

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)	RESOLUTION NO. 04-3467
CHIEF OPERATING OFFICER TO ENTER INTO)	
AN AGREEMENT TO SELL 48 GRAVES TO)	
THE EASTSIDE JEWISH COMMUNITY OF)	Introduced by Chief Operating Officer
PORTLAND AND ESTABLISH THE EASTSIDE)	Michael J. Jordan with the concurrence of
JEWISH CEMETERY SECTION AT DOUGLASS)	Council President David Bragdon
PIONEER CEMETERY)	

WHEREAS, Metro was approached by the Eastside Jewish Community of Portland (EJCOP) in the summer of 2003 with a request to purchase a block of graves at Douglass Pioneer Cemetery for purposes of creating a Jewish Cemetery Section;

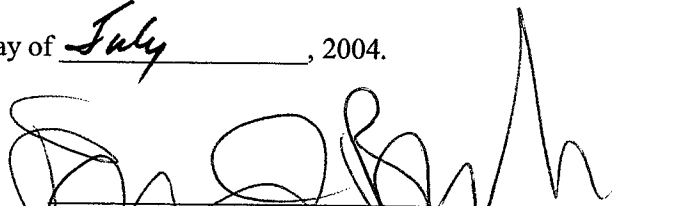
WHEREAS, Douglass Pioneer Cemetery, located in the City of Troutdale, Multnomah County, is one of the 14 Pioneer Cemeteries that Metro owns, actively markets and maintains;

WHEREAS, Metro and EJCOP have been negotiating the terms of a block sale to EJCOP for the creation of the Eastside Jewish Cemetery Section; and

WHEREAS, Metro and EJCOP have reached a tentative agreement providing for the sale by Metro of 48 graves to EJCOP along with a covenant to sell adjacent graves to third parties in a sequence that allows for the potential expansion of the Eastside Jewish Cemetery Section in the future; now therefore

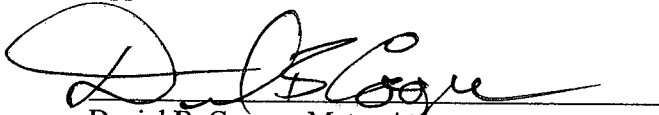
BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to enter into the proposed Grave Sales Agreement, attached hereto as to form only as Exhibit "A" to sell graves to the Eastside Jewish Community of Portland and establish the Eastside Jewish Cemetery Section at Douglass Pioneer Cemetery.

ADOPTED by the Metro Council this 8th day of July, 2004.



David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney



Grave Purchase Agreement

This GRAVE PURCHASE AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2004, by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, and Eastside Jewish Community of Portland, (hereinafter referred to as “EJCoP”). In consideration of the mutual covenants, terms, conditions, and restrictions contained in this Agreement, the parties agree as follows:

1. Settlement, Merger and Release. This Agreement is in settlement of any and all disputes between Metro and EJCoP relating to the prospective or actual sale of Gravesite Licenses (hereinafter referred to as “Graves”), prospective or actual sale of options or other future rights to purchase Graves, and the prospective or actual creation of a Jewish cemetery section at Douglass Pioneer Cemetery, located in Multnomah County, State of Oregon (hereafter “Douglass Pioneer Cemetery”), occurring prior to this Agreement (hereinafter referred to as “Grave Sales”). EJCoP and Metro hereby release and forever discharge each other, including their officers, employees, agents, successors and assigns, from any claim, demand, action, suit, or proceeding of any kind or nature whatsoever, relating to or arising out of said Grave Sales that either party has had, now has, or hereafter may have or may assert against the other party on account of, or in any way arising out of said Grave Sales. This Agreement contains the final expression of, and entire agreement between, Metro and EJCoP with respect to the sale and resale of Graves to EJCoP, and supersedes all prior understandings with respect to said sales.
2. Sale of Lots to EJCoP. Metro agrees to sell and EJCoP agrees to buy 48 Graves in lots 11, 12, 13, 14, 15, 16, 17 and 18 of Block 11 of Douglass Pioneer Cemetery, at Metro’s former rate of \$800.00 per Grave, as depicted on Exhibit A.
3. Order of Future Sales to EJCoP. EJCoP may purchase additional Graves in Block 11 of Douglass Pioneer Cemetery any time, at Metro’s rate in effect on the date of said future purchases. Said Grave sales shall take place beginning with all the Graves in lots 19 and 20, then proceeding in the following order by column: lots 41-45, 46-50, 71-75, 76-80, 101-105, 106-110, 131-135, 136-140, 161-165, 166-170, 191-195, 196-200 and 221-225. All Graves in each column of lots must be purchased by EJCoP before any Graves in the succeeding column of lots may be purchased by EJCoP (e.g., all Graves in the column of lots 41-45 must be purchased before Graves in the column of lots 46-50 may be purchased, and so forth). The initial 48 Graves purchased by EJCoP, together with any additional future Graves purchased by EJCoP as set forth above, shall be hereinafter termed the “Eastside Jewish Cemetery Section.”
4. Order of Future Sales by Metro to Third Parties. Metro agrees that, if and when it sells the remaining Graves in Block 11 of Douglass Pioneer Cemetery to third parties, it will sell said Graves to third parties in the following order:
 - 4.1 Metro will first sell Graves in the 30-lot area numbered 1-10, 21-30 and 31-40. When 50% of the Graves in the 30 -lot areas numbered 1-10, 21-30 and 31-40

have been sold, Metro may begin selling Graves in the 30-lot area numbered 51-70 and 81-90.

- 4.2 When 50% of the Graves in the 30-lot area numbered 51-70 and 81-90 have been sold, Metro may begin selling Graves in the 30-lot area numbered 91-100 and 111-130.
 - 4.3 When 50% of the Graves in the 30-lot area numbered 91-100 and 111-130 have been sold, Metro may begin selling Graves in the 30-lot area numbered 141-160 and 171-180.
 - 4.4 When 50% of the Graves in the 30-lot area numbered 141-160 and 171-180 have been sold, Metro may begin selling Graves in the 30-lot area numbered 181-190 and 201-220.
 - 4.5 When 50% of the Graves in the 30-lot area numbered 181-190 and 201-220 have been sold, Metro may begin selling Graves in the 30-lot area numbered 221-225, 191-200, 161-170, and 136-140.
 - 4.6 When 50% of the Graves in the 30-lot area numbered 221-225, 191-200, 161-170, and 136-140 have been sold, Metro may begin selling Graves in the 30-lot area numbered 131-135, 101-110, 71-80, and 46-50.
 - 4.7 When 50% of the Graves in the 30-lot area numbered 131-135, 101-110, 71-80, and 46-50, have been sold, Metro may begin selling Graves in lots 41-45 and 19-20.
5. EJCoP Installed Improvements. EJCoP may install mutually approved signage identifying the location and existence of the Eastside Jewish Cemetery Section in the area so termed, or in the nearby vicinity in a location subject to Metro's prior approval. At the southwest corner of Block 11 of Douglass Pioneer Cemetery, in the location depicted on Exhibit B, EJCoP may install a bench, a tree and an archival plot. A ritual hand washing station may also be installed by EJCoP at the southwest corner of Block 11 of Douglass Pioneer Cemetery, in the location depicted in Exhibit B, if and when water becomes available to Douglass Pioneer Cemetery. The area depicted in Exhibit B is hereby made part of the Eastside Jewish Cemetery Section.
 6. Gravemarkers and Headstone Standards. EJCoP agrees, covenants and warrants that, as a condition of resale to its members of Graves and subsequent burial therein, EJCoP will require and enforce the exclusive use of flat gravemarkers or headstones that are flush with the ground, in accord with Metro regulations.
 7. Hedge. Metro agrees to plant a mutually acceptable vegetative border/hedge along the east, west and north border of lots 11-20. The hedge will be planted along the east edge of lots 11 and 20, the west edge of lots 15 and 16 and the north edge of lots 16-20. Thereafter, EJCoP will be responsible for extending and replanting the hedge, under Metro's supervision, as future Grave purchases by EJCoP occur. The hedge may only be extended by EJCoP to encompass an additional column of lots (e.g., lots 41-45, and

