

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 00-2949
EXECUTIVE OFFICER TO EXECUTE AN)
ALLOCATION, JOINT COOPERATION AND)
DEFENSE AGREEMENT WITH THE PORT OF)
PORTLAND FOR THE WILLAMETTE COVE) Introduced by Mike Burton,
PROPERTY) Executive Officer

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, on January 18, 1996, via Resolution 96-2266, the Metro Council authorized the purchase of the 27-acre Willamette Cove property ("the Property") on the east bank of the Willamette River which had been under option to The Trust for Public Land and identified in the bond measure Fact Sheet 4 as one of the "option" sites; and

WHEREAS, on February 28, 1996, Metro purchased the Property using Open Spaces, Parks and Streams bond funds; and

WHEREAS, on January 29, 1999, DEQ, as part of its examination of properties throughout the Portland Harbor, notified Metro that the Property would be listed as a confirmed release site; and

WHEREAS, DEQ and Metro identified the Port of Portland (the Port) as a responsible party on the site as a past owner and operator of the site; and

WHEREAS, the United States Environmental Protection Agency (EPA) indicated in early April 2000 that it will list the Portland Harbor stretch of the Willamette River as a federal Superfund site; and

WHEREAS, on December 1, 1999 and again on May 19, 2000, DEQ notified Metro and the Port that DEQ was requesting that Metro and the Port execute a Voluntary Agreement for Remedial Investigation and Source Control Measures for the Willamette Cove property, and that enforcement action would follow if such agreement with DEQ is not entered into; and

WHEREAS, additional work will likely be required by either DEQ, EPA, or both on the Portland Harbor, including the Willamette Cove site; and

WHEREAS, Metro and the Port share common interests in conducting site work at the Property, including performing an environmental investigation, risk assessment, source control measures, feasibility studies, and remedial action; exchanging historical site information, and cooperating on an effective and efficient strategy for working with DEQ and EPA; and

WHEREAS, Metro's legal counsel has negotiated an Allocation, Joint Cooperation and Defense Agreement between Metro and the Port of Portland (the "Agreement"), which would authorize Metro and the Port to conduct activities and allocate costs relating to Willamette Cove, which Agreement shall be attorney-client privileged as it will be entered into in anticipation of litigation; and

WHEREAS, once the scope of work for the Site Work for the Property is set by DEQ or EPA, any such written agreement will be brought back to the Metro Council for final review and approval; and

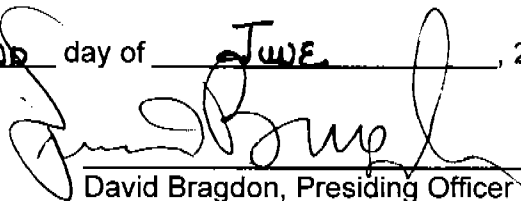
WHEREAS, Metro wishes to fulfill its objectives related to protection of the ecological integrity of this important regional natural area and providing safe, future public access to the site as a public open space; now therefore

BE IT RESOLVED,

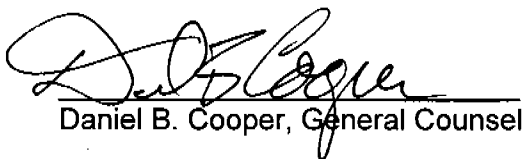
That the Metro Council authorizes the Metro Executive Officer to execute the Allocation, Joint Cooperation and Defense Agreement, as negotiated by Metro legal counsel.

ADOPTED by the Metro Council this 22ND day of JUNE, 2000.

Approved as to Form:



David Bragdon, Presiding Officer



Daniel B. Cooper, General Counsel

Staff Report

CONSIDERATION OF RESOLUTION NO. 00-2949 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN ALLOCATION, JOINT COOPERATION AND DEFENSE AGREEMENT WITH THE PORT OF PORTLAND FOR THE WILLAMETTE COVE PROPERTY

Date: June 29, 2000

Presented by:

Jim Desmond
Alison Kean Campbell

PROPOSED ACTION

Resolution No. 00- 2949, requests authorization for the Executive Officer to execute an Allocation, Joint Cooperation and Defense agreement (the "Agreement") with the Port of Portland (the "Port") for performing joint environmental testing, remediation, cost allocation and other matters related to the Willamette Cove property.

