

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)
EXECUTIVE OFFICER TO EXECUTE AN)
INTERGOVERNMENTAL AGREEMENT)
WITH THE CITY OF GRESHAM FOR THE)
MANAGEMENT OF PROPERTY IN THE EAST)
BUTTES/BORING LAVA DOMES TARGET AREA)

RESOLUTION NO. 00-2901

Introduced by Mike Burton
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 July 25, 1996 via resolution 96-2361, the Metro Council adopted a refinement plan for the East Buttes/Boring Lava Domes regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition, and which encouraged partnerships involving Metro and local governments; and

WHEREAS, in November and December 1999, Metro acquired 26.5 acres in the East Buttes/Boring Lava Domes target area on the west slope of Gresham Butte, surrounded on three sides by open space owned and managed by the City of Gresham (the "Property"); and

WHEREAS, the City of Gresham (the City) lacked funding to participate in the acquisition of the Property, but offered to facilitate the acquisition by taking 16 open space acres (the City Tract) in the proximity of the Property off of the market and by managing the Property after closing; and

WHEREAS, the City and Metro desire that the City should manage, operate, and maintain the City Tract and the Property as open space, and have agreed to record the covenants, conditions, and restrictions attached as Exhibit A with the deed to the Property and to the City Tract to ensure that both properties will be managed, operated and maintained as open space; and

WHEREAS, an intergovernmental agreement (IGA) involving Metro and the City would benefit the Property, as well as the public in general by ensuring consistent open space management on Gresham Butte; and

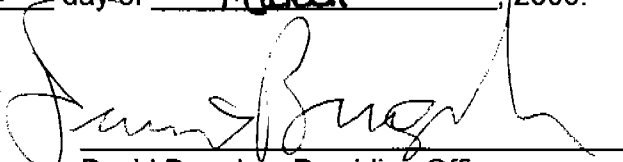
WHEREAS, the IGA attached to this resolution as Exhibit B sets forth management, maintenance, and operation guidelines for the City, requiring that the Property be managed for protection of the Property's natural resources; enhancement, restoration and protection of wildlife habitat; pedestrian and bicycle use; and public recreation consistent with these goals; with the primary goal being to manage the Property as a component of the City's Gresham Butte open space area; and

WHEREAS, the IGA attached to this resolution as Exhibit B sets forth the City's commitment to take the City Tract off of the market and to record the covenants, conditions, and restrictions attached as Exhibit A with the deed of the City Tract, as well as Metro's commitment to record the covenants, conditions, and restrictions attached as Exhibit A with the deed of the Property; now therefore

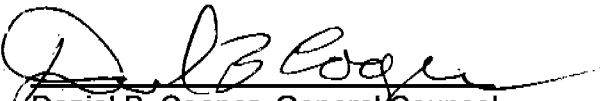
BE IT RESOLVED,

That the Metro Council approves and authorizes the Metro Executive Officer to execute the Intergovernmental Agreement with the City of Gresham, attached hereto as Exhibit B, wherein Metro will record the covenants, conditions, and restrictions attached as Exhibit A with the deed of the Property and the the City will manage the Property in the East Buttes/Boring Lava Domes target area.

ADOPTED by the Metro Council this 2ND day of MARCH, 2000.


David Bragdon, Presiding Officer

Approved as to Form:


Daniel B. Cooper, General Counsel

Declaration of Real Covenants and Restrictions

Declarant Metro, a municipal corporation and political subdivision of the state of Oregon, is fee owner of approximately 26.5 acres known as the Chambers Property, described in Exhibit 1. Declarant the City of Gresham, a municipal Corporation, is fee owner of approximately 16.4 acres known as the Regner Sixteen Acres, described in Exhibit 2. Declarants hereby covenant and restrict, each to the other, the use of the Chambers Property and the Regner Sixteen Acres to open space uses in perpetuity, and covenant to maintain the following described real property in its natural state in perpetuity.

1. These covenants and restrictions shall run with the land and shall burden each of the below described parcels of land, shall be enforceable against the declarants, their successors and assigns, and shall be enforceable for the benefit of each parcel herein described by the declarants, their successors and assigns, and party who holds any right, title or interest in the parcel herein described.

2. These covenants and restrictions shall also be enforceable in the same manner by or against and for the benefit of any parcel later included by either declarant via a like declaration benefiting the parcels herein described.

3. These covenants and restrictions are enforceable by the declarants until such time as the declarants no longer own the parcels herein described or later included. Thereafter, these covenants and restrictions shall be enforceable by declarants' successors and assigns, and any party holding any right, title or interest in the parcels herein described or later included.

