

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING	)	RESOLUTION NO. 06-3741
THE CHIEF OPERATING OFFICER TO	)	
ENTER INTO A GRAVE PURCHASE	)	Introduced by Chief Operating Officer
AGREEMENT WITH HAVURAH SHALOM	)	Michael J. Jordan with the concurrence of
FOR THE BULK SALE OF GRAVES AT	)	Council President David Bragdon
JONES PIONEER CEMETERY	)	

WHEREAS, Metro was approached by Havurah Shalom in February 2006 with a request to enter into a grave purchase agreement to provide for a series of bulk grave sales at Jones Cemetery over time, beginning with an immediate 85 grave bulk sale at the current rate; and

WHEREAS, Jones Cemetery, located in Portland, is one of the 14 Pioneer Cemeteries that Metro owns, actively markets and maintains; and

WHEREAS, the Havurah Shalom Cemetery Section was established in Jones Pioneer Cemetery by Multnomah County, through an earlier series of bulk grave sales to Havurah Shalom dating back to 1984, prior to the transfer of the Pioneer Cemeteries from Multnomah County to Metro; and

WHEREAS, Metro Code Section 10.04.050 requires that the bulk sale of graves must be approved by a resolution of the Metro Council setting forth the terms and conditions of said bulk sale, including rates and the terms of resale, and that no options to purchase graves shall be granted unless approved by resolution of the Metro Council setting forth the terms and conditions of said option; and

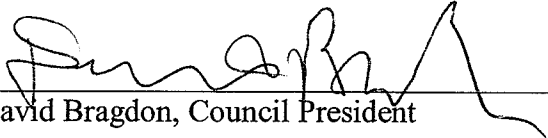
WHEREAS, the Regional Parks and Greenspaces Department entered into discussions with Havurah Shalom on the potential bulk sales of graves and have reached tentative agreement on the terms of a Grave Purchase Agreement providing for the immediate bulk sale of 85 graves to Havurah Shalom at current rates, together with a prospective ability for Havurah Shalom to purchase future blocks of 96 graves at the Metro rates then in effect, up to a total of 384 additional graves, contingent on Metro Council approval; now therefore

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to enter into the Grave Purchase Agreement attached as Exhibit A hereto, providing for the bulk sale of graves at Jones Pioneer Cemetery.

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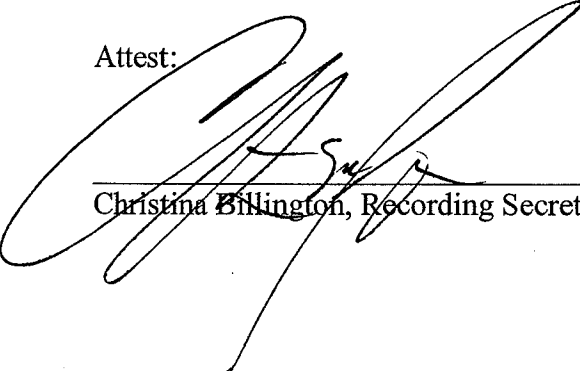
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ADOPTED by the Metro Council this 30<sup>th</sup> day of November 2006

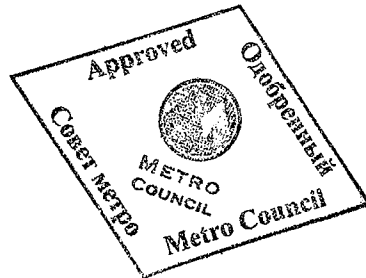
  
\_\_\_\_\_  
David Bragdon, Council President

Attest:

Approved as to Form:

  
\_\_\_\_\_  
Christina Billington, Recording Secretary

  
\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney



Resolution No. 06-3741

**Exhibit A**

**Sale of 85 Graves to Havurah Shalom**

**Lots 220-223, 210-213, 200-203, and 190-193 of the Jones Pioneer Cemetery**

# Grave Purchase Agreement

This GRAVE PURCHASE AGREEMENT (“Agreement”) is entered into and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2006 (the “Effective Date”), by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, and Havurah Shalom (hereinafter referred to as “Havurah”), an Oregon nonprofit corporation.

