

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE )  
EXECUTIVE OFFICER TO EXECUTE AN )  
INTERGOVERNMENTAL AGREEMENT WITH )  
TUALATIN HILLS PARKS AND RECREATION )  
DISTRICT FOR THE MANAGEMENT OF )  
PROPERTY IN THE FANNO CREEK GREENWAY )  
TARGET AREA )

RESOLUTION NO. 01-3067  
  
Introduced by Mike Burton,  
Executive Officer

WHEREAS, in July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Ballot Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; and

WHEREAS, Measure 26-26 provided that lands acquired by Metro with the regional share of the bond funds would be "landbanked" with minimal maintenance, and no bond funds can be legally used for any operating expenses on these lands; and

WHEREAS, Measure 26-26 stated that Metro Regional Parks and Greenspaces Department may operate and maintain these lands, or other cooperative arrangements may be made with other jurisdictions or park providers to operate and maintain these lands consistent with the Greenspaces Master Plan; and

WHEREAS, on May 16, 1996, the Metro Council adopted a refinement plan for the Fanno Creek Greenway regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition, and which encouraged partnerships involving Metro and local jurisdictions in the acquisition of land along Fanno Creek and its tributaries; and

WHEREAS, on September 25, 2000, Metro purchased from Winchester-Benton, Inc. 2 acres on Fanno Creek in the City of Beaverton (the Property); and

WHEREAS, the Tualatin Hills Park and Recreation District (THPRD) and Metro desire that THPRD should operate, manage, and maintain the Property, as well as properties in the same Fanno Creek Greenway target area that Metro may acquire in the future; and

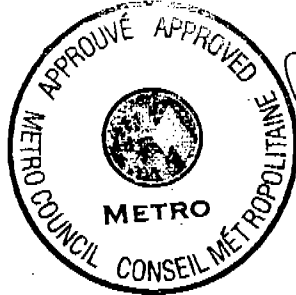
WHEREAS, an intergovernmental agreement (IGA) between Metro and the THPRD would benefit the Property, and future acquisitions in this vicinity, as well as the public in general by providing increased care for the properties and by encouraging public use; and

WHEREAS, the IGA attached to this resolution as Exhibit A sets forth the management, maintenance, and operation guidelines to be followed by THPRD as steward of the Property, requiring that the Property be managed for passive recreation, pedestrian/bicycle use, and habitat restoration, with the primary goals being the protection of the property's natural resources, the enhancement and protection of wildlife habitat, and public recreation consistent with these goals; now therefore,

BE IT RESOLVED,

That the Metro Council approves and authorizes the Metro Executive Officer to execute the Intergovernmental Agreement with the Tualatin Hills Park and Recreation District, in substantially the form attached hereto as Exhibit A, wherein the Tualatin Hills Park and Recreation District will manage the Property and potentially other properties within the Fanno Creek Greenway target area.

ADOPTED by the Metro Council this 31<sup>st</sup> day of May, 2001.



  
\_\_\_\_\_  
David Bragdon, Presiding Officer

Approved as to Form:

  
\_\_\_\_\_  
Daniel B. Cooper, General Counsel

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
METRO AND THE TUALATIN HILLS PARK & RECREATION DISTRICT  
FANNO CREEK OPEN SPACE/REGIONAL TRAIL PROPERTIES**

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 Tualatin Hills Park & Recreation District (the “District”), located at 15707 SW Walker Road, Beaverton, Oregon 97006-5941.

**RECITALS:**

WHEREAS, pursuant to the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26 (“Metro Open Spaces Bond Measure”), on September 26, 2000, Metro purchased approximately 2 acres of real property, including approximately 560 feet of Fanno Creek frontage, located along SW Allen Boulevard, commonly known as the “Winchester-Benton Property” and more particularly described in Exhibit A attached hereto and incorporated herein;

WHEREAS, the Winchester-Benton Property is located within the Fanno Creek Target Area identified pursuant to the Metro Open Spaces Bond Measure, and is also identified as a regionally significant open space and natural area in the Metro Greenspaces Master Plan;

WHEREAS, the Winchester-Benton Property is located within the boundaries of Tualatin Hills Park & Recreation District;

WHEREAS, Metro and the District wish to preserve the Winchester-Benton Property as open space in accordance with the Metro Open Spaces Bond Measure and the Metro Greenspaces Master Plan;