4. If legal proceedings of any type are begun so as to enforce these covenants and restrictions or to seek damages for violations of these covenants and restrictions, the prevailing party shall recover reasonable attorney's fees, including attorney fees on appeal, as determined by the trial or appellate courts. However, attorney's fees may not be recovered by the prevailing party unless legal proceedings to enforce these covenants and restrictions were preceded by ten days written notice to the recorded owners of all parcels of real property subject to these covenants and restrictions at that time.

IN WITNESS WHEREOF, the declarants Metro, a municipal corporation and political subdivision of the state of Oregon, and the City of Gresham, a municipal corporation have executed this Declaration of Covenants and Restrictions on _____, 199__.

Declarant METRO

Declarant CITY OF GRESHAM

Mike Burton, Metro Executive Officer



Bonnie Kraft, City Manager

Exhibit 1 – Legal Description of Chambers Property
Exhibit 2 – Legal Description of Regner Sixteen Acres

Exhibit B

INTERGOVERNMENTAL AGREEMENT**Chambers 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 Gresham, located at 1333 NW Eastman Parkway, Gresham, Oregon 97030 ("the City").

RECITALS:

WHEREAS, pursuant to the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26 ("Metro Open Spaces Bond Measure"), Metro has entered into an Agreement of Purchase and Sale and Donation Agreement to acquire approximately 26.5 acres of real property on the west slope of Gresham Butte in Gresham, Oregon, commonly known as tax parcels R99316-1800, and R99316-0540, and more particularly described in Exhibit A and Exhibit A-1 attached hereto and incorporated herein (hereinafter referred to as "the Property");

WHEREAS, the Property is within the East Buttes/Boring Lava Domes 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 is directly adjacent to open space owned by the City, and is central to the City's trail system on Gresham Butte;

WHEREAS, Metro and the City wish to preserve the Property as open space in perpetuity and in accordance with the Metro Open Spaces Bond Measure, the Metro Greenspaces Master Plan, and Gresham's Park, Recreation, and Open Space Master Plan;

WHEREAS, the City lacks adequate funding to financially participate in the acquisition of the Property with Metro;

WHEREAS, the City is currently marketing for sale thirty (30) acres of property east of Regner Road, on the east side of Towle Butte, consisting of two (2) tax lots with reference parcel numbers 1S3E15C 00800, and 1S3E15C 00900 (the "Regner Road Property"), located within Metro's East Buttes/Boring Lava Domes Target Area;

WHEREAS, though the City lacks the financial resources to partner with Metro in the acquisition of the Property, the City desires to assist Metro's effort to protect open space properties within the City limits and Metro's East Buttes/Boring Lava Domes Target Area by foregoing the sale of the western 16.4 acres of the Regner Road Property, as described in Exhibit B and Exhibit B-1 (hereafter, "the Regner Sixteen Acres"), retaining ownership of and managing the Regner Sixteen Acres for open space natural area in perpetuity, in accordance with the terms set forth in this Agreement; and

WHEREAS, in order to insure that the open space protections established in this Agreement for the Property and for the Regner Sixteen Acres are perpetual, Metro will record the covenants, conditions and restrictions attached as Exhibit C along with the deed for the Property and the City will record the same covenants, conditions and restrictions along with the deed for the Regner Sixteen Acres;

WHEREAS, on 9/21, 1999 the Gresham City Council authorized the City to enter into this Agreement to forego the sale of the Regner Sixteen Acres; to accept Conditions, Covenants, and Restrictions restricting its use of the Regner Sixteen Acres to that of open space natural area in perpetuity; to be responsible for the interim protection and management for the Property until such time that Metro and the City decide to draft a Management Plan; to manage, operate and maintain the Regner Sixteen Acres 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 of the Property

1. Metro has entered into an Agreement of Purchase and Sale and a Donation Agreement, contingent on execution of this Intergovernmental Agreement between the City and Metro, for the acquisition of the Property. Metro shall be responsible for conducting its normal due diligence investigations prior to closing, pursuant to Metro Open Spaces Bond Measure practices. If the City requires any due diligence investigations not normally performed by Metro, the City shall be solely responsible for those items.
2. Metro shall record covenants, conditions, and restrictions upon The Property, in the form attached as Exhibit C, prohibiting subdivision, development, or improvement of the Property, and which otherwise insure that the Property will be managed in accordance with the terms of this Agreement in perpetuity.