so forth), upon EJCoP's purchase of a lot or lots within said column. Subject to the provisions of Sections 9 and 10, set forth below, Metro will maintain said hedge once established and as thereafter extended, and no other plantings shall be allowed except as set forth herein. In the event that EJCoP extends the hedge to encompass a lot before it buys any graves within that lot, Metro may sell graves within that lot to a third party other than EJCoP as allowed under the terms of Section 4, upon 10 days written notice to EJCoP. EJCoP shall, within 10 days of said written notice, remove at its expense that portion of the hedge encompassing such lot or lots (and in the event EJCoP fails to so remove the hedge as required herein, Metro may do so and bill EJCoP for the expense of such removal).

8. Burial Services. Metro shall be the sole provider of burial services at Douglass Pioneer Cemetery. Metro or Metro's contractor shall open and close all Graves purchased by EJCoP, in accord with Metro's fee schedule, policies and procedures.
9. Cemetery Maintenance. Metro will maintain the Eastside Jewish Cemetery Section on the same schedule and in an equivalent manner as the remainder of Douglass Pioneer Cemetery, in accord with Metro policies and procedures, subject to the provisions of Section 10 set forth below. Metro agrees never to install a road or cul-de-sac in Block 11 of Douglass Pioneer Cemetery.
10. Appropriations. Metro's performance under this Agreement is conditioned upon and financed by legally available funds appropriated for the purposes of Pioneer Cemetery maintenance. Nothing herein shall obligate Metro to appropriate funds to finance maintenance for Metro's Pioneer Cemeteries collectively, or for Douglass Pioneer Cemetery, individually. However, all funds Metro does appropriate for maintenance at Douglass Cemetery shall be allocated such that the Eastside Jewish Cemetery Section receives maintenance equal to the rest of Douglass Cemetery. -
11. EJCoP Dissolution and Succession. In the event EJCoP dissolves without creating a 501 (c)(3) successor cemetery association, the Eastside Jewish Cemetery Section shall remain a Jewish cemetery. In such a case, EJCoP will transfer ownership of the Eastside Jewish Cemetery Section to another Jewish 501 (c)(3) organization. In such case, Metro will afford the successor organization the same operating terms and conditions that existed at the time of the dissolution.
12. Metro Dissolution and Succession. In the event Metro sells Douglass Pioneer Cemetery or is dissolved, Metro's successors and assigns shall be bound by the terms of this Agreement.
13. Default. In the event Metro or EJCoP fail to perform as required by this Agreement, then the other party (the "Non-Defaulting Party") shall give written notice to the party who failed to perform or pay (the "Defaulting Party") setting forth the alleged default. In the event such default is uncured for a period of thirty (30) days after the giving of such notice (the "Cure Period"), the Non-Defaulting Party may proceed to cure such default. In the event the Non-Defaulting Party shall cure a default hereunder, the Defaulting Party shall be obligated to reimburse the Non-Defaulting Party on demand for the total costs and expenses of said cure, plus interest on all such sums at the

statutory rate set forth in ORS 82.010 (currently 9%). Such remedies shall be in addition to any other remedies available to the Non-Defaulting Party at law or in equity.

14. Notices. All requests, elections, notices and other communications to be given hereunder by either party to the other shall be in writing and sent by certified mail, return receipt requested, postage prepaid, by personal delivery or by facsimile transmission, addressed as follows:

As to EJCoP: Paul S. Frank, President
Eastside Jewish Community of Portland
P.O. Box 8622
Portland OR 97286

As to Metro: Metro Parks and Greenspaces
Attn: Jim Desmond, Director
600 NE Grand Avenue
Portland, OR 97232-2736

Either party to this Agreement may change its address for purposes of this section by giving the other party written notice of the new address in the manner set forth above. Requests, elections, notices and other communications shall be deemed effective upon delivery, if personally delivered, three (3) business days after mailing as set forth above.

