

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO. 00-2889.  
EXECUTIVE OFFICER TO EXECUTE AN )  
INTERGOVERNMENTAL AGREEMENT )  
WITH THE OREGON PARKS AND )  
RECREATION DEPARTMENT FOR )  
MANAGEMENT OF PROPERTY IN THE ) Introduced by Mike Burton,  
TRYON CREEK LINKAGES TARGET AREA ) Executive Officer

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, the Open Spaces, Parks and Streams Bond Measure 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, the Open Spaces, Parks and Streams Bond Measure 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 May 16, 1996, via resolution 96-2330, the Metro Council adopted a refinement plan for the Tryon Creek Linkages target area, which included a confidential tax-lot specific map identifying priority properties for acquisition, and which encouraged partnerships involving Metro and local governments in the acquisition of land along Tryon Creek and its tributaries; and

WHEREAS, in December 1998, Metro acquired 8.5 acres traversed by Tryon Creek (the "Property"), adjacent to Tryon Creek State Natural Area and in the Tryon Creek Linkages target area; and

WHEREAS, the Oregon Parks and Recreation Department (OPRD) and Metro desire that OPRD should operate, manage, and maintain the Property; and

WHEREAS, an intergovernmental agreement (IGA) involving Metro and OPRD would benefit the Property, as well as the public in general by providing increased care for the Property and by encouraging public use; and

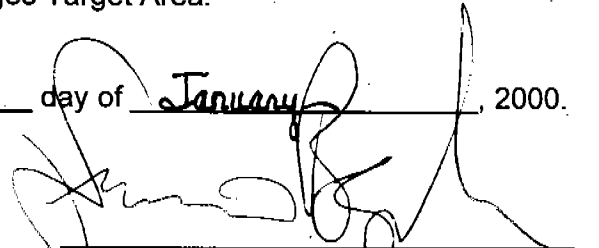
WHEREAS, the IGA attached to this resolution as Exhibit A sets forth management, maintenance, and operation guidelines for OPRD, requiring that the Property be managed for protection of the Property's natural resources; passive recreation; enhancement, restoration and protection of wildlife habitat; pedestrian activity; and public recreation consistent with these

goals; with the primary goal being to manage the Property as part of Tryon Creek State Natural Area; now therefore

BE IT RESOLVED,

That the Metro Council authorizes the Metro Executive Officer to execute the intergovernmental agreement with OPRD, attached hereto as Exhibit A, wherein OPRD will manage the Property in the Tryon Creek Linkages Target Area.

ADOPTED by the Metro Council this 27<sup>th</sup> day of January, 2000.



David Bragdon, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

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**INTERGOVERNMENTAL AGREEMENT**

**SW 11<sup>th</sup> Drive Property  
Portland, Oregon**

This Intergovernmental Agreement ("Agreement") dated this \_\_\_\_ day of \_\_\_\_\_, 2000, is by and between Metro, a metropolitan service district organized under the laws of Oregon State Parks of Oregon and the 1992 Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the State of Oregon Parks and Recreation Department ("Oregon State Parks"), located at 1115 Commercial Street, NE, Salem, Oregon 97310-1001.

**RECITALS:**

WHEREAS, on May 16, 1995, voters approved Ballot Measure 26-26, Open Spaces, Parks, and Streams, authorizing Metro, a metropolitan service district organized under the laws of Oregon State Parks of Oregon and the 1992 Metro Charter, to issue up to \$135.6 million in general obligation bonds for the protection of open spaces, parks and streams (hereafter, "Metro Open Spaces Bond Measure" or "Bond Measure 26-26"); and

WHEREAS, the Metro Greenspaces Master Plan, the Metro Open Spaces Bond Measure, and the Refinement Plan for the Tryon Creek Linkages Target Area, adopted by the Metro Council on May 16, 1996 via Resolution #96-2330, recognized the Tryon Creek watershed as a regionally significant natural area; and

WHEREAS, on December 18, 1998, pursuant to the Metro Open Spaces Bond Measure and the Tryon Creek Linkages Refinement Plan, Metro purchased the following real property with Bond Measure 26-26 proceeds from the Wilson family at SW 11<sup>th</sup> Drive, in the City of Portland:

Approximately 8.5 acres of real property hereafter termed the SW 11<sup>th</sup> Drive Property, located at the terminus of SW 11<sup>th</sup> Drive in Portland, as more particularly described in Exhibit A attached hereto; and

WHEREAS, Oregon State Parks is a parks provider which owns and manages Tryon Creek State Park, adjacent to the SW 11<sup>th</sup> Drive Property on the northernmost boundary of Tryon Creek State Natural Area; and

