

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO 01-3035
EXECUTIVE OFFICER TO PURCHASE)
PROPERTY ON MT. SCOTT IN THE EAST)
BUTTES / BORING LAVA DOMES TARGET)
AREA AND ENTER INTO AN INTERGOVERN-) Introduced by Mike Burton,
MENTAL AGREEMENT WITH THE CITY OF) Executive Officer
PORTLAND FOR CONVEYANCE OF AN)
EASEMENT AND PROPERTY MANAGEMENT)

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, on March 30, 1995 via resolution 95-2113, the Metro Council approved the content of Fact Sheet #4 as public information material for the 1995 Open Spaces, Parks and Streams bond measure (Ballot Measure 26-26); and

WHEREAS, Fact Sheet #4 listed properties under option that would be purchased if the bond measure passed, including item #10, the wooded habitat in southeast Portland, formerly known as Camp Wekio; 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, on July 25, 1995 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

WHEREAS, the East Buttes / Boring Lava Domes target area refinement plan identifies properties on Mt. Scott as Tier 1B properties, which are a regional priority for acquisition in partnership with the local jurisdiction contributing 25% of the purchase price under a challenge grant program; and

WHEREAS, since 1996, the City of Portland has contributed 25%, totaling over \$800,000, of the purchase price of fourteen Tier 1B properties; and

WHEREAS, Metro and the owners of a 20-acre property on Mt. Scott (the Property), located in Tier 1B, entered into a Purchase and Sale Agreement conditioned on Metro Council approval; and

WHEREAS, the City of Portland is not able to contribute 25% of the purchase price of the Property; and

WHEREAS, in lieu of the 25% match requirement, the City has agreed to grant and convey an irrevocable perpetual easement to Metro on an approximate three-quarter-acre piece of City property adjacent to Metro's Oregon Zoo; and

WHEREAS, the East Buttes/ Boring Lava Domes target area refinement plan challenge grant program has already created a successful City of Portland/ Metro partnership; and

WHEREAS, the City of Portland has committed to long-term management, maintenance and operation of the property; and

WHEREAS, Metro and the City wish to enter in 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, and with respect to the transfer and conveyance from the City to Metro of the Easement; 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 in accordance with the Greenspaces Master Plan; and provides for the conveyance by the City to Metro of the easement on the zoo-adjacent three-quarter-acre piece of property as described therein; and

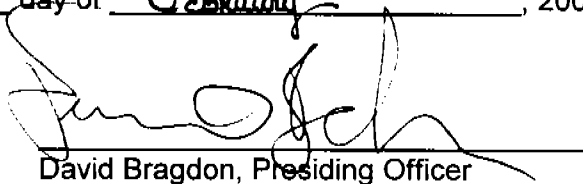
WHEREAS, the Open Spaces Implementation Work Plan requires Metro Council's specific approval for acquisitions which involve such "unusual circumstances;" and

WHEREAS, Metro endeavors to fulfill its promises to voters regarding acquiring properties under option as identified in Fact Sheet #4 of the Open Spaces, Parks and Streams bond measure; now therefore


BE IT RESOLVED,

That the Metro Council authorizes the Metro Executive Officer to purchase 20 acres on Mt. Scott in the East Buttes/Boring Lava Domes target area, as identified in Exhibit A, by waiving the refinement plan challenge grant requirement for a 25% contribution from a local jurisdiction, and accepting the intergovernmental agreement for accepting an easement and for management responsibilities, in substantially the form set forth in Exhibit B, or as approved by the Metro Office of General Counsel.

ADOPTED by the Metro Council this 22nd day of February, 2001.


David Bragdon, Presiding Officer

Approved as to Form:


Daniel B. Cooper, General Counsel

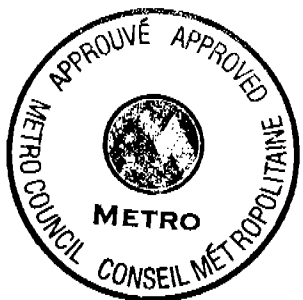


EXHIBIT A
Legal Description of Mt. Scott 20-acre Property

PARCEL 1: A tract in the Northeast one-quarter of the Southwest one-quarter of Section 23, Township 1 South, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at a point in the West line of said Northeast one-quarter of the Southwest one-quarter which is 617 feet South from the intersection of said West line with the Southerly line of SE Flavel Street (Bogges County Road No. 1324); thence due East 305 feet; thence North 3° 52' East 590 feet to the Southerly line of said SE Flavel Street; thence Easterly along the Southerly line of said road 490 feet; thence South 17° 30' West 900 feet, more or less, to a point in the South line of a tract of land conveyed to Paul B. Bergh, et ux, by Deed recorded May 18, 1945 in Book 934 page 57, Deed Records; thence North 88° 05' West, along the South line of said Bergh Tract, 589 feet to the Southwest corner thereof, being a point in the West line of the Northeast one-quarter of the Southwest one-quarter of said section; thence North along said West line of the Northeast one-quarter of the Southwest one-quarter, 365 feet to the point of beginning.

