements, fair market value, site restoration, cultural resources, and any other issue relevant to a specific proposal or park, natural area or recreational facility. The Department shall endeavor to complete negotiations in a timely and business-like fashion.

e) Upon completion of negotiations, the proposed agreement, in the appropriate format, shall be forwarded for review and approval as noted in item "1" above. In no event shall construction of a project commence prior to formal approval of a proposal.

f) Upon completion of all Metro tasks and responsibilities or at intervals determined by the Department, and regardless of Metro Council action related to a proposed easement, right of way or lease for a non-park use, the applicant shall be invoiced for all expenses or the outstanding balance on expenses incurred by Metro.

g.) Permission from Metro for an easement or right-of-way shall not preclude review under applicable federal, state or local jurisdiction requirements.

REGIONAL PARKS AND GREENSPACES STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 97-2539A FOR THE PURPOSE OF APPROVING GENERAL POLICIES RELATED TO GRANTING OF EASEMENTS, RIGHT OF WAYS, LEASES AND LICENSES FOR NON-PARK USES THROUGH PROPERTIES MANAGED BY THE REGIONAL PARKS AND GREENSPACES DEPARTMENT.

Date: July 29, 1997

Presented by:
Charles Ciecko, Director
Regional Parks and Greenspaces

FACTUAL BACKGROUND AND ANALYSIS:

Metro through its Regional Parks and Greenspaces Department, currently owns and manages over 6,000 acres of regional parks, open spaces, natural areas, and recreational facilities. The primary management objectives for these lands is the provision of natural resource dependent recreation opportunities; protection of fish, wildlife and native plant habitat and the maintenance and/or enhancement of water quality.

From time to time, the Regional Parks and Greenspaces Department is approached with proposals to utilize portions of properties for non-park purposes, such as utilities, transportation components, cell phone towers etc. Currently, there is no policy to guide the review, analysis or authorization of uses which are unrelated to the primary management objectives.

The purpose of the proposed resolution is to create policy which will guide staff in responding to proposals for non-park uses.

Highlights of the proposed policy include:

- Formal review and approval of proposals by the Regional Parks and Greenspaces Advisory Committee, Regional Facilities Committee and full Council.
- Requires development of non-park uses outside of Regional Parks and Greenspace properties whenever feasible except when determined that the proposal use can be accommodated without significant impact.
- Requires full mitigation of all unavoidable impacts.
- Requires reimbursement of all costs associated with review, analyses and authorization for use.
- Requires receipt of not less than fair market value for all non-park uses.
- Requires full indemnification for Metro and insurance, if appropriate.
- Establishes limitations on exceptions.
- Establishes process for timely review, analysis and resolution of all proposals.

The Regional Parks and Greenspaces Advisory Committee considered this issue at their July 1, 1997 meeting and recommends its adoption.

BUDGET IMPACT:

The proposed policy requires receipt of not less than fair market value for non-park uses and reimbursement of all costs incurred by Metro thereby eliminating the potential of subsidizing uses which are inconsistent with the primary management objectives of Regional Parks and Greenspaces properties.

A Regional Parks and Greenspaces staff member will be present to answer any questions by Council regarding this policy.

EXECUTIVE OFFICER'S RECOMMENDATION:

The Executive Officer recommends adoption of Ordinance No. 97-2539A.

Staff Report

CONSIDERATION OF RESOLUTION NO. 99-2824 FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF TROUTDALE FOR MANAGEMENT OF PROPERTIES IN THE BEAVER CREEK CANYON GREENWAY TARGET AREA AND APPROVING AN AGRICULTURAL LEASE TO ONE PROPERTY IN SUCH TARGET AREA

Date: August 9, 1999

Presented By:

**Charles Ciecko
Jim Desmond**

Proposed Action

Resolution No. 99-2824, requests authorization for the Executive Officer to execute an intergovernmental agreement (IGA) with the City of Troutdale (the City) for management of properties in the Beaver Creek Canyon Greenway Target Area.

Background and Analysis

Metro executed a purchase and sale agreement on July 13, 1999, to acquire approximately 15.6 acres from the Vera M. Strebin Charitable Remainder Trust (the Property). The Property is a Tier I acquisition under the Beaver Creek Canyon Target Area Refinement Plan adopted on July 11, 1996, under resolution 96-2359. The Property contains a stretch of Beaver Creek, and includes the steep slopes of Beaver Creek Canyon. In addition, the Property is a component in the Beaver Creek Greenway Trail, as envisioned in the City's Parks, Recreation and Greenways Plan.

The City is committed to providing 14% of the purchase price for the Property and assuming management responsibilities for the Property and for future acquisitions of land in the Beaver Creek Canyon Greenway Target Area. The Strebin IGA enumerates these responsibilities.

The Seller of the Property has conditioned the sale on Metro's agreement to lease the Property to the Vera M. Strebin Charitable Remainder Trust for agricultural purposes. This Agricultural Lease would be for a term of ten years, with an option to renew for an additional five-year term. The current use of the Property, and the use that has existed there for fifty years, is berry production. The City is willing to manage the Property subject to the Agricultural Lease.

In order to effectively transfer management responsibilities arising from the Property and from future acquisitions in the same area, and to approve the ten-year lease of real property owned by Metro, the Metro Council would need to authorize the Executive Officer to execute the Strebin IGA and agricultural lease to the Vera M. Strebin Charitable Remainder Trust.

Findings

Authorization of the Executive Officer's execution of the Strebin IGA and agricultural lease to the Vera M. Strebin Charitable Remainder Trust. is recommended based upon the following:

- The Beaver Creek Canyon Greenway Target Area Refinement Plan includes the following among its objectives:

“...acquire property interests on key parcels as outlined in the Troutdale Parks, Recreation and Greenways Plan, November 1995, for completion of the greenway from the Sandy River to Mt. Hood Community College.”

“Leverage funds by coordinating acquisitions with the City of Troutdale and applying local share moneys to appropriate projects.”

Execution of the Strebin IGA, which structures the cooperative acquisition and management of a key parcel in the Beaver Creek Canyon Greenway, as well as the role of Metro and the City of Troutdale in future acquisitions, serves these objectives.

- The City of Troutdale’s existing Parks, Recreation and Greenways Plan anticipates the City’s management of the Property, and the City currently owns and manages property nearby. The City is the appropriate land manager.
- The Agricultural Lease is an acceptable encumbrance upon the Property because it continues the current and historical use of the Property; the managing agency, the City of Troutdale, believes that it is consistent with future site management; the lease does not prevent or impair riparian land management and restoration; and by accepting the lease as a term of the purchase, Metro facilitates the purchase of this Tier I property.
- The Strebin IGA will relieve Metro of management costs arising from the Properties, while fulfilling the acquisition objectives for the Beaver Creek Canyon Greenway Target Area, as described above.

Budget Impact

The City of Troutdale would become responsible for the management, maintenance and operation of certain Metro-owned Open Spaces property purchased with the regional share of the Open Spaces, Parks and Streams bond (Measure 26-26) funds. This would reduce Metro’s land banking costs and future operation and maintenance expenses.

Executive Officer’s Recommendation

The Executive Officer recommends passage of Resolution No. 99-2824.