WHEREAS, on March 14, 2001 the Districts Board of Directors authorized the District to enter into this Agreement to manage, operate and maintain the Winchester-Benton Property as a regional trail corridor and future Metro Open Space acquisitions located within the District’s boundaries -if accepted in accordance with the terms set forth in this Agreement;

WHEREAS, on \_\_\_\_\_, 2001, the Metro Council authorized Metro to enter into this Agreement to transfer the management responsibility for the Winchester-Benton Property, and future Metro Open Spaces acquisitions located within the boundaries of the District, if accepted by the District in accordance with the terms set forth in this Agreement, and

WHEREAS, Metro and the District wish to enter into this Agreement to provide for the responsibilities and obligations of the parties with respect to the allowable uses, management, maintenance, and operation of the Winchester-Benton Property and future properties accepted in accordance with the terms of this Agreement;

NOW THEREFORE, the parties agree as follows:

**A. Acquisition**

1. On September 26, 2000, Metro purchased the Winchester-Benton Property in fee simple ownership with Metro Open Spaces Bond Measure proceeds.
2. If Metro executes an agreement to purchase additional property within the Fanno Creek Target Area and the District boundary, which Metro would like the District to manage under the terms of this Agreement, Metro shall notify the District in writing in the form attached hereto as Exhibit B ("Notice of Acquisition"). The District shall notify Metro if the District does not wish to accept management responsibilities for that property in accordance with this Agreement, using the District's best efforts to make this notification prior to the closing date for the acquisition. If the District has not so notified Metro within sixty (60) days of receiving Metro's Notice of Acquisition, then the District 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.
3. Metro shall be responsible for negotiating the acquisition of future property acquired as set forth above, and for determining the terms and conditions of said Purchase and Sale Agreements and any other terms of the transactions as determined between Metro and the sellers. Metro shall be responsible for conducting the normal due diligence investigations prior to acquisition, pursuant to Metro Open Spaces Bond Measure requirements. Metro shall also be responsible for drafting and coordinating escrow instructions and closing details, and shall pay the Buyer's closing costs. If the District wishes to accept the property, but, requires any due diligence investigations not normally performed by Metro, the District shall be solely responsible for those items.

**B. Management, Maintenance, and Operation**

1. As required by the Metropolitan Greenspaces Master Plan, the long-term management guidelines for the Winchester-Benton Property and any other open space property managed by the District under this Agreement (collectively, the "Properties") must be set forth in a Resource Management Plan ("Management Plan") for the Properties. This Agreement shall set forth the interim protection guidelines for the Properties which shall govern prior to adoption of the Management Plan, and shall also set forth the use limitations for the Properties, which must be carried forth and reflected in the Management Plan.
2. Metro and the District agree that the District shall be responsible for the ongoing management, maintenance, and operation of the Properties, both during the interim period and after adoption of the Management Plan.
3. The term of the District's management, maintenance, and operation responsibilities for the Properties 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.

4. Metro grants to the District, its agents and contractors, the right to enter the Properties for the purpose of performing all activities reasonably necessary for the management, maintenance and operation of the Properties and for the fulfillment of its duties under this Agreement and pursuant to the Management Plan.

**C. Interim Protection Guidelines**

1. Prior to the adoption of a Management Plan for the Properties (the "Interim Period"), the Properties shall be managed, maintained and operated by the District in accordance with and in a manner consistent with this Agreement, the Metro Greenspaces Master Plan, and the District's Comprehensive Master 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 Properties shall be managed, maintained, operated, and protected in accordance with their intended use as a natural area open space, with the primary goals being protection of the Properties' natural resources, enhancement and protection of wildlife and wildlife habitat, and public recreation consistent with the foregoing.
3. In accordance with the Metro Greenspaces Master Plan, formal public use of the Properties and site development on the Properties shall not begin until a Management Plan for the Properties has been adopted.
4. Prior to the adoption of a Management Plan for the Properties in the interim period, the Properties may be used informally by the public for wildlife friendly passive recreation, wildlife viewing, and wildlife friendly pedestrian activity, in the District's discretion. All uses of the Properties 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. In the Interim Period, the District shall not allow or permit any alteration of any water, timber, mineral, or other resource on the Properties, except for the control of exotic or pest plant species or as necessary to prevent Properties degradation or for security or public safety concerns. If the District believes that an improvement, trail, or alteration of any water or timber resource on the Properties is necessary prior to adoption of a Management Plan for the Properties, Metro shall have the right to approve of such action, and the District 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 Properties. In any event, no improvements or trails shall be constructed on the Properties 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. Metro will perform the following immediate stabilization measures on the Properties:
  - A. Metro will remove blackberries in upland areas and replant disturbed areas in upland portions of the Properties with native vegetation and trees.
  - B. Metro will maintain the areas so replanted until the planted vegetation is established.