PARCEL 2: A tract of land in the Northwest one-quarter of the Southwest one-quarter of Section 23, Township 1 South, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at a point in the East line of said Northwest one-quarter of the Southwest one-quarter which is 617 feet South from the intersection of said East line with the Southerly line of SE Flavel Street (Bogges County Road No. 1324); thence South along said East line of the Northwest one-quarter of the Southwest one-quarter to the Southeast corner thereof, being also the Southeast corner of the tract conveyed to Maxwell McCutcheon, et ux, by Deed recorded October 16, 1942 in Book 713 page 166, Deed Records; thence West along the South line of said Northwest one-quarter of the Southwest one-quarter, 421.5 feet, more or less, to the Southwest corner of the property described in said Deed recorded in Book 713 page 166, Deed Records; thence North 3° 52' East along said West line of said McCutcheon tract described in said Book 713 page 166, Deed Records, 516 feet, more or less, to a point from which the point of beginning bears due East; thence due East 421.1 feet to the point of beginning.

PARCEL 3: A portion of the Northwest one-quarter of the Southwest one-quarter of Section 23, Township 1 South, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at a point on the East line of the Northwest one-quarter of the Southwest one-quarter of said Section 23, said point being 497 feet South of the Northeast corner thereof; thence Southerly along said East line 292 feet, more or less, to the Northeast corner of that tract of land conveyed to Portland Council of Camp Fire Girls, an Oregon corporation, by Deed recorded May 26, 1955 in Book 1724, page 338, Deed Records; thence West along the North line of said Camp Fire Girls Tract, 421.5 feet to the Northwest corner of said Camp Fire Girls Tract; thence North 190 feet, more or less, to the Southwest corner of that tract of land conveyed to James Maxwell McCutcheon, et ux, by Deed recorded January 15, 1965 in Book 211, page 288, Deed Records; thence East 150 feet; thence North 115 feet, more or less, to the South line of that tract of land conveyed to Maxwell McCutcheon, et ux, by Deed recorded January 13, 1940 in Book 530 page 428, Deed Records; thence East 251.5 feet, more or less, to the Southeast corner of said McCutcheon Tract; thence North along the East line of said McCutcheon Tract to the South line of SE Flavel Street; thence Easterly along the South line of SE Flavel Street to the East line of the Northwest one-quarter of the Southwest one-quarter of said Section 23; thence South to the East line of said subdivision to the point of beginning.

EXCEPTING THEREFROM that portion described in Deed to Reliable Credit Association, Inc., recorded March 3, 1989 in Book 2084 page 1085, Records of Multnomah County, Oregon.

ALSO EXCEPTING THEREFROM that portion described in Deed to Robert J. Riggs, et ux, recorded August 22, 1988 in Book 2130 page 1834, Records of Multnomah County, Oregon.

PARCEL 4: A tract in the Northeast one-quarter of the Southwest one-quarter of Section 23, Township 1 South, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at a point in the West line of said Northeast one-quarter of the Southwest one-quarter, 617 feet South of the intersection of said West line with the Southerly line of SE Flavel Street (Boggess County Road No. 1324); thence North 3° 38' 20" East along said West line a distance of 216.99 feet; thence South 86° 21' 40" East 100.0 feet; thence North 45° 48' 10" East 308.03 feet to a point in the line of a tract conveyed to the Portland Council of Camp Fire Girls, Inc., by Deed recorded May 26, 1955 in PS Deed Book 1724 page 357; thence South 3° 52' West 442.74 feet, more or less, to a point due East of the point of beginning; thence West 305 feet to the point of beginning.

INTERGOVERNMENTAL AGREEMENT

Campfire Property Zoo Easement

This Intergovernmental Agreement ("Agreement") dated this ___ day of _____, 2001, 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 Portland, located at 1120 S.W. Fifth Avenue, Portland, Oregon 97204 ("the City").