15. EJCoP Indemnity. EJCoP agrees to defend (using legal counsel reasonably acceptable to Metro), indemnify, and hold Metro harmless from and against any and all actual or alleged claims, injury, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties (collectively "Costs") which may be imposed upon or claimed against Metro and which, in whole or in part, directly or indirectly, arise from or are in any way connected with: (i) the act, omission or negligence of EJCoP or EJCoP's officers, directors, agents, employees, contractors or subcontractors, or other persons under EJCoP's direction and control; (ii) the use or occupation of Douglass Pioneer Cemetery by EJCoP, whether or not due to EJCoP's own act or omission and whether or not occurring at Douglass Pioneer Cemetery; (iii) any condition created at Douglass Pioneer Cemetery by EJCoP or EJCoP's officers, directors, agents, employees, contractors or subcontractors, or other persons under EJCoP's direction and control, including any accident, injury or damage after the date hereof; (iv) any breach, violation or nonperformance of any of EJCoP's obligations under this Agreement; and/or (v) any damage caused by any of EJCoP's officers, directors, contractors, subcontractors, employees, agents or other persons under EJCoP's direction and control, on or to Douglass Pioneer Cemetery.
16. Metro Indemnity. Subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Metro agrees to defend (using legal counsel reasonably acceptable to EJCoP), indemnify, and hold EJCoP harmless from and against any and all actual or alleged claims, injury, damages, expenses, costs, fees

(including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties (collectively "Costs") which may be imposed upon or claimed against EJCoP by third parties and which result solely from: (i) the negligent acts of Metro, its officers, directors, agents, employees, contractors or subcontractors, or other persons under Metro's direction and control; (ii) the intentionally wrongful acts of Metro, its officers, directors, agents, employees, contractors or subcontractors, or other persons under Metro's direction and control.

17. Authority. Metro warrants that, in the manner required by its governing laws, it has duly authorized the undersigned signer to execute the Agreement on its behalf.
18. Applicable Law and Regulation. Except as specifically provided in this Agreement, all of EJCoP's activities hereunder shall comply with the Metro Code and Metro regulations. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Oregon.
19. Waiver. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this Agreement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.
20. Severability. The determination that one or more provisions of this Agreement is invalid, void or illegal or unenforceable shall not effect or invalidate the remainder of this Agreement.
21. Modification. No amendment or modification of this Agreement shall be valid unless in writing and signed by all parties hereto.

EASTSIDE JEWISH COMMUNITY OF PORTLAND ("EJCoP")

By: Michael Kay, Chair
EJCoP Cemetery Committee

Date

By: Paul S. Frank, President
EJCoP

Date

METRO

By: Michael J. Jordan
Metro Chief Operating Officer

Date

Exhibits:

- A 48 Graves in Lots 11, 12, 13, 14, 15, 16, 17 and 18 of Block 11 of Douglass Pioneer Cemetery
- B Southwest Corner of Block 11 of Douglass Pioneer Cemetery - EJCoP Installation of Bench, Tree, Archival Plot and Ritual Hand Washing Station Upon Water Availability for the Eastside Jewish Cemetery Section

EXHIBIT A DOUGLASS PIONEER CEMETERY BLOCK 11

15	16	45	46	75	76	105	106	135	136	165	166	195	196	225
14	17	44	47	74	77	104	107	134	137	164	167	194	197	224
13	18	43	48	73	78	103	108	133	138	163	168	193	198	223
12	19	42	49	72	79	102	109	132	139	162	169	192	199	222
11	20	41	50	71	80	101	110	131	140	161	170	191	200	221
10	21	40	51	70	81	100	111	130	141	160	171	190	201	220
9	22	39	52	69	82	99	112	129	142	159	172	189	202	219
8	23	38	53	68	83	98	113	128	143	158	173	188	203	218
7	24	37	54	67	84	97	114	127	144	157	174	187	204	217
6	25	36	55	66	85	96	115	126	145	156	175	186	205	216
5	26	35	56	65	86	95	116	125	146	155	176	185	206	215
4	27	34	57	64	87	94	117	124	147	154	177	184	207	214
3	28	33	58	63	88	93	118	123	148	153	178	183	208	213
2	29	32	59	62	89	92	119	122	149	152	179	182	209	212
1	30	31	60	61	90	91	120	121	150	151	180	181	210	211

