

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENTERING INTO AN ) RESOLUTION NO. 07-3756  
INTERGOVERNMENTAL AGREEMENT WITH )  
MULTNOMAH COUNTY FOR ACQUISITION ) Introduced by Council President  
OF THE MORRISON BUILDING PROPERTY ) David Bragdon

WHEREAS, Resolution No. 93-1877 was approved by Metro Council on December 19, 1993, "For The Purpose Of Approving An Intergovernmental Agreement Between Multnomah County And Metro Regarding Transfer Of Regional Parks, Natural Areas, Golf Courses, Cemeteries, And Trade/Spectator Facilities Presently Owned And Operated By Multnomah County To Metro", and authorizing the Executive Officer to enter into an agreement providing for the Phase I transfer (operation/management) of Multnomah County parks, natural areas, golf courses and cemeteries from Multnomah County to Metro; and

WHEREAS, Resolution No. 96-2285 was adopted by Metro Council on March 14, 1996, "For The Purpose Of Authorizing A Phase II Intergovernmental Agreement With Multnomah County Regarding Parks And Other Facilities", and authorizing the Executive Officer to enter into an agreement providing for the Phase II transfer (property ownership/title) of Multnomah County parks, natural areas, golf courses and cemeteries from Multnomah County to Metro; and

WHEREAS, Multnomah County owns the property commonly known as the Morrison Building Property, located at 2115 SE Morrison Street, in the city of Portland, county of Multnomah, state of Oregon, hereinafter referred to as "Property" and consisting of Lots 4 & 5, Block 7, Garrison's Subdivision in East Portland, and Parcel 2, Partition Plat No. 1997-197; and

WHEREAS, on March 7, 2002, the Multnomah County Board of Commissioners ("Board") adopted its Resolution 02-032, which deemed the Property surplus and directed its disposition. On October 6, 2005, by Resolution 5-071, the Board approved the transfer of the Property to Metro and authorized the Chair to execute all documents necessary to complete the transfer; and

WHEREAS, Metro, the City, and the County are all committed to working together in the future with interested community groups to see that the Morrison Building property is appropriately developed to create a proper entrance to the Lone Fir Cemetery, to create a potential memorial to the Chinese immigrants who were buried on the site, and/or to other uses appropriate to its history, location, and circumstances. Metro and Multnomah County have an IGA, Exhibit A, that transfers ownership of the Property from Multnomah County to Metro; now therefore

BE IT RESOLVED that the Metro Council authorizes the Metro Chief Operating Officer to enter into an Intergovernmental Agreement with Multnomah County and to accept fee simple title to the Property on the terms and conditions set forth in Exhibit A.

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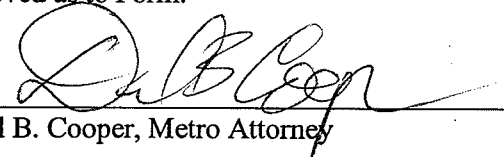
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Adopted by the Metro Council this 1<sup>st</sup> day of January 2007.

  
David Bragdon, Council President

Approved as to Form:

  
Daniel B. Cooper, Metro Attorney

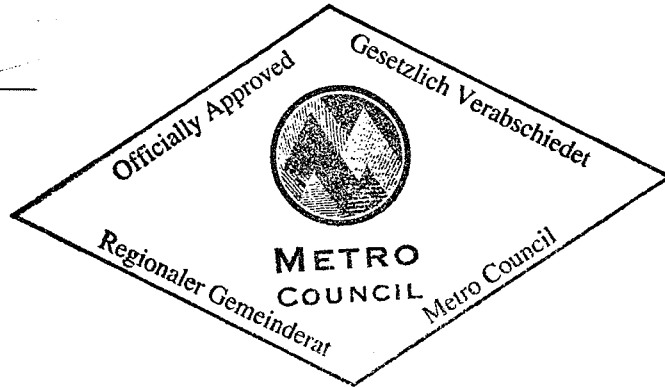


EXHIBIT A  
RESOLUTION 07-3756

**INTERGOVERNMENTAL AGREEMENT**

This Intergovernmental Agreement ("Agreement") between Metro, a political subdivision of the state of Oregon ("Metro") and Multnomah County, a political subdivision of the state of Oregon ("County"), is made and entered into as of \_\_\_\_\_, 2007.