EXISTING LAW

Metro Code 2.04.026 (a) (2) requires that the Executive Officer obtain the authorization of the Metro Council prior to entering into certain agreements pursuant to ORS Chapter 190.

Metro Code 2.04.026 (a) (1) (D) requires that the Metro Council approve any contract for personal services for a term greater than 12 months and in an amount greater than \$50,000. Metro's payment to the Port of Portland for Metro's share of personal services under the proposed agreement may exceed \$50,000, but the exact amount cannot be determined at this time.

Metro Code 2.08.030(a) provides the Office of General Counsel with general control and supervision of all legal proceedings in which Metro may be interested. Pursuant to Metro Code 2.08.040 (a), the general counsel prepares documents concerning any matter in which Metro is interested, and reviews and approves all legally binding instruments. Metro Code 2.08.070 provides that the general counsel may employ outside legal counsel on behalf of Metro to handle such matters as the general counsel deems advisable.

BACKGROUND AND ANALYSIS

On February 28, 1996, Metro purchased from The Trust for Public Land, a 27-acre property in the Willamette River Greenway Target Area known as the Willamette Cove property (the "Property") with funds from the Open Spaces Parks and Streams bond measure. The Port of Portland ("the Port") is a former owner and operator of portions of the Property.

In 1997 the Oregon Department of Environmental Quality ("DEQ") and the U.S. Environmental Protection Agency ("EPA") conducted a study of a portion of the Willamette River known as the Portland Harbor, and discovered elevated levels of hazardous substances in sediments throughout the Portland Harbor. In April 2000 the EPA indicated that it will list the Portland

Harbor stretch of the Willamette River as a federal Superfund site. The division of responsibilities between DEQ and EPA has not been finalized yet, and it is possible that the EPA may take over responsibility for regulatory oversight of the entire Harbor, just the sediments portion, or just the uplands portion. There is also the possibility for joint lead between DEQ and EPA.

Pursuant to the harbor investigation, DEQ has recommended listing the Property in DEQ's confirmed release list and inventory. In addition, in December 1999 and again on May 19, 2000, DEQ issued notices to property owners along the Portland Harbor, including Metro and the Port, requesting that Metro and the Port execute a Voluntary Agreement for Remedial Investigation and Source Control Measures for Willamette Cove. DEQ's notice states that if Metro and the Port do not enter the voluntary program, that DEQ will begin preparation of a unilateral order.

Both Metro and the Port have engaged outside legal counsel to assist in the Willamette Cove Property and to respond to DEQ. Metro and the Port propose jointly entering into an Allocation, Joint Cooperation, and Defense Agreement negotiated by legal counsel to coordinate common defense activities such as the exchange of historical site information, retention of an environmental consultant, negotiation of the scope of additional site work with DEQ or EPA, and performance of the site work and other activities, in order to facilitate an effective strategy for responding to DEQ or EPA, or as applicable, other government agencies or private parties, and to allocate the cost of performing those activities.

FINDINGS

Authorization of the Executive Officer's execution of the Allocation, Joint Cooperation, and Defense Agreement with the Port is recommended based on the following:

- The Property is an important regional natural area and the ability to provide safe, future public access to the site as a public open space is a Metro objective.
- As potentially responsible parties for the site, Metro and the Port have shared common interests in conducting the site work, exchanging historical site information and cooperating on an effective and efficient strategy for working with DEQ/EPA.
- Metro has an interest in limiting its potential costs for site work at the Property and would be well served by partnering with other potentially responsible parties, such as the Port, with respect to the site.
- The Agreement will fulfill objectives related to the protection of the ecological integrity of the Property and the health and safety of the public.

BUDGET IMPACT

Metro and the Port would allocate costs as negotiated in the Allocation, Joint Cooperation, and Defense Agreement. By partnering with the Port, the budget impact related to costs associated with DEQ/EPA-required activities on Willamette Cove will be greatly reduced.

Executive Officer's Recommendation

The Executive Officer recommends passage of Resolution No. 00-2949.