

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 97-2568
THE EXECUTIVE OFFICER TO TRANSFER)
\$200,000 IN BOND MEASURE 26-26)
MULTNOMAH COUNTY LOCAL SHARE FUNDS) Introduced by Mike Burton,
TO THE CITY OF GRESHAM FOR THE) Executive Officer
PURCHASE OF PROPERTY AND TO EXECUTE)
AN INTERGOVERNMENTAL AGREEMENT)
WITH THE CITY OF GRESHAM FOR)
MANAGEMENT, MAINTENANCE AND)
OPERATION OF SAME.)

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's Bond Measure 26-26 for Open Space, Parks and Streams was approved by the voters of the region in May of 1995; and

WHEREAS, on November 30, 1995, the Metro Council adopted an intergovernmental agreement with Multnomah County ("Multnomah County Local Share IGA"), which authorized the contribution of \$3,401,545 in Bond Measure 26-26 proceeds to Multnomah County for the purchase and improvement of parks and natural areas; and

WHEREAS, the Multnomah County Local Share IGA Project List designated "Hogan Cedars/Johnson Creek" as a local greenspace and trail project acquisition for Multnomah County; and

WHEREAS, the Hogan Cedars property is located in the riparian area of Johnson Creek, and includes a unique variety of cedar trees which are situated in a manner that will provide public access to the Springwater Trail.

WHEREAS, The City of Gresham purchased the 15.32 acre Hogan Cedars property, in the spring of 1997, meeting the Multnomah County Local Share goal set forth in the Multnomah County Local Share IGA Project List entitled "Hogan Cedars/Johnson Creek;" and

WHEREAS, The City of Gresham purchased the Hogan Cedars/Johnson Creek property to forestall sale of the property to a private party, and now requests that it be partially reimbursed out of the Multnomah County Local Share funds dedicated to the acquisition of the "Hogan Cedars/Johnson Creek" Project by the Multnomah County Local Share IGA; and

WHEREAS, Metro will receive a five-ninths undivided interest in the property as a co-owner with the City of Gresham, in exchange for Metro's transfer of \$200,000 in Multnomah County Local Share funds to the City of Gresham; and

WHEREAS, The City of Gresham has agreed to accept responsibility for the management, operation, and maintenance of the Hogan Cedars property; and

WHEREAS, under Bond Measure 26-26, Metro Regional Parks and Greenspaces Department is authorized to operate and maintain these lands or may enter into cooperative arrangements with other jurisdictions or park providers to operate and maintain these lands consistent with the Greenspaces Master Plan; and

WHEREAS, an intergovernmental agreement (IGA) with the City of Gresham would benefit the properties and the public in general by encouraging public use and providing for care of the properties by the local jurisdiction, the City of Gresham; and

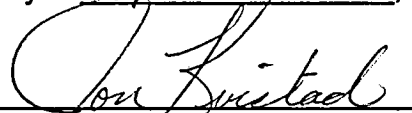
WHEREAS, such an IGA would set forth management, maintenance and operation guidelines for the City of Gresham, requiring that the property be managed for passive recreation, pedestrian/bicycle use and habitat restoration, with the primary goals being natural resource protection, enhancement and protection of wildlife habitat and passive public recreation, consistent with these goals; and

WHEREAS, the IGA attached hereto as Exhibit A has been approved by the Gresham City Council for management of the Hogan Cedars property;

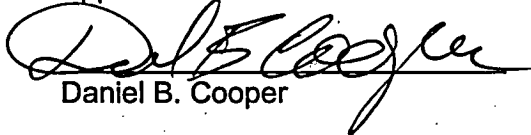
NOW, THEREFORE, BE IT RESOLVED,

The Metro Council approves the transfer of \$200,000 to the City of Gresham for the purchase of the Hogan Cedars property, and authorizes Metro's Executive Officer to execute the intergovernmental agreement for the management, operation and maintenance of the Hogan Cedars property, attached hereto as Exhibit A.