WHEREAS, Metro and Oregon State Parks wish to preserve the SW 11<sup>th</sup> Drive Property as an open space in accordance with the Metro Open Spaces Bond Measure and with the Metro Greenspaces Master Plan; and

WHEREAS, Oregon State Parks is willing to assume management, operation and maintenance responsibility for the SW 11<sup>th</sup> Drive Property according to the terms of this Agreement; and

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WHEREAS, Metro and Oregon State Parks wish to enter into this Agreement to provide for the responsibilities and obligations of the parties with respect to the acquisition, allowable uses, maintenance and operation of the SW 11<sup>th</sup> Drive Property;

WHEREAS, on \_\_\_\_\_, 2000, the Metro Council authorized Metro to enter into this Agreement to transfer management responsibility for the SW 11<sup>th</sup> Drive Property in accordance with the terms set forth in this Agreement, and

Now, therefore, the parties agree as follows:

**A. Acquisition**

On December 18, 1998, Metro purchased the SW 11<sup>th</sup> Drive Property in fee simple ownership with Metro Open Spaces Bond Measure proceeds.

**B. Management, Maintenance, and Operation**

1. Oregon State Parks shall be responsible for the ongoing management, maintenance, and operation of the SW 11<sup>th</sup> Drive Property in accordance with the terms of this Agreement.
2. The SW 11<sup>th</sup> Drive Property shall be managed, maintained and operated in accordance and in a manner consistent with this Agreement, Metro's Greenspaces Master Plan, the City of Portland Zoning Code and the Natural and Cultural Resource Compliance Landbook, adopted as a guideline for the park management by the Oregon Parks and Recreation Department in November of 1997. These Plans shall constitute the Resource Protection Plans for the SW 11<sup>th</sup> Drive Property, as described in the Metro Greenspaces Master Plan. In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern.
3. If Metro executes an agreement to purchase additional property within the Tryon Creek Linkages Target Area and adjacent to Tryon Creek State Natural Area which Metro would like Oregon State Parks to manage under the terms of this Agreement, Metro shall notify Oregon State Parks in writing in the form attached hereto as Exhibit B ("Notice of Acquisition"). Oregon State Parks shall notify Metro if Oregon State Parks does not wish to accept management responsibilities for that property in accordance with this Agreement, using Oregon State Parks' best efforts to make this notification prior to the closing date for the acquisition. If Oregon State Parks has not so notified Metro prior to the Closing Date of the acquisition, then Oregon State Parks 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. Metro grants to Oregon State Parks, its agents and contractors, the right to enter the SW 11<sup>th</sup> Drive Property for the purpose of performing all activities reasonably necessary for the management, maintenance and operation of the SW 11<sup>th</sup> Drive Property.

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5. The term of Oregon State Parks' management, maintenance, and operation responsibilities for the SW 11<sup>th</sup> Drive Property shall be ten (10) years from the date of this Agreement, renewable by mutual written agreement for additional ten (10) year periods.

**C. Limitations on Use**

1. The SW 11<sup>th</sup> Drive Property shall be managed, maintained and operated in accordance with its intended use as natural area open space, with the primary goal being protection of the SW 11<sup>th</sup> Drive Property's natural resources, enhancement and protection of wildlife habitat, and passive public recreation consistent with the foregoing.
2. The SW 11<sup>th</sup> Drive Property may be used by the public, in Oregon State Parks' discretion, for passive recreation, pedestrian activity, and/or habitat enhancement. Metro shall have the right to approve of any improvements, trails or alteration of any water or timber resource on the SW 11<sup>th</sup> Drive Property, and Oregon State Parks shall give Metro 90 days advance written notice of its intent to construct any improvements, trails, or alteration of water or timber resource on the SW 11<sup>th</sup> Drive Property. In any event, no improvements or trails shall be constructed on the SW 11<sup>th</sup> Drive Property and no alteration of water or timber resource shall occur that are inconsistent with this Agreement or with the Plans.
3. Metro shall have the right to review and comment on any changes in the Plans relating to the management, maintenance, or operation of the SW 11<sup>th</sup> Drive Property. Any changes in the Plans made or proposed by Oregon State Parks that relate to management, maintenance, or operation of the SW 11<sup>th</sup> Drive Property shall not conflict with the guidelines set forth in this Agreement, in the Greenspaces Master Plan, or with the uses and restrictions described in the Open Spaces Measure. Oregon State Parks shall give Metro written notice as soon as possible, but in any event no less than 90 days in advance of a proposal to amend Oregon State Parks' Plans where such amendment would alter Oregon State Parks' management, maintenance or operation of the SW 11<sup>th</sup> Drive Property.
4. The SW 11<sup>th</sup> Drive Property shall not be subdivided or partitioned, nor shall any development rights, timber rights, mineral rights, or other rights related to the SW 11<sup>th</sup> Drive Property be sold or otherwise granted, nor shall there be any alteration of any water or timber resource, except as necessary for construction of trail or other improvements, for the purpose of improving resource values, or as necessary to protect public safety.
5. Oregon State Parks shall maintain security of the SW 11<sup>th</sup> Drive Property, and shall provide additional fencing, gates, signage, and other measures as Oregon State Parks may deem necessary to increase safety on the SW 11<sup>th</sup> Drive Property, and to preserve and protect the SW 11<sup>th</sup> Drive Property's natural resources.