RECITALS:

WHEREAS, pursuant to the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26 ("Metro Open Spaces Bond Measure"), on November 28, 2000 Metro and Campfire, Inc. ("Campfire") executed an Agreement of Purchase and Sale wherein Metro has agreed to purchase and Campfire has agreed to sell to Metro approximately 20 acres of real property, located along SE Flavel Road, in Portland, Oregon and more particularly described in Exhibit A attached hereto and incorporated herein ("Campfire Property");

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

WHEREAS, The East Buttes/Boring Lava Domes Target Area, which was identified as a regionally significant natural area by the Metropolitan Greenspaces Master Plan, the Open Spaces Bond Measure, and the Refinement Plan for the East Buttes/Boring Lava Domes Target Area adopted by the Metro Council on July 17, 1996, identifies certain areas as Tier 1B;

WHEREAS, the Campfire Property is identified as a Tier IB property in the Refinement Plan;

WHEREAS, a Tier IB Refinement Plan objective calls for the participation of other governments in acquiring strategic properties by requiring a minimum 25 % non-Metro match towards the purchase price of Tier IB properties;

WHEREAS, the City has encouraged Metro to purchase the Campfire Property, and Metro and the City wish to preserve the Campfire Property as open space in accordance with the Metro Open Spaces Bond Measure and the Metro Greenspaces Master Plan;

WHEREAS, Metro has agreed to waive the 25% match requirement set forth in the Refinement Plan for the East Buttes/Boring Lava Domes Target Area for acquisition of the Campfire Property;

WHEREAS, in lieu of the 25% match requirement, the City has agreed to grant and convey an irrevocable perpetual easement to Metro on an approximate $\frac{3}{4}$ -acre piece of City property adjacent to Metro's Oregon Zoo, for zoo-related purposes, which easement shall allow Metro to occupy, operate, manage, and maintain the easement property in perpetuity and construct and/or expand any zoo-related improvements thereon, and to use the easement property for any zoo-related purpose to which Metro, in its sole discretion, shall determine, including zoo facility and exhibit construction and/or expansion, as set forth more fully in the easement documents attached hereto as Exhibit B and incorporated herein ("Easement") and in accordance with all applicable laws, codes, rules and regulations; and the Easement area shall be more particularly described by a survey as set forth herein ("Easement Property"); 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 Campfire Property, and with respect to the transfer and conveyance from the City to Metro of the Easement;

Now, therefore, the parties agree as follows:

A. Acquisition of Campfire Property

1. Metro has negotiated an Agreement of Purchase and Sale for the Campfire Property with the property owner. Metro shall be responsible for conducting the normal due diligence investigations of the Campfire Property pursuant to Metro Open Spaces Bond Measure requirements. If the City requires any due diligence investigations not performed by Metro, the City shall be solely responsible for those items. Upon satisfaction of all conditions precedent as set forth in the Agreement of Purchase and Sale, Closing is scheduled to take place on February 26, 2001. Metro shall be responsible for drafting and coordinating escrow instructions and closing details, and shall pay the Buyer's closing costs. Metro and the City shall sign all documents necessary for Closing.
2. Metro and the City shall take title to the Campfire Property as tenants in common, with Metro having an undivided $\frac{3}{4}$ interest and the City having an undivided $\frac{1}{4}$ interest, and with deed restrictions requiring that the Campfire Property remain in its natural condition in perpetuity.

B. City Conveyance to Metro of Easement On Property Adjacent to Zoo

1. At the Closing Date for the Campfire Property, or as soon thereafter as possible, the City shall grant and convey to Metro an easement on a $\frac{3}{4}$ -acre piece of City property adjacent to Metro's Oregon Zoo, which easement area shall be more particularly described by a survey as set forth herein ("Easement Property"); which easement shall be in the form set forth in the easement documents attached hereto as Exhibit B and incorporated herein ("Easement"). The Easement, as set forth more fully therein, shall be irrevocable and shall allow Metro to occupy, operate, manage, and maintain the Easement Property for zoo-related purposes in perpetuity and construct and/or expand any improvements thereon, and to use the Easement

Property for any zoo-related purpose to which Metro, in its sole discretion, shall determine, including zoo facility and exhibit construction and/or expansion, in accordance with the Easement agreement and all applicable laws, codes, rules and regulations.

2. The Easement Property appears to be included in the legal description of the parking lot serving Metro's Oregon Zoo, the World Forestry Center, and the planned City Children's Museum (to be located on the former OMSI site) ("Parking Lot"), as set forth in the Parking Lot Lease between the City, Metro, and the World Forestry Center ("Parking Lot Lease"). Metro and the City hereby agree to amend the Parking Lot Lease, and to use their best efforts to do so prior to Closing or as soon thereafter as possible, and to obtain the approval and signature of the World Forestry Center to such amendment; and the City and Metro hereby agree to sign any other documents necessary to remove the Easement Property from the Parking Lot Lease and any other applicable agreements.
3. Metro has engaged the services of a qualified surveyor to establish a legal description of the Easement Property, and has delivered a copy to the City for review and approval prior to the Closing Date. Said legal description shall be attached to the Easement and to the amendment to the Parking Lot Lease.
4. The City hereby grants to Metro, its agents, employees and contractors, the right to enter the Easement Property for the purpose of performing the survey contemplated herein and to conduct any and all due diligence investigations that Metro may choose to make of the Easement Property prior to Metro accepting the Easement.