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


Jon Kyistad, Presiding Officer

Approved as to form:


Daniel B. Cooper

INTERGOVERNMENTAL AGREEMENT

Wells Fargo/First Interstate Property

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 Gresham, located at 1333 NW Eastman Parkway, Gresham, Oregon, 97030-3813 ("City").

RECITALS:

WHEREAS, pursuant to the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26 ("Metro Open Spaces Measure"), Multnomah County Local Share Funds were allotted for the acquisition of acreage along Johnson Creek in order to protect a unique variety of cedar trees located on the property ("Multnomah County Hogan Cedars Project"), and provide public access to the Springwater Trail; and

WHEREAS, the City of Gresham has purchased 15.32 acres from First Interstate Bank/Wells Fargo Trust ("First Interstate/Wells Fargo Trust Property" or "Property"); as shown and described in Exhibits A, B, and C, vicinity map, site map and legal description, respectively.

WHEREAS, Metro, as the administrator of Multnomah County Local Share Funds, has determined that the First Interstate/Wells Fargo Trust Property meets the goals of the Multnomah County Hogan Cedars Project and;

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

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

WHEREAS, on _____, 1997 the Metro Council authorized Metro to enter into this Agreement to provide funding for the acquisition of the Property 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 Property;

Now, therefore, the parties agree as follows:

A. Acquisition

1. The purchase price for the Property was Three Hundred Sixty Thousand Dollars (\$360,000). Metro will contribute Two Hundred Thousand Dollars (\$200,000) towards the acquisition cost for the Property with Multnomah County Open Spaces Measure bond proceeds, for purposes of the Multnomah County Hogan Cedars Project as set forth herein.
2. The City has undertaken all investigations, negotiations, and closing costs and requirements necessary to reach agreement with the Property owners for purchase of the Property.
3. After execution of this Agreement, or at the close of escrow for the Property, whichever is later, Metro, as administrator of the Multnomah County Local Share Fund, will transfer Two Hundred Thousand Dollars (\$200,000) to the City.
4. Metro and the City shall take title to the Property as tenants in common proportionate to their percentage of contribution to the purchase price, Metro having a 5/9 undivided interest, the City having a 4/9 undivided interest. The City will deliver a deed to Metro reflecting these ownership percentages.

B. Management, Maintenance, and Operation

1. As required by the Metropolitan Greenspaces Master Plan, the City shall determine the long-term management guidelines for the Property in a Resource Management Plan ("Management Plan") for the Property. Until adoption of the Management Plan, this Agreement shall provide the interim protection guidelines for the Property, and shall also provide the use and limitations of the Property which must be carried forth and reflected in the Management Plan.
2. Both long term and interim management guidelines shall protect the existing Hogan Cedars trees and the adjacent habitat area within the property boundaries.
3. Metro and the City agree that the City shall be responsible for the ongoing management, maintenance, and operation of the Property, both during the interim period and after adoption of the Management Plan, in accordance with the terms of this Agreement.

C. Interim Protection Guidelines

1. Until formal adoption of a Management Plan for the Property, the Property shall be managed, maintained and operated by the City in accordance and in a manner consistent with this Agreement, the Metropolitan Greenspaces Master Plan, the City's Comprehensive Plan, and the City's 1995 Park, Recreation and Open Space Master Plan

("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 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 Property's natural resources, enhancement and protection of wildlife habitat, Hogan and Johnson creeks, public access to the Springwater Trail, and public recreation consistent with the foregoing. In all cases priority shall be given to protecting the Hogan Cedars and their habitat on the property.
3. In accordance with the Metropolitan Greenspaces Master Plan, formal public use of the Property and site development on the Property shall not begin until a Management Plan for the Property has been adopted, as set forth in Section D below.
4. Until formal adoption of a Management Plan for the Property, at the City's discretion, the Property may be used informally by the public for passive recreation, habitat enhancement or low impact pedestrian activity, and/or nonmotorized bicycle use. All uses of the 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. Until formal adoption of the Management Plan for the Property, the City shall not allow or permit any alteration of any water, timber, mineral, or other resource on the Property, except for the control of exotic or pest plant species or as necessary to prevent Property degradation or for security or public safety concerns.