## Recitals

WHEREAS, in accord with the Metro Regional Parks and Greenspaces Department’s Pioneer Cemeteries Operations Policy, Procedure and Rules, the sale of multiple grave licenses to an entity for future resale or transfer to other individuals may be permitted upon the approval by the Metro Chief Operating Officer, who may decide to bring the request before the Metro Council; and

WHEREAS, Section 10.04.050 of the Metro Code provides that options to purchase graves in the Metro Pioneer Cemeteries must be approved by resolution of the Metro Council setting forth the terms and conditions of the transaction; and

WHEREAS, via Resolution No. 06-3741 (“For the Purpose of Approving an Agreement with Havurah Shalom for the Purchase of Graves at Jones Cemetery”), the Metro Council approved the terms of this Agreement set forth below; and

In consideration of the mutual covenants, terms, conditions, and restrictions contained in this Agreement, the parties agree as follows:

1. Sale of Graves to Havurah. Metro agrees to sell and Havurah agrees to buy 85 grave licenses (hereafter, “Graves”) in lots 220-223, 210-213, 200-203, and 190-193 of the Jones Pioneer Cemetery, at Metro’s current rate of \$1,000.00 per grave, as depicted on Exhibit A attached hereto.
2. Order of Future Grave Sales to Havurah. Havurah may elect to purchase the following additional graves in Jones Pioneer Cemetery at any time. Havurah must purchase said graves in 96 grave blocks, paying Metro’s rate in effect on the date of said future purchases, subject to the restrictions and requirements set forth herein. Said block sales shall begin with the remaining graves in lot 192-193, if any, and the graves in lots 180–183, 173-176, 163–166 and 153-156, and shall proceed in order as follows: lots 143-146, 132-135, 116-119 and 104-107; then lots 89–92, 76–79, 60–63 and 46-49; then lots 30-33, 17-20, and 1-4, as depicted in Exhibit A attached hereto. The parties acknowledge that the final block sale may contain fewer than 96 graves. The sequence of purchases provided herein is intended to establish the orderly sale of graves from west to east, but shall be used as a reference only. Said block sales may be adjusted by Metro to account for grave space lost in portions of the cemetery occupied by trees, near roads, or burdened by steep topography, and to provide for convenient and economical replacement of the hedge.

3. Order of Future Sales by Metro to Third Parties. When Metro determines in its sole discretion that there are no remaining saleable graves in the portion of Jones Pioneer Cemetery that is not subject to this Agreement, or if a family or group wishes to buy a block of graves that exceeds availability in the remainder of the Jones Pioneer Cemetery, Metro will provide Havurah with written notice of Metro's intent to sell graves in the area set forth above in Section 2. Upon receipt of said notice Havurah shall then be provided 60 days from receipt of notice to purchase all the remaining unsold graves in said lots. If Havurah elects not to purchase said graves, Metro may begin selling the graves to third parties. Metro must sell said graves to third parties in the following order:
  - 3.1 Metro will first sell graves in lots 1-4, 17-20, and 30-33. When 50% of the available graves in said lots have been sold to third parties, Metro may begin selling graves in lots 46-49, 60-63, 76-79, and 89-92.
  - 3.2 When 50% of the graves in lots 46-49, 60-63, 76-79, and 89-92 have been sold to third parties, Metro may begin selling graves in lots 104-107, 116-119, 132-135, and 143-146.
  - 3.3 When 50% of the graves in lots 104-107, 116-119, 132-135, and 143-146 have been sold to third parties, Metro may begin selling graves in lots 153-156, 163-166, 173-176, and 180-183.
4. Re-Sale of Graves by Havurah. Havurah must resell graves purchased from Metro hereunder at a rate that is no more than the current rate paid to Metro for graves.
5. Havurah Installed Signs. Havurah may install mutually approved signs identifying the location and existence of the Havurah Shalom Cemetery Section in the area so termed, or in the nearby vicinity in a location subject to Metro's prior approval.
6. Gravemarkers and Headstone Standards. Havurah agrees, covenants and warrants that, as a condition of resale to its members of graves and subsequent burial therein, Havurah will require and enforce the use of flat gravemarkers or headstones that are flush with the ground in accord with Metro regulations in alternating rows with standing headstones, such that every other grave row will contain exclusively flat grave markers.
7. Hedge. Metro agrees to plant a mutually acceptable vegetative or non-vegetative border (the "Hedge") along the west border of lots 220-223, along the south border of lots 223, 231, 203 and 193, and along the east border of lots 193, 192, 191, and 190. Metro will be responsible for extending and replanting the Hedge, as future Grave purchases by Havurah occur. The Hedge will only be extended to encompass graves owned or resold by Havurah. No Hedge will be placed on the north border of the Jones Pioneer Cemetery. Subject to the provisions of Sections 9 and 10, set forth below, Metro will maintain the Hedge once established and as thereafter extended, and no other plantings shall be allowed except as set forth herein.