EJCOP
Purchased Lots

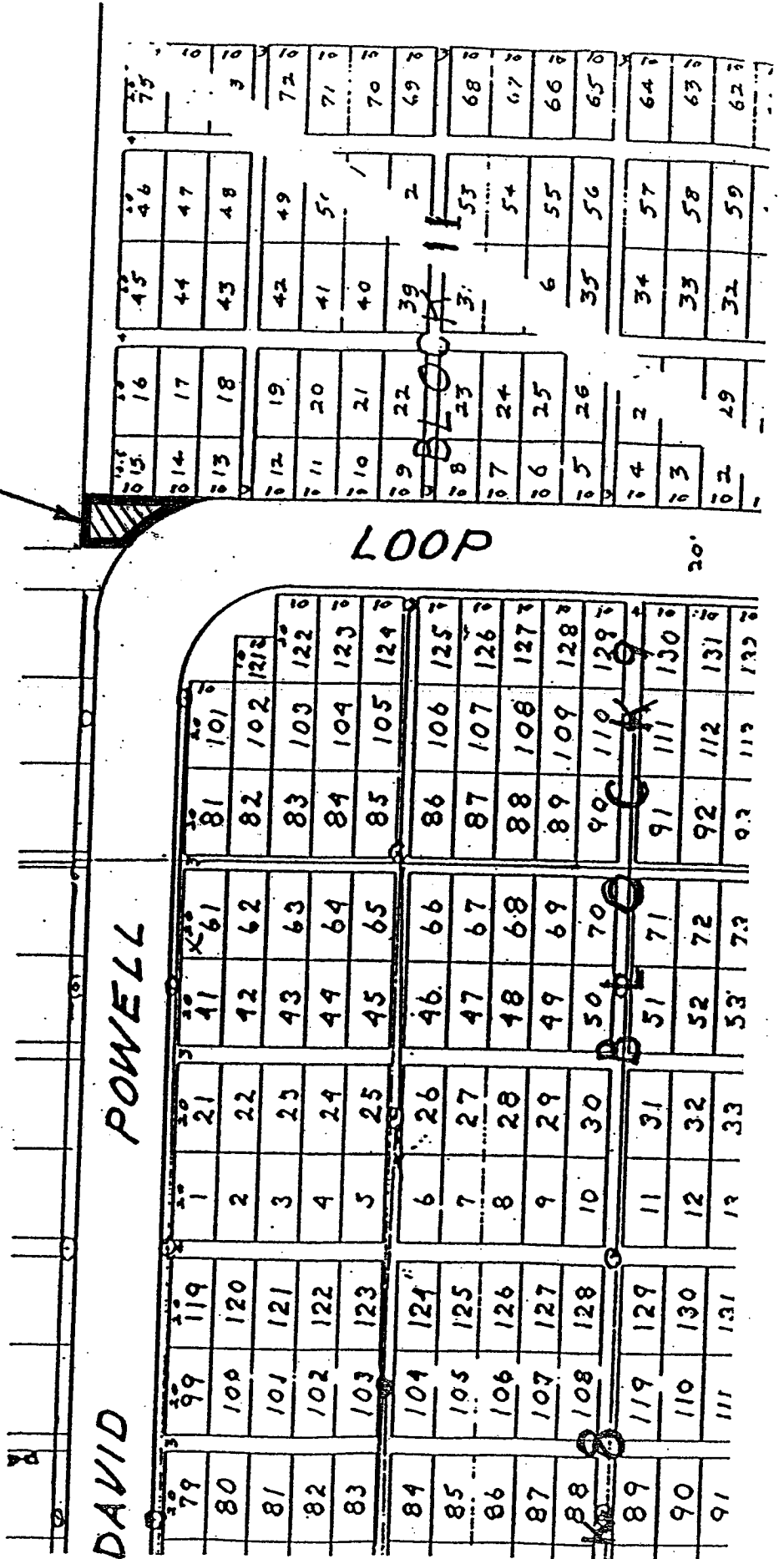
EJCOP
Purchasable Lots

METRO
Order Of Grave Sales Before Entering
EJCOP's Purchasable Lots

- First
- Second
- Third
- Fourth
- Fifth

Exhibit B-SW Corner -Block 11
 Douglass Pioneer Cemetery
 48 Graves in Lots 11, 12, 13, 14,
 15, 16, 17 & 18

Location of Bench, Tree
 & Archival Plot



STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3467, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ENTER INTO AN AGREEMENT TO SELL 48 GRAVES TO THE EASTSIDE JEWISH COMMUNITY OF PORTLAND AND ESTABLISH THE EASTSIDE JEWISH CEMETERY SECTION AT DOUGLASS PIONEER CEMETERY

Date: June 17, 2004

Prepared by: Jim Desmond
Dan Kromer

BACKGROUND

Metro's Regional Parks and Greenspaces Department was approached by the Eastside Jewish Community of Portland (EJCOP) about a year ago with a request to purchase a block of graves at Douglass Pioneer Cemetery. Douglass Pioneer Cemetery, located in the City of Troutdale, Multnomah County, is one of the 14 Pioneer Cemeteries that Metro owns, actively markets and maintains. These cemeteries were transferred to Metro in 1994 when Multnomah County's Parks Services Division merged with Metro to create the Regional Parks and Greenspaces Department. EJCOP desires to establish an Eastside Jewish Cemetery Section at Douglass Pioneer Cemetery and this cemetery has a large section (Block 11) of contiguous graves that have not been sold, making it an ideal area for EJCOP's needs.

Metro's Chief Operating Officer and the Regional Parks and Greenspaces Department have reached a tentative agreement providing for the sale by Metro of 48 graves to EJCOP along with a covenant to sell adjacent graves to third parties in a sequence that allows for the potential expansion of the Eastside Jewish Cemetery Section in the future.

ANALYSIS/INFORMATION