B. The Regner Road Property

1. In consideration for Metro's full financial obligation to acquire the Property, the City shall forego the sale of the Regner Sixteen Acres, retaining full deeded ownership and managing the Regner Sixteen Acres for open space natural area purposes in perpetuity, in accordance with the terms of this Agreement.
2. The provisions of this Agreement shall not be effective until such time as Metro has accepted title to the Property. If Metro does not accept title to the Property, this Agreement is null and void in its entirety. Notwithstanding the above, the City will forego the sale of the Regner Sixteen Acres until Metro's due diligence is completed and Metro acquires the Property or decides not to acquire the Property.

City of Gresham
Agreement No. 761

3. The City shall record covenants, conditions, and restrictions upon the Regner Sixteen Acres, in the form attached as Exhibit C, prohibiting subdivision, development, or improvement of the Regner Sixteen Acres, and which otherwise insure that the Regner Sixteen Acres will be managed in accordance with the terms of this Agreement in perpetuity.

C. Resource Management Plan for the Property

1. The City shall develop a Resource Management Plan ("Management Plan") for the Property prior to any improvements or enhancements made to 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.
2. The Management Plan shall include guidelines to help manage, maintain and operate the Property in accordance with the Metro Greenspaces Master Plan, the City's Park, Recreation, and Open Space master plans and with this Agreement, and that all trails and improvements on the Property comply with the Metro Greenspaces Master Plan, the City's Park, Recreation, and Open Spaces Master Plans and with this Agreement. The Management Plan shall also outline measures to guide the management of the Property 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. The Management Plan shall include an inventory of the resources on the Property.
3. Metro shall designate at least one staff member to participate in the Management Plan process for the Property. The Management Plan shall be subject to approval by the Metro Council and by the City prior to its implementation. Metro Council approval shall not be unreasonably withheld and shall be based on consistency with this Agreement and with the Metro Greenspaces Master Plan.

D. Management, Maintenance, and Operation

1. During the Interim Period prior to formal adoption of the Management Plan set forth above (the "Interim Period"), this Agreement shall provide the interim protection guidelines for the Property, and shall also provide the use and 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. Metro grants to the City, its agents and contractors, the right to enter the Property without notification to Metro for the purpose of performing all activities reasonably necessary for the

management, maintenance and operation of the Property and for the fulfillment of their duties under this Agreement and pursuant to the Management Plan.

E. Interim Protection Guidelines

1. During the Interim Period, the Property shall be managed, maintained and operated by the City in accordance and in a manner consistent with this Agreement, the Metro Greenspaces Master Plan, the City's Park, Recreation and Open Space Master Plan ("the Plans"). In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern.
2. 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. 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, as set forth in Section D above.
4. During the Interim Period, at the City's discretion, the Property may be used informally by the public for passive recreation, habitat enhancement, pedestrian activity, and/or nonmotorized bicycle use. 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.
5. During 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 health or safety concerns.
6. During the Interim Period 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 if deemed necessary by the City, and shall respond to neighborhood or citizen complaints regarding improper use or noise on the Property.

F. Permits, 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 assessments, costs, and liabilities for the Property. Notwithstanding the guidelines established in this Agreement and future Interim Management Plans designed for

City of Gresham
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the Property, the City shall have the right to determine at its discretion the level of maintenance for the Property and the amount of its resource allocation.

2. Until formal 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.

G. General Provisions

1. Indemnification.

- a) Metro shall indemnify the City and its officers, employees, and agents against all liability, damage, loss, and expense resulting from injury to or death of persons, or property damage, arising out of or in any way connected to the tortious acts of Metro employees acting within the scope of employment and duties in performance of this agreement, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS Chapter 30.
- b) The City shall indemnify Metro and its officers, employees, and agents against all liability, damage, loss, and expense resulting from injury to or death of persons, or property damage, arising out of or in any way connected to the tortious acts of City employees acting within the scope of employment and duties in performance of this agreement, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS Chapter 30.

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. At its timing discretion, The City shall provide on-site signage informing the public that the City is managing the site. Metro will provide on-site signage stating that funding for the acquisition came from Metro Open Spaces Bond 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 Bond Measure bond proceeds. On-site signage that provides recognition of Metro funding shall be subject to prior review and comment by Metro. All signage will be consistent with Metro guidelines for Open Spaces Projects.