8. Burial Services. Metro shall be the sole provider of burial services at Jones Pioneer Cemetery. Metro or Metro's contractor shall open and close all graves purchased by Havurah, in accord with Metro's fee schedule.
9. Appropriations. Metro's performance under this Agreement is conditioned upon and financed by legally available funds appropriated for the purposes of Pioneer Cemetery maintenance. Nothing herein shall obligate Metro to appropriate funds to finance maintenance for Metro's Pioneer Cemeteries collectively, or for Jones Pioneer Cemetery, individually. However, all funds Metro does appropriate for maintenance at Jones Cemetery shall be allocated such that the Havurah Shalom Cemetery Section receives maintenance equal to the rest of Jones Cemetery.
10. Default. In the event Metro or Havurah fail to perform as required by this Agreement, then the other party (the "Non-Defaulting Party") shall give written notice to the party who failed to perform or pay (the "Defaulting Party") setting forth the alleged default. In the event such default is uncured for a period of 30 days after the giving of such notice (the "Cure Period"), the Non-Defaulting Party may terminate this Agreement by written notice, and exercise any other remedy available to the Non-Defaulting Party at law or in equity.
11. Notices. All requests, elections, notices and other communications to be given hereunder by either party to the other shall be in writing and sent by certified mail, return receipt requested, postage prepaid, by personal delivery or by facsimile transmission, addressed as follows:

As to Havurah:           Office Administrator, Havurah Shalom  
825 NW 18<sup>th</sup> Avenue  
Portland, OR 97209-2333

As to Metro:            Metro Parks and Greenspaces  
Attn: Jim Desmond, Director  
600 NE Grand Avenue  
Portland, OR 97232-2736  
Telephone (503) 797-1914  
Facsimile (503) 797-1849

Either party to this Agreement may change its address for purposes of this section by giving the other party written notice of the new address in the manner set forth above. Requests, elections, notices and other communications shall be deemed effective upon delivery, if personally delivered, three (3) business days after mailing as set forth above.

15. Indemnity. Havurah agrees to defend (using legal counsel reasonably acceptable to Metro), indemnify, and hold Metro harmless from and against any and all actual or alleged claims, injury, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties (collectively "Costs") which may be imposed upon or claimed against Metro and which, in whole or in part, directly or indirectly, arise from or are in any way connected

with: (i) the act, omission or negligence of Havurah or Havurah's officers, directors, agents, employees, contractors or subcontractors, or other persons under Havurah's direction and control; (ii) the use or occupation of Jones Pioneer Cemetery by Havurah, whether or not due to Havurah's own act or omission and whether or not occurring at Jones Pioneer Cemetery; (iii) any condition created at Jones Pioneer Cemetery by Havurah or Havurah's officers, directors, agents, employees, contractors or subcontractors, or other persons under Havurah's direction and control, including any accident, injury or damage after the date hereof; (iv) any breach, violation or nonperformance of any of Havurah's obligations under this Agreement; and/or (v) any damage caused by any of Havurah's officers, directors, contractors, subcontractors, employees, agents or other persons under Havurah's direction and control, on or to Jones Pioneer Cemetery.

16. Authority. Metro warrants that, in the manner required by its governing laws, it has duly authorized the undersigned signer to execute the Agreement on its behalf.
17. Applicable Law and Regulation. Except as specifically provided in this Agreement, all of Havurah's activities hereunder shall comply with the Metro Code and Metro regulations. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Oregon.
18. Waiver. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this Agreement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.
19. Severability. The determination that one or more provisions of this Agreement is invalid, void or illegal or unenforceable shall not effect or invalidate the remainder of this Agreement.
20. Modification. No amendment or modification of this Agreement shall be valid unless in writing and signed by all parties hereto.

HAVURAH SHALOM

_____	_____
By:	Date
Its:	
_____	_____

METRO

_____	_____
By: Michael J. Jordan Metro Chief Operating Officer	Date

Attachment 1  
to  
Exhibit A  
Resolution No. 06-3741

Sale of 85 Graves to Havurah Shalom  
Lots 220-223, 210-213, 200-203, and 190-193 of the Jones Pioneer Cemetery

Refer to Section 1 on map (Attachment 3)

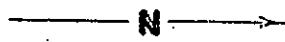


Attachment 2  
to  
Exhibit A  
Resolution No. 06-3741

Sequential Order of Future 96 Grave Sales to Havurah of the Jones Pioneer Cemetery:  
Lots 180-183, 173-176, 163-166 and 153-156  
Lots 143-146, 132-135, 116-119 and 104-107  
Lots 89-92, 76-79, 60-63 and 46-49  
Lots 30-33, 17-20, and 1-4

Refer to Sections 2 through 5 on map (Attachment 3)

Attachment 3  
to Exhibit A  
Res. 06-3741



JONES CEMETERY

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## **STAFF REPORT**

IN CONSIDERATION OF RESOLUTION NO. 06-3741 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ENTER INTO A GRAVE PURCHASE AGREEMENT WITH HAVURAH SHALOM FOR THE BULK SALE OF GRAVES AT JONES PIONEER CEMETERY