C. Management, Maintenance, and Operation of Campfire Property

5. As required by the Metropolitan Greenspaces Master Plan, the long-term management guidelines for the Campfire Property must be set forth in a Resource Management Plan ("Management Plan") for the Campfire Property. This Agreement shall set forth the interim protection guidelines for the Campfire Property which shall govern prior to adoption of the Management Plan, and shall also set forth the use limitations for the Campfire Property which must be carried forth and reflected in the Management Plan.
6. Metro and the City agree that the City shall be responsible for the ongoing management, maintenance, and operation of the Campfire Property, both during the interim period and after adoption of the Management Plan.
7. If Metro executes an agreement to purchase additional property within the East Buttes Tier I B Target Area which Metro would like the City to manage under the terms of this Agreement, Metro shall notify the City in writing in the form attached hereto as Exhibit C ("Notice of Acquisition"). The City shall notify Metro if the City does not wish to accept management responsibilities for that property in accordance with this Agreement, using the City's best efforts to make this notification prior to the closing date for the acquisition. If the City has not so notified Metro within thirty (30) days of receiving Metro's Notice of Acquisition, then the City shall be deemed to have accepted the new Property for

management, maintenance and operation responsibilities in accordance with the terms and conditions of this Agreement.

8. The term of the City's management, maintenance, and operation responsibilities for the Campfire Property shall be determined by the Management Plan, but in no event shall the term be less than ten (10) years from the effective date of this Agreement, renewable by mutual written agreement for additional ten (10) year periods.
9. Metro grants to the City, its agents, employees and contractors, the right to enter the Campfire Property for the purpose of performing all activities reasonably necessary for the management, maintenance and operation of the Campfire Property and for the fulfillment of its duties under this Agreement and pursuant to the Management Plan.

D. Interim Protection Guidelines

1. Prior to the adoption of a Resource Management Plan for the Campfire Property as set forth below, in the interim the Campfire 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 and the City's Comprehensive Plan, (this Agreement and these plans collectively referred to herein as "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 Campfire 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 Campfire 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 Campfire Property and site development on the Campfire Property shall not begin until a Management Plan for the Campfire Property has been adopted.
4. Prior to the adoption of a Management Plan for the Campfire Property, in the interim period the Campfire Property may be used informally by the public for passive recreation, habitat enhancement, pedestrian activity, and/or nonmotorized bicycle use, at the City's discretion. All uses of the Campfire 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. Prior to the adoption of the Management Plan for the Campfire Property, in the interim period the City shall not allow or permit any alteration of any water, timber, mineral, or other resource on the Campfire Property, except for the control of exotic or pest plant species or as necessary to prevent Campfire Property degradation or for security or public safety concerns. If the City believes that an improvement, trail, or alteration of any water or timber resource on the Campfire Property is necessary prior to adoption of a Management Plan for the Campfire Property, Metro shall have the right to approve of such action, and the City shall

provide Metro 90 days advance written notice of its intent to construct any improvements, trails, or alteration of water or timber resource on the Campfire Property. In any event, no improvements or trails shall be constructed on the Campfire Property and no alteration of water or timber resource shall occur that are inconsistent with this Agreement and shall not preclude any uses that could later be allowed in the Management Plan.

6. Prior to adoption of the Management Plan and thereafter, the City shall maintain security of the Campfire Property, and shall provide additional fencing, gates, signage, and other measures as the City may deem necessary to increase safety on the Campfire Property, and to deter improper public use of the Campfire Property prior to adoption of the Management Plan. During the interim period the City shall control access to the Campfire Property, and shall respond to neighborhood or citizen complaints regarding improper use or noise on the Campfire Property.

E. Resource Management Plan for the Campfire Property

1. The City shall develop a Resource Management Plan (“Management Plan”) for the Campfire 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 Campfire Property. The City shall manage the Campfire Property in accordance with the standards and guidelines developed in the Management Plan.
2. The Management Plan shall ensure that the Campfire Property is managed, maintained and operated in accordance with the Metro Greenspaces Master Plan and with this Agreement, and that all trails and improvements on the Campfire Property comply with the Greenspaces Master Plan and with this Agreement. The Management Plan shall also ensure that the Campfire Property is maintained as a natural area open space, with the primary goals being protection of the Campfire Property’s natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing. As part of the process of developing the Management Plan, the City shall take an inventory of the resources on the Campfire Property.
3. Metro shall designate at least one staff member to participate in the Management Plan process for the Campfire Property. In addition to any other approvals required by the City or any other applicable agency or entity, the Management Plan shall be subject to approval by the Metro Council prior to its implementation, which approval shall not be unreasonably withheld and shall be based on consistency with this Agreement and with the Greenspaces Master Plan.