4. Joint Termination for Convenience. Metro and the City may by mutual agreement terminate all or part of this Agreement based upon a determination that such action is in the public interest.
5. Documents are Public Records. All records, reports, data, documents, systems and concepts, whether in the form of writings, figures, graphs, or models which are prepared or developed in connection with the acquisition, management, maintenance or operation of the Property shall become public records. Nothing in this section or in any other part of this Agreement shall be construed as limiting Metro's or the City's ability to consider real property transactions in executive session pursuant to ORS 192.660(1)(e) or as requiring disclosure of records that are otherwise exempt from disclosure pursuant to the Public Records Law (ORS 192.410 to 192.505) or Public Meetings Law (ORS 192.610 to 192.690).
6. Law of Oregon. This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the 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

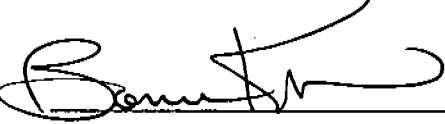
To City: City of Gresham
Ms. Julee Conway, Manager
Parks and Recreation Division
Department of Environmental Services
1333 NW Eastman Parkway
Gresham, OR 97030-3813

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 GRESHAM

METRO

By: 
Title: _____
City Manager

By: _____
Mike Burton, Executive Officer

Approved to Form:


City of Gresham, City Attorney Office

Attachments:

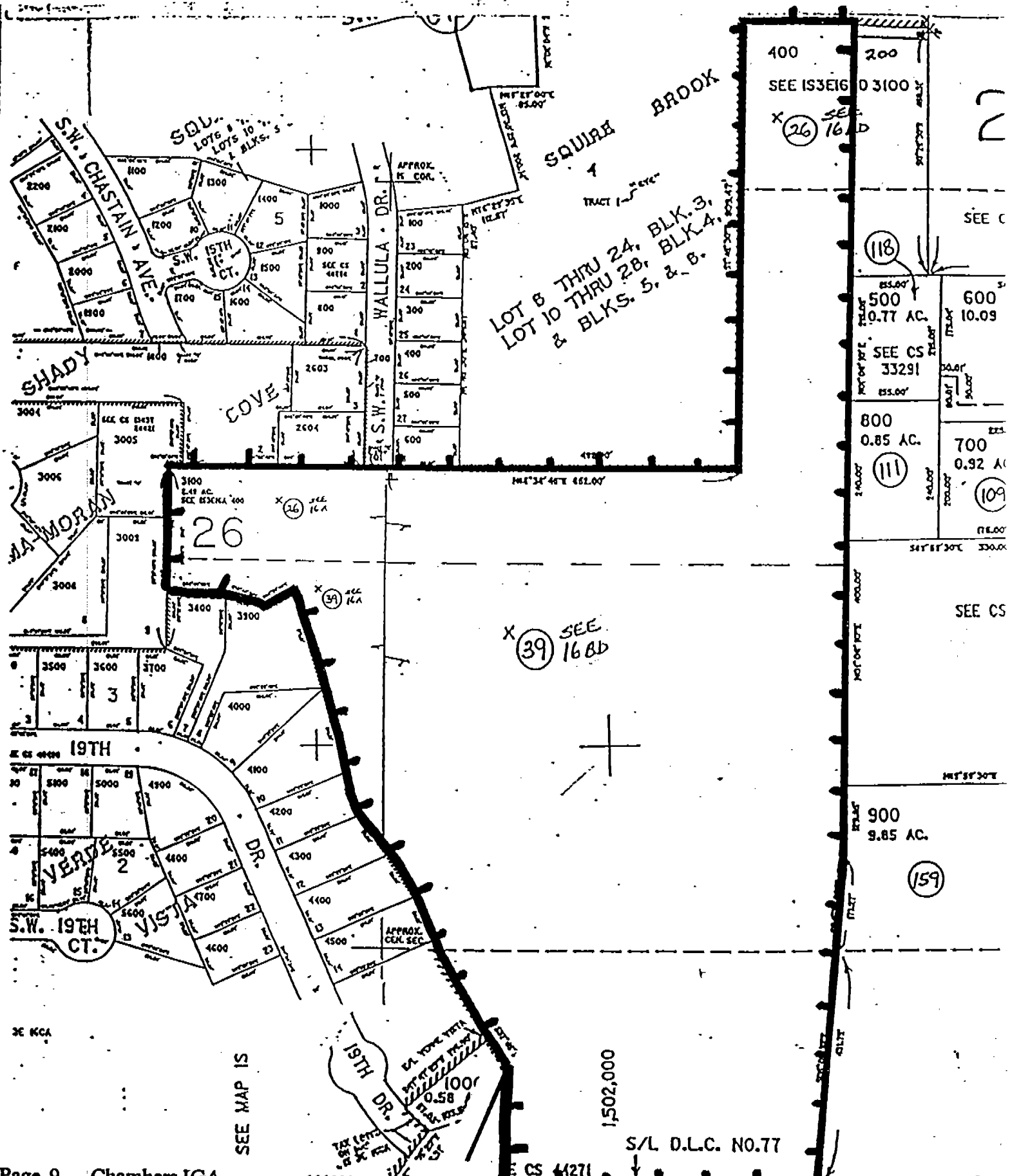
- Exhibit A Legal Description of Property
- Exhibit A-1 Map of Property
- Exhibit B Legal Description of Regner Sixteen Acres
- Exhibit B-1 Map of Regner Sixteen Acres
- Exhibit C Declaration of Real Covenants and Restrictions