D. Resource Management Plan for the Property

1. The City shall develop a Resource Management Plan ("Management Plan") for the 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 Property. The City shall manage the Property in accordance with the standards and guidelines developed in the Management Plan.
2. The Management Plan shall ensure that the Property is managed, maintained and operated in accordance with the Metro Greenspaces Master Plan, the City's master plans and with this Agreement, and that all trails and improvements on the Property comply with the Greenspaces Master Plan and with this Agreement. The Management Plan shall also ensure that the Property is maintained as a natural area open space, with the primary goals being protection of the Property's natural resources, enhancement and protection of wildlife habitat, Hogan and Johnson creeks, public access to the Springwater Trail, and public recreation consistent with the foregoing. In all cases priority shall be given to protecting the Hogan Cedars and their habitat on the property. As part of the process of

developing the Management Plan, the City shall include an inventory of the wildlife and plant resources on the Property.

3. Metro shall designate at least one staff member to participate in the Management Plan development process for the Property. 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 ownership and management responsibility for the Property the City agrees to be responsible for funding the operation and maintenance of the Property with the City's own resources. The City's management responsibility shall include responsibility for all taxes, assessments, costs, and liabilities for the Property.
2. Until formal adoption of the Management Plan and thereafter, the City shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Property.
3. Any permits granted by the City to users of the Property shall comply with the terms and limitations set forth in this Agreement and in the Management Plan for the Property.
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 Property.

F. General Provisions

1. Indemnification.

- a) Metro shall indemnify the City and its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of persons, or property damage, arising out of or in any way connected to the tortious acts of Metro employees acting within the scope of employment and duties in performance of this agreement, subject to the limitations and conditions of the Oregon Tort Claims Act ORS Chapter 30.
- b) The City shall indemnify Metro and its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of persons, or property damage, arising out of or in any way connected to the tortious acts of City employees acting within the scope of employment and duties in performance

of this agreement, subject to the limitations and conditions of the Oregon Tort Claims Act ORS Chapter 30.

2. **Oregon Constitution and Tax Exempt Bond Covenants.** The source of funds for the acquisition of this Property 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 City 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 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.** Metro will provide on-site signage stating that a portion of the funding for the acquisition came from Metro Open Spaces Measure bond proceeds. The City shall provide on-site signage informing the public that the City is managing the site. 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. Guidelines shall be provided to the City.
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 Records.** 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 Property shall become public records. 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 property 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. Neither party may assign or otherwise transfer any of its rights or responsibilities under this Agreement without prior written consent from the other, 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 Gresham
 Julee Conway, Manager
 Parks and Recreation Division
 1333 NW Eastman Parkway
 Gresham, Oregon 97030-3813

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 this Property. 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 GRESHAM
 By: 

METRO
 By: _____

Title: City Manager

Title: _____

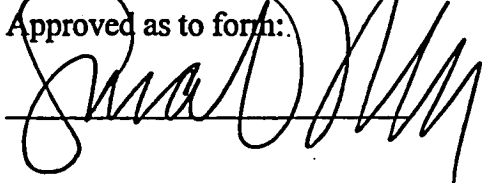
Approved as to form:


EXHIBIT A

City of Gresham

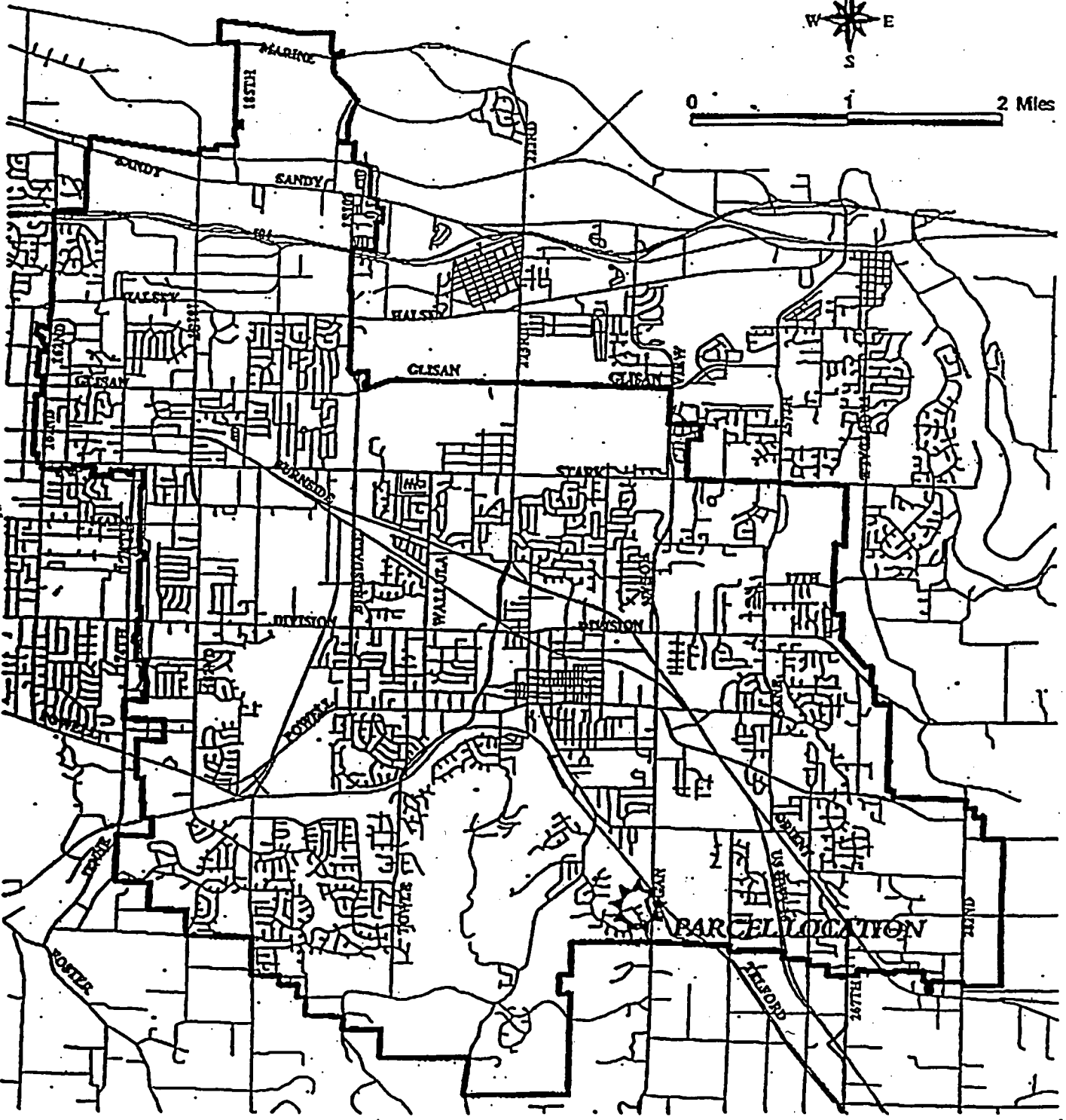
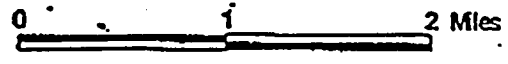