**RECITALS:**

- a.** County owns the property known as the Morrison Property, located at 2115 SE Morrison Street, in the city of Portland, county of Multnomah, state of Oregon, hereinafter referred to as "Property" and consisting of **Lots 4 & 5, Block 7, Garrison's Subdivision in East Portland, and Parcel 2, Partition Plat No. 1997-197.**
- b.** By Resolution 02-032, dated March 7, 2002, The Multnomah County Board of Commissioners ("Board") deemed the Property surplus and directed its disposition. By Resolution 5-071, dated October 6, 2005, the Board approved the transfer of the Property to Metro and authorized the Chair to execute all documents necessary to complete the transfer.
- c.** On January 4, 2007, via Metro Council Resolution No. 07-3756, "For the Purposes of Entering Into an Intergovernmental Agreement with Multnomah County for Acquisition of the Morrison Building Property," the Metro Council authorized the Metro Chief Operating Officer to enter into this Agreement and to accept fee simple title to the Property on the terms and conditions set forth below.
- d.** The parties desire by this Agreement to provide for transfer of ownership of the Property to Metro.

**The terms of this Agreement are as follows:**

- 1. Transfer of the Property.** Transfer of the Property shall be by statutory bargain and sale deed (the "Deed"), and shall occur on or before January 5, 2007, or a later date mutually agreeable to the parties, but no later than January 31, 2007 (the "Transfer Date").
- 2. Consideration.** The transfer shall be for non-monetary consideration, and is made and accepted in reliance upon the recitals set forth above and in consideration of the mutual and reciprocal agreements and covenants between County and Metro set forth herein.

### **3. Indemnification**

#### **3.1. Liability Other Than Environmental Liability**

**3.1.1.** Metro has examined the Property and Metro agrees that it is acquiring the Property in an “as is” condition, subject only to the provisions of Section 3.2, solely in reliance on Metro’s physical inspection and examination of the Property, including title reports, environmental and archeological reports related to the demolition, and environmental reports attached hereto as Exhibits A and B. Moreover, Metro acknowledges and agrees that County has made no representations or warranties with respect to the Property.

**3.1.2.** County, to the maximum extent permitted by law and within the limits of the Oregon Tort Claims Act, ORS 30.260 to 30.300, shall defend, indemnify and hold harmless Metro and 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 the Workers Compensation laws, including, but not limited to attorneys’ fees and expenses at trial and appeal, relating to or resulting from any claim based on any act or occurrence that took place prior to the Transfer Date, arising from operations at the Property.

**3.1.3.** Metro, to the maximum extent permitted by law and within the limits of the Oregon Tort Claims Act, ORS 30.260 to 30.300, shall defend, indemnify and hold harmless County and 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 the Workers Compensation laws, including, but not limited to attorneys’ fees and expenses at trial and appeal, relating to or resulting from any claim based on any act or occurrence that took place on or after the Transfer Date, arising from operations at the Property.

#### **3.2. Environmental Liability**

**3.2.1.** This Section 3.2 sets forth the agreement between the parties regarding the allocation of liability for any contamination, fuel leak, discharge or release of toxic materials or hazardous substances as those terms are defined in any law or regulation on the Property which is being transferred to Metro. As used in this Section 3.2, “occurred” means any contamination, fuel leak, discharge or release of toxic materials or hazardous substances that originated on the Property rather than off-site.

**3.2.2.** Metro, to the maximum extent permitted by law, shall defend, indemnify and hold harmless County, and its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits and actions relating to or resulting from any contamination, fuel leak, discharge or release of toxic materials or hazardous substances as those terms are defined in any law or regulation, on the Property, except for any such contamination, fuel leak,

discharge or release of toxic materials or hazardous substances for which County has a duty to indemnify Metro pursuant to Section 3.2.3 below.

**3.2.3.** County, to the maximum extent permitted by law, shall defend, indemnify and hold harmless Metro, and its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits and actions relating to or resulting from any contamination, fuel leak, discharge or release of toxic materials or hazardous substances as those terms are defined in any law or regulation (hereafter, "Release"), on the Property that:

**3.2.3.1.** is located within the top sixteen (16) inches of soil surface of the Property, or

**3.2.3.2.** is identified in PBS's Phase I Environmental Site Assessment, January 2006 (Exhibit A) and PBS Soil Assessment, May 24, 2006 (Exhibit B), provided that costs are required to be incurred to comply with an order issued by a governmental authority or to comply with a law or regulation requiring investigation, remediation or cleanup of any Release, or

**3.2.3.3.** occurred or originated on the Property if such Release occurred or originated during the period beginning on the date County became the owner or operator of the Property on which the Release occurred or originated and ending as of the Transfer Date, provided that costs are required to be incurred an order issued by a governmental authority or to comply with a law or regulation requiring investigation, remediation or cleanup of any Release.