EXHIBIT A
Legal Description of Property

A tract of land in Section 16, Township 1 South, Range 3 East, Willamette Meridian, in the City of Gresham, County of Multnomah and State of Oregon, said tract of land being more particularly described as follows:

Commencing at the most Easterly corner of Lot 17, Block 3 of the duly recorded plat of VERDE VISTA; thence Northerly and Westerly along the Easterly and Northerly line of said Block 3 on the following courses: North 31° 07' 40" West, a distance of 152.54 feet; North 23° 26' 40" West, a distance of 129.32 feet; North 34° 53' 55" West, a distance of 164.13 feet; North 16° 51' 25" West, a distance of 399.22 feet; South 58° 39' 40" West, a distance of 59.35 feet; North 70° 44' 30" West a distance of 65.00 feet; North 89° 44' 30" West, a distance of 100.00 feet to the Northwest corner of Lot 7, Block 3 of said plat of VERDE VISTA and a point in the East line of the duly recorded plat of LIMA-MORAN; thence North 00° 15' 30" East, along the East line of said plat of LIMA-MORAN, a distance of 201.43 feet, more or less, to a point in the Westerly extension of the South line of the duly recorded plat of SHADY COVE; thence North 89° 47' 09" East along the Westerly extension of and the South lines of said plat of SHADY COVE and the duly recorded plat of SQUIRE BROOK, a distance of 975.96 feet, more or less, to the Southeast corner of Tract I of said plat of SQUIRE BROOK; thence North 00° 15' 24" East, along the East line of said Tract I, a distance of 809.47 feet, more or less; to an interior corner of said Tract I; thence South 89° 24' 30" East along the South line of said Tract I, a distance of 323.08 feet, more or less, to a point in the West line of that certain tract of land conveyed to John Gantenbein, by Deed recorded March 5, 1910 in Deed Book 487, page 66, Deed Records; thence South 03° 39' 20" West, along the West line of said Gantenbein Tract, a distance of 456.62 feet, more or less, to a point in the North line of that certain tract of land conveyed to Ione LeGette (Becker) by Deed recorded October 2, 1936 in Deed Book 357, page 269, Deed Records; thence South 89° 19' 08" West, along the North line of said LeGette Tract, a distance of 99.33 feet, more or less, to the Northwest corner of said Ione LeGette (Becker) Tract established by Decree in Suit No. 325865 entered on January 16, 1968, of said county; thence South 00° 57' 08" West, along the West line of said LeGette Tract, a distance of 984.14 feet to an angle corner in said West line; thence South 04° 25' 24" West along the West line of said LeGette Tract, a distance of 170.07 feet to an angle corner in said West line; thence South 05° 00' 45" West, along the West line of said LeGette Tract, a distance of 429.44 feet to a point in the South line of the William G. Cathey Donation Land Claim; thence North 89° 32' 25" West, along the South line of said Cathey Donation Land Claim, a distance of 513.24 feet to a point; thence North 02° 01' 30" West, a distance of 220.85 feet to a point; thence North 37° 45' 10" West, a distance of 57.28 feet to the point of beginning.