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**D. Permits, Assessments, Coordination with Other Public Agencies**

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the SW 11<sup>th</sup> Drive Property Oregon State Parks agrees to be responsible for funding the operation and maintenance of the SW 11<sup>th</sup> Drive Property with Oregon State Parks' own resources. Oregon State Parks' management responsibility shall include responsibility for all taxes or assessments for the SW 11<sup>th</sup> Drive Property.
2. Oregon State Parks shall be responsible for obtaining any permits necessary for management, maintenance or operation of the SW 11<sup>th</sup> Drive Property.
3. Any permits granted by Oregon State Parks to users of the SW 11<sup>th</sup> Drive Property shall comply with the terms and limitations set forth in this Agreement and in the Plans.
4. Oregon State Parks shall be responsible for contacting and coordinating with other local or state agencies regarding any management, maintenance or operation issues that may arise with respect to the SW 11<sup>th</sup> Drive Property.
5. All requests for easements, rights of way, and leases on or affecting the SW 11<sup>th</sup> Drive 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 C.

**E. General Provisions**

1. **Indemnification.** Oregon State Parks, 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 SW 11<sup>th</sup> Drive Property, including but not limited to construction of trails or in relation to any other improvement on the SW 11<sup>th</sup> Drive Property.
2. **Oregon Constitution and Tax Exempt Bond Covenants.** The source of funds for the acquisition of the SW 11<sup>th</sup> Drive 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. Oregon State Parks 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 Oregon State Parks 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.

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3. Funding Declaration. Oregon State Parks shall document in any publication, media presentation or other presentations relating to the SW 11<sup>th</sup> Drive Property, that funding for acquisition of the SW 11<sup>th</sup> Drive Property came from Metro Open Spaces Measure bond proceeds. If signs are placed on or near the SW 11<sup>th</sup> Drive Property to inform the public of the acquisition, management or ownership of the SW 11<sup>th</sup> Drive Property, such signs shall include the Metro logo, and acknowledge that the funding for the acquisition came from Metro Open Spaces Bond Measure Proceeds.
4. Joint Termination for Convenience. Metro and/or Oregon State Parks 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. Law of Oregon. This Agreement shall be governed by the laws of Oregon State Parks of Oregon, and the parties agree to submit to the jurisdiction of the courts of Oregon State Parks 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 Oregon State Parks 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. 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

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To State: Oregon Parks and Recreation Department  
Robert Meinen, Director  
1115 Commercial Street, NE  
Salem, Oregon 97310-1001

cc: Manager  
Tryon Creek State Natural Area  
11321 SW Terwilliger Blvd.  
Portland, OR 97219

- 8. 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.
- 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 the SW 11<sup>th</sup> Drive 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.

State of Oregon,  
Parks and Recreation Department

METRO

By: \_\_\_\_\_  
Director

By: \_\_\_\_\_  
Executive Officer



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**EXHIBIT A**

Parcel 2, PARTITION PLAT NO. 1998-194, in the City of Portland, County of Multnomah and State of Oregon. TOGETHER WITH an easement for reciprocal access as shown on the recorded plat AND FURTHER described in Mutual Reciprocal Access Easement Agreement recorded December 18, 1998 as Fee No. 98231923.



**Key**

- Existing Parks & Open Spaces
- Bond Measure Acquisitions

**Open Spaces, Parks and Streams Bond Measure  
Marshall Park, Tryon Creek State Park and Vicinity**

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**EXHIBIT B**

Notice of Acquisition

\_\_\_\_\_, 199\_\_

Oregon Parks and Recreation Department  
Robert Meinen, Director  
1115 Commercial Street, NE  
Salem, Oregon 97310-1001

Re: Acquisition of Property Along Tryon Creek Linkages Target Area

Dear Director:

Pursuant to the Metro Open Spaces Bond Measure 26-26, and the Intergovernmental Agreement between Metro \_\_\_\_\_ dated \_\_\_\_\_, 1999, attached hereto ("Intergovernmental Agreement"), this shall serve as notice of acquisition of the following property along the Tyron Creek Linkages:

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

Pursuant to the Intergovernmental Agreement, Metro requests that Oregon State Parks manage this Property pursuant to the terms of the Intergovernmental Agreement. Please notify Metro in writing if Oregon State Parks does not wish to accept management responsibility for this Property. As set forth in the Intergovernmental Agreement, if Oregon State Parks does not so notify Metro within thirty (30) days of receipt of this letter, Oregon State Parks 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

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Exhibit C

Metro Easement Policy, Resolution No. 97-2539B,  
Passed by Metro Council, November 6, 1997

## Staff Report

### **CONSIDERATION OF RESOLUTION NO. 00-2889 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE OREGON PARKS AND RECREATION DEPARTMENT FOR MANAGEMENT OF PROPERTY IN THE TRYON CREEK LINKAGES TARGET AREA**

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**Date:** January 5, 2000

**Presented By:**

**Charles Ciecko  
Jim Desmond**

#### Proposed Action

Resolution No. 00-2889 requests authorization for the Executive Officer to execute an intergovernmental agreement (IGA) with the Oregon Parks and Recreation Department (OPRD) for management of a property in the Tryon Creek Linkages target area.

#### Background and Analysis

In December of 1998, Metro purchased from Donald and Nancy Wilson an 8.5-acre property in the Tryon Creek Linkages Target Area ("the Property") with funds from the Open Spaces, Parks and Streams bond measure. The Property is adjacent to the 640-acre Tryon Creek State Park, which is owned by the State of Oregon and managed by OPRD. The 28-acre property to the north of the Property is Marshall Park, owned by the City of Portland. Metro's acquisition of the Property closed the only gap in public ownership along a major stretch of Tryon Creek.

OPRD is committed to assuming management responsibilities for the Property. The IGA enumerates these responsibilities. In order to effectively transfer management responsibilities arising from the Property, the Metro Council is requested to authorize the Executive Officer to execute the IGA.

#### Findings

Authorization of the Executive Officer's execution of the IGA with OPRD is recommended based on the following:

- The Tryon Creek Linkages target area refinement plan includes Tier 1 objectives of providing a linkage between Tryon Creek State Park and Marshall Park, and protection of the streambed and riparian zone along Tryon Creek for habitat value, flood control and water quality benefits.
- The management of Tryon Creek State Park is very involved in the salmonids habitat monitoring and restoration activities in conjunction with the listing of the Lower Columbia River steelhead, as Tryon Creek is a tributary. The management of the Property by OPRD will allow for those activities in a longer stretch of Tryon Creek, thus ensuring Metro's participation in the effort.
- Adjacent to Tryon Creek State Park and falling on both sides of the creek, the Property expands the streamside riparian buffer already protected in Tryon Creek State Park.

- The Tryon Creek Linkages target area objectives also encourage partnerships involving Metro and OPRD, which serve to expand recreational opportunities at existing facilities such as Tryon Creek State Park.
- The proximity of the Property to Tryon Creek State Park makes management of the site more efficient, and therefore appropriate, for OPRD, rather than Metro. The IGA restricts the uses of the properties to those uses allowed under the bond measure.
- The IGA will relieve Metro of management costs arising from the Property, while fulfilling acquisition objectives related to the protection the ecological integrity of Tryon Creek.

### **Budget Impact**

OPRD would become responsible for the management, maintenance and operation of the Property, in conjunction with its own adjacent park facilities. 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. 00-2889.

**METRO OPERATIONS COMMITTEE REPORT**

CONSIDERATION OF RESOLUTION NO. OO-2889, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE OREGON PARKS AND RECREATION DEPARTMENT FOR MANAGEMENT OF PROPERTY IN THE TRYON CREEK LINKAGES TARGET AREA

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Date: January 21, 2000

Presented by: Councilor Washington

**Committee Action:** At its January 19, 2000 meeting, the Metro Operations Committee voted 3-0 to recommend Council adoption of Resolution 00-2889. Voting in favor: Councilors Atherton, Washington and Monroe.

**Background:** Charlie Ciecko gave the staff presentation. Resolution 00-2889 authorizes an intergovernmental agreement with the state, to manage an 8.5 acre parcel, purchased by Metro, that abuts and bridges (state owned) Tryon Park and the City of Portland's Marshall Park. The term of this agreement is for a 10 year period, renewable for an additional 10 years.

- Existing Law—The site is in the Tryon Creek Linkages area, subject to conditions of the Open Spaces Bond Measure.
- Budget Impact—While no specific amount has been identified, assigning management of this parcel to the state saves Metro funds related to management, maintenance and operations of the site.

**Committee Issues/Discussion:** There was no additional committee discussion.