County's indemnity and hold harmless obligation set forth above in Sections 3.2.3.1, 3.2.3.2 and 3.2.3.3 shall not extend to legal costs and fees incurred by Metro.

**3.2.4.** In the event Metro or County is notified by any state or federal agency that it is a potentially responsible party as the result of any contamination, fuel leak, discharge or release of toxic materials or hazardous substances as those terms are defined in any law or regulation originating from the Property, or if either party shall become aware of any contamination, fuel leak, discharge or release of toxic materials or hazardous substances, other than those described in Exhibits A and B, notice shall immediately be given to the other party in writing. If a notice is received from a state or federal agency, Metro shall take the lead role in responding to the notice. County agrees to cooperate with Metro in responding to any such notice. After discovery that a contamination, fuel leak, discharge or release of toxic materials or hazardous substances has occurred, the parties shall meet and agree regarding responsibility under the terms of this Agreement. If the parties cannot agree regarding responsibility under this Agreement, such responsibility shall be determined in accordance with Section 3.2.5 below. Metro shall take all necessary action required to mitigate damages resulting from the contamination, fuel leak, discharge or release of toxic materials or hazardous substances, subject to reimbursement by County as provided herein, if it is determined that County is the responsible party.

### 3.2.5. Dispute Resolution

In the event there is a dispute between Metro and County regarding responsibility for any contamination, fuel leak, discharge or release of toxic materials or hazardous substances as those terms are defined in any law or regulation, the dispute shall be resolved by the binding decision of a panel of experts as provided herein.

Whichever party determines that a dispute exists may initiate the dispute resolution process by notifying the other party in writing. The party initiating the dispute resolution process shall appoint an expert environmental engineer to the dispute resolution panel within 14 days of the notice initiating the dispute resolution process. Thereafter, the other party shall appoint its expert environmental engineer within 14 days. The two experts so appointed shall appoint a third expert environmental engineer within 30 days of the second appointment. No expert shall be required to have any particular education, training or experience to serve on the panel.

Each party agrees to provide the other party all information and documents available to the party, its employees, agents or experts relating to the dispute, including but not limited to all expert reports (including raw data) whether or not prepared by the party's appointed environmental engineer.

The three experts shall resolve the matter. Unless a majority of the panel finds that the County is responsible pursuant to Section 3.2.3 above, Metro shall be responsible pursuant to Section 3.2.2 above. The decision of the panel shall be final and binding on the parties. Each party shall pay the costs of its own expert, investigation costs and attorney fees. The cost of the third expert shall be shared equally by the parties.

4. **Taxes, Prorates, Costs and Expenses.** The Property is currently in tax-exempt status and no real property taxes are assessed or owing against the Property. Any other items required to be prorated shall be prorated as of the Transfer Date.
5. **Possession.** Metro shall be entitled to exclusive possession of the Property on the Transfer Date.
6. **Easement Property.** County received an interest in property described as the south twenty (20) feet of Lot 3, Block 7 Garrison's Subdivision, via quitclaim instrument recorded July 17, 1929 in Book 16, Page 421, Multnomah County deed records (the "Easement Property"). The Deed will convey to Metro all of County's rights acquired under the above described instrument. The County agrees that it will make best efforts to convey any interest in the title to the Easement Property that may vest in the County after the Transfer Date to Metro by quitclaim deed.. No provision of this Agreement other than this Section 6 shall apply to the Easement Property.
7. **Notices.** All notices or other communications required or permitted under this Agreement must be in writing and must be (1) personally delivered (including by means of a professional messenger service), which notices and communications will be deemed received on receipt at the office of the addressee; (2) sent by registered or certified mail, postage prepaid, return receipt requested, which notices and communications will be deemed



**9.5. Time of Essence.** The County and the Metro hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision.

**9.6. Construction.** Headings at the beginning of each section and subsection are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural, and the masculine shall include the feminine, and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. Unless otherwise indicated, all references to sections and subsections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference. If the date on which the Metro or the County is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

**9.7. Governing Law.** The parties acknowledge that this Agreement has been negotiated and entered into in the state of Oregon. The parties expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the state of Oregon.