EXHIBIT B

North →

26
SUBJECT
PARCEL

SEE CS 25221

SEE MAP IS CE 1500

Springwater Trail

JOSHOP

CRK

400

TAX LOT 400 15.32 acres

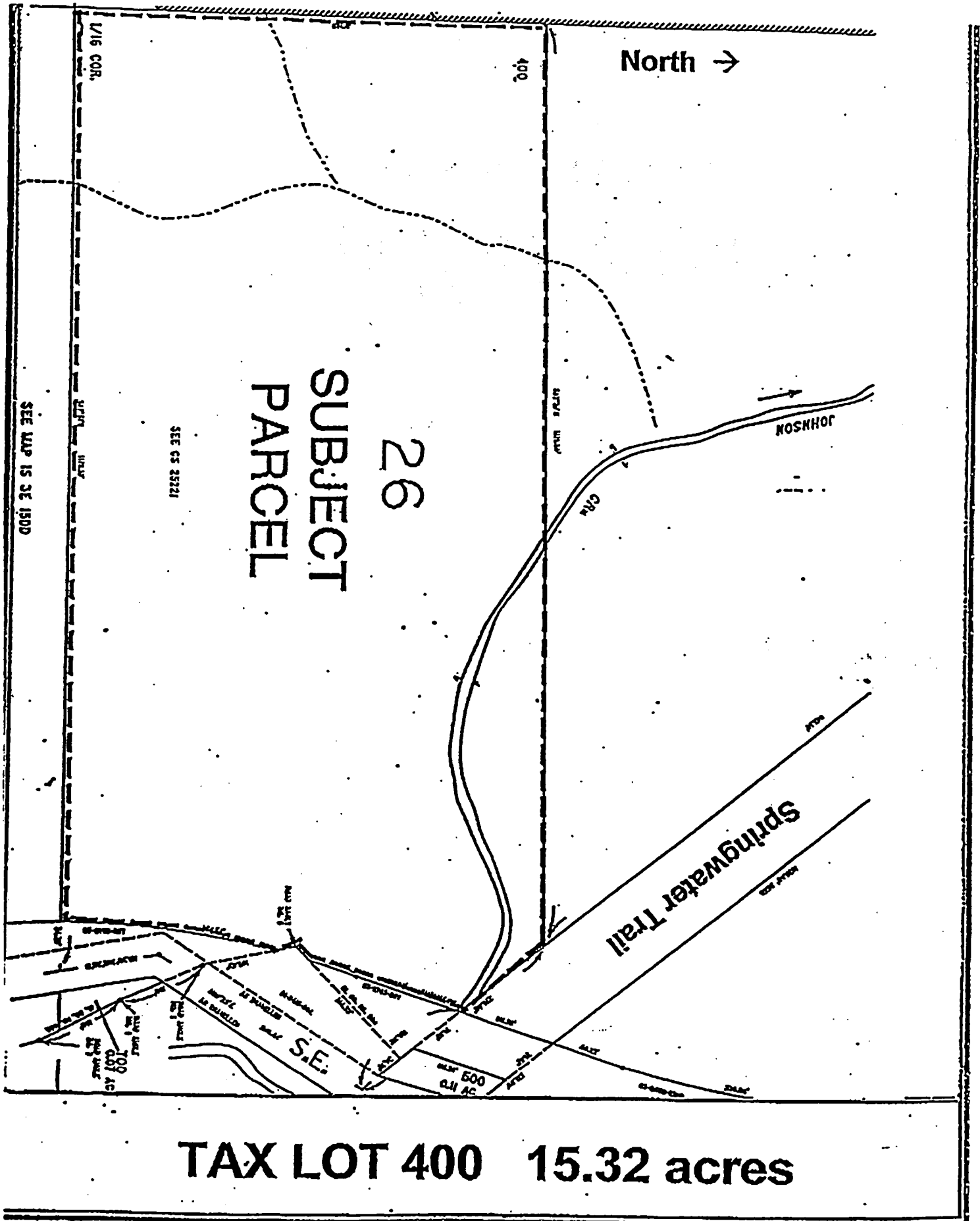


EXHIBIT C

LEGAL DESCRIPTION

A tract of land in Section 15, Township 1 South, Range 3 East of the Willamette Meridian, in the City of Gresham, County of Multnomah and State of Oregon, described as follows:

Beginning at the initial point, a 5/8 inch iron rod with yellow plastic cap marked "K.W. Cox & Assoc. Inc."; thence North 00° 46' 41" East a distance of 578.19 feet to a point; thence North 88° 44' 41" East a distance of 1119.73 feet to a point on the Southerly right of way line of the Oregon Water, Power and Railroad Co.; thence South 39° 51' 18" East along said Southerly right of way a distance of 126.11 feet to a point on the Westerly right of way line of Hogan Road; thence South 17° 07' 44" West along said Westerly right of way line a distance of 135.63 feet to a point of curvature; thence Southwesterly along the arc of a 1030.00 foot radius curve to the left through a central angle of 120° 08' 57" (chord bears South 07° 03' 15" West 360.35 feet) an arc distance of 362.22 feet to a point; thence South 89° 03' 03" West a distance of 1124.09 feet to the initial point.