EXHIBIT A-1
Map of Property

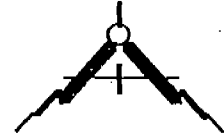


ENGINEERING
PLANNING
SURVEYING
LAND DEVELOPMENT

Registration:
Oregon
Idaho
Washington

KENT W. COX and ASSOCIATES, INC.
Consulting Engineers -- Land Surveyors

204 N.E. KELLY AVENUE
GRESHAM, OREGON 97030-7544
(503) 667-4464
FAX (503) 665-9634
email: kwcox@teleport.com



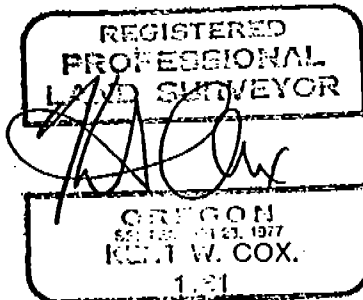
Affiliations:
American Society of Civil Engineers
Professional Land Surveyors of Oregon
American Congress of Surveying and Mapping

**BOUNDARY DESCRIPTION
FOR
CITY OF GRESHAM PARKS & RECREATION
16.335 ACRES PROPOSED FOR OPEN SPACE
WEST OF REGNER ROAD**

99 122
Revised October 28, 1999

A tract of land located in the Southwest Quarter of the Southwest Quarter of Section 15, Township 1 South, Range 3 East of the Willamette Meridian, City of Gresham, County of Multnomah, State of Oregon and more particularly described as follows:

Beginning at the southwest corner of said Section 15; thence North 00°32'31" West along the west line of said Section 15 a distance of 1087.98 feet; thence North 88°53'37" East parallel to the south line of said southwest quarter of the southwest quarter a distance of 721.50 feet; thence South 01°06'23" East a distance of 96.29 feet; thence South 30°16'38" West a distance of 36.54 feet; thence South 27°22'53" West a distance of 66.86 feet; thence South 04°31'52" East a distance of 121.73 feet; thence South 02°53'30" West a distance of 88.34 feet; thence South 07°45'19" West a distance of 200.00 feet; thence South 03°27'44" West a distance of 200.00 feet; thence South 09°17'48" West a distance of 300.00 feet to a point on the south line of said Section 15; thence South 88°53'37" West along said south line a distance of 581.50 feet to the southwest corner of said Section 15. Containing 16.335 acres more or less. The bearings and distances of this description are based upon Survey Number 55371 on file in the Multnomah County Surveyors office.



RENEWS 12-31-99

Exhibit C
Declaration of Real Covenants and Restrictions

Declarant Metro, a municipal corporation and political subdivision of the state of Oregon, is fee owner of approximately 26.5 acres known as the Chambers Property, described in Exhibit 1. Declarant the City of Gresham, a municipal Corporation, is fee owner of approximately 16.4 acres known as the Regner Sixteen Acres, described in Exhibit 2. Declarants hereby covenant and restrict, each to the other, the use of the Chambers Property and the Regner Sixteen Acres to open space uses in perpetuity, and covenant to maintain the following described real property in its natural state in perpetuity.

1. These covenants and restrictions shall run with the land and shall burden each of the below described parcels of land, shall be enforceable against the declarants, their successors and assigns, and shall be enforceable for the benefit of each parcel herein described by the declarants, their successors and assigns, and party who holds any right, title or interest in the parcel herein described.
2. These covenants and restrictions shall also be enforceable in the same manner by or against and for the benefit of any parcel later included by either declarant via a like declaration benefiting the parcels herein described.
3. These covenants and restrictions are enforceable by the declarants until such time as the declarants no longer own the parcels herein described or later included. Thereafter, these covenants and restrictions shall be enforceable by declarants' successors and assigns, and any party holding any right, title or interest in the parcels herein described or later included.
4. If legal proceedings of any type are begun so as to enforce these covenants and restrictions or to seek damages for violations of these covenants and restrictions, the prevailing party shall recover reasonable attorney's fees, including attorney fees on appeal, as determined by the trial or appellate courts. However, attorney's fees may not be recovered by the prevailing party unless legal proceedings to enforce these covenants and restrictions were preceded by ten days written notice to the recorded owners of all parcels of real property subject to these covenants and restrictions at that time.

IN WITNESS WHEREOF, the declarants Metro, a municipal corporation and political subdivision of the state of Oregon, and the City of Gresham, a municipal corporation have executed this Declaration of Covenants and Restrictions on _____, 199__.

