

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE ) RESOLUTION NO. 97-2492  
OFFICER TO EXECUTE THE ROCK CREEK GREENWAY ) Introduced by Mike Burton  
INTERGOVERNMENTAL AGREEMENT WITH THE ) Executive Officer  
CITY OF HILLSBORO TO MANAGE PROPERTIES )  
PURCHASED BY METRO OPEN SPACES. )

WHEREAS, In July 1992 the Metro Council adopted by Resolution No. 92-1637 the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, Metro Open Spaces Acquisition Division has purchased over 2,000 acres pursuant to ballot measure 26-26 and its stated goal of acquiring up to 6,000 acres of open space property throughout the region; and

WHEREAS, Measure 26-26 provided that lands acquired by Metro with the regional share of the bond funds would be "land banked" 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, the City of Hillsboro has expressed interest in managing some of the properties acquired by Metro in the Rock Creek regional target area; and

WHEREAS, an intergovernmental agreement (IGA) with the City of Hillsboro would benefit the properties and public in general by providing increased care for the properties and encourage public use; and

WHEREAS, such an IGA would set forth management, maintenance, and operation guidelines for the City of Hillsboro, requiring that the properties 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; and

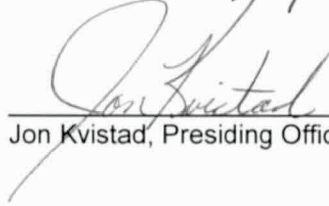
WHEREAS, Metro Open Spaces has signed a purchase and sale agreement to purchase the 20-acre, Nofziger property, and has purchased the 5-acre Courtney property, the 5-acre Ehler property and the 3-acre Sneddon property, all identified in the Rock Creek Greenway Target Area refinement plan as Tier I properties; and

WHEREAS, an IGA has been signed by the City of Hillsboro for management of the Nofziger property and other properties in the Rock Creek Greenway, attached hereto as Exhibit A; now, therefore

BE IT RESOLVED,

That the Metro Council authorizes the Metro Executive Officer to execute the Rock Creek Greenway IGA with the City of Hillsboro, attached hereto as Exhibit A, wherein the City of Hillsboro will manage the Nofziger property and potentially other properties within the Rock Creek Greenway Target Area.

ADOPTED by the Metro Council this 1st day of May, 1997.

  
\_\_\_\_\_  
Jon Kvistad, Presiding Officer

Approved as to Form:

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

EXHIBIT A  
Resolution 97-2492

[MPI]INTERGOVERNMENTAL AGREEMENT

**Rock Creek Greenway Target Area**

This Intergovernmental Agreement ("Agreement") dated this \_\_\_ day of \_\_\_\_, 1997, 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 Hillsboro, located at 123 W. Main Street, Hillsboro, OR 97123("the City").

**RECITALS:**

WHEREAS, pursuant to the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26 ("Metro Open Spaces Measure"), Metro will be acquiring properties within the Rock Creek Greenway Target Area ("the Properties"), located along Rock Creek, in the City of Hillsboro, Oregon;

WHEREAS, the Properties are within the Rock Creek Target Area identified pursuant to the Metro Open Spaces Measure, and is also identified as regionally significant open space and natural area in the Metro Greenspaces Master Plan;

WHEREAS, Metro and the City wish to preserve the Properties as open space in accordance with the Metro Open Spaces Measure and the Metro Greenspaces Master Plan;

WHEREAS, on March 4, 1997 the City Council authorized the City to enter into this Agreement and to manage, operate and maintain the Properties in accordance with the terms set forth in this Agreement; 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 Properties;

Now, therefore, the parties agree as follows:

**A. Acquisition**

1. Metro anticipates purchasing the Properties with Metro Open Spaces Measure bond proceeds. These acquisitions will be maintained as provided for herein.
2. Metro has executed an agreement to purchase property in the Rock Creek Target Area for the Nofziger property, more particularly described in Exhibit A-1. Upon execution of this Agreement and the close of escrow for the Nofziger property, the City shall manage, maintain and operate the Nofziger property under the terms and conditions set forth in this Agreement.
3. If Metro executes agreements to purchase additional properties within the Rock Creek Target Area which Metro would like the City to manage under the terms of this Agreement, Metro shall notify the City in writing in substantially the form attached hereto as Exhibit B ("Notice of Acquisition"). The City shall notify Metro if the City does not wish to accept management responsibilities for this property in accordance with this Agreement, using the City's best efforts to make this notification prior to the closing date for the acquisition. Any property for which the City notifies Metro that it does not wish to accept management responsibilities shall not be part of the Properties subject to this Agreement.
4. Attached hereto are Notices of Acquisition for the following properties, more particularly described in the attached legal descriptions: Courtney (Ex. A-2); Sneddon (Ex. A-3); and Holscher (Ex. A-4). These properties are currently set to close on or around April 2, 1997. The City shall use its best efforts to notify Metro prior to that date if the City does not wish to accept management responsibilities for those properties.

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

1. The long-term management guidelines for the Properties will 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 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 City agree that, as of the close of escrow for the purchase of any property that is subject to this Agreement, the City 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 City'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 City, 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 their 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 Properties 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, ("the Plans"). In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern.
2. The Properties shall at all times 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 Properties' 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 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, at the City's discretion, the Properties may be used informally by the public for passive recreation, habitat enhancement, pedestrian activity, and/or nonmotorized bicycle use. 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. Prior to the adoption of the Management Plan for the Properties, in the interim period the City 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.
6. Prior to adoption of the Management Plan and thereafter, the City shall maintain security of the Properties, and shall provide additional fencing, gates, signage, and other measures as the City 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 City 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 City shall develop a Resource Management Plan ("Management Plan") for the Properties. 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 Properties. The City shall manage the Properties in accordance with the standards and guidelines developed in the Management Plan.

2. The Management Plan shall ensure that the Properties are 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 Greenspaces Master Plan and with this Agreement. The Management Plan shall also ensure that the Properties are maintained as a natural area open space, with the primary goals being protection of the Properties' 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 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 City, 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.

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

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Properties the City agrees to be responsible for funding the operation and maintenance of the Properties with the City's own resources. The City's management responsibility shall include responsibility for all taxes or assessments for the Properties, including the anticipated future assessment for the extension of Aloclek Road and widening of Old Cornell Road. Any obligation of the City to expend funds under this Agreement is subject to appropriation of those funds by the City Council.
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 Properties.
3. Any permits granted by the City 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 City 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.

**F. 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 any claim based on any act or occurrence arising from the negligent or unlawful 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 Properties taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d), 11(e), and 11(g) 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 Properties 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 shall provide on-site signage informing the public that the City is managing the site. Metro will provide on-site signage 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. On-site signage that provides recognition of Metro funding shall be subject to prior review and comment by Metro. All signage will be consistent with Metro guidelines for Open Spaces Projects.
4. Joint Termination for Convenience. Metro and the City may by mutual agreement terminate all or part of this Agreement based upon a determination that such action is in the public interest.
5. Documents are Public Properties. All records, reports, data, documents, systems and concepts, whether in the form of writings, figures, graphs, or models which are prepared or developed in connection with the acquisition, management, maintenance or operation of the Properties shall become public Properties. Nothing in this section or in any other part of this Agreement shall be construed as limiting Metro's or the City's ability to consider real Properties transactions in executive session pursuant to ORS 192.660(1)(e) or as requiring disclosure of records that are otherwise exempt from disclosure pursuant to the Public Records Law (ORS 192.410 to 192.505) or Public Meetings Law (ORS 192.610 to 192.690).
6. Law 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 City may not assign any of its rights or responsibilities under this Agreement without prior written consent from Metro, except the City 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

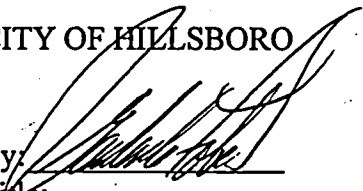
To City: City of Hillsboro  
 Parks and Recreation Department  
 636 S.E. Ninth Ave.  
 Hillsboro, OR 97123  
 Attention: Scott Talbot

- 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 matters set forth in this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

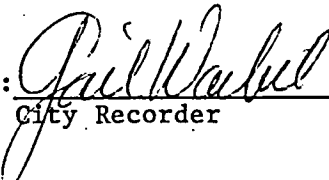
IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year set forth above.