F. Permits, Easements, Costs, Coordination with Other Public Agencies

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Campfire Property the City agrees to be responsible for funding the operation and maintenance of the Campfire Property with the City’s own resources. The City’s management responsibility shall include responsibility for all taxes, fees, expenses, or

assessments associated with the use, operation, construction, management or maintenance of the Campfire Property.

2. Prior to adoption of the Management Plan and thereafter, the City shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Campfire Property.
3. Any permits granted by the City to users of the Campfire Property shall comply with the terms and limitations set forth in this Agreement and in the Management Plan for the Campfire Property.
4. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any and all use, management, maintenance or operation issues that may arise with respect to the Campfire Property.
5. All requests for easements, rights of way, and leases on or affecting the Campfire Property shall be submitted to Metro in accordance with the Metro Easement Policy, Resolution No. 97-2539B, passed by the Metro Council on November 6, 1997, attached hereto as Exhibit D.

G. General Provisions

1. Indemnification. The City, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless Metro, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from the management, maintenance or operation of the Campfire Property, including but not limited to construction of trails or in relation to any other improvement on the Campfire Property.
2. Oregon Constitution and Tax Exempt Bond Covenants. The source of funds for the acquisition of this Campfire Property is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem Campfire 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 Campfire 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. The City may provide on-site signage informing the public that the City is managing the site. Metro will provide on-site signage which shall be installed by the City, stating that funding for the acquisition came from Metro Open Spaces 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 Measure bond proceeds. All signage will be consistent with Metro guidelines for Open Spaces Projects.

4. Joint Termination for Convenience. Metro and the City may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective upon ten (10) days written notice of termination issued by Metro, subject to the mutual written agreement of the parties.
5. Termination for Cause. Either party may terminate this Agreement in full, or in part, at any time before the date of completion, whenever that party determines, in its sole discretion, that the party has failed to comply with the conditions of this Agreement and is therefore in default. The terminating party shall promptly notify the other party in writing of that determination and document such default as outlined herein. The other party shall have thirty (30) days to cure the problem. Notwithstanding any termination for cause, both parties shall be entitled to receive payments for any work completed or for which that party is contractually obligated for, which completion or contractual obligation occurred prior to the effective date of the termination, provided that no party shall be obligated to make any payment except for work specifically provided for in this Agreement.
6. Laws 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 Portland
 James Sjulín
 Natural Resources Supervisor
 Portland Parks and Recreation
 1120 S.W. Fifth Ave. #1302
 Portland, OR 97204

- 9. Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.
- 10. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to the issues set forth herein. 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 PORTLAND

METRO

By: _____
Title: _____

By: _____
Title: _____

Exhibits:

- Exhibit A - Legal Description of Campfire Property
- Exhibit B – Easement From City to Metro re Property Adjacent to Zoo
- Exhibit C- Form of Notice of Acquisition
- Exhibit D - Metro Easement Policy and Metro Resolution No. 97-2539B

EXHIBIT C

Notice of Acquisition

_____, 199__

City of
Parks and Recreation Department

, OR

Re: Acquisition of Property along [target area]

Dear _____:

Pursuant to the Metro Open Spaces Bond Measure 26-26, and the Intergovernmental Agreement between Metro and _____ dated _____, 1999, attached hereto ("Intergovernmental Agreement"), this shall serve as notice of acquisition of the following property along the [target area]:

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

Pursuant to the Intergovernmental Agreement, Metro requests that the City manage this Property pursuant to the terms of the Intergovernmental Agreement. Please notify Metro in writing if the City does not wish to accept management responsibility for this Property. As set forth in the Intergovernmental Agreement, if the City does not so notify Metro within thirty (30) days of receipt of this letter, the City shall be deemed to have accepted the new Property for management, maintenance, and operation in accordance with the terms and conditions of the Intergovernmental Agreement.

If you have any questions, please do not hesitate to contact me at 797-1914.

Sincerely,

Jim Desmond, Manager
Metro Open Spaces Acquisition Division

cc: Charles Ciecko, Director, Metro Regional Parks and Greenspaces

EXHIBIT D

**Metro Easement Policy and
Metro Resolution No. 97-2539B**

I HEREBY CERTIFY THAT THE FOREGOING IS A COMPLETE AND EXACT COPY OF THE ORIGINAL THEREOF.