1. **Known Opposition.** No known opposition.
2. **Legal Antecedents**

Metro Ordinance No. 93-520 (For the Purpose of Determining Which Facilities Contemplated For Transfer From Multnomah County to Metro are Public Cultural, Trade, Convention, Exhibition, Sports, Entertainment, or Spectator Facilities, or a System of Parks, Open Spaces or Recreational Facilities of Metropolitan Concern, adopted December 9, 1993) and Resolution No. 96-2285 (For the Purpose of Authorizing a Phase II Intergovernmental Agreement With Multnomah County Regarding Parks and Other Facilities, adopted March 14, 1996), authorized the Executive Officer to enter into Phase I and Phase II agreements, respectively, formally transferring all of Multnomah County parks, natural areas, golf courses, cemeteries, and trade/spectator facilities to Metro. The terms of the transfer required Metro to assume all active contracts and/or agreements that were then in effect. Among these agreements was a 1984 Grave Sale Agreement with Havurah Shalom, Inc., establishing the Havurah Shalom Cemetery Section within the Jones Pioneer Cemetery in the City of Portland. This agreement allowed Havurah Shalom, Inc. to purchase 99 graves along with three (3) options to purchase an additional 309 graves. The last of these 3 options was exercised by Havurah Shalom, Inc. in February, 2004.

3. Anticipated Effects

A block of 48 contiguous graves in the Douglass Pioneer Cemetery will be sold to EJCOP. This block of graves, and other contiguous graves, if later purchased by EJCOP will be known as the Eastside Jewish Cemetery Section.

4. Budget Impacts

The sale of 48 graves generates revenue of \$38,400 for Regional Parks and Greenspaces.

RECOMMENDED ACTION

Michael J. Jordan, Chief Operating Officer, with the concurrence of the Council President David Bragdon, recommends adoption of Resolution No. 04-3467.