CITY OF HILLSBORO

METRO

By:   
 Title: Mayor

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

ATTEST:   
 City Recorder



**LEGAL DESCRIPTION**

A tract of land in the Southeast one-quarter of Section 26 and Northeast one-quarter of Section 35, Township 1 North, Range 2 West of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

Beginning at the North line of the Isaac Butler Donation Land Claim in Section 26, Township 1 North, Range 2 West of the Willamette Meridian, at a point South  $79^{\circ} 11'$  East 20.67 chains from the Northwest corner of the East one-half of the Isaac Butler Donation Land Claim said point being the Northeast corner of that certain tract conveyed to Peter Nelson and William Nelson by Deed recorded June 28, 1890 in Book 28 page 290, Deed Records; thence South along the East line of the aforesaid Nelson tract 22.67 chains to the Southeast corner of the Nelson tract; thence East along the South line of a tract of land described in Deed to Robert Imbrie, recorded October 20, 1890 in Book 29 page 199, Deed Records, a distance of 701 feet to the Southwest corner of that certain tract of land described in Deed to John W. Baker, recorded February 24, 1912 in Book 93 page 538, Deed Records; thence North  $0^{\circ} 13'$  West along the West line of the aforesaid Baker tract 1369 feet to the North line of the Isaac Butler Donation Land Claim; thence North  $79^{\circ} 11'$  West along the North line of said Claim to the point of beginning;

EXCEPTING THEREFROM those certain tracts of land described in Deeds to Charles Nofziger, et ux, recorded November 20, 1958 in Book 411 page 681, to Philip Eichler, et ux, recorded April 15, 1965 in Book 548 page 640, to Charles Nofziger, et ux, recorded October 27, 1965 in Book 574 page 698 and to Kamal Hawash, et ux, recorded November 29, 1965 in Book 579 page 114, Deed Records.

## Staff Report

### **CONSIDERATION OF RESOLUTION NO. 97-2492 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE THE ROCK CREEK GREENWAY INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF HILLSBORO TO MANAGE PROPERTIES PURCHASED BY METRO OPEN SPACES.**

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**Date: April 10, 1997**

**Presented by: Charles Ciecko  
Alison Kean Campbell**

## PROPOSED ACTION

Resolution No. 97-2492 would provide Metro Council approval for an intergovernmental agreement (IGA) with the City of Hillsboro to manage properties purchased by Metro Open Spaces Acquisition Division in the Rock Creek Greenway Target Area.

## BACKGROUND AND ANALYSIS

Measure 26-26 provided funding for acquiring up to 6000 acres of regional significant open spaces, but it did not provide any money for operating expenses on those lands. Instead the land purchased with the regional share of the bond funds was to be "land banked." 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 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 2000 acres of regionally significant lands. Local jurisdictions and park providers have expressed interest in managing some of those 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 would enable those 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 those properties, local agencies operating under IGAs would 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, 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 the City and approved by the Metro Council. However, informal public use of the property will be allowed in the interim period at the discretion of local management.

The IGA specifies the particular parcels 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 the City of Hillsboro to manage under the terms of the IGA. The City of Hillsboro can then notify Metro if it does not wish to accept management responsibility for that particular property.

Metro has a signed purchase and sale agreement to purchase the 20-acre Nofziger property in the Rock Creek Greenway Target Area, and is expected to close on that purchase in April 1997. The Nofziger property is identified in the Rock Creek Greenway refinement plan as a Tier I property. The City of Hillsboro signed an IGA to manage the Nofziger property, and is in the process of deciding whether to also accept responsibility under the IGA for managing three other Metro-owned properties (Courtney, Ehler and Sneddon) in the Rock Creek Greenway Target Area.

## **FINDINGS**

Resolution 97-2492 would authorize Metro to enter into the Rock Creek Greenway IGA with the City of Hillsboro to manage the Nofziger and other properties within the Rock Creek Greenway Target Area. Metro will retain title to these properties.

## **BUDGET IMPACT**

The City of Hillsboro would become responsible for the management, maintenance and operation of certain Metro-owned Open Spaces property purchased with the regional share of Measure 26-26 bond funds. This would reduce Metro's land banking costs and future operation and maintenance expenses.

## **Executive Officer's Recommendation**

The Executive Officer recommends adoption of Resolution 97-2492.