**9.8. Non-Merger, Survival.** The covenants, agreements, representations and warranties made herein shall survive the conveyance of the bargain and sale deed to the Property to Metro, and shall not merge into the deed at recording in the official deed records of Multnomah County.

**10. Statutory Disclaimer.**

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 197.352. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 197.352.

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**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year written above.**

**The parties agree as follows:**

**MULTNOMAH COUNTY, OREGON**

**METRO**

\_\_\_\_\_  
\_\_\_\_\_  
**Chair  
Multnomah County**

\_\_\_\_\_  
**Michael J. Jordan  
Chief Operating Officer  
Metro**

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Reviewed:**

**John S. Thomas,  
Deputy County Attorney  
For Multnomah County**

**Approved as to form:**

**Joel E. Morton  
Senior Assistant Attorney  
for Metro**

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## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 07-3756 FOR THE PURPOSE OF ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT WITH MULTNOMAH COUNTY FOR ACQUISITION OF THE MORRISON BUILDING PROPERTY**

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Date: December 21, 2007

Prepared by: Jim Desmond  
Teri Dresler

#### **BACKGROUND**

In September 2005, Metro, Multnomah County (“County”) and the City of Portland (“City”) entered into a Memorandum of Understanding (MOU) concerning the transfer of the Morrison Building property to Metro. The MOU described the general terms and conditions for the progress of negotiations and the due diligence, to result in the entry by the parties into an intergovernmental agreement (“IGA”) governing the transfer by the County of the Morrison Building property (“Property”) to Metro. The Property is located at 2115 SE Morrison Street and consists of Lots 4 & 5, Block 7, Garrison’s Subdivision in East Portland, and Parcel 2, Partition Plat No. 1997-197.

The building was built in 1953 on the Property, which was originally part of the Lone Fir Cemetery. The County retained the Property when it transferred the Lone Fir Cemetery to Metro in 1996. Though the Property was never developed as part of the formal Lone Fir Cemetery, it was used from the late 19<sup>th</sup> century to the mid-20<sup>th</sup> century as a “temporary” burial site for early Chinese workers who could not be buried in the Cemetery proper at that time. It was believed that all of the remains on the property had been disinterred and returned to China for permanent burial prior to construction of the Morrison Building.

In preparation for the sale or transfer of the Property, the County did archeological exploration of the site and discovered human remains on the property. It is believed that the remains are from early Chinese workers and their families.

The County and Metro desire to re-unite the Property with the Lone Fir Cemetery and Metro is prepared to accept responsibility for the long-term ownership of the property. Metro does not have adequate funding to redevelop the site, however.

Metro, the City, and the County are all committed to working together in the future with interested community groups to see that the Morrison Building property is appropriately developed to create a proper entrance to the Lone Fir Cemetery, to create a potential memorial to the Chinese immigrants who were buried on the site, and/or to other uses appropriate to its history, location, and circumstances.

Metro and Multnomah County have negotiated an IGA, Exhibit A to the Resolution, that transfers ownership of the Property from Multnomah County to Metro.

#### **ANALYSIS/INFORMATION**

##### **Known Opposition**

No known opposition.

## **Legal Antecedents**

Resolution No. 93-1877 was approved by Metro Council on December 19, 1993, "For The Purpose Of Approving An Intergovernmental Agreement Between Multnomah County And Metro Regarding Transfer Of Regional Parks, Natural Areas, Golf Courses, Cemeteries, And Trade/Spectator Facilities Presently Owned And Operated By Multnomah County To Metro", and authorizing the Executive Officer to enter into an agreement providing for the Phase I transfer (operation/management) of Multnomah County parks, natural areas, golf courses and cemeteries from Multnomah County to Metro.

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## **Anticipated Effects**

After Metro takes control of the Property, a group of interested groups will be convened, including County and City staff, to discuss the appropriate design and development of a memorial to the Chinese workers buried on the site.

## **Budget Impacts**

Ownership of the Property carries with it maintenance and improvement costs which will be accommodated within appropriated funds. The City of Portland has committed \$150,000 in its FY 06-07 budget to fund stabilization of the site, which will include removal of existing asphalt, surface grading and seeding and perimeter fence installation. Once these projects are completed, it is anticipated that annual maintenance costs will be minimal. At such time improvement costs exceed budget allocation; grants, donations, or other forms of support will be pursued.

## **RECOMMENDED ACTION**

The Chief Operating Officer Michael Jordan recommends passage of Resolution No. 07-3756.