Rebecca V. Shoemaker, Clerk
Clerk of the Metro Council

FOR THE PURPOSE OF APPROVING GENERAL)
POLICIES RELATED TO THE REVIEW OF)
EASEMENTS, RIGHT OF WAYS, AND LEASES)
FOR NON-PARK USES THROUGH PROPERTIES)
MANAGED BY THE REGIONAL PARKS AND)
GREENSPACES DEPARTMENT.)

RESOLUTION NO. 97-2539B

Introduced by
Mike Burton, Executive Officer

WHEREAS, Metro currently owns and manages more than 6,000 acres of regional parks, open spaces, natural areas, and recreational facilities; and

WHEREAS, additional lands are being acquired through the Open Space, Parks, and Streams Bond Measure, approved by voters in May of 1995; and

WHEREAS, the primary management objectives for these properties are to provide opportunities for natural resource dependent recreation, protection of fish, wildlife, and native plant habitat and maintenance and/or enhancement of water quality; and

WHEREAS, Metro will be approached with proposals to utilize regional parks, open spaces, natural areas, and recreational facilities property for utility, transportation, and other non-park purposes; and

WHEREAS, Metro seeks to insure that these uses have no negative impact upon the primary management objectives of Metro Regional Parks and Greenspaces properties; and

WHEREAS, it would be in Metro's best interest to provide for the orderly evaluation and consideration of proposals to utilize portions of Metro Regional Parks and Greenspaces properties for utility, transportation and other non-park uses; NOW THEREFORE,

BE IT RESOLVED, that the Metro Council hereby adopts the policy attached as Exhibit "A" for any and all requests related to formal proposals for the use of Metro Regional Parks and Greenspaces properties for the purposes noted therein.

ADOPTED by the Metro Council this 6th day of November, 1997.

Jon Kvistad
Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

[Signature]

[Signature]

Exhibit "A"

**METRO POLICY RELATED TO THE REVIEW OF
EASEMENTS, RIGHT OF WAYS, AND LEASES
FOR NON-PARK USES**

Metro owns and manages, either on its own or in partnership with other government and private entities, several thousand acres of regional parks, open spaces, natural areas and recreational facilities. These facilities are maintained to promote and preserve natural resources and recreational opportunities for the public consistent with the Greenspaces Master Plan adopted by the Metro Council in 1992, the Open Spaces Bond Measure approved by the voters in 1995 and other restrictions limiting the uses of specific properties in existence at the time of its acquisition by the public. Nothing in this policy shall be construed to allow these facilities to be used in any manner which detracts from this primary purpose. This policy is written from the perspective of Metro as the property owner, however, in those cases in which Metro co-owns a property with other entities, all decisions concerning the use of the property in question will be fully coordinated with the other owners. In addition, all new development and all proposed work within Water Quality Resource Areas or other environmentally sensitive work will be conducted in accordance with Metro or local government policies, to include where appropriate, application for permits and completion of environmental reviews. In event that local government policies are less restrictive than the Metro Model ordinances, Metro will apply the more restrictive Metro policies.

Regarding requests for easements, right of ways, and leases for non-park uses in Metro owned or managed regional parks, natural areas or recreational facilities, it is Metro's policy to:

- 1) Provide for formal review of all proposed easements, right of ways, and leases for non-park, uses by the Regional Parks and Greenspaces Advisory Committee, the Regional Facilities Committee and the full Council. Notwithstanding satisfaction of the criteria set forth herein, the final determination of whether to approve a proposed easement, right of way, or lease is still subject to the review and approval by the full Metro Council.
- 2) Prohibit the development of utilities, transportation projects and other non-park uses within corridors or on sites which are located inside of Metro owned or managed regional parks, natural areas, and recreational facilities except as provided herein.
- 3) Reject proposals for utility easements, transportation right of ways and leases for non-park uses which would result in significant, unavoidable impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management.
- 4) Accommodate utility easements, transportation right of ways or other non-park uses when the Regional Parks and Greenspaces Department (the Department) determines that a proposed easement, right of way or non-park use can be accommodated without significant impact to

b) Upon receipt of the detailed proposal, the Department shall determine if additional information or a Master Plan is required prior to further review and analysis of the proposal. For those facilities which have master plans, require that all proposed uses are consistent with the master plan. Where no master plan exists all proposed uses shall be consistent with the Greenspaces Master Plan. Deficiencies shall be conveyed to the applicant for correction.

c) Upon determination that the necessary information is complete, the Department shall review and analyze all available and relevant material and determine if alternative alignments or sites located outside of the Metro owned or managed regional park, natural area, or recreational facility are feasible.