Staff Report

FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO TRANSFER \$200,000 IN BOND MEASURE 26-26 MULTNOMAH COUNTY LOCAL SHARE FUNDS TO THE CITY OF GRESHAM FOR THE PURCHASE OF PROPERTY AND TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF GRESHAM FOR MANAGEMENT, MAINTENANCE AND OPERATION OF SAME.

Date: October 9, 1997

Presented by:

**Charles Ciecko
Nancy Chase**

PROPOSED ACTION

Resolution No. 97-2568 requests authorization for the Executive Officer to transfer \$200,000 in Bond Measure 26-26 Multnomah County Local Share funds to the City of Gresham for the purchase of property, and to execute an intergovernmental agreement with the City of Gresham for management, maintenance and operation of same.

BACKGROUND AND ANALYSIS

The 15.32-acre Hogan Cedars property ("Property"), described in the attached Intergovernmental Agreement lies along Johnson Creek and abuts the Springwater Corridor. The creek and the corridor intersect at the northeast boundary of the Property. The site contains a mix of former pasture land, riparian corridor vegetation, wetland, and a unique grove of Hogan cedar trees.

Believed to be the only natural occurrence of this variety of tree in the world, the cedar grove spreads over several properties, including the subject Property. In the past, the Hogan Cedars grove survived the Columbus Day storm of 1962, only to be threatened with elimination by the proposed Mt. Hood highway project of 1970. Acquisition of this site places a portion of the grove in public ownership and adds expanded access to the Springwater Corridor Trail.

Exhibit A of the Intergovernmental Agreement, Open Spaces Bond Measure Local Share Component, with Multnomah County, dated November, 30, 1995, states that Metro shall:

"Acquire acreage in the vicinity of Telford Road/Springwater Corridor/ Johnson Creek. The purpose of the project is to acquire (from willing sellers) riparian areas which includes a unique variety of cedars trees and which are situated in a manner that will provide public access to the Springwater Trail/Johnson Creek."

Accordingly, \$300,000 in Multnomah County Local Share funds were set aside for acquisition of the Hogan Cedars grove. In the spring of 1997, the City of Gresham brought the Property to Metro's attention as an acquisition opportunity that met the goals of the Hogan Cedars project. To accommodate the seller's time frames, the City of Gresham purchased the Property with the understanding that a request would be made to the Metro

Council for a Metro partnership, via a commitment of Multnomah County Local Share funds and an intergovernmental agreement for management, maintenance and operation. This acquisition is termed an unusual circumstance in that the up-front acquisition and due diligence were performed by the City of Gresham.

To acquire the Property, the City of Gresham paid \$360,000. The City of Gresham requests that Metro contribute \$200,000 in exchange for an undivided five-ninths interest in the property as a co-owner with the City of Gresham. In the attached intergovernmental agreement, the City of Gresham agrees to retain management, maintenance and operation responsibilities for the property in accordance with the goals of Bond Measure 26-26.

FINDINGS

Acquisition of this property is recommended based on the following:

- The purchase of the Property protects riparian habitat along Johnson Creek and provides additional public access to the Springwater Trail.
- A portion of the Hogan Cedars grove will be protected; this variety of trees has a very limited geographic distribution and is believed to occur naturally only in this area.
- The City of Gresham strongly supports this project and will assume responsibility for management, maintenance and operation of the Property.
- Within the Multnomah County Local Share IGA, Metro agreed to fund the acquisition in the "Hogan Cedars/Johnson Creek" Project, of which the Property is an integral part.

BUDGET IMPACT

The City of Gresham will retain responsibility for management, maintenance and operation of the Property. \$200,000 of the total \$300,000 set aside for the "Hogan Cedars/Johnson Creek" Project would be applied to acquire an undivided five-ninths interest in the Hogan Cedars Property.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends passage of Resolution No. 97-2568.