Declarant METRO

Declarant CITY OF GRESHAM

Mike Burton, Metro Executive Officer



Bonnie Kraft, City Manager

Exhibit 1 – Legal Description of Chambers Property
Exhibit 2 – Legal Description of Regner Sixteen Acres

EXHIBIT 1
Legal Description of Chambers Property

A tract of land in Section 16, Township 1 South, Range 3 East, Willamette Meridian, in the City of Gresham, County of Multnomah and State of Oregon, said tract of land being more particularly described as follows:

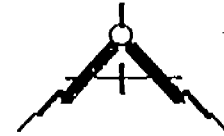
Commencing at the most Easterly corner of Lot 17, Block 3 of the duly recorded plat of VERDE VISTA; thence Northerly and Westerly along the Easterly and Northerly line of said Block 3 on the following courses: North 31° 07' 40" West, a distance of 152.54 feet; North 23° 26' 40" West, a distance of 129.32 feet; North 34° 53' 55" West, a distance of 164.13 feet; North 16° 51' 25" West, a distance of 399.22 feet; South 58° 39' 40" West, a distance of 59.35 feet; North 70° 44' 30" West a distance of 65.00 feet; North 89° 44' 30" West, a distance of 100.00 feet to the Northwest corner of Lot 7, Block 3 of said plat of VERDE VISTA and a point in the East line of the duly recorded plat of LIMA-MORAN; thence North 00° 15' 30" East, along the East line of said plat of LIMA-MORAN, a distance of 201.43 feet, more or less, to a point in the Westerly extension of the South line of the duly recorded plat of SHADY COVE; thence North 89° 47' 09" East along the Westerly extension of and the South lines of said plat of SHADY COVE and the duly recorded plat of SQUIRE BROOK, a distance of 975.96 feet, more or less, to the Southeast corner of Tract I of said plat of SQUIRE BROOK; thence North 00° 15' 24" East, along the East line of said Tract I, a distance of 809.47 feet, more or less; to an interior corner of said Tract I; thence South 89° 24' 30" East along the South line of said Tract I, a distance of 323.08 feet, more or less, to a point in the West line of that certain tract of land conveyed to John Gantenbein, by Deed recorded March 5, 1910 in Deed Book 487, page 66, Deed Records; thence South 03° 39' 20" West, along the West line of said Gantenbein Tract, a distance of 456.62 feet, more or less, to a point in the North line of that certain tract of land conveyed to Ione LeGette (Becker) by Deed recorded October 2, 1936 in Deed Book 357, page 269, Deed Records; thence South 89° 19' 08" West, along the North line of said LeGette Tract, a distance of 99.33 feet, more or less, to the Northwest corner of said Ione LeGette (Becker) Tract established by Decree in Suit No. 325865 entered on January 16, 1968, of said county; thence South 00° 57' 08" West, along the West line of said LeGette Tract, a distance of 984.14 feet to an angle corner in said West line; thence South 04° 25' 24" West along the West line of said LeGette Tract, a distance of 170.07 feet to an angle corner in said West line; thence South 05° 00' 45" West, along the West line of said LeGette Tract, a distance of 429.44 feet to a point in the South line of the William G. Cathey Donation Land Claim; thence North 89° 32' 25" West, along the South line of said Cathey Donation Land Claim, a distance of 513.24 feet to a point; thence North 02° 01' 30" West, a distance of 220.85 feet to a point; thence North 37° 45' 10" West, a distance of 57.28 feet to the point of beginning.

ENGINEERING
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LAND DEVELOPMENT

Registration:
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Idaho
Washington

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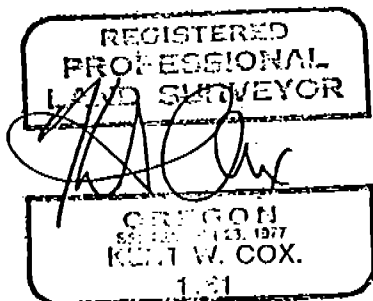
Affiliations:
American Society of Civil Engineers
Professional Land Surveyors of Oregon
American Congress of Surveying and Mapping

BOUNDARY DESCRIPTION
FOR
CITY OF GRESHAM PARKS & RECREATION
16.335 ACRES PROPOSED FOR OPEN SPACE
WEST OF REGNER ROAD

99 122
Revised October 28, 1999

A tract of land located in the Southwest Quarter of the Southwest Quarter of Section 15, Township 1 South, Range 3 East of the Willamette Meridian, City of Gresham, County of Multnomah, State of Oregon and more particularly described as follows:

Beginning at the southwest corner of said Section 15; thence North 00°32'31" West along the west line of said Section 15 a distance of 1087.98 feet; thence North 88°53'37" East parallel to the south line of said southwest quarter of the southwest quarter a distance of 721.50 feet; thence South 01°06'23" East a distance of 96.29 feet; thence South 30°16'38" West a distance of 36.54 feet; thence South 27°22'53" West a distance of 66.86 feet; thence South 04°31'52" East a distance of 121.73 feet; thence South 02°53'30" West a distance of 88.34 feet; thence South 07°45'19" West a distance of 200.00 feet; thence South 03°27'44" West a distance of 200.00 feet; thence South 09°17'48" West a distance of 300.00 feet to a point on the south line of said Section 15; thence South 88°53'37" West along said south line a distance of 581.50 feet to the southwest corner of said Section 15. Containing 16.335 acres more or less. The bearings and distances of this description are based upon Survey Number 55371 on file in the Multnomah County Surveyors office.