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

***D. Resource Management Plan for the Properties***

1. The District shall develop a resource management plan (“Management Plan”) for the Properties, either individually, or collectively. The Management Plan(s) shall set forth the acceptable management, operation, maintenance, types and levels of programmed and public use, and trail and improvement standards for the Properties. The District shall manage the Properties in accordance with the standards and guidelines developed in the Management Plan(s).
2. The Management Plan shall ensure that the Properties are used, managed, maintained and operated in accordance with the Metro Greenspaces Master Plan and with this Agreement, and that all trails and improvements on the Properties comply with the Metro Greenspaces Master Plan and with this Agreement. The Management Plan shall also ensure that the Properties are maintained as natural area open space, with the primary goals being protection of the Properties’ natural resources, enhancement and protection of wildlife and wildlife habitat, and passive public recreation consistent with the foregoing. As part of the process of developing the Management Plan, the District shall take an inventory of the resources on the Properties.
3. Metro shall designate at least one staff member to participate in the Management Plan process for the Properties. In addition to any other approvals required by the District, 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 Metro Greenspaces Master Plan.

***E. Permits, Easements, Assessments, Coordination with Other Public Agencies***

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Properties the District agrees to be responsible for funding the operation and maintenance of the Properties with the District’s own resources. The District’s management responsibility shall include responsibility for all taxes or assessments for the Properties.
2. Prior to adoption of the Management Plan and thereafter, the District shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Properties.
3. Any permits granted by the District to users of the Properties shall comply with the terms and limitations set forth in this Agreement and in the Management Plan for the Properties.
4. The District shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance or operation issues that may arise with respect to the Properties.

5. All requests for easements, rights of way, and leases on or affecting the Properties 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 C.

***F. General Provisions***

1. Indemnification. The District, 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 Properties, including but not limited to construction of trails or in relation to any other improvement on the Properties.
2. Oregon Constitution and Tax Exempt Bond Covenants. The source of funds for the acquisition of these Properties is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The District covenants that it will take no actions that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event the District 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 District may provide on-site signage informing the public that the District is managing the site. Metro will provide on-site signage which shall be installed by the District, stating that funding for the acquisition came from Metro Open Spaces Measure bond proceeds. The District 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 District 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 NE Grand Avenue  
 Portland, OR 97232-2736

To District: Tualatin Hills Park & Recreation District  
 Attn: Steve Bosak  
 15707 SW Walker Road,  
 Beaverton, OR 97006-5941


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 these Properties. 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.

**TUALATIN HILLS PARK &  
RECREATION DISTRICT**

**METRO**

By:   
Title: General Manager

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibits:**

- Exhibit A - Legal Description - Winchester-Benton Property
- Exhibit B - Form of Notice of Acquisition
- Exhibit C - Metro Easement Policy and Metro Resolution No. 97-2539B

**EXHIBIT A**

**Winchester-Benton Property**

TRACT A of Partition Plat No. 1992-62, in the City of Beaverton, County of Washington, State of Oregon.

**EXHIBIT B**Notice of Acquisition

\_\_\_\_\_, 2001

Tualatin Hills Park and Recreation District  
 Attn: Steve Bosak  
 15707 SW Walker Road  
 Beaverton, Oregon 97006-5941

Re: Acquisition of Property along Fanno Creek

Dear Mr. Bosak:

Pursuant to the Metro Open Spaces Bond Measure 26-26, and the Intergovernmental Agreement between Metro and the District dated \_\_\_\_\_, 2001, attached hereto ("Intergovernmental Agreement"), this shall serve as notice of acquisition of the following property along the Fanno Creek Target Area:

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

Pursuant to the Intergovernmental Agreement, Metro requests that the District manage this Property pursuant to the terms of the Intergovernmental Agreement. Please notify Metro in writing if the District does not wish to accept management responsibility for this Property. As set forth in the Intergovernmental Agreement, if the District does not so notify Metro within sixty (60) days of receipt of this letter, the District 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 503/797-1914.