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Date: November 8, 2006

Prepared by: Jim Desmond  
Teri Dresler

### **BACKGROUND**

Metro Park's staff has been in discussions with Havurah Shalom since February 2006 regarding their request to purchase 85 graves at Jones Pioneer Cemetery. Havurah Shalom is also interested in four (4) options to purchase additional blocks, each block as a bulk sale of 96 graves, in future years at Jones Pioneer Cemetery, located in the City of Portland. This will be the second agreement Metro has entered into with Havurah to purchase bulk graves in Jones Pioneer Cemetery. In the transfer of the pioneer cemeteries from Multnomah County in 1994 Metro was required to assume all active contracts and/or agreements that were then in effect. Among these agreements was a 1984 Grave Sale Agreement with Havurah Shalom, Inc., establishing the Havurah Shalom Cemetery Section within the Jones Pioneer Cemetery in the City of Portland. This agreement allowed Havurah Shalom, Inc. to purchase 99 graves along with three (3) options to purchase an additional 309 graves. Approximately 80 graves from this previous sale remain in Havurah's inventory.

Parks staff has met with Havurah Shalom and both parties have reached agreement to the terms, for the immediate bulk sale of 85 graves to Havurah Shalom at current rates, together with a future right for Havurah Shalom to purchase additional blocks of 96 graves at the Metro rates then in effect, up to a total of 384 additional graves, contingent on Metro Council approval. Under the proposed Grave Purchase Agreement, Havurah Shalom does not have an exclusive option to purchase the 384 additional graves, and Metro Pioneer Cemeteries may sell graves within the area of Jones Pioneer Cemetery affected by Havurah Shalom's future right to purchase, as long as certain preconditions are met. Finally, Havurah Shalom's resale of the graves must be at a rate equivalent to the Metro rate in effect at the time of resale.

### **ANALYSIS/INFORMATION**

#### **1. Known Opposition**

No known opposition.

## **2. Legal Antecedents**

**Ordinance 93-520 adopted December 9, 1993:** “For the Purpose of Determining Which Facilities Contemplated for Transfer from Multnomah County to Metro Are Public Cultural, Trade, Convention, Exhibition, Sports, Entertainment, or Spectator Facilities, or a System of Parks, Open Spaces or Recreational Facilities of Metropolitan Concern.”

**Resolution 96-2285 adopted March 14, 1996:** “For the Purpose of Authorizing a Phase II Intergovernmental Agreement with Multnomah County Regarding Parks and Facilities.”

**Resolution 04-3467 adopted July 8, 2004:** “For the Purpose of Authorizing the Chief Operating Officer to Enter Into an Agreement to Sell 48 Graves to the Eastside Jewish Community of Portland and Establish the Eastside Jewish Cemetery Section at Douglass Pioneer Cemetery.”

Metro Ordinance No. 93-520 and Resolution No. 96-2285 authorized the Executive Officer to enter into Phase I and Phase II agreements, respectively, formally transferring all of Multnomah County parks, natural areas, golf courses, cemeteries, and trade/spectator facilities to Metro. Part of this agreement required Metro to assume all active contracts and/or agreements that were currently in place including an agreement at Jones Cemetery with Havurah Shalom to purchase 99 graves and additionally three (3) options to purchase an extra 309 graves.

Metro Resolution No. 04-3467 authorized the Chief Operating Officer to enter into a grave purchase agreement with Eastside Jewish Community Cooperative to sell 48 gravesites and future options to purchase an additional 402 graves.

Metro Code Section 10.04.050 requires that the bulk sale of graves must be approved by a resolution of the Metro Council setting forth the terms and conditions of said bulk sale, including rates and the terms of resale, and that no options to purchase graves shall be granted unless approved by resolution of the Metro Council setting forth the terms and conditions of said option.

## **3. Anticipated Effects**

Park staff will purchase plant material or other appropriate non-vegetative hedge material and install a hedge around the 85 gravesites purchased. The east edge of this hedge will be moved and reinstalled by Park staff after each additional bulk grave purchase.

## **4. Budget Impacts**

The purchase of 85 graves translates into revenue of \$85,000 for Regional Parks and Greenspaces. The additional 384 graves outlined in the agreement would bring in an additional \$384,000, at current grave prices, if this consideration were completely exercised. Fifteen percent of the sale price will transfer to the Cemetery Perpetual Care Fund for future expenses related to cemetery maintenance, per established Metro Code. The contract calls for the relocation of a hedgerow in the cemetery that can be accommodated within the existing budget

for cemetery maintenance. No change in adopted budget or future budgets will be necessary to execute this transaction. Additional revenues above FY 06-07 budgeted revenues for grave sales will result in a positive impact on fund balance.

**RECOMMENDED ACTION**

Michael Jordan, Chief Operating Officer, with the concurrence of the Council President David Bragdon, recommends adoption of Resolution No. 06-3741.