d) If outside alternatives are not feasible, the Department shall determine if the proposal can be accommodated without significant impact to park resources, facilities or their operation and management. Proposals which cannot be accommodated without significant impacts shall be rejected. If the Department determines that a proposal could be accommodated without significant impacts, staff shall initiate negotiations with the applicant to resolve all issues related to exact location, legal requirements, terms of the agreement, mitigation requirements, fair market value, site restoration, cultural resources, and any other issue relevant to a specific proposal or park, natural area or recreational facility. The Department shall endeavor to complete negotiations in a timely and business-like fashion.

e) Upon completion of negotiations, the proposed agreement, in the appropriate format, shall be forwarded for review and approval as noted in item "1" above. In no event shall construction of a project commence prior to formal approval of a proposal.

f) Upon completion of all Metro tasks and responsibilities or at intervals determined by the Department, and regardless of Metro Council action related to a proposed easement, right of way or lease for a non-park use, the applicant shall be invoiced for all expenses or the outstanding balance on expenses incurred by Metro.

g.) Permission from Metro for an easement or right-of-way shall not preclude review under applicable federal, state or local jurisdiction requirements.

REGIONAL PARKS AND GREENSPACES STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 97-2539A FOR THE PURPOSE OF APPROVING GENERAL POLICIES RELATED TO GRANTING OF EASEMENTS, RIGHT OF WAYS, LEASES AND LICENSES FOR NON-PARK USES THROUGH PROPERTIES MANAGED BY THE REGIONAL PARKS AND GREENSPACES DEPARTMENT.

Date: July 29, 1997

Presented by:
Charles Ciecko, Director
Regional Parks and Greenspaces

FACTUAL BACKGROUND AND ANALYSIS:

Metro through its Regional Parks and Greenspaces Department, currently owns and manages over 6,000 acres of regional parks, open spaces, natural areas, and recreational facilities. The primary management objectives for these lands is the provision of natural resource dependent recreation opportunities; protection of fish, wildlife and native plant habitat and the maintenance and/or enhancement of water quality.

From time to time, the Regional Parks and Greenspaces Department is approached with proposals to utilize portions of properties for non-park purposes, such as utilities, transportation components, cell phone towers etc. Currently, there is no policy to guide the review, analysis or authorization of uses which are unrelated to the primary management objectives.

The purpose of the proposed resolution is to create policy which will guide staff in responding to proposals for non-park uses.

Highlights of the proposed policy include:

- Formal review and approval of proposals by the Regional Parks and Greenspaces Advisory Committee, Regional Facilities Committee and full Council.
- Requires development of non-park uses outside of Regional Parks and Greenspace properties whenever feasible except when determined that the proposal use can be accommodated without significant impact.
- Requires full mitigation of all unavoidable impacts.
- Requires reimbursement of all costs associated with review, analyses and authorization for use.
- Requires receipt of not less than fair market value for all non-park uses.
- Requires full indemnification for Metro and insurance, if appropriate.
- Establishes limitations on exceptions.
- Establishes process for timely review, analysis and resolution of all proposals.

The Regional Parks and Greenspaces Advisory Committee considered this issue at their July 1, 1997 meeting and recommends its adoption.

BUDGET IMPACT:

The proposed policy requires receipt of not less than fair market value for non-park uses and reimbursement of all costs incurred by Metro thereby eliminating the potential of subsidizing uses which are inconsistent with the primary management objectives of Regional Parks and Greenspaces properties.

A Regional Parks and Greenspaces staff member will be present to answer any questions by Council regarding this policy.

EXECUTIVE OFFICER'S RECOMMENDATION:

Executive Officer's Recommendation of Ordinance No. 97-2539A

Staff Report

CONSIDERATION OF RESOLUTION NO. 01-3035 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE PROPERTY ON MT. SCOTT IN THE EAST BUTTES/ BORING LAVA DOMES TARGET AREA AND ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND FOR CONVEYANCE OF AN EASEMENT AND PROPERTY MANAGEMENT

Date: February 8, 2001

Presented by: Jim Desmond
Nancy Chase

Proposed Action

Resolution No. 01-3035 requests authorization for the Executive Officer to purchase land on Mt. Scott in the East Buttes/Boring Lava Domes target area and enter into an intergovernmental agreement with the City of Portland.