Sincerely,

Jim Desmond, Manager  
 Metro Open Spaces Acquisition Division

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

**EXHIBIT C**

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

## Staff Report

### **CONSIDERATION OF RESOLUTION NO. 01-3067 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE TUALATIN HILLS PARK AND RECREATION DISTRICT FOR THE MANAGEMENT OF PROPERTY IN THE FANNO CREEK GREENWAY TARGET AREA**

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**Date: April 25, 2001**

**Presented by: Charles Ciecko  
Jim Desmond**

#### **DESCRIPTION**

Resolution No. 01-3067, requests authorization for the Executive Officer to execute an intergovernmental agreement (IGA) with the Tualatin Hills Park and Recreation District ("THPRD") for management of Metro property in the Fanno Creek Greenway target area.

#### **EXISTING LAW**

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

#### **BACKGROUND AND ANALYSIS**

Metro's Open Spaces, Parks and Streams bond measure (passed in May 1995) provided funding for acquiring regionally significant open spaces, but it did not provide any money for operating expenses on these lands. Instead, the land purchased with the regional share of the bond funds was to be "landbanked." This allowed for initial stabilization of the property and low level maintenance, but would not necessarily enable the properties to be open to the public. The bond measure also stated that Metro Regional Parks and Greenspaces Department may operate and maintain these lands or that other cooperative arrangements may be made with other jurisdictions or parks providers consistent with the Greenspaces Master Plan.

Since passage of the bond measure, Metro Open Spaces has acquired over 6,600 acres of regionally significant lands. Local jurisdictions and park providers have expressed interest in managing some of these regionally significant properties acquired by Metro, either pursuant to pre-existing management plans or through future management plans.

Entering into intergovernmental agreements (IGAs) with local jurisdictions and park providers enables these agencies to manage some of Metro's regionally significant lands that would otherwise not have management dollars allocated to them at this time. Since Metro only has funding for the most minimal maintenance on these properties, local agencies operating under IGAs will provide more funding to better care for the properties and maintain their natural habitat.

The IGA sets forth management, maintenance, and operation guidelines for properties to be acquired by Metro in the Fanno Creek Greenway regional target area, requiring that they be managed for passive recreation, pedestrian/bicycle use, and habitat restoration, with the primary goals being protection of the properties' natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with these goals. Under the IGA, the properties would also be more likely to become available for public use and benefit. As required by the Metropolitan Greenspaces Master Plan, formal public use and site development of a property shall not begin until a resource management plan has been adopted by THPRD and approved by the Metro Council. However, informal public use for the property will be allowed in the interim period at the discretion of local management.

The IGA specifies the particular parcel to be covered by the agreement, and also sets forth a mechanism whereby Metro will notify the local jurisdiction if Metro purchases future properties within the target area that Metro would like THPRD to manage under the terms of the IGA. THPRD can then notify Metro if it does not wish to accept management responsibility for that particular property.

In September 2000, Metro purchased the 2-acre Winchester-Benton property ("the Property") in the Fanno Creek Greenway target area. The Property is identified in the Fanno Creek Greenway refinement plan as a Tier I property. Metro will retain title to the Property. THPRD has signed the IGA to manage the Property. THPRD has committed to construct a public pedestrian/bicycle trail along this portion of Fanno Creek, to be paid for with a combination of THPRD and federal transportation funds.

## **FINDINGS**

Authorization of the Executive Officer's execution of the Fanno Creek IGA is recommended based on the following:

- Entering into IGAs with local jurisdictions and park providers enables local agencies to manage some of Metro's regionally significant lands that would otherwise not have management dollars allocated to them at this time. Under the IGAs, the properties would also be more likely to become available for public use and benefit at an earlier date than if Metro retains all operations and management responsibilities.
- THPRD has signed an IGA to manage the Property and has committed to construct a public trail along this portion of Fanno Creek.
- The strong presence of THPRD in the target area and the relatively small size of this and other sites in the target area makes management of these sites more appropriate for a local, rather than regional, agency.
- The IGA would relieve Metro of management costs arising from the Property, while fulfilling acquisition objectives established at the time of the Fanno Creek Greenway Refinement Plan.

**BUDGET IMPACT**

THPRD would become responsible for the management, maintenance and operation of the Property purchased with the regional share of bond funds. This would reduce Metro's land banking costs and future operation and maintenance expenses.

**OUTSTANDING QUESTIONS**

None.

**Executive Officer's Recommendation**

The Executive Officer recommends passage of Resolution No. 01-3067.