RENEWED 12-31-99

Staff Report

CONSIDERATION OF RESOLUTION NO. 00-2901 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF GRESHAM FOR THE MANAGEMENT OF PROPERTY IN THE EAST BUTTES/BORING LAVA DOMES TARGET AREA

Date: February 16, 2000

Presented By:

**Charles Ciecko
Jim Desmond**

Proposed Action

Resolution No. 00-2901 requests authorization for the Executive Officer to execute an intergovernmental agreement (IGA) with the City of Gresham ("the City") for management of a property in the East Buttes-Boring Lava Domes target area.

Existing Legislation

Metro Code 2.04.026 (a) (2) requires that the Executive Officer obtain the authorization of the Metro Council prior to entering into an agreement pursuant to ORS Chapter 190 for the transfer of an interest in real property (including agreements to record deed restrictions on Metro Property).

The Greenspaces Master Plan identified a desired system of natural areas, which included the East Buttes/Boring Lava Domes area. Metro purchased this East Buttes property under the Open Spaces, Parks and Streams bond measure passed by the voters of the region in 1995, which indicates that properties may be operated and maintained by cooperative arrangements consistent with the Greenspaces Master Plan. The property is included in the East Buttes/Boring Lava Domes Refinement Plan adopted by the Metro Council via resolution 96-2361. The Open Spaces Implementation Work Plan encourages agreements with other park providers as a strategy to reduce landbanking costs.

Background and Analysis

In November and December of 1999, Metro purchased from the Chambers family 22.5 acres, and received from the Chambers family a donation of four adjacent acres in the East Buttes/Boring Lava Domes target area ("the Property"). The Property is on the western slope of Gresham Butte, surrounded on three sides by City-owned open space. The acquisition of the Property by Metro will allow the City to solidify its ownership on Gresham Butte, and to protect the forested backdrop to the newly constructed Gresham Butte trail.

The City requested that Metro acquire the property after the owner submitted for City review several subdivision development designs. The City lacked adequate funds to participate in the acquisition of the property, but agreed to assist Metro's acquisition efforts in two other ways. First, the City agreed to manage the Property as a component of the City's Gresham Butte open space natural area, pursuant to the terms of an IGA. Second, the City agreed to take off

of the market 16.4 open space acres (the City Tract) located within the forested corridor that Metro is attempting to protect. In order to ensure that both the Property and the City Tract are managed as open space, Metro and the City agreed to record covenants, conditions, and restrictions with the deeds of their respective properties.

The IGA between Metro and Gresham provides for the following:

1. Guidelines for the City's management of the Property as open space;
2. The City's commitment to retaining ownership of the City Tract;
3. The City's commitment to record covenants, conditions, and restrictions with the deed of the City Tract, ensuring that the City Tract are managed as open space, and
4. Metro's commitment to record covenants, conditions, and restrictions with the deed of the Property, ensuring that the Property is managed as open space.

Findings

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

- Gresham Butte is the northern anchor to an open space corridor in which Metro owns approximately 325 acres. The IGA ensures that a 26-acre block on Gresham Butte will be managed consistently with surrounding properties, as an open space natural area.
- The location of the Property within an area owned and managed by the City makes the City an appropriate manager of the site.
- The City Tract, currently marketed by the City as a development property, is a key property in the open space corridor which Metro is invested in protecting, increasing the buffer between forested wildlife habitat and residential development along Regner Road. The IGA protects the natural character of the City Tract by requiring the City to retain ownership and to manage it as open space.
- Metro's commitment to recording covenants, conditions, and restrictions with the deed of the Property, as required in the IGA, is consistent with the City's management of surrounding open space properties on Gresham Butte.
- Under the IGA, the Property is more likely to become available for public use and benefit at an earlier date than if Metro retains all operations and management responsibilities and the property is landbanked for an indefinite period of time.
- The IGA will relieve Metro of management costs arising from the Property, while fulfilling acquisition objectives related to objectives established in the East Buttes/Boring Lava Domes target area.

Budget Impact

The City 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. 00-2901.