Existing Legislation

Metro Code 2.04.026 (a) (3) requires that the Executive Officer obtain the authorization of the Metro Council prior to executing any contract for the purchase of real property. The Open Spaces Implementation Work Plan, adopted by the Metro Council via Resolution 96-2424, was established to implement the Open Spaces, Parks and Streams bond measure passed by the voters of the region in 1995. The Work Plan established acquisition parameters that authorize the Executive Officer to purchase property, within the Council-approved target area refinement plan maps. Purchases that do not meet these criteria or have "unusual circumstances" (as that term is defined in the Work Plan) require specific Council approval. Via Resolution 96-2361, the Metro Council approved the East Buttes/Boring Lava Domes target area refinement plan tax-lot specific map, which includes the subject property. The refinement plan was amended via Resolution 98-2724 to remove the challenge grant cap. This resolution, if approved, would waive one requirement of the refinement plan, and authorize the purchase of the property subject to the terms of the Purchase and Sale Agreement, executed by Metro and the landowner. The resolution also proposes acceptance of an intergovernmental agreement (IGA) with the City of Portland. The agreement provides for the responsibilities and obligations of the parties with respect to the acquisition, allowable uses, management, maintenance of the property, and with respect to the transfer and conveyance from the City to Metro of an easement for land adjacent the to Oregon Zoo.

Background and Analysis

In May 1995, the Metro area voters approved the Open Spaces, Parks and Streams bond measure, which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and certain park-related capital improvements.

On July 25, 1996, via Resolution 96-2361, the Metro Council adopted a refinement plan, which outlined a land protection strategy for the East Buttes/Boring Lava Domes regional target area. One objective of the plan is to "encourage participation of other governments and non-profit organizations in acquiring strategic properties that enhance and connect existing open space in the Mt. Scott, Mt. Clatsop, Powell Butte, Kelley Butte, Rocky Butte, and Mt. Talbert areas by

establishing a challenge grant program.” One of the refinement plan requirements is that acquisitions on these buttes be made as part of a challenge grant program with a minimum 25% non-Metro match.

Mt. Scott is a priority acquisition area for the challenge grant program for several reasons. It is a heavily developed, forested butte, which is prominently in view from as far away as downtown Portland. Metro has twenty acres on Mt. Scott under contract (“the Property”) that contain healthy stands of second growth fir and a tributary of Johnson Creek. The Property, a former Camp Fire camp, was originally optioned by Metro prior to passage of the Open Space, Parks and Streams bond measure. This option was detailed as Option #10 on Fact Sheet #4, approved by the Metro Council via Resolution 95-2113 and distributed to voters prior to passage of the bond measure.

Metro has entered into a purchase and sale agreement with the Portland Area Council of Camp Fire to purchase the 20-acre site on Mt. Scott. This agreement is subject to approval by Metro Council and entry into an intergovernmental agreement with the City of Portland. The Property is in Tier1B of the East Buttes/Boring Lava Domes refinement plan. The owners have proposed land use changes to the City planning department which, if accomplished, could allow for development of this 20-acre natural area site. At one of the later land-use hearings before the City Council regarding development of this site, a citizen stated that he believed the property contained gravesites. Further investigations into this issue, including further discussions and site walks with the citizen making these claims, have yielded no confirmation of these claims.

The refinement plan provides that properties in Tier 1B require a 25% non-Metro match for acquisition costs. The City of Portland has not been able to fund the dollars necessary for the 25% match requirement, but in lieu of the 25% match, the City has agreed to convey to Metro an irrevocable perpetual easement on an approximately three-quarter-acre piece of City property adjacent to Metro’s Oregon Zoo. For this reason, removal of the 25% match requirement is requested to take advantage of the rare opportunity to purchase land on Mt. Scott and fulfill the commitment made to the voters as detailed in Fact Sheet #4 of the 1995 Ballot Measure 26-26. In addition, the City has agreed to accept full management, maintenance and operation responsibility for the site.

Waiver of the 25% challenge match requirement is considered an unusual circumstance as defined in the Work Plan and therefore requires Council approval. In accordance with the Work Plan, the Open Spaces Acquisition Committee met on February 16, 2001 and recommended that the Property be purchased and the challenge match requirement be waived for this acquisition.

Findings

Acquisition of the property is recommended, based on the following:

- The East Buttes/Boring Lava Domes target area refinement plan identifies Mt. Scott, a rapidly developing butte with second growth and tributaries to Johnson Creek, as a regional priority for protection through a challenge grant program. The goal of the challenge grant, to facilitate public partnerships, has been accomplished by this acquisition.
- The remaining provisions of the East Buttes/Boring Lava Domes target area refinement plan shall remain unchanged, with the sole modification being the waiver of the 25% match requirement for this property.

- This site is considered desirable from a regional perspective for the protection of Mt. Scott and Johnson Creek, and honoring the commitment made to the voters in Fact Sheet #4 of the Open Space, Parks and Streams Bond Measure

Budget Impact

Bond funds would supply acquisition money. The City of Portland has committed to assuming long-term management, maintenance, and operation responsibilities for the Property as part of the accompanying Metro-City of Portland IGA. Minimal costs would be incurred for administering the IGA.

Executive Officer's Recommendation

The Executive Officer recommends passage of Resolution No. 01-3035.